

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
March 10, 1983

The meeting of the Local Government Committee held March 10, 1983, at 12:30 p.m. in Room 224A of the Capitol Building was called to order by Chairman Kathleen McBride. All members were present except Rep. Neuman, who was absent.

SENATE BILL 332

SEN. MARBUT, sponsor. This bill extends from only first-class cities to all cities the ability to annex wholly surrounded land under the provisions of Title, chapter 2, part 45. We are talking about residential land and, in some cases, commercial land.

PROPOSERS:

ALEC HANSEN, representing Montana League of Cities and Towns, said what we are trying to do with this bill is correct inequities in the present law. Only first-class cities can annex wholly surrounded land--those above 10,000 population. We see this bill as a vital instrument in planning for Montana communities. We are simply attempting to eliminate this inequity in current state law by making a very simple change in 7-2-4501 (EXHIBIT 1) by changing "cities of the first class" to "cities of all classes."

ANN MULRONEY, representing the League of Women Voters, stated she concurred with Mr. Hansen's comments and supported SENATE BILL 332.

MIKE YOUNG, City of Missoula, read into the record a letter (EXHIBIT 2) from Jim Nugent, City Attorney of Missoula, and Chairperson of the Montana League of Cities and Towns Legislation Committee, said he did not know of any rational or justifiable reason for discriminating against second and third-class cities, pursuant to existing law. He supported SENATE BILL 332.

DON MORRISON, Whitefish, Montana, said as you are aware of the bill, golf courses and industrial property is exempt. When you get through taking out all of the exemptions, all that is left to annex is residential subdivision. About 25% of the population of Whitefish are retired or on fixed income. The fringe area is owned by a more affluent group of people. They use our city water, parks, streets and, yet, are not annexed to the city. We show very succinctly (EXHIBIT 3) that they use city services on a daily basis but do not contribute through their taxes to support those services.

OPPOSERS: None

SEN. MARBUT closed saying that the testimony given today indicates the need for this legislation. The real key is that second- and third-class cities tend to end up as first-class cities and to allow them the orderly growth possibilities and procedures at this time will solve a lot of the problems that they will have by the time they get to be first-class cities.

REP. BERGENE: There was a gentleman here who raised his hand. Did you want to ask a question?

WM. H. CLARKE, Missoula: Yes.

REP. WALDRON: I would like to ask this gentleman what his problem is with the bill.

WM. H. CLARKE: If an area that is surrounded becomes annexed, does the city force the area to go on the city sewer? Written testimony was submitted.

REP. WALDRON to MIKE YOUNG: Would you answer that question?

MIKE YOUNG: In Missoula, we would allow you to connect to the sewer if you pay construction costs.

REP. WALDRON: If you are in the city, you are required to pay for the sewer, whether or not you connect?

MIKE YOUNG: You pay the sewer use fee, whether or not you connect. We do not force anyone to connect unless it is a commercial establishment, in which case we do.

REP. WALLIN: I have a piece of property that fits this bill (about four acres) but I don't want to develop it at this point in time. To hook onto water and sewer in Bozeman is a requirement to come into the city limits. Do you mean to tell me that suddenly, tomorrow, I am in the city and I have to put water and sewer in that four acres?

ALEC HANSEN: This would not apply to Bozeman.

REP. WALDRON: You wouldn't charge vacant lots for sewer service, would you?

MIKE YOUNG: No.

CHAIRMAN McBRIDE closed the hearing on SENATE BILL 332.

REP. KITSELMAN will carry this bill on the House floor.

SENATE BILL 87

SEN. THOMAS, sponsor. This bill simply extends the time for a preliminary plat from one year to three years. This is at the option of the local government. They do not have to conform to the time period. It will give local government some flexibility they do not now have.

PROPONENTS:

BILL WALTERS, member of the staff of the Great Falls City-County Planning Board, said the bill has the support of the Planning Board, City Commission and the County Commission. One of the problems with existing law with the one-year limitation is periodically you will encounter a developer who desires to subdivide a 100-acre plat. He doesn't want to do this in one step. He wants to do it in phases. We require him to go through a master plan procedure for the whole 100 acres in order to see how the various phases fit together in the end. As he decides to plat each phase, he has to go through a preliminary plat and a final plat on each phase. This amendment would allow the developer and subdivider to create a preliminary plat of the whole 100 acres and follow that up with the final plat of the various phases, as long as he could get it done within that three-year time period. We think, in the end, it would expedite development and be a time and cost savings for both the developer and public officer that would be involved in the process of these plats. This additional time would allow the developer to arrange his financing.

DENNIS REHBERG, representing the Montana Association of Realtors, said one of the cases he worked on in Washington D. C. under REP. MARLENEE was a particular subdivision in the City of Billings. They received their preliminary plat approval on the local level and then received it on the state level. Because it was a Title 10 unguaranteed loan, they then had to go to HUD but the preliminary plat was already agreed to. They made application on April 15, 1981. They received final approval April 1, 1983. That didn't fall within the one-year extension. There was a loophole in the law allowing him to continue rather than go back and start the preliminary plat procedure all over again. His particular problem was financing. The bonding company would not give him his loan on the entire project until HUD gave them a letter of commitment. HUD would not give them a letter of commitment until the bonds were sold. This legislation we support because of a fumble in Billings, Montana.

AL JOHNSON, Great Falls, said he supports this legislation.

OPPONENTS:

TOM FINCH, University Area Homeowners' Association, Missoula, requested that the Committee guard against any respiration in this bill of the very short notice period (EXHIBIT 4).

WM. H. CLARKE, Missoula, said as it says, the initial approval is one year. They can get a one year extension and the extension can be for a long time if the approval is included as a specific condition of a written agreement. For the fellow who is developing a 100-acre parcel, that would be a condition which would warrant the extension for a longer period of time if it is contained in the written agreement. I can't see why this bill has to be written to allow what seems like is already provided. The other thing is--subsection (2) which states that "after the preliminary plat is approved, the governing body of the subdivision may not impose any additional conditions." If we are talking about a three-year period of initial approval and a one-year period of approval after that plus it can be longer in response to a written agreement, you are talking about undeveloped land which may have undeveloped land around it. The condition of the undeveloped land could change so much that it would be fair for a planning body to want to look at the changed situation and make additional conditions. If you are going to allow the extension of three years, strike subsection (2) entirely.

SEN. THOMAS closed saying he thought the section that the individual from Missoula was referring to requires a bond and developers are very reluctant to go into that procedure to take and extend the plot plan. We think this is a good piece of legislation to allow some good planning. We think the cost can be passed on to the customer without jeopardizing the planning process.

QUESTIONS:

REP. SANDS: If we do permit the three-year period, shouldn't we allow additional conditions to be imposed during that period?
WM. CLARKE: If you would strike subsection (2), you would find opposition arising from developers and real estate people. That opens the door for placement of additional conditions. If there are no limitations to that, it could generate a lot of opposition from subdividers and developers. When the governing body looks at a preliminary plat, they can foresee some possible changes occurring and they do have the option to not grant that full three-year period of approval to the preliminary plat.

CHAIRMAN McBRIDE closed the hearing on SENATE BILL 87.

SENATE BILL 322

SEN. HALLIGAN, sponsor. The original intent of the bill was to allow municipalities to regulate their own utilities. The Senate has removed language and allowed what was done in 1981 which is simply to put in cement the provision the municipalities who owns its utilities can raise its rates up to 12% without having to go to the Public Service Commission for approval. There is an Audit Committee bill that does the same thing but adds some language to it. Because that bill has amendments to it that are accepted by cities and other public service commission, I would recommend to table this bill.

PROPOSERS:

BILL VERWOLF, City of Helena, said this has been used for two years and we feel it has been extremely beneficial in cities living with their water and sewer systems in this particular time. The provision allows we can do annual increases up to 12% without going to the Public Service Commission. There is also a very complete system of public hearings and public notices that are provided in the system so that we don't just pass these at a single meeting. The protections are there so that people get the chance to testify; they know that the rate changes are being made. There is also provision for those capital improvements mandated by the State Department of Health or the EPA, we can make the required adjustments in our rates to fund those things--whether or not they are under 12%. It is very important that the local elected officials are the ones who need to be making that decision. The last time we went to the Public Service Commission for a rate increase which was in 1982, we filed in January and received an answer in September. We think it is very important that this be continued. We would agree with SENATOR HALLIGAN it is important that this bill be looked at in conjunction with the auditing bill.

MIKE YOUNG, Missoula, said he supported the concept of tabling. In terms of both bills, flexibility and protection provided are necessary and meaningful for local government.

ALEC HANSEN, Montana League of Cities and Towns, spoke in support of this legislation. This bill would provide the 12% increase. The other bill which was drafted, and has been in the process of being drafted for about six months, provides the same basic authority; but in working on that bill, we met with the Public Service Commission and agreed to some amendments that are included in SENATE BILL 436. They provide

that if a Public Service Commission creates a rate increase, they cannot use the 12% authority within twelve months. There was also some question among the cities on language in the bill. It called for annual interest whether it applied to fiscal or calendar years. Most of these utilities operate on fiscal years. There was some confusion. We included an amendment that specifically requires that increase may only be granted under the 12% rule once in a twelve month period. You should look at both bills and see what happened with SENATE BILL 436 and go from there.

BILL OPITZ, Executive Director, Public Service Commission, said he supports SENATE BILL 436 and would concur with SENATOR HALLIGAN's request to table this bill.

OPPONENTS:

REP. PISTORIA opposed SENATE BILL 322.

SEN. HALLIGAN closed saying the Consumer Council has not appeared to indicate any abuse of the present system. The cities that are regulating their utilities now are doing it efficiently and according to the needs of the people. The 12% does reduce the Public Service Commission's workload. It does show some indication of sensitivity to local government needs in terms of flexibility. It is administratively efficient. However, if the other bill does the same thing and already has the amendments in it, I think you should go with that one.

QUESTIONS:

REP. HAND: Who is the sponsor of SENATE BILL 436?

SEN. HALLIGAN: SENATOR BLAYLOCK and it involves the re-establishment of the Public Service Commission.

REP. BERTELSEN: Will we get the other bill in this committee?

SEN. HALLIGAN: It will go to State Administration.

CHAIRMAN McBRIDE closed the hearing on SENATE BILL 322.

SENATE BILL 130

SEN. MAZUREK, sponsor. This bill extends the requirement for fiscal notes to bills having a fiscal impact on counties or municipalities. All we are trying to do here is have an effort made to get some information together as to what the impact might be. It is a good concept and I think we should try it.

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PROPOSERS:

BILL VERWOLF, City of Helena, said that a lot of decisions affect revenue generated capacity or our expenditure requirements. It is extremely important for us to know the impact of those decisions.

MIKE STEPHENS, Montana Association of Counties, said they are tracking over 614 bills in this session which affects local government. With that many bills affecting us and as little as is known about many of them, we feel that the State Legislature and through the Budget Office and any of the entities concerned, there should be an effort to come up with just what fiscal impacts are on local government before decisions are made. I did ask the Budget Director from the Governor's Office what the fiscal note was on providing state fiscal notes in regard to this session and there is none. All of these fiscal notes are derived from state agencies and they are absorbed. We would like to have our bills assimilated throughout the ranks of various departments. All we are asking is a reasonable effort made coming up with the fiscal note so we all know what we are doing.

AL THIELEN, City Administrator, Billings, said that the one group that would benefit the most would be the Legislature-- both the Senate and the House. He supported this legislation.

MIKE YOUNG, City of Missoula, said this bill will help you understand the fiscal impacts of legislation against local government. He was in favor of SENATE BILL 130.

HOWARD SCHWARTZ, Executive Officer of Missoula County, urged support of this legislation.

GEORGE BOUSLIMAN, Urban Coalition, said they support this bill and urged the Committee to do the same.

AL JOHNSON, Great Falls, said this type of legislation provides the sort of information legislators need.

ALEX HANSEN, Montana League of Cities and Towns, supported this legislation.

OPPOSERS: None

SEN. MAZUREK closed saying he did not contact the Budget Office and ask them to be here. In the Senate, they came and said they didn't want to spend this \$200,000. The other organization that I did not contact was the Department of Commerce, Office of Local Government Service Branch. Mr. Dooley appeared in support of the legislation and said they would be in a position to help the Budget Office as well.

QUESTIONS:

CHAIRMAN McBRIDE: If the idea is not to provide funds to the Budget Office to provide for these fiscal notes, the attempt will be to depend on the organization on existing assistance that might be present within state government. There will be some endeavor to use organizations representing local government. From your standpoint--how do you feel? That is something more than tracking your 600 bills that you might be asked to do.

MIKE STEPHENS: My reaction is that we do a lot of that right now and we would like to have a partner in this thing. Any of the bills on any of the fiscal notes comes from our office.

CHAIRMAN McBRIDE closed the hearing on SENATE BILL 130.

REP. WALDRON offered to carry the bill in the House.

EXECUTIVE SESSION
SENATE BILL 130

SENATOR MAZUREK, sponsor.

REP. WALDRON: Moved SENATE BILL 130 BE CONCURRED IN.

REP. HAND: I think the \$200,000 is going to be phased in very slowly so we really don't have to concern ourselves.

CHAIRMAN McBRIDE: That was one of the options that was laid out by the Budget Office. SEN. MAZUREK foresaw they would not select that option but take one of the other ones instead.

REP. SANDS: What are those different options?

CHAIRMAN McBRIDE: Read from the fiscal note, "The first option would be for the budget director or some other state agency to contact each and every local government unit whenever a fiscal note had to be prepared on a bill. This would be a very time-consuming and expensive process. No precise cost estimate is possible.

The second option would be for the state to develop a computerized data base that captured all local government financial reports. A feasibility study of this option was prepared

in June of 1982. Initial system development costs were estimated at between \$150,000 to \$200,000 while annual maintenance costs would be \$35,000 to \$50,000.

The third option would be for the associations of counties and cities to take the responsibility for estimating the local government fiscal impacts of various legislation. They would have to determine if this is possible.

It was this third option that SENATOR MAZUREK as well as local government people alluded to instead of the second one.

REP. SANDS: Would it be appropriate to require that in the bill as the means of making the fiscal note.

CHAIRMAN McBRIDE: You can put it in directly that there will be no funds associated with this bill. The other way is to provide no money with it and they are forced to go with the third option.

REP. WALDRON: At some point in the future, the Budget Office might add some staff. So I wouldn't know if you want to limit it too much. We might find better times in the future when they will have a local government specialist in the Budget Office.

The motion that SENATE BILL 130 BE CONCURRED IN was voted on and PASSED UNANIMOUSLY.

REP. WALDRON will carry SENATE BILL 130 on the House floor.

SENATE BILL 322

SEN. HALLIGAN, sponsor. This bill removes the termination provision from the law allowing regulation by a municipality of municipally-owned utilities.

REP. SALES: Moved that SENATE BILL 322 BE TABLED.

The motion was voted on and PASSED UNANIMOUSLY.

SENATE BILL 87

SEN. THOMAS, sponsor. This bill extends the approval agreement on preliminary subdivision plats from less than 1 year to from 1 to 3 years.

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REP. SALES: Moved SENATE BILL 87 BE CONCURRED IN.

CHAIRMAN McBRIDE: All this bill does is to extend time up to 3 years so that they can have approval between 1 and 3 years or up to 3 years.

The motion was voted on and PASSED UNANIMOUSLY.

REP. BERGENE will carry the bill on the House floor.

SENATE BILL 332

SEN. MARBUT, sponsor. This bill extends to all cities the ability to annex wholly surrounded land.

REP. SALES: Moved that SENATE BILL 332 BE CONCURRED IN.

CHAIRMAN McBRIDE: What class city is Hamilton?

REP. SCHYE: Second class.

CHAIRMAN McBRIDE: So this would affect them.

REP. WALDRON: There are some exceptions in this bill. Where are they?

LEE HEIMAN: What it does, it provides that the protest provisions set out earlier apply unless 7-2-4502 applies and 4502 says there is no right to protest. I think it is archaic; except it may apply in the fact that you don't have protests but you send out the notices. If the notice goes out and you are exempt under 4503, you can send it back in and halt the annexation.

REP. WALLIN: I think we should amend that a person can protest.

CHAIRMAN McBRIDE: That is existing law for first-class cities now.

REP. WALLIN: Maybe we should change existing law and include them all.

CHAIRMAN McBRIDE: I don't know if you can do it under this bill.

The motion was voted on and SENATE BILL 332 PASSED with REPS. VINGER, SWITZER, PISTORIA and WALLIN voting no.

REP. SPAETH was going to be asked to carry this bill on the floor of the House.

SENATE BILL 19

SEN. KOLSTAD, sponsor. This bill revises provisions for state grants to counties for district court assistance; provides computation formula and requires the Department of Administration to audit grant.

CHAIRMAN McBRIDE: The amendment that SENATOR MAZUREK talked about where remodeling was required in an existing courthouse, the funds expended in that case could be claimed under the grant program (EXHIBIT 6).

REP. SALES: Moved that the amendment not be accepted.

REP. KADAS: Why don't you want to amend it?

REP. SALES: I don't know how you can be fair under a deal like this. Every county or district court situation is going to be entirely different. Maybe they can accommodate another judge quite reasonably. In a lot of cases, you are going to have all kinds of variances if you open this thing up. What this bill is trying to do is to end the sun-setting on assistance to local government and to clarify it. I think we had better stay with that.

The motion of not accepting the amendments was voted on and FAILED with nine members voting yes (REPS. BERTELSEN, HAND, KITSELMAN, SALES, SANDS, SWITZER, VINGER, WALDRON and WALLIN) and nine members voting no (REPS. PISTORIA, BERGENE, DARKO, HANSEN, HOLLIDAY, KADAS, KEENAN, SCHYE and CHAIRMAN McBRIDE).

REP. DARKO: Moved to adopt the amendment.

SALES: How do we submit a bill to the state for the \$3.5 million we spent?

CHAIRMAN McBRIDE: This applies to action of this Legislature and thereafter.

REP. SWITZER: This probably just applies to one-half block behind some courthouse that we don't know anything about.

CHAIRMAN McBRIDE: There is the protection that the additional judges and any remodeling associated with the additional judge has to be approved by the Legislature.

REP. WALLIN: You have an openended bill. They can go to the Taj Mahal with that amendment.

LEE HEIMAN: The way the bill is structured with the appropriations behind it, it is at the end of all of the spending for that fiscal year. It is pro rated for the amount appropriated.

It would decrease the reimbursable amount to the counties.
It would not give them the full amount.

REP. SCHYE: Everybody complains about the court system being so slow, but you have to give those judges places to work.

REP. WALLIN: Are you going to give Hamilton the same or lesser amount than Billings, based on the size of the city.

REP. SCHYE: It is pro rated on the amount that is available.

LEE HEIMAN: It would be proportionate to what you put in.

REP. HANSEN: In this case, the county doesn't have anything to say about it. If the state has to pay for it, maybe there will be somebody able to look at it in the fiscal light rather than forcing it on the counties. I think that is more fair.

REP. SWITZER: The county usually accepts the new judge according to their needs. They come in and lobby for those judges. When Sidney county commissioners were offered the opportunity to have another judge, they immediately began searching out space in which to have their court and came up with it. I think that is a good way to address it.

REP. DARKO: We legislate how many judges and I think we should provide some kind of support.

REP. SANDS: The way the bill is structured, there is no way to control it. Everybody puts in their claims; and whoever has the largest claim, gets the most. If you inflate your claim, you are better off. The state pays the bill, but the county submits the claim. The state has no way of evaluating the claims.

CHAIRMAN McBRIDE: It isn't completely that a bill is submitted and the state has to pay accordingly. There is a requirement on page 5 that there be an audit. If the audit discloses that the recipient has received an amount in excess of the amount for which he is eligible, the county then must repay. While that may cover the situation of overpayment, it does say there are some safeguards. If, during the course of the audit, they find that amounts are inflated, you can be sure that will not be allowed.

REP. SANDS: My problem--it says "in excess of the amount for which they are eligible". That is probably good but it doesn't say people can't submit claims for amounts for which they are eligible but which are unreasonably high.

REP. SWITZER: You pointed out on page 5 that adjustments shall be made. If they receive an amount in excess of that which they are eligible, it points up the feature that REP. SANDS pointed out. Whoever has the best lobbyist will probably get the most money.

REP. KADAS: The grant is not going to pick up the whole thing. It is only going to pick up a portion and that is what restricts the county. The county is still paying a substantial amount and they are going to hold the level down. The only way they could get more grant is if they paid more themselves.

CHAIRMAN McBRIDE: The six mills for first class cities would be the requirement they have levied and expended up to that point before they can come into this program.

REP. SALES: The testimony that was given previously stated there was \$3.3 million for the biennium that was in the Governor's budget for this purpose. If we are talking about \$3.3 million, we could be picking up quite a few building costs.

Question was called and the motion to amend was voted on and FAILED with nine members voting yes (REPS. PISTORIA, BERGENE, DARKO, HANSEN, HOLLIDAY, KADAS, KEENAN, SCHYE and CHAIRMAN McBRIDE) and nine members voting no (REPS. BERTELSEN, HAND, KITSELMAN, SALES, SANDS, SWITZER, VINGER, WALDRON and WALLIN).

REP. WALDRON: Moved that SENATE BILL 19 BE CONCURRED IN. Although I have a problem with the county grant aid because you really don't know what you are buying, the bill just sets up a mechanism for providing that grant aid and if you will look at page 1, line 19, this bill can set on the books and it doesn't do anything unless funds are appropriated to the department for the purpose of this bill. While I disagree with providing grants in that manner, I think the bill doesn't hurt as long as we do have the grant program.

REP. BERGENE: Are we lacking a formula in this bill to appropriate?

REP. WALDRON: The problem I have is that you have counties come in who say they have all their mills allocated and they ask for money. They always ask for more than we give them. I think a more appropriate thing to do would be to pick up those costs. The ones that cause the biggest problem are the public defender and the witness and jury fees. The other problem is that we decide how much money we are going to appropriate.

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REP. SANDS: I was a little concerned about the language on page 3, lines 20 and 22--it says the department shall award a grant. This is new language. It seems to me this is mandatory language and it creates a potential problem where you may be establishing a new title. There are other statutes that say the department shall to the extent the money is appropriate award a grant. I would feel more comfortable with that language. Can you tell me if that is language that is commonly used?

REP. WALDRON: LEE HEIMAN might be able to come up with the language right now.

LEE HEIMAN: Since this is part of Section 1--it starts right out--"The department shall make grants" and the grants are to be made from funds appropriated to the department for that purpose--since that is part of Section 1, it would be impossible to read subsection 2(c) or (3) to require an appropriation when the subsection just above it says grants can be made from funds appropriated.

The motion that SENATE BILL 19 BE CONCURRED IN was voted on and PASSED UNANIMOUSLY.

The meeting adjourned.

Kathleen McBride

CHAIRMAN KATHLEEN MCBRIDE

Gini Brusett

Secretary

2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979.

7-2-4410 through 7-2-4420 reserved.

7-2-4421. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 109, L. 1981 (HB 55), read: "An act prescribing conditions under which land is presumed to be annexed and may be so recorded."

Codification Instruction: Section 2, Ch. 109, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 2,

parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1."

Interim Study Committee Bill: Chapter 109, L. 1981 (HB 55), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

Part 45

Annexation of Wholly Surrounded Land

7-2-4501. Annexation of wholly surrounded land by cities of the first class. A city of the first class may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979.

7-2-4502. Protest not available. Such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders of the land to be annexed object.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd.

Sec. 1, Ch. 238, L. 1959;
1, Ch. 510, L. 1977; R.C.M.

7-2-4504. What land proposed to be part shall be deemed or parcels of land other roadway, unplatted land too

History: En. Sec. 1, C

7-2-4505. Application of territory to provisions of this part indicated.

(2) The government to be annexed may in parts 42 through ular annexation. The procedures prescribed

History: En. Sec. 3, C

Compiler's Comment

1981 Amendment: Ad Interim Study Comm (Ch. 130, L. 1981) was in of the Study Committee see committee report, L. Codification: Sec. 4 vided: "Section 3 is int

7-2-4506. Present Montana law, the municipality a

(1) as provided

(2) in first-class municipality and t

History: En. Sec. 2,

Compiler's Comment

1981 Amendment: I plan provided by the vices will be provided fied in 7-2-4732" for chapter 2, part 47"; ad

7-2-4507 thro

7-2-4511. What tract or parcel of being within municipality or unofficially

Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4504. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4505. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 4, Ch. 130, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Interim Study Committee Bill: House Bill 54 (Ch. 130, L. 1981) was introduced at the request of the Study Committee on Annexation Laws, see committee report, Legislative Council, 1980.

Codification: Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as

five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4506. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 3, Ch. 447, L. 1981.

Compiler's Comments

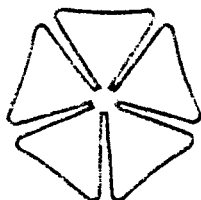
1981 Amendment: Inserted "according to a plan provided by the municipality" after "services will be provided"; substituted "as specified in 7-2-4732" for "as specified in Title 7, chapter 2, part 47"; added subsection (1); and

inserted "in first-class cities" and "otherwise" at the beginning of subsection (2).

Interim Committee Bill: Chapter 447, L. 1981 (HB 58) was introduced at the request of the Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

7-2-4507 through 7-2-4510 reserved.

7-2-4511. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may



THE GARDEN CITY
HUB OF FIVE VALLEYS

Missoula, Montana 59802

March 9, 1983

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700

83-176

House Local Government Committee Members
State Capitol
Helena, Montana 59620

Re: SB 332 - An Act to Allow Cities
of All Classes to Annex

House Local Government Committee Members:

I would like to strongly urge your support of the passage and enactment of SB 332. SB 332 would allow second and third-class cities to have the same annexation authority with respect to wholly surrounded land as first-class cities have.

I do not know of any rational or justifiable reason for discriminating against second and third-class cities, pursuant to existing law. SB 332 is really a matter of equity to second and third-class cities.

The members of Montana League of Cities and Towns unanimously voted to support the passage of this piece of legislation at their annual meeting in September, 1982. Therefore, I strongly urge your support for the enactment of SB 332.

Yours truly,

Jim Nugent, City Attorney
and
Chairperson, Montana League of
Cities & Towns Legislation Committee

cc: Senator Reed Marbut
Alec Hansen, Executive Director
League of Cities & Towns

Ex 3
SB3

Annexation of Wholly Surrounded Property

Section 7-2-4501 M.C.A. currently gives first class cities the power to annex a parcel of land that is wholly surrounded by the city (except land being used for agriculture, mining, industrial, transportation, golf course, air field or cemetery. See 7-2-4503 M.C.A.).

We are not talking about land that is merely adjacent to the city limits, but that which is completely surrounded by the city limits.

Although the citizens of several 2nd and 3rd class cities suffer inequitable property tax burdens because of their inability to annex wholly surrounded developments, I will address my remarks to the City of Whitefish with which I am most familiar.

Twenty-four percent of Whitefish City taxpayers are retired and on fixed incomes. Most live in the city limits, although some live in the unincorporated "fringe." There is another population the same size as the city population which lives on the city's fringe, and, in some cases, in the heart of Whitefish but not officially in the city limits.

These noncity residents drive daily on city streets, daily use the library, call for fire and ambulance service, use the city parks, etc. and in many cases are hooked to city water. Yet they will not contribute to the city property tax base which supports the services they are consuming.

Attached is a survey of the amount of services these out-of-city but in-county persons consume for police, court and park services alone. The tax paying city residents, many of whom are elderly, can no longer afford to subsidize the free-loaders. In most of the cases, these people have built their homes purposely close to the city limits to use its services and give value to their property, but avoid their fair share of local taxes.

It is also ironic to note that on the average, 76% of all "citizens" attending City Council meetings and requesting one thing or another are not even city residents or taxpayers, but are these same people who live in these unincorporated areas, use and request city services, yet do not help pay for them. A good share of these areas have been wholly surrounded by the city for 10 to 30 years.

This very inequitable situation should be partially remedied by allowing 2nd and 3rd class cities to at least annex those urban areas that are wholly surrounded by the city limits. Your support of SB332 is fully justified and much appreciated.

Annual Service Costs by Recipient Category

| <u>Recipient Category</u> | ¹ <u>Police & Ct. Time</u> | <u>Share FY 82-83 Police & Ct. Budget</u> | <u>Revenue From Fines</u> | <u>Net Cost</u> |
|------------------------------|---|---|-------------------------------|---------------------|
| In city persons | 43% | \$142,644 | \$21,500 | \$121,144 |
| Out of city (in co.) persons | 24% | 79,615 | 12,000 | 67,615 |
| Out of St. or co. persons | 33% | 109,471 | 16,500 | 92,971 |
| | <u>100 %</u> | <u>\$331,731</u> | <u>\$50,000</u> | <u>\$281,730</u> |

¹As measured by citations issued first quarter 1982

| <u>Recipient Category</u> | ¹ <u>Parks Use</u> | <u>Share FY 82-83 Parks Expenditures</u> | <u>Fees</u> | <u>Net Cost</u> |
|------------------------------|-------------------------------|--|-------------|---------------------|
| In city persons | 24% | \$ 13,016 | - 0 - | \$ 13,016 |
| Out of city (in co.) persons | 32% | 17,354 | - 0 - | 17,354 |
| Out of St. or co. persons | 44% | 23,862 | - 0 - | 23,862 |
| | <u>100 %</u> | <u>\$ 54,232</u> | | <u>\$ 54,232</u> |

¹Parks use survey conducted summer 1982 at city tennis courts and beach

VISITOR'S REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

BILL SENATE BILL 332

DATE March 10, 1983

SPONSOR SENATOR MARBUT

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name T. L. Finch Committee On Local Gov't.
Address 415 E. Beckwith Date March 10, 1983
Representing University Area Homeowners' Ass'n Support _____
Bill No. SB 87 Oppose _____
Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Reducing the period of notice on municipal zoning matters from 15 days to 10 days is strongly opposed.
2. Ten days, including weekend, is not adequate time to become informed about any proposal, contact others affected, and prepare a studied position.
3. Short notice will produce "knee jerk" reactions, and tend to exclude residents from matters of concern to property owners.
4. Please maintain the Senate amendment restoring the 15 day notice of public hearing.

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

WITNESS STATEMENT

Name WM. H. CLARKE Committee On LOCAL GOV'T.
Address 5900 RATTLESNAKE, MISSOURI 63102 Date 3/10/83
Representing RATTLESNAKE VALLEY ALLIANCE, INC Support _____
Bill No. SB-87 Oppose X
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- ①. A CHANGE FROM 15 DAYS NOTICE TO 10 DAYS NOTICE OF A PUBLIC HEARING (A CUT OF $\frac{1}{3}$) DOES NOT LEAVE ENOUGH TIME (CONSIDERING THAT A WEEKEND IS INVOLVED, TO) TO LEARN OF THE HEARING, RESEARCH THE PROPOSAL, CONTACT AND ORGANIZE THE NEIGHBORHOOD AFFECTED, AND FORM A POSITION ON THE PROPOSAL AND A PLAN OF ACTION.
- ②. A POSITION ON THE PROPOSAL AND A PLAN OF ACTION. CONSIDERING THAT THE PRESENT LAW ALLOWS FOR PERIOD OF INITIAL APPROVAL FOR ONE YEAR, WITH PROVISION FOR EXTENSION FOR ANOTHER YEAR (OR LONGER IF IT IS PART OF A WRITTEN AGREEMENT, I HAVE A LOT OF DIFFICULTY WITH A BLANKET INITIAL APPROVAL EXTENSION TO THREE YEARS.
- ③. CONSIDERING THE CHANGES IN LEVEL OF DEVELOPMENT THAT CAN OCCUR IN LAND AROUND AN AREA COVERED BY A PRELIMINARY PLAT APPROVAL, IF THE INITIAL PERIOD OF APPROVAL IS CHANGED TO THREE YEARS, THEN THE PROHIBITION AGAINST ANY ADDITIONAL CONDITIONS (CONTAINED IN SECTION 3, SUBSECTION 2) SHOULD BE DROPPED SO THAT THE GOVERNING BODY CAN CONSIDER WHAT HAS HAPPENED TO THE AREA OVER THE THREE YEAR PERIOD. THIS IS ONLY A FAIR CONTRIBUTION TO THE GOVERNING BODY FOR ALLOWING THE THREE-YEAR APPROVAL
- ④. I AM AGAINST IN PRINCIPLE CHANGING THE LAW FOR THE WHOLE STATE WHICH HAS PROVED RELATIVELY WORKABLE AND FAIR SO FAR, TO ADAPT TO A SITUATION IN GREAT FALLS WHICH GREAT FALLS COULD FIND SOME OTHER WAY TO SOLVE (AS BY HOLDING ONE MEETING A MONTH ON SUBDIVISION REVIEW AND ANOTHER MEETING DURING THE MONTH ON ZONING, GREAT FALLS' PRACTICE OF HOLDING COMBINED MEETINGS EVERY TWO WEEKS IS THE PROBLEM).

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 SENATE BILL 87

DATE March 10, 1983

SPONSOR SENATOR THOMAS

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE LOCAL GOVERNMENT

COMMITTEE

BILL SENATE BILL 322

DATE 3-10-83

SPONSOR SENATOR HALLIGAN

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____ LOCAL GOVERNMENT _____ COMMITTEE _____

BILL SENATE BILL 130

DATE 3-10-83

SPONSOR SENATOR MAZUREK

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

AMENDMENTS TO SB 19

1. Page 4, line 9.

Following: "acquisition."

Insert: "However, where remodelling of existing courthouse space is necessary to accommodate an additional district court judge added by the legislature, the reasonable expenses of remodelling shall be eligible for grant purposes. The reasonableness of the expenditures shall be determined by the department."

STANDING COMMITTEE REPORT

March 10

19 83

MR. **SPEAKER**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **SENATE** Bill No. **87**

third reading copy (**blue**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING FROM 15 DAYS TO 10 DAYS
THE MINIMUM NOTICE OF A PUBLIC HEARING ON MUNICIPAL ZONING, REDUCING
FROM 15 DAYS TO 10 DAYS THE MINIMUM NOTICE OF A PUBLIC HEARING ON
A PRELIMINARY PLAT OF A PROPOSED SUBDIVISION, AND INCREASING FROM
1 YEAR TO 3 YEARS ALLOWING THE INITIAL PERIOD OF APPROVAL FOR A
PRELIMINARY PLAT OF A PROPOSED SUBDIVISION BY A LOCAL GOVERNING BODY
TO RANGE FROM 1 YEAR TO 3 YEARS; AMENDING SECTIONS 76-2-303,
76-3-605, AND SECTION 76-3-610, MCA."**

Respectfully report as follows: That **SENATE** Bill No. **87**

BE CONCURRED IN

XXXXXX

STANDING COMMITTEE REPORT

March 10 19 81

MR. **SPEAKER**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **SENATE** Bill No. **130**

third reading copy (**blue**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A FISCAL NOTE ON
LEGISLATION AFFECTING LOCAL GOVERNMENTS; AMENDING SECTIONS 5-4-201
AND 5-4-203, MCA."**

Respectfully report as follows: That **SENATE** Bill No. **130**

BE CONCURRED IN

~~DO NOT~~

STANDING COMMITTEE REPORT

March 10 19 83

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 332

third reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW CITIES OF ALL CLASSES
TO ANNEX WHOLLY SURROUNDED LAND UNDER THE PROVISIONS OF TITLE 7,
CHAPTER 2, PART 45, MCA; AMENDING SECTION 7-2-4501, MCA."

Respectfully report as follows: That SENATE Bill No. 332

BE CONCURRED IN

~~DO PASS~~