

MINUTES OF THE MEETING
SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 12, 1981

The meeting of the Local Government Committee was called to order by Vice-Chairman O'Hara in Senator McCallum's absence. The meeting was on the above date at 12:30 p.m. in Room 405.

ROLL CALL: Senator McCallum was excused due to another meeting, all other members were present.

CONSIDERATION OF HOUSE BILL NO. 498:

AN ACT TO INCREASE THE MINIMUM CONTRACT
AMOUNT ABOVE WHICH MUNICIPAL CONTRACTS
MUST BE ADVERTISED AND LET FOR BID AND
MAY BE PAID IN INSTALLMENTS.

Representative Oberg, District No. 8, said this is a house-keeping bill. It takes into account the effects of inflation. City government has a difficult time when making contracts to purchase equipment. It is an impossible situation. The city of Havre had found a used pickup which was a very good deal but according to statute the bids had to be put out and they lost the vehicle. This proposal is workable and assures competitive bidding will remain when it is required. The House exempted construction in the bill, he is not happy with that. It does not take much construction to exceed \$4,000.

Dan Mizner, League of Cities and Towns, said the problem lies with inflation rates. He wants to reinstate, on line 18, \$10,000 in place of \$4,000. On page 2, line 17, the section number is wrong, it should be 7-5-4302(1). It is unfair to cities and towns to be limited to \$4,000. Contractors won't come in to bid for less than \$10,000. This bill gives the cities the same consideration as counties.

Larry Huss, Montana Contractors' Association, said the League of Cities and Towns recommended the language inserted by the House be changed back to the original language. The reason it was inserted was because of the objection by contractors. They do not want the state to compete with them. They would like the language left exactly as it is.

There were no opponents appearing before the committee.

Representative Oberg, in closing, said he would like to go back to the original language. We need local control, we have to give them the authority.

Senator O'Hara then called for questions from the committee.

Senator Ochsner asked Mr. Mizner if he wanted the \$4,000 on line 19 to be changed to \$10,000.

Mr. Mizner said yes and strike the language after that.

Senator O'Hara asked if "construction" on line 16 would have to be reinstated also.

Mr. Mizner answered yes. They want the language that was on the white copy of the bill.

Senator Van Valkenburg asked Mr. Huss why he did not want the construction contracts raised, they have had the existing limit since 1971.

Mr. Huss said that would put them in competition with the government and they don't want that.

Mr. Mizner said the smaller cities and towns that have no construction companies have to call on companies from larger cities to bid on their contracts. The companies will not bid on contracts in these communities for \$4,000.

CONSIDERATION OF HOUSE BILL NO. 594:

AN ACT REQUIRING LAND DEVELOPMENT AND USE
BY GOVERNMENTAL AGENCIES TO CONFORM TO
LOCAL ZONING REGULATIONS.

Representative Kemmis, District No. 94, said this bill arises out of a problem that exists in a number of communities where there is residential zoning in the midst of state- or other government entity-owned property which they want to put to other than residential use. The problem is when the owner chooses to go ahead and make changes without going through the proper zoning procedures. There is no requirement that they abide by zoning procedures. In Missoula the University of Montana owns property in residential neighborhoods and has proposed to change the use of that property from residential to office buildings. People in the neighborhood ask that they go through the zoning process so the public will have input in the matter. This bill clarifies the situation. He submitted to the committee a letter from a Billings resident. (See attached Exhibit A.)

Senator Norman, co-sponsor of the bill, said on page 2 there are some safety features. On line 1, page 2, the local authority cannot zone out state land, it would have to be considered. On line 12 it provides that in zoning, the authority would have to consider the public benefit to be served statewide. Nothing in this bill prevents the state from acquiring land.

With these safety features, the state's interest can be served and the state will have to pay some heed to the desire of local residents.

Mae Nan Ellingson, city of Missoula, said they are interested in assisting and protecting the residents of the city. So far they have been unable to protect residents to help ward off intrusion in their neighborhoods that they have felt was harmful or not in their best interests. Governmental institutions are not required to obey other governmental institutions' zoning. The purpose of the bill is to allow local government institutions to protect planning and zoning that has gone on in the community. The bill tries to give an advantageous way to meet the needs the interfering governmental agencies might have. The burden of proof as to public benefit is given to them. The nature of the zoning process in local government is decided by groups of appointed or elected officials. A zoning commission will hear and make recommendations on requests for zoning. It then goes to the city council. A person can appeal to the state or district court. This system gives government the flexibility they need.

Rudyard Goode, Missoula, lives south of the University of Montana. There were eight residences in the neighborhood when he moved to Missoula twelve years ago. They were being used as single-family residences. Over the years, the University of Montana has acquired additional houses in the neighborhood. The single-family residential zone has been changed once and may be changed again. There have been two occasions when nonresidential purposes have been proposed. He does not feel the university should be able to change the neighborhood.

Andrew Hornick, Missoula, lives in the same block. He is concerned with residential zoning.

Aubrey Dunkum, Missoula, also lives in the same neighborhood. They want to preserve the residential nature of the neighborhood.

Tom Finch, University Area Homeowners' Association, said the bill is not drawn narrowly nor is it a punitive attempt toward the university. Homes and neighborhoods are an environmental situation where we spend a great deal of time. When agencies introduce a facility that is contrary to the character and quality of the neighborhood, that environmental situation has been damaged. This action creates friction between people and agencies of government.

Senator O'Hara then called for opponents of the bill.

Jack Noble, deputy commissioner for Management and Fiscal Affairs of the Montana University System, spoke in opposition of the bill. (See attached Exhibit B.)

Phil Hauck, Architecture and Engineering Division of the Department of Administration, said they handle all building construction in the state of Montana. They oppose this bill because it is a very bad precedent for the state. Proponents say this bill would be in the best interest of the people but it is not in the best interest of the state. This gives zoning boards control over what he does. They can set conditions on any approvals that might be necessary. They could delay construction or stop it. They could charge additional fees for hookup of waterlines, etc. This bill is too extreme. It gives too much power. The conflicts have to be resolved and one or the other will have ultimate authority. It should be the legislature.

Representative Kemmis said, in closing, the debate gets down to a superior government doctrine which could be characterized as big brotherism. Action taken on anyone's neighborhood, regardless of the effect, is not right. If we believe in giving people control of what happens to them, then this bill is a step in the right direction.

There were no questions from the committee.

CONSIDERATION OF HOUSE BILL NO. 507:

AN ACT TO ALLOW THE REMAINING TRANSPORTATION
BOARD MEMBERS TO FILL VACANCIES ON THE
TRANSPORTATION BOARD.

Representative Azzara, District No. 96, said this bill allows vacancies on transportation district boards to be filled by board members. If a vacancy occurs, this allows the remaining members to fill the vacancy. The same provisions apply for advertising and giving public notice. This bill allows appointment to be made two weeks after appearance of notice.

Dick Howell, Transit Bureau of the Department of Community Affairs, was also speaking on behalf of the city of Great Falls. This bill allows involvement from the transit board.

There were no opponents of the bill appearing before the committee.

Senator O'Hara then called for questions from the committee.

Senator Thomas asked what the reason for the bill is, why couldn't county commissioners appoint the members.

Representative Azzara said there is no serious problem with that, it is just a procedural encumbrance to fill the vacancy that way. The vacancy can be filled more quickly this way and those making the appointment would have a direct knowledge of

the field.

Senator Thomas said you could pack the board pretty easily that way.

Representative Azzara said the bill says the remaining transportation board members may be filled by the selection board or the remaining board members. It is possible if a concern arose that the county commissioners could prevail if they wanted to.

Dan Mizner said this bill is specifically for transportation districts in Missoula and Great Falls. The bill says if someone leaves, the other members can appoint someone to fill that vacancy. They are talking about a specific area.

Senator Van Valkenburg asked Representative Azzara if he said the selection board could override the appointment.

Representative Azzara said that was what he was referring to.

Senator Van Valkenburg said he was concerned with the board members packing the board. He can think of no other board of a multiple-member body in government that can choose the members to fill vacancies. It is a check and balance on that board.

Representative Azzara said an exemption is being made here. This is the best method to facilitate filling a vacancy. If the committee feels a check is needed, they might want to consider amending the bill so county commissioners could veto any action taken on the selection.

Dick Howell said they are trying to speed up the process of replacing board members. They do not mind the county commissioners appointing the board members but they would like to have some input on the selection.

Representative Azzara said we are talking about elected officials. It is not as if appointed people would be making appointments.

Senator Thomas asked if this problem has been cumbersome.

Representative Azzara said there was a vacancy on the board in Missoula which remained unfilled for quite some time and impeded the ability of the other board members.

Senator Thomas asked Representative Azzara if he would be happy if the county commissioners were required to appoint someone within two weeks.

Representative Azzara said he understands the Senator's concern.

What settles the matter for him is that we are talking about elected officials, not appointed members.

Senator Thomas said no state or county persons can choose their successors.

Representative Azzara said if the committee thought this would start a stampede toward boards appointing themselves, they might consider amending the bill. He does not feel that would happen.

Senator O'Hara asked how many times this was a problem.

Representative Azzara said it happened once in Missoula but it was a significant problem and of long duration.

Senator Hammond asked if the selection board was elected.

Representative Azzara said yes, they are generally county commissioners.

CONSIDERATION OF HOUSE BILL NO. 424:

AN ACT TO RAISE THE CEILING ON RATES CHARGED
BY METROPOLITAN SANITARY AND/OR STORM SEWER
DISTRICTS.

Representative Dave Brown, District No. 83, gave some background to the bill. (See attached Exhibit C.) He wanted to emphasize that all six House members and all three Senators from Butte endorsed the bill. This is an act of solidarity. They want to be put under the Public Service Commission like everyone else so they do not have to come to the legislature each time they need to change. There is a need that this bill be effective immediately upon passage. He submitted an amendment to the committee. (See attached Exhibit D.) There is a bill coming through that sends this back to the local government. The House supports that bill as well. The local governmental body could not raise rates without a hearing.

Senator Healy, District No. 44, represents Walkerville, the northern part of Butte-Silver Bow. They have between 1700 and 1800 people that empty into the metro sewer. Prior to that their sewage went into a creek. The Board of Health got after them. This is a good system and has good operating efficiency. He is a signer of the bill and heartily supports it.

Senator Stimatz, District No. 43 in Butte, has grown up with the metro sewer. There were problems with it at first but they have been solved. They do need this upon passage and approval because the operation and maintenance budget is about \$190,000

in the hole and they have to hold a hearing to raise the rates. This simply raises ceiling rates. He is the author of most of the changes in the bill. There is no controversy to this. He has a resolution from the council in Butte-Silver Bow saying they need this. The size is comparable to Helena's sewer system, it would cost approximately \$4500 to change the rates.

Joe Wolf, budget director from Butte-Silver Bow is in support of the bill. He stressed the importance of immediate passage. They cannot continue to operate on the current rates.

Dan Mizner, League of Cities and Towns, supports the bill.

There were no opponents of the bill appearing before the committee.

Dave Brown, in closing, said this has no impact on the state except for Butte-Silver Bow. The bill that went through the House puts rate making in local communities and out of the PSC, that was the way most of the House wanted to go.

There were no questions from the committee.

There being no further business before the committee, the meeting was adjourned at 2:00 p.m.


Chairman George McCallum

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/12/81
12:30

NAME	PRESENT	ABSENT	EXCUSED
Senator George McCallum			✓
Senator Jesse O'Hara	✓		
Senator H. W. Hammond	✓		
Senator J. Donald Ochsner	✓		
Senator Bill Thomas	✓		
Senator Max Conover	✓		
Senator Fred Van Valkenburg	✓		

Each day attach to minutes.

MARCH 12, 1981

BILL NO. HB498

[illegible]

(Please leave prepared statement with Secretary)

NAME: Rudyard Grider DATE: March 12, 1981

ADDRESS: 643 East Beckwith, Missoula

PHONE: 728-4766

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: H359U

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: State agencies and organizations should
abide by the same zoning regulations and as
individual citizens must adhere to.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Andrew Hornick DATE: 3/12/81

ADDRESS: 629 E Beckwith Missouri

PHONE: 549-1422

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: 5942

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: AUBREY DUNKUM DATE: 3/12/81

ADDRESS: 601 E. BECKWITH MSLA

PHONE: 543-5360

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: HB 594

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thomas L. Finch DATE: 3-12-81

ADDRESS: 415 E Beckwith, Missoula

PHONE: 549-5482

REPRESENTING WHOM? University Area Homeowner's Ascn.

APPEARING ON WHICH PROPOSAL: HB 594

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Richard J. Hrivak DATE: 3/12/81

ADDRESS: Box 35 Blue Sky Heights, Clancy

PHONE: 449-3757

REPRESENTING WHOM? Transit Board,
Montana Dept of Community Affairs &
Great Falls Transit District

APPEARING ON WHICH PROPOSAL: HB 567

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: (1) would require Transit Board involvement
in filling vacancies on the Board.
(2) minimize the effects of departing
members on the board.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Glass DATE: 5-12-50

ADDRESS: Box 544, Kansas

PHONE: 442-7070

REPRESENTING WHOM? None

APPEARING ON WHICH PROPOSAL: 25-475

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

March 10, 1981

Representative Dan Kemmis
House of Representatives
State Capitol Building
Helena, Montana 59601

Dear Mr. Kemmis:

Re: HB 594

I was happy to learn that efforts are being made to require State Colleges and Universities to abide by area zoning laws when constructing or expanding their facilities. We have experience in our neighborhood when Eastern Montana College was adding a Physical Plant building on property zoned RESIDENTIAL. The zoning law was completely disregarded. The building belongs in a railroad yard.

If the College had been required to stay within the zone or had hearings in connection with a zone change, we could have worked with the EMC officials to the benefit of all.

Sincerely,



C R. Beitman (Clancy)
Enclosures

Letter to the Editor
Letter to the City Manager

Gazette

8-24-80

Eyesore

EMC has done it again to the taxpayers. The physical plant built on Rimrock Road looks like a junkyard that needs to be filled. A little landscaping would help a lot, a tree here and there perhaps, tall enough to cover that mess that looms up in front of taxed residents. We understand the botany class will plant some native grass. Without water or care and with weeds that tall, it will take eight life times to hide that stall.

You build a house in all good faith, pay your bills on time, vote for taxes to improve your schools, and the money is used to deface. The building is an insult to the existing campus and certainly adds nothing to the design of those who live just north of that junk who take pride in their homes and their town.

Property owners are well aware that taxes are rising, yet we vote for levies to help our schools. This is what you get.

Bette C. Beitman
307 N. Rim Road

November 13, 1980

Mr. Harrison G. Fagg
Harrison G. Fagg and Associates
222 North 32nd Street
Billings, MT 59101

Subject: Eastern Montana College's Environmental Impact
on the residential area along North Rim Road

Dear Harrison:

Congratulations on your election to the Legislature.

We, the residents of North Rim Road, are still disturbed and angered over the development of the property south of our street. Reference is made to the Physical Plant Building that looks more like a Highway Truck Stop with all the surrounding junk; i. e. gas pumps, oil drums, trucks, cars and debris.

We have discussed the problem with you and President Van DeWetering of Eastern Montana College. Dr. Van DeWetering has been courteous and understanding. He admits the building is an ugly blight in our neighborhood. He also admits that the city would not allow a taxpayer's weeds to grow to the extent EMC's do. But, Eastern has no money to get rid of the weeds, or to improve the looks of the building and the area around it.

Last year Eastern had money and erected the concrete slab structure without obtaining a zone change from residential to commercial. They disregarded all city zoning laws and did not consider the impact on the neighborhood. Why wasn't the structure completed aesthetically similar to other buildings on the campus? Why wasn't it erected in a less conspicuous area?

As you will recall the north side of the building faces North Rim Road with a huge ditch parallel to and separating the building from the street. This is unsightly and is considered hazardous to the otherwise residential area. It detracts and depreciates our property. It must also be noted that the building has been designed so that a second story can be added. We object strenuously.

Mr. Harrison G. Fagg

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November 13, 1980

We recommend that the area around this building be lanscaped so that the ugly building will be hidden from view as much as possible. As a suggestion, the slope along the North side of the Physical plant should be stabilized with sandstone with wells spaced to receive conifers of the large type such as spruce, pine, fir and other varieties. A drip irrigation system or some other satisfactory method of watering will be needed. The South side as well as the East side will also require proper treatment.

In accordance with our earlier discussions we resepctfully ask that steps be taken to have the state legislature appropriate funds to adequately complete and landscape the area that is depressing to all of the people in the area. Eastern should have a campus which will be of pride to all.

The residents of this area have been damaged. Article II, Section 18 of the Montana State Constitution gives us the right to sue. We would rather settle this in an amicable way.

Sincerely,



Clarence R. Beitman for
All residents on North Rim Road

CC John E Van de Wetering, Pres EMC Billings 59101
Senator Thomas Keating 3302 Fourth Ave N Billings
Senator Mark Etchart, Box 429, Glasgow Mt.
Royal Johnson City Councilman, Midland Natl Bk Billings
Al Thelan, City Manager, Billings
George S Freeman Planning Director P O Box 1178 Billings
Kenneth W Heikes, EMC Environmental Impact Co EMC
Residents North Rim Road

C. R. Beitman
307 North Rim Road
Billings, Montana 59101

Mr. Al Thelan, City Manager
City Hall
Billings, Montana 59101

Dear Sir:

We, the residents of North Rim Road, are disturbed over the development of the property south of our street.

This neighborhood was here many years before Eastern Montana College purchased the area from the Heffners. When they bought the property we were elated. We thought they would improve the area - making the parking lot like the one south of the campus and develop the rest of the land like the main campus. We didn't complain when they didn't do this, thinking they would in time. They are doing the opposite.

We, who are TAXPAYERS, would like an answer to the following questions:

1. Is there a double standard to the zoning laws of the city - one for the taxpayers and another for E M C?
2. If this is not so, why can E M C do the following:
 - a. Get a permit to build an extremely ugly, commercial type cement warehouse in a zoned residential area, and surround it with old trucks, cars, oil drums, gas pumps, and debris?
 - b. Park old abandoned, wrecked cars on a lot in the same area,zoned residential?
 - c. Let weeds grow tall all over the place - a breeding place for grasshoppers - and, now a fire hazard.

In the Montana State Constitution, Article II, Section 18, gives us, the taxpayers, certain rights. This building has caused no end of anxiety, grief, disappointment, and concern.

Isn't it your responsibility, as City Manager, to see that the zoning board enforces its laws? This is definitely a "blighted" area within our city.

Please reply,

Sincerely

cc: Mr. K. D. Peterson, City Attorney
250 The Grand
27th St & 1st Ave
Billings, Mt. 59101

Dr. John Van de Wetering, President
Eastern Montana College

July 30, 1980

Dr. John VanDeWetering, President
Eastern Montana College
Billings, Montana 59101

Dear John:

This letter is to let you know that we who live on North Rim Road are disappointed in the design, construction and maintenance of the Physical Plant Building. We can only see depreciation of our property because of what the college has seen fit to do.

No doubt the building fulfills the present needs of the campus and your administration insofar as facilities and accessibility are concerned. I am sure no one can quarrel with that. However, the building does not fit aesthetically with other structures on the campus. The others are brick-faced whereas this one is of pre-stressed concrete industrial type which might fit well in a railroad siding location. The north side faces or parallels North Rim Road and has a 10-foot open trench between the building and the road. Vegetation is primarily weeds and dead grass presenting a fire hazard. You have told us that you were going to landscape the area but nothing of consequence has happened to date.

The front of the building fails to move us to ecstasy. It is visible from Rimrock road. The vehicles, oil drums, gas pumps and junkers seen from this vantage point certainly add nothing to an otherwise attractive campus.

Try as we may we can find nothing desirable to the east end of the building either. The pile of dirt put there is covered with weeds which is also a fire hazard. The exposed power transformer gives the appearance of an industrial site. All of the equipment and automotive vehicles should be housed behind a screened-off area as at the University of Montana at Missoula.

We are aware that Eastern did not get a zone change from residential and that you did obtain a construction permit from the city for a commercial building. Then you proceeded to construct the Physical Plant Building with complete defiance to the residents of the area and the people of Billings.

It is not our responsibility to oversee development of Eastern College. That is your job. How can this deplorable situation be corrected?

Please reply.

Sincerely

S. C. R. Beitman

C. R. Beitman
307 North Rim Road.
Billings, Mt. 59101

cc: Harrison Fagg, State Representative, Granite Tower, 59101
City Manager, Billings, City Hall, 59101
Mr. John Richardson, Com of Higher Ed., 33 S Last Chance Gulch, Helena, 59601
People on North Rim Road, Billings 59101



THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH

HELENA, MONTANA 59620

(406) 449-3024

Exhibit B

COMMISSIONER OF HIGHER EDUCATION

TO: Senate Local Government Committee

FROM: Jack Noble *JN*
Deputy Commissioner for
Management and Fiscal Affairs

DATE: March 11, 1981

SUBJECT: H. B. 594

On behalf of the Regents, Commissioner of Higher Education, and the six campus presidents, I would like to express our opposition to H. B. 594.

We recognize that the actions of state agencies in fulfilling their public mission may, from time to time, create hardship for a few citizens who happen to be impacted by the decisions of a state agency. It appears that the reason for the introduction of H. B. 594 is to solve a particular problem for Missoula residents who live on the south side of the U of M campus.

Their concerns are undoubtedly real and no one, including the Regents or the Commissioner, derives personal gratification from having to make decisions which may adversely affect local citizens. The world is in a constant state of change, however, and the process of progress, growth, or change seems to always include people who are adversely affected.

The problem with H. B. 594 is that it provides a broad sweeping change by totally reversing the long standing legal principle of the "superior sovereign" doctrine . . . that the state should govern, or is "superior" to local government. (1) Nearly all states operate under the superior sovereign doctrine. We have been able to expand campus holdings to accommodate over 25,000 students since our inception in 1897 under the doctrine without incurring serious problems with local citizens.

While H. B. 594 reverses a well-established legal principle, we do not believe it will solve the concerns of the citizens adjacent to the U of M campus.

If the University determines that the purchase and use of the land on which the citizens reside is in the best interest of the state, H. B. 594 will not preclude that decision from being carried out. H. B. 594 will, however, make the acquisition much more costly to the state.

Memo

SUBJECT: H. B. 594

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The proposed legislation does not preclude the University from purchasing property which may be offered for sale by residential homeowners living adjacent to campus property. Nor does H. B. 594 preclude the state from exercising eminent domain powers -- although the language is not very clear on this point as to the use of such land acquired through this process.

The purpose of the bill is to limit the use of land purchased by the state. In the Missoula situation, houses could not be used as offices, classrooms, or research facilities. About the only options would be for the campus to rent the houses as single family residences, leave the houses vacant (as they are now), or to sell and remove the houses, leaving vacant lots. Those may not be the most cost-efficient uses.

The committee should consider the possible future impact on other state agencies of reversing the superior sovereign doctrine. If the state subjects themselves to local zoning restrictions in the future, the chances of increased state/local conflict will most likely be increased. How about facilities relating to institutions, especially the prison? Who wants a prison or mental institution in their neighborhood? S.R.S and highways have facility needs all over the state. Consider the difficulty of locating a hazardous waste disposal plant if local zoning commissions could veto a state decision. A campus research proposal to study communicable diseases in either animals or humans could be thwarted by a local zoning restriction. In addition, county zoning boards could thwart the future efforts of the Fish and Game to manage its land effectively.

Section 3, subdivision (2) (a) would effectively give local government agencies, including zoning commissions and boards of adjustment, veto power over programs and facilities considered and authorized by this Legislature. It would allow legislatively authorized programs to be held hostage to local interests and politics. Local zoning regulations can be changed upon fifteen days notice and a public hearing.

The bill creates a conflict of sovereignties. It is also possible that it contributes an unconstitutional delegation of legislative powers. This Legislature, under our constitutional form of government is the only competent body to determine state interests. This bill at Section 3(2) (a)-(b) delegates to subordinate local agencies the power to determine state-wide interests and needs without specific guidelines as to how that power should be exercised. This is an infringement on the power which the people delegated to its elected legislative representatives.

The power to control the location of public services is the power to control their effectiveness and existence.

Memo

SUBJECT: H. B. 594

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The use of the word "considered" in Section 3(2) would allow the local governmental body to avoid application of the statements presented in Section 3(2) (a)-(c). The dictionary definition of "consider" would not require the local governmental entity to actually apply those statements in reaching its decision as long as it reflected on or thought about them.

In summary, H. B. 594 will not guarantee that the problems of the Missoula residents will be solved. It will establish a new legal principle which is contrary to the "superior sovereign" doctrine. The risks of changing a legal principle which has served the state for all of this century far outweigh the benefits offered by H. B. 594.

(1) Examples of Legal Cases upholding the "superior sovereign" doctrine:

Aviation Services, vs. Board of Adjustment (1956)
Kentucky Institution for Education of Blind vs. City
of Louisville (1906)
Reber vs. South Lakewood Sanitary Dist. (1961)
Floyd vs. New York State Urban Development Corp. (1972)
City of Newark vs. University of Delaware (1973)
Board of Regents vs. City of Tempe (1960)
Rutgers State University vs. Piluso (1972)

HOUSE BILL NO. 594

INTRODUCED BY KEMMIS, NORMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LAND DEVELOPMENT AND USE BY GOVERNMENTAL AGENCIES TO CONFORM TO LOCAL ZONING REGULATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

Section 2. Local zoning regulations to apply to agencies. The EXCEPT AS PROVIDED IN 76-2-314, AND FOR RIGHTS-OF-WAY AND EASEMENTS, THE development and use of land held by an agency shall comply with local zoning regulations if:

(1) zoning has been adopted pursuant to Title 76,

chapter 2;

(2) zoning has been adopted in compliance with a master plan adopted as provided in Title 76, chapter 1, part 6; and

(3) the application of such zoning does not have the effect of excluding any state or local government institution from the jurisdictional area for which the local zoning regulations have been adopted.

Section 3. Public interest to be considered in review of agency zoning request. (1) In reviewing a request by an agency for zoning, rezoning, or variance, the governing body, zoning commission, and board of adjustment of the unit of local government whose regulations govern shall review the request in accordance with the provisions of Title 76, chapter 2.

(2) The following tests of public interest shall also be considered when reviewing a zoning request by an agency:

(a) the public benefit to be served by the intended use, including regional and statewide interests;

(b) the effect compliance with local land-use regulations would have on the applying agency in its effort to serve the public;

(c) the availability of alternative locations for the proposed development or use of land.

(3) The provisions of subsection (2) do not apply to review of zoning requests of an agency for land that has been acquired under a long-range development plan but that is not being used for its eventually intended public purpose.

-End-
-2-

THIRD READING

HM 594

FACT SHEETMETRO SEWER SYSTEM RATE INCREASES - BUTTE-SILVER BOW1) Introduction and Background

The Metropolitan Sewer District was created December 30, 1964 by the Silver Bow County Commissioners. In 1965, the Legislature of the State of Montana established that the Board of County Commissioners would have full power and authority by Ordinance or Resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system. Section 16-4416 of the M.C.A. Montana Code Annotated 1965, went on to further say "Such rates, charges and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general, and the cost of disposal of sewage and storm waters."

In 1967, this section of law was amended to have a ceiling of \$5.00 per unit user per year for operation and maintenance and \$3.00 per unit user per year for treatment. 1969 saw another amendment to the ceiling making the change to \$7.00 per unit user for operation and maintenance and \$7.00 per unit user for treatment. [The law stands now as it did in 1969 with the \$7.00 ceiling on rates.]

[The Butte-Silver Bow Metro Sewer District is presently the only system in the State affected by this particular section of State Law.] The Metro Waste Water Treatment Plant was constructed at a cost of \$1.35 million and put into operation in January, 1970. Recent expansions to the sanitary and storm sewers amounted to \$2.65 million. Metro Sewer is subject to the laws of the 1979 Edition of the Montana Code Annotated (M.C.A.) and is unique because it is the only sewage plant in Montana that was established by and is governed by the Montana Legislature.

Expansions in the Metro Sewer System, completed in 1979, were required to meet the regulations of the Environmental Protection Agency (EPA). Non-compliance to EPA Standards is punishable by a fine of \$1,000 minimum per day.

The Metro Sewer System is now in very good condition. There is, however, a drastic need to increase revenues to meet the actual costs of operation, maintenance and treatment of Metro Sewer.

Due to skyrocketing inflation and unpredictably high energy costs, there is a definite need to raise the ceiling from \$7.00 per unit user to at least \$10.00 per unit user in order to allow Metro Sewer to function properly. It is essential that the ceiling be raised in order to keep the system operating. ~~The following information should provide adequate background material for the need of an immediate increase in the rate ceiling.~~

2) Utility Costs for Metro Sewer

1977-1978: \$19,490.00
1978-1979: \$31,858.00
1979-1980: \$76,860.00

An increase of \$51,770 in just 3 years is very difficult to allow. The preliminary estimates of utility (gas and electric) costs will pass the \$100,000 mark in 1980-81. These increases are due to rising utility costs and changing over to mostly electrical equipment at the Metro Sewer Plant. Based on Montana Power data and the utility bills of Metro Sewer, the electrical costs have increased dramatically. Electrical equipment was installed in 1979 which upgrades the system significantly to meet EPA regulations. Energy consumption should not increase any further unless the amount of sewage handled increases. (See monthly breakdowns 78-79, 79-80 in Section 16).

1. no monetary cost to anyone but Butte

2. emphasize solidarity of Butte delegation

3. after previous ~~attempts~~ inside delegation fighting over issue - House and \$100,000.00

4. Proper affect - HB-1790 introduced to put under PSC

5. and it ~~required~~ ^{now} requires ~~any~~ need increase



The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

Representative Dave Brown
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Committees:
Natural Resources,
Judiciary

Amendment to House Bill 424:

1. Page 2.

Following: line 6

Insert: "NEW SECTION. Section 2. Coordination. If House Bill 790 introduced in the 47th Legislature is passed and approved, this act becomes void and of no effect on the effective date of House Bill 790."

Renumber: subsequent section