

LOCAL GOVERNMENT COMMITTEE MEETING
March 10, 1981

The Local Government Committee met March 10, 1981 at 12:30 p.m. in the Old Highway Auditorium. VICE CHAIRMAN ORREN VINGER called the meeting to order. The secretary called the roll. All committee members were present except Reps. Hurwitz and Waldron who were absent. Lee Heiman, staff researcher, was present too.

SENATE BILL 133 - sponsored by Senator John Manley of Drummond

SENATOR MANLEY said the reason for this legislation is because of problems that have arisen in the counties for the planning and zoning of properties in the State of Montana without the real consent of the owners of the property. In many cases certain areas have been zoned, turning one neighbor against another. Nobody realized what the zoning being put on their land was about. They didn't understand it and some of the people actually signed both petitions. What this piece of legislation does is when a piece of land is set aside by the Planning Boards and the County Commissioners, and a plan made up for their area, it has to be presented to the people who own the property beforehand and an election held. It must be explained to them in detail so they will know what the zoning will entail. I, as well as many of the people in support of this legislation feel that landowners should be allowed to vote, and this is what this does.

We see nothing wrong with the bill by requiring that the people and the County Commissioners must come up with a detailed plan which they are willing to accept or reject. It should be up to the people involved and not up to a Planning Board or the County Commissioners.

PROPOSERS FOR SENATE BILL 133

ELMER FLYNN of the Missoula Valley said that Missoula County was one of the first in the state to proceed with the Master Plan. Zoning of 12,000 acres was set up almost overnight with a stroke of a pen without even a hearing. When the property owners read about it in the paper, they were upset and certainly learned how to protest and carry petitions. This occurred as a result of hiring high priced planners from out of state who came in and thought they knew what they were doing. We have some land where the use has been changed four times, showing that no ground work or thought was put into the original planning. They then came in and told the people, "now you can protest". I feel the public has the right to a voice because when the decisions are made, that is setting the value on their property. The people cannot just go by the classification. It is one thing to come in and decide what potential the ground has and perhaps make some good recommendations as to what it can be used for, but to submit people to an overall classification and then tell them to fight their way out is wrong. It is not democratic and I hope the committee sees fit to pass both of these bills.

PROPONENTS who rose in support and spoke in favor of this bill submitted written testimony which is attached to and made a part of these minutes, as follows:

Juanita Bays, from Ovando

Robert J. Boucher, Chairman of the Blackfoot Freeholders' Association.

Vera Cahoon, Potomac, Missoula County Freeholders' Association

Agnes Coburn of Ovando

Margaret Copenhaver represented a group of Ovando citizens

Steven D. and Donna Copenhaver of Ovando

James Costamagma, Blackfoot Freeholders' Association

Evelyn Davis, formerly from Blackfoot Valley, Missoula

Tina Gausett, Missoula County Freeholder

Alfred M. Hutcheson from Missoula

John and Sue Lapka, Ovando

Joy and Paul Nelson, Potomac

Wells and Sheila Cahoon, Potomac

JULIE HACKER said she lives at Potomac and brought along some information she received through the Missoula County Planning Department. The reason the Blackfoot Freeholders are so upset about the zoning is because it took such a long time to develop and then the County Commissioners took over without any notification to us describing the platted out zones. We're asking through these bills that the legislature provide a vehicle so the people can be informed and know the rules and regulations. If these documents called plans were properly prepared with the consent of the people, and if the people had a right to vote on them, we might be willing to accept zoning. We found out that there is only one way to go in the process of preparing plans for the Blackfoot Valley and that is with these blanket regulations. We're asking for the right to be informed and the right to vote in the final say on how our land is to be zoned. We want to have a hand in the control of the variances.

OPPONENTS TO SENATE BILL 133

H. S. HANSON represented the Montana Technical Council. He feels it is important that we understand there are two methods by which

zone laws can be passed. One is that the landowners can petition the commissioners to have a specific area zoned. The second one is the zoning by the County Commissioners. This bill specifically addresses that area. (For additional testimony, see written report attached to and made a part of these minutes.) He urged committee members to kill this bill as it will not allow changes to be made once it is adopted.

ROSE LEAVITT represented the Montana League of Women Voters and spoke in opposition to Senate Bill 133. (See written testimony attached to and made a part of these minutes.)

BOB DECKER, Lewis and Clark County Commissioner, said he is here on behalf of the County Commissioners. Evidently the problems we are talking about today are more acute in Missoula and Ovando than here. The comprehensive plan goes through a long advertised public hearing and public involvement process. Counties that do not have a comprehensive land use plan must react. It is a reactionary process on behalf of the county commissioners to a petition by 60% of the freeholders within that proposed zoning district. It is not as if in most of the counties of Montana, zoning came out of the blue if the desire for zoning originates within the proposed zoning district and is reacted to by the county commissioners. When the commissioners react, they consider things not specifically pertinent to that district, but they also consider what impacts the zoning would have on the rest of the planning area and the community as a whole, such as transportation, local services, taxation, commercial areas, and so forth. The whole ball of wax must be considered. The proposed change in Senate Bill 133 would affect this whole process and in the end would make the zoning more costly. One election in our county could cost from \$8,000 to \$9,000. If it could be held in conjunction with a primary or general election, there would be a length of time development. Senator Manley stated that no landowner voice is present in the existing zoning process, but pointed out that with the majority of the 50 Montana counties, that zoning process begins with the landowners (60% of the freeholders in the proposed zoning district.) Mr. Flynn stated that the current petitions being circulated are going to the root of the problem. It appears that the root of the problem here isn't the zoning bills as they currently exist in Montana statutes. The current problems that you are hearing in support of this bill exist in a relatively small area of the whole state state which we are representing. I would ask you to look at the entire impact this bill will have on the entire zoning statutes and the other counties that seem to be operating under these statutes physically and relatively well.

DON SNOW said he is Staff Coordinator of the Montana Environmental Information Center and he rises in opposition to Senate Bill 133, not in opposition to the concept of voter approval or anything else. (Mr. Snow's written testimony is attached to and made a part of these minutes.)

DENNIS TAYLOR said he represents the City of Helena. Last night the City Commission voted unanimously in opposition to this bill. We feel especially that Senate Bill 133 would have a detrimental effect on our community's abilities to deal with our problems locally and because of a few insolated counties and the solution proposed here would have an adverse effect on the rest of the communities that are having some political problems. Specifically, I'd like you to turn to page 7, section 6, line 12. Last session the legislature adopted Senate Bill 65 which was a uniform revision of the state election laws. If you are going to adopt a measure such as this one, you should amend Section 6 to require that the county administrator should be the person responsible for the administration of law by elector's owning the property. Currently all election administration is centered in the county election administrator and in most instances that is your County Clerk and Recorder. I think that would be an improvement. Another one is that Uniform Title XIII for conducting an election provides one uniform notice provision for all elections. I would urge you to consider putting it into this bill that uses that same uniform provision.

REP. KITSELMAN said he is a representative from House District 60 in Billings. He said he has been a member of the City-County Planning Board and the County Zoning Commission since 1973. He applauded the efforts on public input, but on an average now when real estate development is down, we handle approximately 8 to 10 zone changes a month. When things were going strong, about two years ago, we were handling between 10 to 19 zone changes a month. The current estimated cost of an election in Yellowstone County on a limited basis is about \$11,000. Usually the costs are born by the developer or person requesting the zone change. The advertising has risen to approximately \$1,700 a month per zone change hearing and the cost is phenomenal with this thing. Multiply 8 zone changes by \$11,000 and compare that cost.

As there were no further opponents, ACTING CHAIRMAN VINGER asked Senator Manley if he'd like to close. Senator Manley said he'd wait until any questions from committee members were answered.

QUESTIONS FROM COMMITTEE MEMBERS

REP. PISTORIA asked Mr. Hanson why he doesn't want people to vote on these decisions?

MR. HANSON said basically we are in favor of them voting. The problem is it becomes locked in. Once you lock that type of thing in, you end up that you go out the door but you have to come back in. When there are 7 or 8 zone changes a month, you are talking about 51% stopping any zone or land use change in any particular county. I think it is wrong for that type of change. 51% should participate in the formation of the zoning, but not be able to stop it.

REP. PISTORIA asked Bob Decker to reply to a question. You said you talked with the Clerk and Recorder and she said it costs about \$8,000 to \$10,000 to hold an election. Don't you think it is worth it in the American way to vote on something?

BOB DECKER replied that the American way right now seems to be saving money in government. I would like to mention that Lewis and Clark County has 33 zone districts. Last year we considered at least a dozen such changes and we were faced with the same expenditure problem. May I suggest that in order to adhere to that American way you are talking about getting the landowners voice. There are two ways the Commissioners can create zoning districts. One is by the 60% petition route and the other is by the use of the comprehensive planning route. Under the comprehensive land use plan, the Commissioners can by law, with advertising and via the planning board, create a zoning district without going to the freeholders directly. May I suggest that if you are really concerned about getting the freeholders' voice and are concerned about seeing the local government's money, maybe the petition process should be entered into the comprehensive plan zoning process. Then, no matter which way you create the zoning district, you'd have 60% or a majority of the freeholders proposing that that zoning district be created. Under Rep. Keyser's system, the zoning district would not stem from the Commissioners but would start at home.

REP. GOULD commented that in his area the people are always on the defensive. We figured we had the zoning to protect us and it seems like every time you turn around somebody is trying to put in a condominium development that more or less circumvents the zoning that is already there. I wondered if this would be an advantage in such a situation.

SENATOR MANLEY said yes, he believes it would be an advantage. Whatever plan was brought out, it would have to be well thought out and detailed and it would have to be sold to the people in the area. Then, if they voted on it and accepted that zoning in their area, it would be acceptable.

BOB BOUCHER said the feeling everywhere is that under the present law, Chapter 47, this is not working. It seems to me it is more logical to do something in a positive fashion and get people to agree first of all than to work out a plan and then have to disagree with it to get rid of it by going through a protest. If it was more along the lines of Chapter 41, we would be a lot better off. If we'd throw out Chapter 47 all together, we'd be much better off.

REP. KESSLER for Senator Manley: People are concerned about the right to vote. Yet by limiting the language in this bill to just the electors of the area, aren't you disenfranchising a great number of people who don't live on but still own the land?

SENATOR MANLEY said the way he interprets the bill is that it would address the landowners in the area, and the landowners would be able to vote and must be notified.

REP. KESSLER continued that on page 7, line, it puts the resolution to a vote of the qualified electors. I assume they would have to be residents.

SENATOR MANLEY said that is not the way he interprets it. It was to mean, and perhaps we need an amendment to clarify this, that the electors owning land within the area to be zoned must be notified and that would include any absentee landowner.

REP. BERTELSEN said he had a request for an amendment to this bill from the Railroad Association because they felt they were being excluded in the way the bill is written and it should include language to say "freeholders".

SENATOR MANLEY said that if there is an error in the bill, he would recommend and accept an amendment.

REP. HANNAH: I have a question for Margaret Copenhaver of Ovando. You indicated that the landowners in your area didn't find out about the proposed change until the last minute, and you then had to go out and collection petition signatures in protest. Did you get enough signatures to fight it? Does the current law work or not?

MARGARET COPENHAVER answered, yes, it did work. But I don't feel we should have to wait until something happens before we can fight it.

VICE CHAIRMAN VINGER asked if there were further question. Seeing none, he hased Senator Manley to close.

SENATOR MANLEY commented that all the opposition to this bill is even more reason why we should pass it. We talk about how wonderful some of the other cities like Missoula, Billings, Bozeman and others have done. Then look out over the Helena valley, especially at night, and look at how wonderful they have done with their planning. It is absolutely horrible to think of some of the things that have happened to the landowners in those areas, and it is still happening in Billings even though you say it isn't. All you have to do is go to Billings and land in an airplane and look around you at the Rimrocks. Look at all the planning that went into that and all the things forced on the landowners because they didn't have a choice. To say this is just Missoula's problem is ridiculous. This is the State of Montana's problem. Some of the worst things are that it is too cumbersome and costs too much to give people a vote.

If you are going to have a zoning plan in an area, what is wrong with asking for a good job? If you listened to the people from Ovando, you can tell how one neighbor feels about another now. Had everything been well detailed, well planned and presented in the open to the people in the area and put up to an election, I personally feel the zoning would have been accepted. But it wasn't because of the people didn't think they were being polled about what was being done to their land and their rights. They rebelled. It made them mad, so they hurried up, got a petition and stopped what was happening to their land before they were even told. There really is a need for this piece of legislation. The only problem is that it may be 10 or 15 years too late for a lot of areas. Look at Bozeman when you drive from Manhattan into town and see what happened to the valley which perhaps 20 years ago was one of the most beautiful agricultural areas in the State of Montana. People from that area, take a good look at this next time you go over there.

This was done and allowed by bureaucrats who didn't ask the people. They did it without approval from the landowners. You can go through the Bitterroot Valley and see the same thing. This bill should be passed now to keep this from happening further and further out into the country. I feel it is a sacrilege to not allow the people who own and live on the land to vote on what is going to happen to it. I hope that you will allow this bill to pass so we can start getting a handle on some of the things which are happening.

VICE CHAIRMAN VINGER closed the hearing on Senate Bill 133.

SENATE BILL 399 - sponsored by SENATOR JOHN MANLEY.

VICE CHAIRMAN VINGER said the hearing is now open, and he called on Senator Manley to introduce the bill.

SENATOR MANLEY said that Senate Bill 399 addresses approximately the same problems as SB 133, but he asked to turn the introduction of the bill over to Senator Turnage.

SENATOR TURNAGE said he is from District 13 and resides at Hillcrest in Polson. One thing you can't say about this bill is that it is a local interest problem. It includes the right to vote to all electors, not just the landowners. In the present law, if there are problems in the sections that SB 133 missed, the problems are not nearly as severe as in the heart and sections of SB 399. This bill deals with Title 76, Part 6, Chapter I and has to do with the Master Plan. Before you can understand how important it is that something must be done in the nature of SB 399, you have to consider the entire Part 6 of the Master Plan sections and what they propose to encompass.

SENATOR TURNAGE went over 76-1-601 of the contents of the Master Plan discussing each section as he went. When he finished, he

submitted that this is a responsible way to allow those that are going to be governed to make a decision in an open and free election as to how they'll be governed. The present law does not do that. Keep in mind that once the plan is adopted, even the County Commissioners can't amend it. The people cannot initiate any change. Finally, the people have no effective voice on whether or not any part of the plan will be adopted at all.

SENATOR MANLEY asked Chairman Vinger if they could give up their time for proponents and let the opponents present their views. Rep. Vinger said he'd allow the opponents to speak first.

OPPONENTS TO SENATE BILL 399

ROSE LEAVITT represented the Montana League of Women Voters. She said the League supports the concept of voter approval of the land use Master Plan. Because there are so many ambiguities in SB 399 and because the intent is not clear, we urge you reject the bill or amend it to make it workable. (She submitted written testimony which is attached to and made a part of these minutes.)

GALE ALLEN of Butte represented the Montana Association of Planners. They opposed this bill based upon the fact that the procedures as they are written are not clear. For instance, whose plan is submitted for a vote of the people? Not only does the plan effect land use that seems to be the major element of concern, but it effects many other items. It effects such items as capital sewer improvement, utilities, telephone lines, street development, and so forth. Because of this, it would not only slow land use development, but would slow up basic community development, which often times in our full impact growth areas is widely needed. Once adopted, the plan is inflexible. Such a bill does not recognize deficiencies in the plan once they are passed. Because of this inflexibility, unforeseen changes in the community are not perceived and the plan cannot be readily amended.

THURMAN TROSPER said he is a member of Lake County Planning Board and he's been working on this bill for about four years. (His written testimony is attached to and made a part of these minutes.)

BOB DECKER, Lewis & Clark County Commissioner, said Lewis and Clark County is not opposed per se to the elective process of the bill, but the rest of the bill seems to be very confusing and could lead to a lot of statutory challenges and court cases. Section 6 allows the public to vote on a land-use plan. It says a governing body may repeal or revise a master plan adopted under this section. Planning is a dynamic process. It goes hand and foot with growth and development. Planning must be the same way. So plans change from year to year. As I understand it, the bill would allow the governing body to make changes in the Master Plan if not unilateral at least with the public consent. If that is so, what meaning does initial voter approval have with the Master Plan. It seems to me after administrations

change, they would change the plan if they saw fit and we'd be back in the same boat as we are today. It disagrees with the first part of the bill. If it isn't that way, the governing bodies cannot make changes after the Master Plan has been initially adopted, so where is the flexibility in planning that we need to address changes in economics, agriculture, funding sources, you name it? Either we have flexibility or we don't and the bill as written is very confusing regarding that question.

QUESTIONS FROM COMMITTEE MEMBERS

REP. AZZARA for Senator Turnage: I like this bill and feel it might be workable, but you have conveyed the impression that the counties are obligated to adopt Master Plans and they are not. There are only 4 or 5 counties in the State that have a Master Plan.

SENATOR TURNAGE said he did not say that they statutorily must adopt a plan. I said that the statute requires that you either adopt, amend or reject. I did say that after the County Commissioners had spent thousands of dollars buying the plan, the practical matter was yes, they must adopt it.

REP. AZZARA said that Missoula's plan has been systematically ignored. Don't you believe, Senator Turnage, that there are a series of options which never really become law until they are adopted by a governing body?.

SENATOR TURNAGE said 606 deals with subdivisions (plats). As far as adopting ordinances, we want them all adopted at one time. Once the Master Plan has adopted the ordinances, it must be under the statutes.

REP. ANDREASON asked Senator Turnage about the same question as Bob Decker did on Section 6. I'm not sure why that section is in there.

SENATOR TURNAGE: The present law does not allow the county commissioners or city council members to amend, revise or repeal the plan. Once the plan has been adopted, it cannot be changed.

REP. ANDREASON said perhaps we should have stated something about their ability to have input, revise or change it. It seems very drastic that once we've set up a plan with voter approval, all of a sudden we get to Section 6 and they can repeal it.

SENATOR TURNAGE said it is inflexible. Nobody can change it.

REP. MATSKO asked Senator Turnage if it is his intention that Section 6, sub (a) and (b) would allow for modifying those Master Plans already in effect.

SENATOR TURNAGE said, "that is my intent."

REP. HANNAH for Senator Turnage: On page 2, lines 9 to 12, the bill reads: "If a majority of the qualified electors voting on the proposed plan disapprove it, the plan may not be resubmitted to the qualified electors for a period of one year from the date of disapproval." There is a certain amount of vagueness. If the plan were basically a good plan and the people supported it except for one area and because of that area they voted the plan down, does that mean that we can't come back for a full year with any plan?

SENATOR TURNAGE: The planners are afraid that if you allow all the people to vote on the plan, special interest groups will gut the plan. What do you think we're all doing here in Helena? We're laying plans for the entire state. Often times special interest groups gut somebody's plans. That is the democratic process. If there are defects, I submit they are a lot more safe to live with than having a floated government with planning boards, with the government writing their laws so they can control your activity. With this I will close.

ACTING CHAIRMAN VINGER closed the hearing on SENATE BILL 399.

EXECUTIVE SESSION:

SENATE BILL 152

CHAIRMAN BERTELSEN stated he feels we should take some action on SENATE BILL 152. This is the bill to allow municipalities greater flexibility in assessing the costs of installing and maintaining a lighting system to those who benefit from a special lighting district. The Chairman said it was brought up to him that there was a move to reconsider, so he asked Rep. Marks what we should do to hold it and not put it on the floor until the committee has a chance to consider whether they want to reconsider House Bill 152. It seems better to bring the bill back to committee and see whether that is what they really want to do.

REP. KITSELMAN said he'd move to reconsider SENATE BILL 152. He feels we should reconsider as right now county government can charge or assess 100% for a lighting district. In Billings where we have annexation, the maximum is about 75% as 25% is passed on to the rest of the city. The money has to come from somewhere and at present it is coming out of their general fund which approximates \$100,000. Another thing is the fact that it is assessed to the whole city. I'm in the city, but I don't have any lights. But I'm paying for lights across town. That situation is not fair.

CHAIRMAN BERTELSEN said the question was brought to him that we probably haven't given the bill enough consideration. There were some arguments which we didn't bring up in committee. If you want to reconsider it, I have no strong feeling either way.

REP. DUSSAULT commented, "then the bill was never reported out?"

CHAIRMAN BERTELSEN said that is correct. We just held it to save some paper work rather than go on through the process of having it come up on the floor with an adverse committee report. We can do whatever you want to do now.

REP. SWITZER asked Rep. Kitselman if this was to allow a lighting district to spread part of the cost over the whole city?

REP. KITSELMAN said the lighting district itself will pay for its own lights. Right now the cost is spread over the whole city with the exception of your main thoroughfares in the downtown area where there is more public use than in a small neighborhood. The thing is that it is an urban bill. It does put a burden on the cities to come up with \$100,000, particularly in Billings where annexation is taking place and the creation of more and more lighting districts (for instance 31% of the neighborhoods have lights). If you come out with the other 25% and spread it over another 75%, you can see there is a tremendous drain and burden from the general fund to make up that difference. We are not exercising that much of an option in Billings. If you create a lighting district, allow those who live in the district to pay for it themselves and don't spread the cost to people who don't receive the benefit.

REP. HANNAH said under the current law, the governing body must spread 25% up to 75%.

REP. BERGENE said Great Falls asked that the City of Great Falls be allowed that flexibility. They are going to change one whole lighting district.

REP. ANDREASON said he was told there were going to be some amendments submitted which would substantially alter this situation. I haven't really changed my mind on this particular issue. What we're saying to the newcomers is, "we have our lights; now you can pay for yours" and I don't think it is fair.

REP. HANNAH feels Rep. Andreason has a good point, but I think we have a bad situation now. We are forcing people out of the city to pay for a minimum or a portion of the lighting districts in the city and I don't think that is fair either.

REP. ANDREASON said he can't see that lighting or the other things are the same at all. We are talking here about a community resource of lighting which is not the same as streets and other types of things. I have lights on my street and the street next to me is totally dark. I wouldn't mind if I and some of the rest of the community paid for them to have lights because I think it would help the whole community as a community resource. We are not talking about the same kind of thing. I feel it is a community resource and it is different.

REP. GOULD feels if you have lighting in your area, you can cut down on crime, police patrols and that kind of thing and it should be on a cost ratio to everyone in the community.

CHAIRMAN BERTELSEN said if the city feels it cannot contribute the 25%, and they won't allow the lighting district, the people might really be willing to accept it. That is the point that was made.

REP. KESSLER commented that when a city is up to their millage and they can't assess it to a district, they just won't assess it at all, because they'd have to take it out of the general fund.

REP. KITSELMAN said that millage is very important because it is mandatory that they contribute 25%. In Billings they just shrunk the police force by 16 people. That millage in our city would allow us to have 2 to 4 more salaried policemen on duty.

QUESTION to reconsider action on SENATE BILL 152.

A roll call vote resulted in 11 committee members voting "yes", and 4 voting "no", namely Reps. Andreason, Dussault, Gould and Pistoria. Motion carried and the committee will reconsider Senate Bill 152.

CHAIRMAN BERTELSEN appointed REP. SALES as chairman of a subcommittee to come up with recommendations for action on SB 152. Other subcommittee members are Reps. Dussault and Vinger.

The meeting adjourned at 2:45 p.m.


Verner L. Bertelsen, Chairman

hbm

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

BILL SENATE BILL 133

Date March 10 - 12:30 p.m.

SPONSOR Senator John Manley

Old Highway Auditorium

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPO
Julie Hacker	Star Pt - Patomac	self	X	
Marjorie Conner	Crane Mt	self	X	
Ann Murphy	Quincy	self	^	
Betty Reinisch	Crane	self	X	
Margie Spear	Crane	"	X	
Christa Bays	Quincy	Self	X	
LeAnne Anderson	Quincy	self	X	
H S LANSON	HELENA	MT TECH. Council		X
George Hacker	Patomac	self	X	
James Labaree	Quincy	self	X	
Boyd S Nelson	Quincy (Twin)	self	X	
John C. ...	Patomac	self	X	
Robert Boucher	Patomac	chairman Blackfoot Freeholder	X	
James Castanaga	Patomac	Blackfoot Freeholder	X	
Paul H. Davis	Helena, MT	self	X	
John C. ...	Patomac	self	X	
Jim Barrett	Clinton mt.	Miss. Co. Const. Bd. Rep.	+	
Ellen Smahan	Massena Mt.	High. Co. Rep.	X	
John C. ...	Quincy	self	X	
Joy Nelson	Patomac mt.	self	X	
John B. Wittenberg	Missula Mt	self	X	
Bob Decker	Helena	Law & Clark County		X
Mary A. Flynn	Massena	self	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

RULL SENATE BILL 133

Date March 10 - 12:30 p.m.
Old Highway Auditorium

SPONSOR Senator John Manley

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME AS Hanson Bill No. BB-133
ADDRESS HELENX DATE 3/10/80
WHOM DO YOU REPRESENT MT TECHNICAL Council
SUPPORT _____ OPPOSE ☒ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

(See type SUBMITAL

The Montana Technical Council OPPOSES SB133.

1) We see no need for the bill.

- a. In Montana only 5 counties have adopted county zoning; of these 5 only one county (Cascade) has adopted county-wide zoning; the other districts are located in the urban areas adjacent to cities. YELLOWSTONE. HILL, MT
FLAT HEAD.
- b. In contrast to the one county in Montana which has adopted county-wide zoning, 50% of the counties in Idaho and North Dakota and 80% of the counties in South Dakota have adopted county-wide zoning.
- c. A unique feature in Montana law ^{which the others do not have IS THAT} allows 40% (a minority) of the landowners in a proposed district ^{CAN} to block zoning by petition. This provision has been used to stop zoning proposals in 34 counties. CARDON
LAKE
MEAGHER
- d. The motivation for SB133 ^{APPEARS TO BE} arose out of one area in Missoula County. Even in that case zoning was not formally proposed by the county because of opposition from some of the property owners. The current law did not allow zoning to be forced on those land owners.

WE BELIEVE

2) [^] SB133 would make the procedures for adopting zoning ~~prohibitively~~ costly and cumbersome. It will require

- a. Present law already requires that a plan be prepared and adopted before zoning may be proposed. After adopting a plan counties must follow stringent and complex requirements for notice, hearing and a protest period. SB133 adds to these existing procedures the cost and time of holding an election:
 - registration of eligible voters
 - publication of notice for four weeks
 - mail of notice to all eligible voters
 - conduct of election, with canvassing

A. MSL ZONING DISTRICT WAS ESTIMATE TO COST \$16000. THE FIGURE WAS DEVELOPED BY THE MSL PLANNING STAFF.

- 3) One provision of SB133 is clearly unconstitutional -- the requirement that a planning board must approve an interim zoning proposal before the county commissioners may adopt it.

In 1961 the Montana Supreme Court ruled that elected officials cannot be governed by an advisory planning board (Plath vs. Hi-Ball Contractors, Inc., 1961).

It appears

- 4) SB133 would severely abridge the rights of property owners by making zoning almost totally inflexible.
- a. The same costly and elaborate procedures of holding an election would apply to any proposed zone change under SB133. Ironically, property owners (whom SB133 purports to protect) would particularly suffer because their right for fair and undelayed consideration of a zone change, no matter how legitimate, would be lost.
- 5) SB133 could deny a property owner the relief from hardship that a Board of Adjustment can grant.
- a. SB133 would require a 60 day protest period and allow a 40% petition to overrule the granting of a variance by a Board of Adjustment.
 - b. A Board of Adjustment serves a necessary Quasi-judicial purpose of granting relief to property owners when strict enforcement of a zoning regulation would cause unnecessary hardship. A property owner's judicial appeal to a Board of Adjustment should be considered on its merits, and not be delayed for 60 days or overruled by a petition.

NAME Rose Leavitt BILL No. SB 133
ADDRESS 318 Harrison - Helena DATE 3/10/81
WHOM DO YOU REPRESENT L'W V of Montana
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

please see prepared statement

NAME Quanita Adams Bill No. SE 133 & SE 399

ADDRESS Quanta Mt DATE 10-10-61

WHOM DO YOU REPRESENT Self

SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Have a written testimony that is left.

Mr. Chairman and Members of the Committee, my name is Garita Lopez of Ovando in Powell county. In regards to SB 133 and SB 399 I would like to express my views why I urge you members of the House Local Government Committee to approve these two bills.

a group of people
In 1980 ~~Rep. Verner Bertelsen and proponents~~ presented a zoning proposal for School District 11 to the county commissioners stating that 60% of the landowners were in favor of the zoning proposal. The signatures on the petition were accumulated through 1978, 1979 and 1980. A number of citizens felt the regulations were so restrictive the landowner was being deprived of his rights.

When a protest petition was circulated some proponents became irate and resorted to dirty tricks and harassment such as phoney land sale adds, accusations of ignorance and lack of interest in the community, all of which accomplished only hard feelings in the community, and leads one to believe some ^{*underlying*} ~~subversive~~ interest must have been behind it. One ~~of the proponents~~ ^{*of the proponents*} working on the zoning proposal was investing in a large subdivision on the Double Arrow. ^{*in Seeley Lake, MT.*} Does that sound like he has the interest of the people at heart?

In gathering signatures of 40% of the landowners on the protest petition we found out most of the people did not understand what the zoning would mean to them personally, and had many different ideas as to why they had signed the petition in favor of the proposal in the first place.

I think it is unfair to have such a convenient law that ~~only a few~~ citizens can present their own proposal to the county commissioners without assurance the landowner has a say in the zoning of his land. I am not against zoning but against the way the regulations are written.

my daddy, many other men

~~Our~~ boys fought for the freedom of this America but it seems like now we have forces from within trying to destroy this freedom.

NAME Robert J Boucher

Bill No. 133 + 399

ADDRESS Star Route Potomac

DATE 3/9/81

WHOM DO YOU REPRESENT Blackfoot Freeholders ASS.

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. ATTN: Mr. Gould

Comments: IT should be made clear there will be only one election in HB 133, and that is to determine if an area is going to be zoned. And all ^{affected} freeholders should have a vote. There would not be a vote concerning any regulation changes. The ^(present) normal procedure would be followed for variances or special exceptions, etc. If the freeholders do not agree to any decisions concerning regulation changes or lack of changes, ^{they} can by 40% of the affected freeholders on petition (SHT 6, line 18), over rule the decision. There would not be an election on any zoning regulation changes. The petition would allow the affected freeholders to maintain control of regulations, and still allows the present process for changes. ~~there needs~~
~~to~~

NAME John Smith Bill No. 153

ADDRESS 123 Main St DATE 7/1/79

WHOM DO YOU REPRESENT John Smith

SUPPORT / OPPOSE / AMEND /

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Will hand in

MARCH 10, 1981

MR. CHAIRMAN, MEMBERS OF THE LOCAL GOV'T. COMMITTEE
MY NAME IS VERA CAHOON. I AM CHAIRMAN OF THE MISSOULA COUNTY FREEHOLDERS ASSOC.
AND I REPRESENT THAT GROUP HERE TODAY.

I RISE IN STRONG SUPPORT OF SB 133 AND SB399.

ZONING LAWS IN THEIR PRESENT FORM ARE, FOR THE LARGE PART NOT WORKING, PARTICULARLY IN THE RURAL AREAS. ALMOST ALL ATTEMPTS TO ZONE IN THE OUTLYING AREAS OF THE COUNTY HAVE BEEN SOUNDLY DEFEATED. WHY?? THE PROPOSALS BEING FOISTED UPON US SIMPLY DID NOTHING TO IMPROVE THAT WHICH WE ALREADY HAD. A ZONING PLAN THAT IS COMPOSED OF DRAWING LINES ON A MAP, SAYING THIS WILL BE AGRICULTURE AND THIS OPEN SPACE AND AND YOU CAN BUILD A HOUSE HERE JUST DOESN'T WORK.

THE ZONING PROPOSAL IN THE BLACKFOOT POTOMAC AREA WENT DOWN TO DEFEAT BY AN 86% PROTEST DECISION BY PETITION. WE WERE TO BE ZONED 1-40 OVERALL. AGRICULTURE AND OPEN SPACES. THE LINES ON THE MAP WERE DRAWN AND ROCKY JACK PINE COVERED HILL SIDES WERE TO BE ZONED AGRICULTURE. FORTY ACRES OF THIS LAND WILL NOT FEED ONE COW. ZONED 1-40 THIS IS A WASTE OF LAND. WHO WANTS FORTY ACRES TO BUILD A HOUSE ON AND THEN FOR TAX PURPOSES BE CLASSIFIED SUBURBAN TRACT, THE HIGHEST TAX VALUATION THERE IS, IN MISSOULA COUNTY THAT'S \$1550 PER ACRE. WE ASKED TO HAVE A BETTER BREAK* DOWN THAN THE 1-40 OVERALL. AND IN THE FACE OF PUBLIC INPUT, PROTEST AND REQUEST WE WERE TOLD THAT IT COULD NOT BE DONE DIFFERENTLY BECAUSE IT WOULD NOT BE COMPATIBLE WITH THE COMPREHENSIVE PLAN. THAT MY FRIENDS WAS THE REASON, THE ONLY REASON IT HAD TO BE 1-40 OVERALL. THERE HAS TO BE A BETTER WAY. *When I was kind of zoning as the 1-40 I got* WHEN A DEVELOPER BUILT NINE HOUSES ON SIX LOTS ON THE BLACKFOOT RIVER AND CALLED *by name* IT A CONDOMINIUM, NO REVIEW, WE QUESTIONED AND FOUND CONDO'S NEED NO REVIEW. WE WERE TOLD IF WE WERE ZONED THIS WOULD'NT HAPPEN. HOWEVER A FEW MONTHS LATER THE SAME THING HAPPENED IN A ZONED AREA AND WE WERE TOLD, OH, ITS EASY, JUST GET A ZONING CHANGE OR VARIANCE. NOW, WHICH IS IT? IT CAN'T BE BOTH WAYS. WE MUST HAVE SOME CONTROL OVER CHANGE.

WE ARE SIMPLY ASKING THAT WHEN A NEW ZONING DISTRICT IS BEING CREATED AND AFTER THE ~~FOR~~ PROPER PUBLIC INPUT, THEN GIVE THE AFFECTED LANDOWNERS A VOTE ON THE PROPOSAL. SB-133 WOULD GIVE US THIS VOTE.

PETITIONS HAVE A WAY OF BEING MISUNDERSTOOD, MISREPRESENTED, LOST AND DECLARED ILLEGAL. THERE IS NO ISSUE THAT CAUSES NEIGHBORHOOD WARS LIKE A ZONING ISSUE. YOUR VOTE IS PRIVATE, THE MAJORITY RULES AND THE ISSUE IS SETTLED.

THE MISSOULA CO. PLANNING DEPT. HAS A BUDGET OF \$511,968 AND SIXTEEN STAFF MEMBERS. \$187,000 OF THAT IS COUNTY GENERATED. I THINK WE HAVE A RIGHT TO EXPECT SOMETHING BETTER THAN WHAT WE ARE GETTING. SB-133 WILL RESULT IN BETTER PLANNING AND LESS EXPENSE.

WE ARE NOT SPEAKING OF THE CITIES OR EVEN THE DENSELY POPULATED URBAN AREAS WHICH FOR THE MOST PART ARE ALREADY ZONED. WE ARE TALKING ABOUT THE RURAL AREAS WHERE THERE ARE FARMS, RANCHES, PIGS CHICKENS, COWS AND HORSES.

WE ARE TIRED OF BEAURACRATIC LAW. WE WANT THE RIGHT TO VOTE, TO MAKE THE DECISION AS TO WHAT KIND OF LAND USE PLANNING WE WILL HAVE.

WE HAVE THE RIGHT TO PETITION THE GOVERNMENT TO ASK THEM TO DO SOMETHING FOR US. THIS LEGISLATURE HAS FOR THE MOST PART PROTECTED THAT RIGHT, THEN WHY, WHERE ISSUES OF LAND USE AND CONTROL IS CONCERNED ARE WE FORCED TO PETITION GOVERNMENT TO ASK THEM NOT TO DO THIS, THAT WE DON'T WANT IT. GOVERNMENT IS A SERVANT OF THE PEOPLE AND THE BEAURACRACY IS A TOOL OF GOVERNMENT. LET US NOT GET THIS CONFUSED AND ALLOW THE GOVERNMENT TO BECOME A TOOL OF THE BEAURACRACY. IF YOU BELIEVE IN THE RIGHT OF THE PEOPLE TO VOTE, THEN YOU WILL GIVE SB-133 AND SB-399 A SPEEDY DO-PASS RECOMMENDATION.

Vera Cahoon

BUDGET 17
REVENUE SUMMARY

NON-TAX

1. FY79 CDBG REAL Program	\$ 3,200
2. FY79 CDBG SW Neighborhood	2,000
3. FY79 CDBG Carry Over	4,000
4. FY80 CDBG.	9,000
5. FY81 CDBG.	51,855
6. CDBG Section 8 Rehabilitation.	3,725
7. CD Sales of Historic Documents	3,076
8. Coal Tax	25,000
9. Subdivision Fees	30,000
10. DOH Grant.	8,000
11. EPA 201 Grant.	2,812
12. EPA 175 Grant.	2,000
13. County Zoning Fees	2,000
14. City Zoning Fees	1,200
15. MRA Contract	6,000
16. Graphic Services Paybacks.	10,000
17. Floodplain Fees.	100
18. Publication Sales.	6,000
19. MRA Loan Repayment	65,000
20. Health Department Transportation Grant	25,000
Subtotal	\$259,968

TAX

→ 1. Missoula County Planning Levy.	\$187,000
→ 2. City of Missoula Planning Levy	65,000
Subtotal	252,000
TOTAL	\$511,968

16 Staff Members

march 10, 1981

We support SB-133 and SB-399 in our belief that we should have the right vote on an issue as important as land use planning.

Had the zoning proposal passed in the Potomac area our land would have been useless. Planners must take into consideration the needs of the people in a given area. One plan does not fit all.

If we pay for the land and pay taxes on it and try to make it productive then we must have some control of it or all is lost.

If we are zoned under the present law with the same proposal, we will simply stop all improvements and default on our taxes. We will have no choice.

We urge you to give both these bills a do-pass recommendation

Thank you,

*Julius & Sheila
Cahoon
Potomac, Md.*

NAME Agnes Cohen Bill No. 133

ADDRESS Ciando DATE 3-10-81

WHOM DO YOU REPRESENT self

SUPPORT X OPPOSE ✓ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: will read paper

Mr. Chairman and members of the committee, my name is Tommy Lohman of Ovando in Powell County.

Last fall the Powell County Commissioners proposed to zone a large area surrounding Ovando according to what they thought was the wish of the majority of area residents. This had been conveyed to them through a petition gathered over 2 or 3 years time and through input at a public meeting which, while sparsely attended, was preponderantly made up of persons in favor of the proposed zoning.

It was only when the Commissioners published legal notice of their intent to zone that some of us really became aware of what was happening and the potential effect on our land. We immediately contacted either directly or by mail all the registered landowners in the proposed district to be sure they were aware of what was happening and to solicit their assistance in preventing the imposition of what we felt were unwarranted and inappropriate controls on the use and disposition of land in Northern Powell County. This was a very costly and time consuming effort for us, and it ^{created} ~~unneeded~~ more hard feelings among our neighbors than it should have. Citizens have a right to be informed about what is happening to their rights in their land and should be able to express their wishes in the most direct way possible - through the election process.

If the local government is required to take the initiative in notifying landowners what zoning districts and regulations it is proposing to institute, there will be less chance that the wishes of the few will be imposed on an informal majority. Many landowners in our area are not year round residents on their land, since much of the land is recreational and more heavily used in the summer. These people may well not receive the local paper and not see notices posted in local stores, post offices, etc. Many full time residents also do not read the legal notes, and they may be too busy trying to operate their ranches to be able to get away for Saturday afternoon public meetings. Finally, in a small community such as ours, people try to live in harmony. We respect our neighbors, even if we do not always agree with them. There are too few of us for us to have the luxury of "taking up sides" in a dispute, with

possible lasting hard feelings. At a public meeting the more vocal and more articulate may well appear to be in the majority when in fact the real majority remains silent, uneasy speaking in public and unwilling to disagree with or risk offending their neighbors. But in the privacy of the election booth they could speak strongly, clearly and honestly.

I realize that simply putting a zoning plan to a vote does not guarantee that there will not be rumors and misunderstandings about what the actual effect of the zoning would be, but the extensive public notice required under SB 155 coupled with the direct mailings to landowners from the local government and the opportunity for concerned citizens to read the proposed regulations and discuss them with each other, with local government officials, and with planning board members should help insure that when voters get to the polling booth they will make the most informed decision possible.

in favor of SB 133

My name is Margaret Copenhaver and I have been asked to speak/for the group of Ovando concerned citizens that opposed a recent zoning plan.

Mr. Chairman and members of the committee:

Recently a situation in Ovando illustrates the need for a change in the law concerning land zoning.

A small group of citizens wanted to zone school district 11. As far as most citizens were concerned the committee appointed at the community planning meeting was to look into zoning to see what it would do for the community and report back to the people.

About a year and a half later we realized a zoning plan had been written up and submitted to the county commissioners. The required meeting with the commissioners was announced in the Silver State Post (our weekly county newspaper) and notices of the meeting were posted in town one week before the meeting. Few realized there was a meeting or what the meeting was all about and by the time word got around many had other commitments and only a handful of people attended, all but 2 being proponents of the zoning plan. Lacking strong opposition the commissioners felt they should accept the plan. A petition favoring zoning with about 60% of the landowners had been submitted to the commissioners to indicate landowner favor of the plan. The signatures spanned more than a years time.

A concerned citizen read the report of acceptance of the zoning plan in the Silver State Post and obtained a copy of the plan. She was shocked to discover her ranch was litteraly divided into two different classifications and the restrictions as to what she could do with her land caused her to investigate the law. It was found there was a 30 day protest period and a protest petition with 40% of the freeholders could defeat the plan. These signatures were obtained and the plan defeated in less than 3 weeks.

Some of the facts learned in this exercise included:

1. County commissioners have authority to zone land without consulting the people whose land is involved and a petition is not necessary.
2. A handful of citizens can successfully zone an area without the majority of the landowners realizing what is happening.

3. Many landowners contacted declared they did not sign a previous petition in favor of such a zoning regulation and some did not remember signing any petition at all so much time had elapsed.
4. Most did not understand the true meaning of the petitioned they signed.
5. When restrictions on use and disposal of privately owned land as written in the zoning regulations was understood, few were in favor of any regulations in addition to the state law and were outraged that land could be zoned without their knowledge or consent.
6. Petitions seldom give enough details to sufficiently inform potential signers.

We recognize that it is the duty of any citizen to beware of what he is signing, but in a community such as ours , not all subscribe to the weekly county newspaper and many from the rural areas especially seldom get into town or even to the post office to read the notices about the required meetings. We also recognize the need for citizens to be better informed regarding such important matters as their land. Therefore, we feel SB 133 is a step in the right direction.

A companion bill SB 399 addresses similar problems on a state level. We ask that both bills be passed.

Margaret F. Copenhaver



Ovando MT
March 5, 1981

Verner Bertelsen, Chairman
House Local Government Committee
Montana State House of Representatives
Helena MT 59601

Dear Verner,

We feel land is one of the most precious material possessions a person can have and think it should be controlled by the one who owns it. At present the subdivision law and zoning regulations leave a landowner with very limited say about what happens to his land. One of the big problems is that your land can literally be zoned without your knowing about it.

We think SB 133 and SB 399 give the landowner a better chance to have a say about what happens to his land by being better informed and we are asking you and your committee to support these two bills.

Thank you.

Sincerely yours,

Steven D. Greenhauer
Anna L. Greenhauer

NAME James C. - 1000000 Bill No. 133

ADDRESS Box 324 DATE 3/9/81

WHOM DO YOU REPRESENT Blackfoot Freeholders Ass.

SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Support Bill -

NAME John F. & Evelyn H. Huns Bill No. 85-350 SR399
ADDRESS 1815 Perry - 19416 DATE 7-2-81
WHOM DO YOU REPRESENT Self
SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We live in Helena, now but was raised
in the Blackfoot Valley and my parents
have owned land there for over 30 yrs.
It is our wish in the future to ~~be in the~~
Gallatin based in the Blackfoot area
reason for supporting this is that we
that we simply feel that our livelihood
& our children's future could be greatly
affected if these bills do not pass.
Why buy land in an area where
we could not prosper? We don't really
see the landowner needs to participate
but some control over their land
to why then be a landowner?

Thank you

John F. & Evelyn H. Huns
Helena, MT.

NAME Tim Farnell Bill No. SB 373 ~~SB 379~~
ADDRESS 21635 25th Ct. NE DATE 1/10/79
WHOM DO YOU REPRESENT Missoula County
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I recommend both SB 373 and SB 379 for approval by the committee because zoning problems we have come up against. Missoula County has not accepted zoning because of the problems and control of by the Planning Board and County Commission.

A group of area landowners in our area completely rejected zoning after looking at because of the law as it now stands.

In the future ~~we~~ pay it is not enough to ask some control if zoning is workable. It has not worked in Missoula County! People would be more aware of the facts of zoning and content with it if they understood it. Fiscal note from the Office of Budget & Planning is none or very little. A process necessary to ensure success in zoning procedures and maintain it.

NAME

E. L. ...

Bill No.

133

ADDRESS

2132 ...

DATE

2-1-81

WHOM DO YOU REPRESENT

Self

SUPPORT

x

OPPOSE

6

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Both Bills are needed.

House Local Govt
Sub Committee

March 10-1981
Alfred Hutcheson
460 Mont. Ave.
E. Missoula, MT 59801
(406) 721-1610

I Feel that SB-131 & SB-399 Should
be passed for more than one reason.

First zoning is a very important
matter concerning the lives & styles of
lives. Their zone should be handled by part
by the people who own the land and pay
the taxes on it. Not by a few planners
or commissioners that only look at it on
a map.

Secondly zoning should comply with
current use again do the planners
etc. know what is going on in a
specific area by looking at a map. The
people who live in an area are better
versed on what is currently going on
and what the people want than a person
behind a desk.

I urge you to pass these bills
to restore a little bit of Govt of the
people by the people

Thank you!

Alfred M. Hutcheson

March 5, 1981
Ovando MT

Verner Bertlesen, Chairman
House Local Government Committee
Montana State House of Representatives
Helena MT 59601

Dear Verner,

We feel land is one of the most precious material possessions a person can have and think it should be controlled by the one who owns it. At present the subdivision and zoning regulations leave a landowner with very limited say about what happens to his land. One of the big problems is that your land can literally be zoned without your knowing about it.

We think SB 133 and SB 399 give the landowner a better chance to have a say about what happens to his land by being better informed and we are asking you and your committee to support these two bills.

Thank you.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Stephen J. Smith", is written over a faint, circular official stamp. The signature is written in a cursive style.

MARCH 10, 1981

IF YOU BELIEVE THAT ZONING LAWS SHOULD BE FAIR AND DEMOCRATIC YOU WILL
GIVE SB-133 AND SB-399 A DO PASS VOTE.

TOO MUCH LAW IS BEING LEGISLATED BY PLANNING DEPT. PERSONAL. WE MUST HAVE
BETTER CONTROL AND BETTER PLANNING, IF NOT THEN NO ZONING AT ALL WOULD BE
BETTER THAN BAD PLANNING.

THE RESTRICTIVE ZONING LAWS ARE UNACCEPTABLE IN RURAL AREAS. THEY SERVE TO
HURT THOSE THAT ARE ALREADY THERE.

A VOTE OF THE AFFECTED LANDOWNERS WILL RESULT IN BETTER PLANNING AND BETTER
UNDERSTANDING.

I FOR ONE WILL NEVER ACCEPT ZONING UNDER PRESENT LAW. WE HAVE TO HAVE SOME
CONTROL OF IT AND OF CHANGE.

THERE HAS TO BE A BETTER WAY THAN THE ABUSIVE PETITION PROTEST THAT WE ARE
NOW SUBJECTED TO. IF GOV'T WANTS TO ZONE, THEN THE BURDEN SHOULD BE THEIRS
TO SELL IT TO THE PEOPLE.

I URGE PASSAGE OF SB 133 AND SB-399.

thank you,

Paul and Joy Nelson

Anderson

Amended
House BILL NO. **399**
INTRODUCED BY *Wm. F. Furgerson* *Ed. H. Elliott*

1 a newspaper of general circulation in the area to be
2 included within the proposed plan for 3 consecutive weeks
3 prior to the election.
4 (4) The governing bodies shall make copies of the
5 proposed plan in its entirety available to the public for
6 review for a period of 60 days prior to the election.
7 (5) If a majority of the qualified electors voting on
8 the proposed plan approve it, the plan shall take effect
9 immediately. *and shall be in effect 60 days*
10 If a majority of the qualified electors voting
11 on the proposed plan disapprove it, the plan may not be
12 resubmitted to the qualified electors for a period of 1 year
13 from the date of disapproval.
14 (6) (a) The governing bodies may revise or repeal a
15 master plan adopted under this section.
16 (b) The qualified electors of the jurisdiction may
17 included within the master plan may by initiative or
18 referendum as provided in 7-5-131 through 7-5-137, revise
or repeal a master plan adopted under this section."

-End-

Bob Decker

*what
means the
does the
might be
have?*

*Vote on
district?
only?
LNU*

(1) Whose plan submitted?

*(2) Affects capital improvement and
other projects and will be community*

*(3) not flexible
once adopted*

S.B. 3, n.

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT

COMMITTEE

BILL SENATE BILL 399

Date March 10 - 12:30 p.m.

SPONSOR SENATOR JOHN MANLEY

Old Highway Auditorium

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPO
Julie Hachin	Alto, Puerto	Self	X	
Michael Greenhouse	Orlando FL	Self	X	
Betty Remick	Orlando,	Self	X	
Margaret Shaw	Orlando	"	X	
Ann M. ...	Orlando	"	X	
Granito R. ...	Orlando	Self	X	
Lillian Ferguson	Orlando	Self	X	
George Hachin	Potomac	Self	X	
Thurman ...	Penon	Self		X
Agnes ...	Orlando	Self	X	
Betty B. ...	Bonnie (Twin ...)	Self	X	
Miss ...	Potomac	Self	X	
Robert Boucher	Potomac	chairman Blackfoot Freeholder	X	
James ...	Potomac	co-chairman Blackfoot Freeholder	X	
Thomas F. ...	Helena	Self	X	
Miss ...	Potomac	Self	X	
Irvin ...	Clinton Mt	Miss ... Freeholder	X	
Ellen ...	Massachusetts Mt	Helena Freeholder	X	
Miss ...	Massachusetts Mt	Self	X	
Jay Nelson	Potomac Mt.	Self	X	
Miss ...	Massachusetts Mt.	Self	X	
Bob Becker	Helena	James & Clark County		X
Mary ...	Massachusetts	Self	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

BILL SENATE BILL 399

Date March 10, 1981==12:30 p

SPONSOR SENATOR JOHN MANLEY

Old Highway Auditorium

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Charles J. Ryan Bill No. 399

ADDRESS 1100 7th Ave. N.W. DATE 3-18-51

WHOM DO YOU REPRESENT Self

SUPPORT X OPPOSE ✓ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Both bills are needed

NAME Rose Leavitt BILL No. SB 99
ADDRESS 318 Harrison - Helena DATE 3/10/81
WHOM DO YOU REPRESENT L'WV of Montana
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

please see prepared statement

To: House Local Government Committee
From: League of Women Voters of Montana
Re: Senate Bill 399

The League supports the concept of voter approval of land use master plans but because there are so many ambiguities in S.B. 399 and because the intent is not clear we urge that you reject the bill as it now stands or amend it to make it workable.

Subsections (1) and (2) do not make it clear if this is a one-time vote on a plan introduced for the first time or if a vote is required each time a revision is made in a plan. We see problems in having a county-wide vote on a plan that contains different land-use options for separate geographical areas. Provision then should be made for planning districts to vote on the land-use plan that directly impacts their area.

If these sections can be amended to clarify what will be voted on then it would seem to be very unfair to allow the governing body the option of immediately revising or repealing that plan.

We propose that subsection 6 (a) be stricken (lines 13-14, page 2) and that on line 9, page 2 there be added after the word immediately "and shall be in force for five years at which time the planning board shall review and update the plan and submit the revised plan to the voters."

Subsection 6 (b) would allow the governing body the option of submitting to the voters a resolution to revise or repeal the plan in the interim five years if a real problem should come up.

Clearly the LWV is supportive of voter input and involvement but the current planning process allows for this without costly elections. S.B. 399 does not appear to be needed or workable.

NAME Thurman Trosper Bill No. 5399

ADDRESS RT# 1 Box 43 Bonan DATE 3/10/81

WHOM DO YOU REPRESENT Self

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Statement by Thurman Trostper, member of Lake County Planning Board, before the House Committee on Local Government, March 10, 1981

Ladies and Gentlemen:

Senate Bill 399 is not a practical approach to resolving any of the problems associated with land use planning. Land use planning is relatively new to Montana and especially to Lake County. We all have a great deal to learn about ways to make land use planning practical, economical, and to serve the public interest. We in Lake County have an over-riding need to protect our agricultural land base. Both in the short-term and long-term, agriculture is and will continue to be the sustaining factor in our economy. We all know from recent studies that the United States is losing its prime agricultural land at a staggering rate and in not too many years we will be importing agricultural products.

Unless the local government does something positive to protect the agricultural base of their areas, the higher level of government will step in and mandate the agricultural base be protected in the national interest. We have the clear choice of locally assuring the preservation of our agriculture lands or ultimately facing certain mandate from the federal government to do so.

Senate Bill 399 presents several stumbling blocks to obtaining this important objective. In addition, it will prove very cumbersome and costly to implement.

Land use planning is a very complex process requiring intensive citizen involvement in the formulation of policies that are fair and equitable to all segments of the community. The planning process is, first of all, an educational process and must take place over time in order that land owners and the general public understand how their interests and the values of the community can be enhanced and protected.

It does not make sense to have a master plan approved by referendum after a large investment of time, effort and money has gone into the preparation of such a plan. It would be far better if a referendum were held in each county to decide whether or not the county should work toward a land use plan prior to the expenditure of large sums of money.

An experience in Lake County proved to us that it would be a very simple task for any small, special interest group to thwart the majority through misinformation concerning the purposes of land use planning.

The Lake County Planning Board and Planning Staff attempted for four years to involve citizens in the planning process. These efforts were unsuccessful so the County Commissioners recommended the planning board members with the assistance of the planning staff develop a first approximation of a land use plan. This proposed plan was intended as a point of beginning to involve citizens in understanding the complexities, relationships, and implications of land use planning. This proposal was seized upon and misrepresented by a vocal minority and it was not long until a petition was circulated asking the commissioners to not accept the plan and to fire the planner. The commissioners, planning board and staff in all meetings leading up to the distribution of the plan told the public in news releases and letters and in public meetings that this was only a draft plan meant to stimulate citizen review on the local level. I mention this only to illustrate how easy it is for a small group to confuse the public through misrepresentation and thwart any constructive planning process. If this measure is adopted it would, for all practical purposes, stop all future planning in Montana.

The state law has charged the county commissioners with the responsibility for protecting the health, welfare, morals, and safety of their constituency. How, I might ask, are the commissioners to redeem this responsibility when it is not possible for them to adopt a comprehensive land use plan and a system for its implementation?

The commissioners are in a position to listen to all public input and to evaluate the validity of that input as to whether or not it is based on reality or on misinformation. They are in a position to study any proposed plan to evaluate its impact and its affect at protecting the public health, safety and welfare. Under the present statutes that authorize land use planning, there are adequate checks and balances to protect every citizen's interest. In addition, since we live in a rapidly changing environment any land use plan that establishes guidelines and gives direction to overall development must be amended periodically as the need arises. This is provided for in present law. The people want flexibility but you won't get it if every modification has to be submitted to the electorate.

It stands to reason that any major change in a land use plan that has been adopted by referendum would itself have to be amended by referendum. The bill is inconsistent in this respect.

It must be pointed out that referenda are very time consuming and costly to the county, often requiring special elections.

In addition to the above adverse comments, it seems to me that the proposals under SB399 would relieve the county commissioners of a major responsibility entrusted to them by state law and the electorate. As such I would imagine county commissioners in general would welcome the enactment of this bill!

Land use planning is not a communist plot. The process is the very essence of democracy at the grass roots. It comes as near to the old New England town meeting as one can get.

Thurman Trospen

Master Plan

76-1-601. Master plan — contents. The planning board shall prepare and propose a master plan for the jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. The plan may include:

- (1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;
- (2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:
 - (a) history, population, and physical site conditions;
 - (b) land use, including the height, area, bulk, location, and use of private and public structures and premises;
 - (c) population densities;
 - (d) community centers and neighborhood units;
 - (e) blighted and slum areas;
 - (f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;
 - (g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;
 - (h) flood control and prevention;
 - (i) public and private utilities, including water, light, heat, communication, and other services;
 - (j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;
 - (k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;
 - (l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;
 - (m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;
 - (n) education, including location and extent of schools, colleges, and universities;
 - (o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;
 - (p) conservation of water, soil, agricultural, and mineral resources;
 - (q) any other factors which are a part of the physical, economic, or social situation within the city or county;
- (3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;
- (4) a long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;
- (5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831.

76-1-602. Public hearing on proposed master plan. (1) Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833.

SB
399

76-1-603. Adoption of master plan by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834.

76-1-604. Adoption, revision, or rejection of master plan by local governments. The governing bodies shall adopt, revise, or reject such proposed plan or any of its parts.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-605. Use of adopted master plan. After adoption of the master plan, the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

- (1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
- (2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
- (3) adoption of subdivision controls;
- (4) adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-606. Effect of master plan on subdivisions and plats. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter:

(a) a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(3) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842.

NAME James Buchanan Bill No. 133 + 399

ADDRESS Box 111 Covada NW DATE 5/10/81

WHOM DO YOU REPRESENT Self

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Will read paper

NAME John C. Anderson Bill No. 579

ADDRESS 1000 ... DATE 7/...

WHOM DO YOU REPRESENT Democratic ...

SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Will Anderson



The Montana Environmental Information Center

March 10, 1981

• P.O. Box 1184, Helena, Montana 59601 (406) 443-2520
• P.O. Box 8166, Missoula, Montana 59801 (406) 728-2644

Testimony Before the House Local Government Committee Regarding HB 133 and HB 399

My name is Don Snow. I am Staff Coordinator of the Montana Environmental Information Center. I rise in opposition to both HB 133 and HB 399. I will concentrate my remarks, however, chiefly on HB 399.

We support citizen input at all stages in the land use planning process. We also support the use of elections for citizens to impact major decisions that affect their lives. Briefly, our objections to HB 399 in both regards are two: First, the bill will not accomplish its supposed objective of enhancing citizen input in the planning process. The development of master land use plans is a complicated and time-consuming affair that involves compromise and debate if it is done properly. EIC does not feel that in all instances, the power of the vote on the formulation of land use plans is a way of encouraging meaningful participation. Second, requiring a vote on all land use master plans will add red tape and expense to the county or city and ultimately to the taxpayers. Rather than a mandatory vote on all master plans, we suggest amending the bill to clarify and empower the use of initiatives or referenda to allow for voters to approve or disapprove master plans. Striking sections 2-6 of the bill, leaving section 6(b) to directly empower citizen initiatives and referenda for master plans. The process then would be relatively simple: if 15% of the affected voters in a planning jurisdiction wanted to put the plan up for a vote, they could do so through petition. If 15% of an affected county or city does not object

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EIC on HB 133 and 399

to the plan as drafted by local officials, why put the county through the expense of voter approval?

Citizen involvement is the key element in planning, and the planning formula used now in most counties uses and depends on citizen input. Missoula County is one example of how the master plan is developed through citizen input and recruitment.

They did their urban and rural land use plans at the same time. The process took three years, from 1973 to 1975. The first year was spent gathering preliminary information. Then questionnaires were sent out through the newspaper in the city, and in the rural areas they were delivered by service organizations. 2000 responses were received. Next they began a year long process of public meetings in various areas of the county, forming Citizen Advisory Groups in the rural areas and Task Forces in the city. There were about six to nine rural groups, several of which are still active and involved with land use issues. The initial meeting was often hostile, but as people realized that they had an important role in the formation of the plan they became involved. The core action group of people in each citizen advisory group usually involved six to twelve individuals. The rural group meeting process followed this general format: first they talked about the planning process, identified issues of importance to the area, gathered information, set goals to apply to land use planning, drafted alternatives for the plan, discussed pros and cons of the alternatives. The final meetings of discussing the alternatives and getting input for the final version of the draft had especially good turnout. The last step was the formalized hearings, of which there were three before each board. The composition for the urban Task Forces was topical rather than geographical and there were eight groups. The process was similar, and there were also three hearings before each board for the final urban plan. Lolo was handled as a separate community in the process. Missoula County is NOT a lone example.

There are outstanding examples as well, as other speakers have addressed today.

Our position on HB 399, then, is that voter approval might be, but will not necessarily be, an enhancement of citizen input in the planning process. Since there is question, we would favor having the law clarify the role of initiatives and referenda on master plans, rather than requiring costly election issues on the ballot.

In regard to HB 133, the following adequately states our position opposing the bill in its present form:

EIC opposes SB 133 because it is unnecessary, unworkable, anti-growth, costly, and possibly unconstitutional. Present law allows flexibility in three ways: through appeals to the board of adjustment, through the 40% protest provision, and through the initiative and referendum. These methods are appropriate and workable without unnecessary cost to the county or city.

The proposed change would require a vote on all new zoning regulations and all revisions of existing regulations. This means that all zoning decisions will be delayed until the annual elections unless the city or county want to go to the expense to have special elections every time a change comes up. It also requires four consecutive weeks notice of the details of the proposed zoning in every newspaper published or of general circulation in the county, plus a mailing of the same notice to every property owner in the involved districts. This is a fine idea, but in practice it will be quite expensive. The combined delay and cost of this proposal will inhibit growth, flexibility and change in counties that have zoning and make zoning fees more expensive.

Constitutional questions are raised by the requirement for the county commissioners to have approval of the planning board, which they appoint, in order to adopt interim zoning. This concept has already been struck down in the Montana Supreme Court. The provision which allows a 40% protest to overturn Board of Adjustment decisions is also questionable, since this is a quasi-judicial process and has been dealt with through district court appeal in the past. It seems to confuse the judicial and legislative process.

Thank you for your attention.

Respectfully submitted:

Don Snow

Staff Coordinator

STANDING COMMITTEE REPORT

March 21,

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MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 133

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE LANDOWNER CONTROL OF ZONING BY REQUIRING LANDOWNER APPROVAL BEFORE ZONING MEASURES ARE ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS, BY REQUIRING CITY-COUNTY PLANNING BOARD APPROVAL OF INTERIM ZONING, AND BY ALLOWING PROTEST OF VARIANCES; AMENDING SECTIONS 76-2-202, 76-2-205, 76-2-206, AND 76-2-223, MCA."

Respectfully report as follows: That SENATE Bill No. 133

BE NOT CONCURRED IN
DEPASS

STANDING COMMITTEE REPORT

March 23, 1961

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 399

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE VOTER APPROVAL OF A LAND-USE MASTER PLAN BEFORE IT MAY TAKE EFFECT; PROVIDING PROCEDURES BY WHICH A MASTER PLAN MUST BE SUBMITTED TO QUALIFIED ELECTORS; PROVIDING FOR THE AMENDMENT OR REPEAL OF A MASTER PLAN BY INITIATIVE OR REFERENDUM; AMENDING SECTION 76-1-604, MCA."

House Amendments to:

Respectfully report as follows: That SENATE Bill No. 399

1. Title, line 4.

Following: "ACT TO"

Strike: "REQUIRE"

Insert: "PROVIDE FOR"

2. Title, lines 5 through 7.

Following: "APPROVAL"

Insert: ", "

Strike: everything through and including "PROVIDING FOR THE"

3. Page 1, line 17 through 12 of page 2.

Strike: subsections (2) through (5) in their entirety

4. Page 2, line 13.

Following: Line 12

Strike: "(6)(a)"

Insert: "(2)"

Following: "may"

Insert: "adopt,"

Amendments to Senate Bill 399 (continued)

5. Page 2, line 14.

Following: "plan"Strike: "adopted"

6. Page 2, line 17.

Following: "7-5-137;"Insert: "adopt,"

7. Page 2, line 18.

Following: "plan"Strike: "adopted"

8. Page 2, line 15.

Following: line 14

Strike: "(b)"Insert: "(3)"AS AMENDED BE CONCURRED IN