

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
February 8, 1983, 7 p.m.

The meeting was called to order at 7 p.m., Room 224A of the Capitol Building, February 8, 1983 by Chairman Kathleen McBride. All members were present.

HOUSE BILL 495. REP. HANNAH, sponsor, stated this bill provides a term of 4 years for appointed city judges. Right now there is no specific term for a city judge who is appointed--they serve at the wishes of the City Council or mayor. This would free them from political pressure and they would be able to do their job without the kind of bias that is happening in some localities.

PROPOSERS: None

OPPOSERS: None

REP. HANNAH closed.

QUESTIONS:

REP. BERTELSEN to REP. HANNAH: In the event that someone was elected and could not serve his term of office and someone to replace him was appointed, would this 4-year term create an awkward situation because his expiration time would not come at a regular election period.

REP. HANNAH: It is not my intention that appointed judges would serve another 4 years.

REP. BERTELSEN: We may want to amend it to read: "complete an unexpired term".

REP. HANNAH: That is right.

REP. KADAS: How many elected city judges does Billings have.

REP. HANNAH: One.

REP. KADAS: How many appointed city judges.

REP. JENSEN: I don't think they have any. The problem arises during a vacancy. City judges are elected but when a vacancy arises, it isn't clear that the one appointed fill out a term. Unless a city judge is appointed, sometimes they are released, and another appointed, and that is where the problem arises.

REP. KADAS: Would it be more sensible to say that the appointed judge would fill out the term rather than fill out the term of whoever the appointed one is replacing.

REP. HANNAH: That would be fine with me. My intent is simply to say if you have a judge who replaces somebody because they are appointed, they should not be subject to political pressure because they are appointed.

CHAIRMAN McBRIDE closed the hearing on HOUSE BILL 495.

HOUSE BILL 551. REP. JIM JENSEN, sponsor, stated this act would require that the local government may not deprive someone of their property (automobile) for non-payment of a parking violation unless they can, in fact, demonstrate that the individual who owns the vehicle was responsible for the parking of that car. His concern was if cities or municipal parking authorities want to have criminal sanction, they ought to constitutionally provide some kind of due process and they don't. He proposed the following amendments:

1. Page 1, line 11.
Following: "impounding"
Insert: "or immobilizing"

2. Page 1, line 14.
Following: "impound"
Insert: "or immobilize"

3. Page 1, line 15.
Following: "government"
Strike: "can prove"
Insert: "has proved"

PROPOSERS: None

OPPOSERS:

BILL VERWOLF, City of Helena, stated there is a Supreme Court judgment that affects what cities can and cannot do in relation to parking tickets--not only the impounding but the enforcement and who has to pay them and what they have to do in order to make parking tickets stick. That is going to take some fairly substantial changes in the municipal parking laws in order to devise a system that allows us to enforce the parking codes and still comply with the due process concerns that were expressed. This is a rather simplistic approach to that process and may preclude us from arriving at a really equitable system.

TOM KOSENA, Missoula Parking Commission, said that the lawyers' contention of the Doris Shea findings deals with an issue of a city or local government to impose absolute liability on the vehicle. Mr. Jensen's bill proposes the elimination of parking controls and replaces those meters with police officers. He appeared in opposition of this bill because of lack of ability to control downtown parking spaces.

Page 3

Minutes of the Meeting of the Local Government Committee
February 8, 1983, 7 p.m.

TOM McKERLICK, City of Billings, opposed this bill saying that the bill will effectively negate any traffic/parking enforcement in downtown Billings (EXHIBIT 1).

GARY KEELER, Butte-Silver Bow Parking Commission, said that local governments are mandated to enforce parking regulations for the public health and safety and this would impose greater difficulty (EXHIBIT 2).

REP. JENSEN closed by saying we are using criminal sanctions, in this case parking fines, to generate revenue and that is all that they are used for. I submit that there are a number of cities that do not have parking meters in their downtown area and are delighted that they don't. The argument that the only way we can attract business downtown is fallacious. The question of absolute liability and prohibition that we have talked about and the Shea case in relation to that, absolute liability may be imposed by that case which says that the city can have absolute liability. But I submit to you that that is permissive and the Legislature has the authority to say we don't recognize absolute liability. It is not my intent that one get their vehicle subsequent to due process without paying the fine but I don't think this section allows that. The court could apply any conditions it wished to one getting their car back. And I think they would say, "Pay up". They ought to be able to say, "You have ten days to pay--you may use your car". This bill would enforce some conformity in towing and storage fees.

QUESTIONS:

REP. BERTELSEN: I would like to pose a situation and have you go through the process in the manner this would be handled. I am in downtown Billings and I meet a friend. He says, "Let's run over to Cody, Wyoming, for the weekend." I leave my car on the street. What is the process the city would go through.

REP. JENSEN: This bill addresses only cases of impoundment with overdue parking fines. They would have to serve you with a summons and there would have to be a hearing in the city court.

REP. SALES: Is this limited to a parking stall or does it cover all parking violations.

REP. JENSEN: It was not my intent to expand the scope of this bill to more than rented time.

LEE HEIMAN: It covers more than metered parking.

Page 4

Minutes of the Meeting of the Local Government Committee
February 8, 1983, 7 p.m.

REP. BERGENE: Under your bill, why wasn't REP. BERTELSEN's car impounded?

REP. JENSEN: If he would have had overdue parking tickets, the government would not have been able to deprive him of property without due process because the violation of a parking ticket statute authority is a criminal offense. He would not be able to lose that property until the government owned up to its responsibility.

REP. KADAS: If someone steals your car and leaves it on the streets of Billings, is there some way you can charge that person for the fines.

REP. JENSEN: He had no answer.

REP. SANDS: I have not read the Doris Shea case but I understand that it does not compel the results as outlined in this bill. Is it true that if you remove the ability to imprison someone for a parking violation, the Shea case concludes that you can have absolute liability.

REP. JENSEN: It states that the penalty for a parking violation cannot exceed the state statute, or \$500; it speaks nothing of imprisonment. With the elimination of the imprisonment clause, you then conform to that section of the Shea findings which states that local government has the legislative authority to attack that absolute liability circumstance.

REP. SANDS: What do you propose to do with circumstances where a city would refuse to renew the license of someone who wouldn't pay their fines.

REP. JENSEN: That is an ordinary administrative remedy.

TOM KOSENA: It is our understanding that that is a state statute requirement. Parking violations have to be cleared up before the individual is given the ability to get a license plate.

REP. SANDS: We don't have that authority in our state?

TOM KOSENA: No.

CHAIRMAN McBRIDE closed the hearing on HOUSE BILL 551.

HOUSE BILL 282. REP. KADAS, sponsor, stated that the reason for the bill is that the rural fire districts have a lot of "little canyons" they have to keep fires out of. They wanted to have the authority to enforce the fire codes. This bill with the amendments (EXHIBIT 3) enforces the uniform fire codes.

PROPOSERS:

BOB JOHNSON, Missoula Rural Fire District, stated that rural fire districts should have the same authority to enforce fire codes outside the city and in the county areas. We have had no real severe fire loss due to occupant loads in night clubs. We are going to end up with one of these severe fires. Our concern is enforcement of the life-safety aspects of the codes protecting the public. The structures, in a lot of these cases, that are now outside the city will in a few years be inside the city limits. The city will have to go in and force these people to make a lot of changes and comply with the codes they have and are able to enforce which should have been done prior to their ever having been annexed into the city.

OPPOSERS:

HENRY E. LOHR, Broadwater Rural Fire District, asked if the governing body has this power at this time. How much input did these other fire districts, along with the state, have a chance to put into this and what are their opinions of it.

SAM HOFFMAN, from Manhattan, Gallatin County, representing the Agricultural Preservation Association, the Park County Legislation Association, the Sweetgrass County Preservation Association, the Manhattan Rural Fire District, and himself, stated that they are perfectly happy to operate the way they are.

REP. KADAS closed saying he agreed with the two gentlemen who spoke saying there weren't any problems in the rural areas. Some of the fire districts around urban areas are not nearly as fire conscious as ranchers and farmers. However this legislation is permissive. In our case, we have problems cropping up and we need the opportunity to deal with them if we want to take that on.

QUESTIONS:

REP. SALES: I don't see how you are going to go out and do the job for \$15 per permit.

BOB JOHNSON: It is my interpretation that the fee is not for every inspection they go out on. The intent of the whole thing was for the night clubs and the schools outside the city. I am sure there is no fee charged for going out and doing an inspection.

REP. SALES: It sounds to me that you have a real concern about some public buildings right there in the area you are servicing and you haven't been able to make these inspections. That is a real serious problem. We have to find an answer for it.

Page 6

Minutes of the Meeting of the Local Government Committee
February 8, 1983, 7 p.m.

CHAIRMAN McBRIDE closed the hearing on HOUSE BILL 282.

CHAIRMAN McBRIDE allowed JIM RUGEMER to present an outline of a particular problem in his county. He stated if we had an opportunity for the people in each county to decide whether they wanted a single member district versus at-large elections--whatever best fits their county--I think we would be doing a good service for the people in those counties. I think the solution is to make it optional through a ballot issue in each county.

CHAIRMAN McBRIDE stated there are four different ways for commissions to be elected: (1) elected at large; (2) elected by districts in which candidates must reside and which are apportioned by population; (3) elected at large and nominated by a plan of nomination, etc., and (4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large. (7-3-412)

REP. VINGER: It is possible for them now to follow procedures of the law.

It was voted and PASSED UNANIMOUSLY not to draft a Committee bill.

HOUSE BILL 538. REP. SANDS, sponsor, stated this bill affects the requirements for changing zoning. In order to make a zoning change, we have to go through a city-county planning zoning commission and then the zoning change is proposed. If 20% of the people protest the change, it could actually be a 5% protest change because the way the law is written, it refers to parties 150 feet to the front, rear, or both sides. If 5% of the people within 150 foot area protest the change, then that change cannot go into affect unless the protest is overridden by a 3/4 vote of the city or town council. My bill simply changes the requirement from 3/4 to 3/5.

PROPONENTS: None

OPPONENTS: None

REP. SANDS closed.

CHAIRMAN McBRIDE closed the hearing on HOUSE BILL 538.

Page 7

Minutes of the Meeting of the Local Government Committee
February 8, 1983, 7 p.m.

EXECUTIVE SESSION:

HOUSE BILL 551. REP. JIM JENSEN, sponsor.

REP. KITSELMAN moved HOUSE BILL 551 DO NOT PASS.

The motion was voted on and passed with REPS. HANSEN and
PISTORIA voting no.

HOUSE BILL 282. REP. KADAS, sponsor.

REP. KADAS moved HOUSE BILL 282 DO PASS.

REP. SALES stated we do have a serious problem with unsafe
public buildings.

REP. BERTELSEN said the state fire marshall ought to be able to
do something about it.

CHAIRMAN McBRIDE agreed but asked who is physically doing
something about this.

LEE HEIMAN: There is a very loose provision that requires
inspections by the local sheriff or municipal fire department
which applies to public buildings. However, you do not have
a fire code. You have a fire extinguisher, a fire escape, hose
connections--about four things--none of which addresses the
types of things you find in the building code or uniform fire
code, i.e., building occupancy, etc.

REP. KADAS to LEE HEIMAN: Is the fire marshall supposed to be
doing this.

LEE HEIMAN: The state fire marshall has authority regarding
fire extinguishers, fire escapes, etc., but not with the uni-
form fire code plus he does have some responsibility toward
public institutions, including schools and armories.

A substitute motion was made to table the bill.

The motion passed unanimously.

HOUSE BILL 495: REP. HANNAH, sponsor.

After discussion, CHAIRMAN McBRIDE recommended that LEE HEIMAN
look into the situation where there may be appointed city judges
and write an amendment making it clear that we are talking about
an appointment to an unexpired term.

Page 8

Minutes of the Meeting of the Local Government Committee
February 8, 1983, 7 p.m.

The meeting adjourned at 8:40 p.m.

Kathleen McBride

CHAIRMAN KATHLEEN McBRIDE

Secretary

WITNESS STATEMENT

Name Joan McKerlik Committee On _____
Address 1425 Redwing Circle Date 3-8-83
Representing City of Billings Support _____
Bill No. H.B. # 551 Oppose ✓
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Bill will effectively negate any traffic/parking enforcement in downtown Billings
2. This bill threatens whole viability of downtown shopping & businesses. Will drive public to shopping centers.
3. Section 2 prohibits any collection of parking violation fees. Limits to towing & storage
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Gary Keeler Committee On _____
Address 844 W. Granite Butte Date _____
Representing Butte-Silver Bow Support _____
Bill No. HB 551 Oppose ☒
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. - I oppose House Bill 551, with the concern that it will further impair a local government's enforcement of parking regulations.
2. - I feel that it is in direct conflict with the ability of local governments to establish absolute liability as provided in the Shea Case
- 3.

Rep. Jensen Does not define due process advocated by his legislation

4. Local governments are mandated to enforce parking regulations for the public health and safety and this would impose greater difficulty

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Amendments to House Bill 282 (Introduced Copy)

1. Title, line 5.

Following: "TO"

Strike: "ADOPT"

Insert: "ENFORCE THE UNIFORM"

Following: "FIRE"

Strike: "CODES AND RULES"

Insert: "CODE"

2. Page 1, line 14.

Following: "trustees --"

Insert: "uniform"

3. Page 1, line 15.

Strike: "codes"

Insert: "code"

4. Page 2, line 2.

Following: "(4)"

Strike: "The"

Insert: "Upon approval of the governing body, the"

Following: "may"

Strike: "adopt and"

Strike: "appropriate"

5. Page 2, line 3.

Following: "fire"

Strike: "codes or rules"

Insert: "code"

6. Page 2, line 5.

Strike: "or rules"

7. Page 2, line 9.

Following: "purposes"

Strike: "in adopting"

Insert: "of enforcing the uniform"

Following: "fire"

Strike: "codes or rules"

Insert: "code"

8. Page 2, line 12.

Following: "permits"

Strike: the remainder of line 12 through line 14

Insert: "for compliance with the code;"

9. Page 2, line 18.

Following: "violates"

Strike: "a"

Insert: "the"

Strike: "or rule"

VISITOR'S REGISTER

HOUSE LOCAL GOVERNMENT

COMMITTEE

BILL HOUSE BILL 551

DATE 2-8-83; 7 p.m.

SPONSOR REP. JIM JENSEN

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Sam Hoffman Committee On _____
Address Rt 2 Box 84, Manhattan Mont. Date _____
Representing Legislative Ass. of Mont. Preserv. Ass. & Sweetgrass Co. Preserv. Ass. Support _____
Bill No. HB 282 Oppose ✓
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

BILL HOUSE BILL 282

DATE 2-8-83; 7 p.m.

SPONSOR REP. KADAS

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

HOUSE BILL 282

Page 1 of 3

February 21, 1983

MR. **SPEAKER**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **HOUSE** Bill No. **282**

first reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE TRUSTEES OF A RURAL FIRE DISTRICT TO ADOPT FIRE CODES AND RULES, CONDUCT FIRE SAFETY INSPECTIONS, ISSUE FIRE SAFETY PERMITS, AND CHARGE A FEE FOR ISSUANCE OF A PERMIT; ESTABLISHING A FIRE SAFETY FUND FOR RURAL FIRE DISTRICTS EXERCISING FIRE SAFETY PERMIT AUTHORITY; AMENDING SECTION 7-33-2105, MCA; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That **HOUSE** Bill No. **282**

AMEND HOUSE BILL 282 AS FOLLOWS:

1. Title, line 4.

Following: "ALLOWING"

Insert: "THE BOARD OF COUNTY COMMISSIONERS TO DESIGNATE UNDER CERTAIN CIRCUMSTANCES PUBLIC BUILDINGS WITHIN THE COUNTY WHERE THE UNIFORM FIRE CODE APPLIES, PROVIDING THAT THE STATE FIRE MARSHAL MAY DESIGNATE"

XXXXX
DO PASS

February 21, 1983

2. Title, line 5.
Following: "DISTRICT"
Insert: "THE AUTHORITY"
Strike: "ADOPT"
Following: "ADOPT"
Insert: "ENFORCE THE UNIFORM"
Following: "FIRE"
Strike: "CODES"
Insert: "CODE"
Following: "AND"
Strike: "RULES,"

3. Page 1.

Following: the enacting clause

Insert: "NEW SECTION. Section 1. Uniform fire codes for public buildings in county. The board of county commissioners, with the concurrence of the state fire marshal and the board of trustees of the appropriate fire district, may designate public buildings as set forth in 50-61-103, not within a municipality, for compliance with the Uniform Fire Code. The state fire marshal may inspect such buildings for compliance with such codes or he may delegate all or part of such responsibility to a rural fire district as provided in 7-33-2105."

Renumber: subsequent sections

4. Page 2, line 2.

Following: "may"

Strike: "adopt and"

Insert: "the Uniform Fire Code if delegated to do so under [section 1]"

Strike: "appropriate"

5. Page 2, line 3.

Following: line 2

Strike: "fire codes or rules"

Following: "all"

Insert: "applicable"

6. Page 2, lines 4 through 7.

Following: "district."

Strike: the remainder of subsection (4)

7. Page 2, line 9.

Following: "in"

Strike: "adopting"

Insert: "enforcing"

Following: "codes"

February 21, 1983

Strike: "or rules"

Insert: "to be applied pursuant to [section 1]"

8. Page 2, line 10.

Following: "may"

Insert: ", subject to the authority granted by the state fire marshal"

9. Page 2, line 16.

Following: "[section"

Strike: "2]"

Insert: "3]"

10. Page 2, line 18.

Following: "violates"

Strike: "a code"

Insert: "the Uniform Fire Code"

Strike: "or rule"

11. Page 2, line 19.

Strike: "subsection (4)"

Insert: "[section 1]"

12. Page 3, line 7.

Following: line 6

Strike: "Section 2 is"

Insert: "Sections 1 and 2 are"

13. Page 3, line 9.

Following: "apply to"

Strike: "section 2"

Insert: "sections 1 and 2"

AND AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

February 21, 1983

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 495

second reading copy (yellow)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TERM OF 4 YEARS
FOR APPOINTED CITY JUDGES; AMENDING SECTION 3-11-201, MCA."

Respectfully report as follows: That HOUSE Bill No. 495

BE AMENDED AS FOLLOWS:

1. Strike: amendments of February 12.

DO PASS

STANDING COMMITTEE REPORT

February 21, 19 83

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 495

second reading copy (yellow)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TERM OF 4 YEARS
FOR APPOINTED CITY JUDGES; AMENDING SECTION 3-11-201, MCA."

Respectfully report as follows: That HOUSE Bill No. 495

DO PASS

STANDING COMMITTEE REPORT

FEBRUARY 12 19 83

MR. **SPEAKER**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **HOUSE** Bill No. **495**

first reading copy (**white** color)

**A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TERM OF 4 YEARS
FOR APPOINTED CITY JUDGES: AMENDING SECTION 3-11-201, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **495**

BE AMENDED AS FOLLOWS:

1. Title, lines 4 and 5

Strike: "PROVIDING A TERM OF 4 YEARS FOR APPOINTED"

Insert: "TO CLARIFY FILLING A VACANCY IN THE OFFICES OF"

2. Page 1, line 10

Strike: "or appointed"

3. Page 1, line 12

Following: "successor."

Insert: "A vacancy in office must be filled as provided in
7-4-4112."

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

FEBRUARY 12

83

19.....

MR. **SPEAKER**.....

We, your committee on **LOCAL GOVERNMENT**.....

having had under consideration **HOUSE**..... Bill No. **538**.....

first reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING THE VOTE NECESSARY
TO EFFECT A CHANGE IN ZONING REGULATIONS; AMENDING SECTION 76-2-305,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

Respectfully report as follows: That **HOUSE**..... Bill No. **538**.....

DO PASS

STANDING COMMITTEE REPORT

February 8, 1983

MR. **SPEAKER**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **HOUSE** Bill No. **551**

first reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A LOCAL GOVERNMENT MAY NOT IMPOUND A MOTOR VEHICLE FOR NONPAYMENT OF A PARKING VIOLATION UNLESS IT CAN PROVE THE VEHICLE WAS UNDER THE CONTROL OF THE OWNER WHEN IT WAS PARKED; AND LIMITING THE CHARGE FOR STORAGE OF AN IMPOUNDED VEHICLE."

Respectfully report as follows: That **HOUSE** Bill No. **551**

DO NOT PASS
XXXXXX
DO PASS