

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE  
January 25, 1983

Executive session was called to order by Chairman Kathleen McBride, 7 p.m., January 25, 1983, in Room 224A. All members were present except Rep. Waldron, who was absent and Reps. Bertelsen and Neuman, who were excused.

After roll call was taken, REP. KADAS moved that we do away with the calling for seconds. It passed unanimously.

HOUSE BILL 152

REP. KITSELMAN, sponsor. This bill would create a counting board for election day to count absentee ballots.

REP. KITSELMAN: Moved HOUSE BILL 152 DO PASS. He also moved the amendments be accepted.

Regarding the first set of amendments, he stated that the first amendment simply means using a room rather than using a county-owned or county-operated facility. The new section pertains to the counting board and witnessing of those people that wish to see what is happening. It also states that a notice should be posted by 5 p.m. the day before so one will know how many people one is going to have and can designate the room. Another item is simply saying--those that enter the room must be sequestered and take the oath provided. In reference to the second set of amendments, in case there was a printing error in the ballot or if the ballots were destroyed, the person does have a right to vote again.

REP. KITSELMAN: Moved the amendments be taken together (EXHIBIT 1). The motion was voted on and PASSED.

REP. KITSELMAN: Moved that HOUSE BILL 152 DO PASS AS AMENDED.

REP. WALLIN: Questioned the sentence "I will not discuss or disclose nor allow anyone else to discuss or disclose." One can't promise for anyone else. He would prefer having the counting board held in committee until the polls are closed.

REP. HANSEN: When a person becomes an election judge, they take an oath that is very similar to that oath. I would assume that this special group that is going to count these absentee ballots would have to take the same oath.

REP. WALLIN: Do the judges stay there all day? Would the counting board be allowed to leave?

REP. KITSELMAN: The purpose of the bill is for the absentee ballots to be counted in a separate room, send them out to the precincts and slow the election process. In his district, the results of the election were not known until 6:30 a.m. the following day. This bill would allow the election judge to

have his people in the room at 8 a.m. and count those ballots. If the counting board were released early, then the temptation to talk about results from absentee ballot counts is there; but they are taking the same oath as the election judges and they can be fined if they do talk.

REP. WALLIN: I do not think one can speak for anyone else.

REP. BERGENE: She thought one could by simply bringing up the fact that we should not be discussing this item.

REP. KADAS: Would you approve amending page 4, line 23 to read "No election judge or other individual having access to any results of early counting may leave the room until the polls close."

REP. KITSELMAN: I do not have a strong objection to that.

REP. HANSEN: I cannot see why that phrase is necessary because those absentee ballots go into the same ballot box as everybody else's.

REP. KITSELMAN: The temptation is that if they finish the ballots at noon, then the press would be putting the pressure on them. This bill allows any time after the polls are open to count the ballots.

REP. VINGER: What would be wrong with not starting to count before 6 p.m.

REP. KITSELMAN: In my district where they have 4,000 absentee ballots, it takes a very long time to count them.

REP. PISTORIA: Are you going to have separate judges for every precinct or is somebody going to bring these absentee ballots to one place.

REP. KITSELMAN: The ballots will be kept, in the scenario of Yellowstone County, in the courthouse. They keep them there rather than send them out to 86 precincts. If there are going to be 8,000 ballots, you are going to have more work for the sequestered board.

REP. PISTORIA: The board counts them. When are they going to turn them in. Is the election clerk going to handle that later?

REP. KITSELMAN: When the sequestered board has finished, those ballots are turned into the election judge; they are recorded, etc.. When the machine vote comes in, the two of them are tabulated by precinct and the results are known at that time.

REP. KITSELMAN: This is permissive legislation. It could be adopted by the election administrator.

REP. KADAS: Moved to strike: "may disclose the information while the polls are open" and insert "must remain sequestered until the closing of the polls."

REP. SANDS: Why do we want to take out "may disclose while the polls are open"? Don't we still want to have it in the statute. He questioned whether it might be more appropriate to put that language on line 16.

LEE HEIMAN: The only problem is that subsection (3) begins with a "no".

CHAIRMAN McBRIDE stated that there is no advantage one way or another except the language should be fairly precise on line 24.

REP. WALLIN: I feel that those lines should be deleted from the oath.

REP. KADAS: Read the amendment as proposed, page 4, line 24, "information while the polls are open and must remain sequestered until the closing of the polls."

The amendment PASSED with REP. DARKO opposing.

CHAIRMAN McBRIDE proposed the second amendment to say "Any person observing will stay sequestered with the board and must take the oath until the polls are closed and the counting board is released."

REP. SWITZER: Moved the proposed amendment be accepted. The amendment PASSED with REP. HANSEN voting no.

REP. SANDS: I would like to amend page 5, line 4, to strike: "or anyone else to discuss or disclose." The language that is objectionable is that you are to prevent other people from discussing the results of the election.

REP. KEENAN: It is just a consciousness raising. You can't stop them but you can call their attention to the fact that the individual should not be discussing this item.

Question was called on the amendment and six voted yes (REPS. PISTORIA, SALES, SANDS, SWITZER, VINGER and WALLIN) and ten voted no (REPS. BERGENE, DARKO, HAND, HANSEN, HOLLIDAY, KADAS, KEENAN, KITSELMAN, SCHYE and CHAIRMAN McBRIDE). The motion FAILED.

REP. VINGER: Moved HOUSE BILL 152 DO PASS AS AMENDED. It PASSED UNANIMOUSLY.

#### HOUSE BILL 172

REP. WILLIAMS, sponsor. This bill regards requiring county clerks and recorders to charge for each entry instead of for each index for documents requiring multiple indexing.

REP. HAND: Moved HOUSE BILL 172 DO PASS.

CHAIRMAN McBRIDE brought to the attention of the Committee the item of water filings from the Department of Natural Resources. Another piece of legislation has been introduced that would bring the impact down significantly.

REP. HAND: Thought the Department of Natural Resources would have to ask for an appropriation to pay for those filings.

REP. KADAS: They may send out a summary to the counties and that would be quite a bit cheaper.

REP. HAND: Thought there was a bill in to reassess the water filings to raise money.

The motion was voted on and PASSED with REP. BERTELSEN voting yes by proxy and REP. SWITZER voting no.

#### HOUSE BILL 248

REP. FABREGA, sponsor. This bill would allow the county or the city to make an exception to the 600-foot rule for the sale or service of alcoholic beverages.

REP. HAND: Moved HOUSE BILL 248 DO PASS.

CHAIRMAN McBRIDE: Would the county, being that it already is in the area within the city boundary, be able to eliminate the 600-foot rule. The amendment (EXHIBIT 2), page 2, line 13, following the word "county:", insert the words: "for that area of county not within the corporate limits of a city or town" would eliminate the jurisdictional problems of who can make the exception within the city limits.

REP. KADAS: Moved the amendment be accepted. The motion was voted on and PASSED UNANIMOUSLY.

REP. HAND: Moved HOUSE BILL 248 DO PASS AS AMENDED.

Question was called and HOUSE BILL 248 PASSED with REPS. VINGER, KITSELMAN, WALLIN and PISTORIA voting no.

#### HOUSE BILL 239

REP. HEMSTAD, sponsor. This bill changes the time when the forest reserve money will be given.

REP. KEENAN moved DO PASS on HOUSE BILL 239.

REP. SALES: Does anyone know the total sum of money we are talking about.

REP. DARKO: It depends on timber sales which are down because of the economy.

CHAIRMAN McBRIDE: As I understand, they will not give the money out until they have it all. It may be a couple of months later that they actually get the money to the counties.

REP. DARKO: This money goes to two different sources--the county road fund and the rest goes into the foundation program to be divided equally among the counties. The road fund money gets their whole share and the money that goes to the foundation fund is divided equally.

REP. SALES: The federal government sends the state auditor a payment which is an estimate. He distributes it. When the final payment is made, it may turn out that it is too high and so the auditor has to figure out how to balance the books.

CHAIRMAN McBRIDE: What is the timing when they give the money out based on those two months?

REP. VINGER: Two months later they would make a final payment in full--from October to December.

CHAIRMAN McBRIDE: It would cause the county not to get their October payment until December. In December, they could count on it being the total amount.

Question was called and HOUSE BILL 239 PASSED DO PASS UNANIMOUSLY.

#### HOUSE BILL 193

REP. PISTORIA, sponsor. This bill delineates specific professions be excluded from municipal contract restrictions.

REP. SALES: Moved DO NOT PASS.

REP. PISTORIA: Moved that a substitute motion of DO PASS be accepted. He felt that the bill was too strict and amended the bill (EXHIBIT 2).

The amendments were voted on and PASSED.

REP. PISTORIA: Moved HOUSE BILL 193 DO PASS AS AMENDED.  
Question was called and HOUSE BILL 193 PASSED.

REP. SALES abstained.

#### HOUSE BILL 162

REP. YARDLEY, sponsor. This bill is an act to eliminate the requirement that a county treasurer keep a separate accounting of the expenditures for each budgeted fund.

CHAIRMAN McBRIDE: We are still trying to get some information regarding when warrants are recorded and who keeps track of them. We want to make sure that the intent is correct on what we are repealing.

HOUSE BILL 189

REP. BENGSTON, sponsor. This bill would require that areas to be considered as part of the consolidated or transferring of services plan have a separate vote.

REP. SALES: Moved HOUSE BILL 189 DO PASS.

The question was raised as to whether there were some amendments to this bill.

REP. SALES: I remember there was a question about cleaning up the language in subsection (3) and (4) on page 5 to avoid the misunderstanding of who is voting on what.

LEE HEIMAN: I will write amendments that would clarify subsections (3) and (4) (EXHIBIT 3).

REP. SALES: Moved that we get these amendments printed out so we can look at them before we discuss the bill.

The amendment PASSED with REP. SWITZER opposing.

HOUSE BILL 240

REP. HANSEN, sponsor. This bill changes the protest provision for the adoption of county zoning districts from 40% to 60% of freeholders in the district.

REP. HANSEN: Moved that HOUSE BILL 240 DO PASS.

REP. HANSEN: Moved to amend the 60% to 51%, page 1, line 6 and page 3, line 9.

REP. SALES: I would like to speak against the amendment. He referred to Mr. Clarke's presentation and felt it was the best argument on petition process. He said the 40% is very reasonable and 51% is quite unreasonable.

REP. HANSEN: They intended this bill to deal with zoned land only.

REP. SALES asked REP. HANSEN how she felt about REAM'S suggestion to lower the percentage to 25%. He stated they would have to let people vote on it by secret ballot. That way, you get away from all those petition problems. That was agreeable with REP. HANSEN for this reason--no matter how we deal with this in our county zoning, the other kind of development that you listened to today is going to be a problem to us.

REP. KADAS: Would REP. REAM'S amendments fit under the title.

LEE HEIMAN: They would.

REP. SWITZER: What is it that you wish to accomplish that can't be accomplished in the zoned area?

REP. HANSEN: The city can zone within that three mile limit. We have property within the three-mile limit that the city doesn't want to do anything with. So, the county would like to zone those pieces of property that, in some cases, are almost around us. Because it only took 40% to keep that zoning out, those people who own that property have successfully kept it from being zoned.

REP. SWITZER: Is there any reason you can't get cooperation from the city? They have the power to zone it already. Wouldn't it be more logical to have the county and city work together rather than submit it to the Legislature.

REP. HANSEN: I cannot speak for the county because I have not worked with them on this.

REP. SCHYE: The city council already has the right to say this is going to be zoned this way.

REP. KADAS: The city ought to be doing this and for that reason, we ought to kill the bill. If the Committee feels that there is a problem, we ought to consider it since we have a vehicle to work with.

REP. SALES: Moved REP. REAM'S amendments be accepted and said that if we present a new idea, it would be something for the Senate to think about.

REP. KADAS: It lessens the argument but you still have to collect 25% of landowners' signatures.

REP. SWITZER: What do the REAM amendments do?

REP. KITSELMAN: It simply says those who appear and want a complete assessment and represent 25% or more, you gather 25% of those signatures. After the petition is in, you have a 10-day protest period. After the 10-day protest, you have a secret ballot for either resolution upon procedures, etc..

REP. SANDS: Does this change the law to provide a 20% rather than 25% of the freeholders. That was a problem with a split vote.

REP. KITSELMAN: The objection would be--if there is 1 acre versus 65 acres, it would still be one vote.

REP. SWITZER: If a man had 65 separate lots, he would have 65 votes.

REP. KITSELMAN: That is correct.

Question was called on REP. REAM'S amendments. The motion PASSED with REPS. KEENAN, SCHYE, McBRIDE and PISTORIA voting no.

REP. HAND: Moved that the technical amendments be accepted. The motion was voted on and PASSED UNANIMOUSLY.

REP. HANSEN: Moved that HOUSE BILL 240 DO PASS AS AMENDED. A roll call vote was taken with five voting yes (REPS. DARKO, HAND, HANSEN, HOLLIDAY and SALES) and eleven voting no (REPS. PISTORIA, BERGENE, KADAS, KEENAN, KITSELMAN, SANDS, SCHYE, SWITZER, VINGER, WALLIN and CHAIRMAN McBRIDE). The vote was reversed. HOUSE BILL 240 DOES NOT PASS.

#### HOUSE BILL 237

REP. DEVLIN, sponsor. This bill is an act to change the distribution of money received by the state from the Federal Mineral Lands Leasing Act by including distribution to counties, cities, and towns; establishing how a county, city, or town may use such money.

REP. VINGER: Moved HOUSE BILL 237 DO PASS and requested to speak for the bill. He said this is a very good bill and a legitimate bill. The statutes are very clear that the state is violating those federal statutes and is not distributing this money where it should be distributed. If these counties and cities of eastern Montana wanted to sue the state, he thought they could. He would like to see this passed to the Floor and let MR. DEVLIN refer it to Appropriations.

CHAIRMAN McBRIDE: I want the Committee to know that REP. DEVLIN is free to move the bill whether it has a do pass or do not pass out of this Committee. Even prior to that, the Committee as a whole could request that it be referred to Appropriations.

REP. DARKO spoke against the bill. If we are violating statutes by the way the money is being distributed, we have been violating statutes with the forest reserve money. We have brought bills before the Legislature in the past to



have that money distributed to the counties where the timber is taken and the sales were made; and yet, that money has gone into state-wide planning and has been distributed equally among the counties. The federal statutes have been broken and there has been no action on the part of the federal government since the 1940's. She did not think that was a valid argument.

REP. SALES: If we leave things as they are, suit will be brought. He would like to see REP. BARDANOUVE and REP. DEVLIN's bills brought together and considered.

REP. SCHYE: When we were talking about federal royalties and base money, the statement was made that the counties don't get any of the royalties off that. He asked who gets the net proceeds tax off that royalty.

REP. HAND: The net proceeds does not come from federal lands. You are talking about lease money from federal minerals. Each one of those federal minerals requires a royalty to be paid to the federal government when they are severed.

REP. SANDS: Suggested that a subcommittee be appointed to consider the bills on this subject.

CHAIRMAN McBRIDE: This bill is going to end up in Appropriations and that is where the time and energy should be put.

REP. BERGENE: I would vote do pass on REP. DEVLIN'S bill but I am very concerned how we are going to replace the education money and the highway money as well as the noncompliance.

REP. KADAS: Moved a substitute motion that the bill go to second reading with no recommendation.

REP. VINGER: The process is that we refer bills to the same committee so that they may be heard.

CHAIRMAN McBRIDE: Having heard the bill and because it would have an impact on local government, we would be given an opportunity to give a recommendation or, perhaps, no recommendation. But we should take action on it.

REP. VINGER didn't see how we could pass REP. DEVLIN'S bill when we couldn't compare it with REP. BARDANOUVE'S bill.

CHAIRMAN McBRIDE: We ought to address the bill in front of us and vote on its merits.

REP. SWITZER, in referring to REP. KADAS' motion, stated his understanding of the rules was that a bill has to move from a committee on a positive vote.

REP. KADAS: You can have a positive vote to move no recommendation.

CHAIRMAN McBRIDE: REP. VINGER, you said one could have lawsuits from the counties that are not getting the priorities they should be getting.

REP. VINGER: They could.

CHAIRMAN McBRIDE: In the breakdown and the distribution, you have 20% of the money going to counties in which the royalties were generated. Is it conceivable you can have a neighboring county, in which you have the social and economic impact from the mineral development, bring suit because they didn't get the same kind of consideration as those counties who have the royalties generated.

REP. VINGER: I cannot answer that question. He would not argue the contents of the bill because Appropriations could change all that.

CHAIRMAN McBRIDE: I am going to treat it as a recommendation that the Committee is going to give to the whole House of Representatives.

REP. SANDS: The federal statute is written broadly enough so that any kind of priority system that the Legislature prescribes is really what will meet the standards of the federal statute. He realized that the kind of apportionment system that is in this statute is imperfect. But he thought, because of the broad language in the statute, anything the Legislature decides is going to meet the standards of that statute. What is wrong with the state statute is that it makes no attempt to give priority to the county affected. In fact, regarding the school foundation program, they do exactly the opposite.

CHAIRMAN McBRIDE asked REP. SANDS, even though the priority doesn't meet the criteria that the federal legislation said, you give priorities to the counties that are socially and economically impacted. Do you think it still would not be contested?

REP. SANDS: I can't assure you that it would not be contested. But it seems that there is a close enough connection between economic impact and the location of the actual mining operation that that is sufficient enough to meet the federal standards.

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REP. HANSEN: The percentage before was 62 1/2% to the schools, and now they want 40% of the counties. She was suspicious that this must have come from the counties. She has been working with the counties and sympathized with them, but her priority would be the foundation program. She stated she would have to vote against the bill.

REP. VINGER urged that the Committee vote against this no recommendation.

Question was called and a roll call vote was taken with four voting yes (REPS. PISTORIA, SALES, SANDS and KADAS) and twelve voting no (REPS. BERGENE, DARKO, HAND, HANSEN, HOLLIDAY, KEENAN, KITSELMAN, SCHYE, SWITZER, VINGER, WALLIN and CHAIRMAN McBRIDE). The motion FAILED.

A roll call vote was taken on the original motion of DO PASS on HOUSE BILL 237. The motion PASSED with nine voting yes (REPS. BERGENE, HOLLIDAY, KEENAN, KITSELMAN, SALES, SANDS, SWITZER, VINGER and WALLIN) and eight voting no (REPS. PISTORIA, BERTELSEN, DARKO, HAND, HANSEN, KADAS, SCHYE, and CHAIRMAN McBRIDE). The motion of DO PASS on HOUSE BILL 237 PASSED.

Executive session adjourned at 9:15 p.m.

Kathleen McBride  
CHAIRMAN KATHLEEN McBRIDE

Jan. Beckett  
Secretary

AMEND HOUSE BILL 152 AS FOLLOWS:

1. Title, line 10.

Following: "DAY"

Insert: "UNLESS THERE HAS BEEN AN ERROR IN PRINTING ABSENTEE  
BALLOTS OR AN ABSENTEE BALLOT WAS DESTROYED"

2. Page 2, line 5.

Following: "effect"

Strike: "Effect"

Insert: "Authority to vote in person -- printing error or ballot  
destroyed -- effect"

3. Page 2.

Following: line 11

Insert: "(1) If an elector has voted by absentee ballot but the  
absentee ballot contains printing errors or omissions or if the  
absentee ballot was destroyed, the elector may vote in person in  
any manner at his polling place."

4. Page 2, line 11.

Following "42"

Insert: "(2)"

5. Page 3.

Following: line 22

Insert: "(2) The unopened absentee ballot envelope of an elector  
who has voted in person as provided in 13-13-204 must be marked  
"voted in person" and initialed by a majority of the election  
judges."

Renumber: subsequent subsections.

AMEND HOUSE BILL 248 AS FOLLOWS:

1. Page 2, line 13.

Following: "county"

Insert: "for that area of the county not within the corporate limits of a city or town,"

## AMEND HOUSE BILL 193 AS FOLLOWS:

1. Title, line 4.

Following: "DELINEATING"

Strike: "SPECIFIC"

2. Page 1, line 17.

Following: "technical,"

Insert: "professional, technical,"

Strike : "medical, nursing, architectural, financial,"

3. Page 1.

Following: line 20

Insert: "(3) In subsection (2) each of the enumerated services are intended to include only those services that require advanced or specialized intellectual education, knowledge, and training and that involve exercise of discretion and judgment. Such services do not include services characterized as routine mental, manual, physical or mechanical."

AMEND HOUSE BILL 189 AS FOLLOWS:

1. Page 2, line 14.

Following: "~~In~~"

Strike: "Among those electors voting in"

Insert: "In"

2. Page 2, line 17.

Following: "~~question~~"

Insert: "voting on the question"

Following: "and"

Insert: "a simple majority"

3. Page 2, line 18.

Following: "those"

Insert: "voting on the question"

4. Page 5, line 6.

Following: "(4)"

Strike: "Among those electors voting in"

Insert: "In"

5. Page 5, line 9.

Following: line 8

Insert: "voting on the question"

Following: "and"

Insert: "a simple majority"

Following: "those"

Insert: "voting on the question"