

MINUTES OF THE MEETING  
LOCAL GOVERNMENT COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 17, 1985

The meeting of the Local overnment Committee was called to order by chairman Paula Darko on January 17, 1985 at 3:00 p.m. in Room 129 of the State Capitol.

ROLL CALL: All members were present; however, Representative Brown and Representative Sands were late because of a Rules meeting.

Chairman Darko informed the members of the committee that she had made arrangements to move to Room 312-2 for all of our meetings effective Tuesday, January 22, 1985. She also reminded the committee of the Joint Meeting to be held on Saturday, January 26, 1985, at 1:00 p.m., to discuss a task force on infra structure. Chairman Darko also thanked Lee Heiman, Committee Counsel, for the bill summaries he provides at the beginning of each meeting. She also stated we won't be meeting on Saturdays until later.

CONSIDERATION OF HOUSE BILL NO. 125: Representative Peck appeared before the committee as sponsor of HB 125. He explained that this bill would make it possible for witness and juror fees to be paid out of the district court's fund rather than from the county general fund. He stated this is a housekeeping bill and there is a lot of logic in it.

PROPONENTS: Toni Hagener, representing the Montana Association of Counties from Hill County, stated this is a tidy bookkeeping type of bill, that it is awkward for counties to have two funds, and that it would be simpler and tidier to take money from where they belong.

Gordon Morris, representing the Montana Association of Counties from Helena, invited consideration of the bill and asked for a DO PASS.

There were no opponents to HB 125.

DISCUSSION OF HOUSE BILL 125: Representative Pistoria asked if it is really out of the clerk of court fund that they pay out the money. Mr. Morris answered that the clerk of the court is a segment fur funding purposes and does pay them, but then in turn pays for the general fund.

Representative Wallin asked Mr. Morris if there are any counties that don't levy all of the county mills that they can levy now. He also stated that we keeping hearing that they are short and need the state to back up court costs. The levy

won't take care of all of this. Mr. Morris answered by saying that eleven counties pay out of the general fund. Urban counties are at the maximum length as permitted by law.

Representative Peck closed his presentation of HB 125.

CONSIDERATION OF HOUSE BILL NO. 133: Representative Waldron, state representative from Missoula County, presented HB 133. This bill authorizes the county commissioners to hire attorneys for civil business of the county. It is more of an administrative problem. There are times when a county attorney or deputy county attorney is not available at meetings because they have been sent out of the state or county. He explained that this bill would not undermine the authority of the county attorney. It provides the commissioners with their own staff attorney if they choose to have one. This bill will go a long way to reduce tension by providing administrative needs. The attorney general of the state of Montana has to represent the state in all civil matters. Representative Waldron stated that in no way is this bill meant to criticize any county attorney's office.

PROPONENTS: Gordon Morris, representing the Montana Association of Counties stated that this should be viewed as a housekeeping bill. There is an increase in criminal cases and the county attorney is not able to perform civil services. County commissioners have tried to get private attorneys. This bill would eliminate any potential problem. Mr. Morris asked for favorable action on this bill.

There were no further proponents to HB 133.

OPPONENTS: Erv Gysler, chairman of the Seeley Lake Refuse Board, and representing himself, appeared before the committee and stated that he is against this bill. He said that there is nothing in the constitution of the state of Montana that says that the county commissioners are the ones who totally run the county. He stated he really feels that if this type of legislation is passed, it is kind of taking away from the office of the county attorney any or a good deal of their jurisdiction, and he believes that in checking the law, you will find that the county attorney is liable for the prosecution of cases. All this bill does is eliminate for the county commissioners to have the approval of the county attorney. The statutes are set up so that the county attorney has the authority. If a bill like this is going to be considered, every bill and every law on the books would have to have the legal officer of the board changed to some way get rid of them. The commissioners, as far as we of the Refuse Board know, took two weeks to get the people approved.

We could do much better if they were paying attention to these kinds of things. The constitution has this kind of provision in it. He stated that it seems to him that if there is an over-riding case, the county commissioners and county attorney should be able to get along and should be able to get a person to take care of it.

Charles Graveley appeared for himself and stated that he feels this is an innocuous bill to hire someone to do the county attorney's job. County commissioners will pick and choose what they want the attorney to do. Insurance companies have their own attorneys who work hand in glove with the county attorney. The law requires the county attorney to render legal assistance to the county. In Lewis and Clark county, where Mr. Graveley was the county attorney for 10 years, he stated that never in that time did they have a conflict of interest. There are alternatives as far as county commissioners are concerned. They can implement the bill and if they look it over carefully, it is not as innocuous as it appears.

DISCUSSION OF HOUSE BILL NO 133: In closing, Representative Waldron stated that article 9, section 3 of the constitution does specify those offices as one form of government, but doesn't outline each county and each office. So the county attorney still ends up with the same administration problems.

Representative Sales asked Representative Waldron whose budget this comes out of. The answer was that it comes out of the county commissioner's budget. When the county commissioners establish the budget, they include it. Representative Sales stated that if there were three Republican commissioners who were screaming liberalists and people are looking at them saying we have the wrong guys, it would be nice to have a conservative attorney for better balance. Obviously the commissioners will rob money. Representative Waldron answered by saying the county commissioners can abuse their office, but that possibility exists whether you pass this bill or not pass this bill.

Representative Brandewie asked how many times has the county attorney turned down a request of the county commissioners to hire another attorney. Doesn't it seem logical that you would check with the county attorney before going to an outside source, if he doesn't have someone in his office who can do the job. Representative Brandewie also stated that the problem appears more in the urban counties and that it will be utilized more in the urban counties.

Representative Gilbert stated he sees this bill as an administrative issue.

Representative Kadas asked if the basic problem isn't that in general and specific problems, the county attorney and

and county commissioners do not agree. Representative Waldron answered that that could be a problem.

Representative Brandewie asked Mr. Graveley if while he was county attorney, was there ever a time when you didn't provide service on something important where they had a deadline. Mr. Graveley answered 'absolutely not'. We felt the county commissioner was important. I appointed one deputy to be responsible for civil requests. He said he can envision some political problems in allowing county commissioners to hire an attorney. The county commissioners don't always like the advise they get from the county attorney. He stated cases where this happened when he was in office.

Representative Hansen made a statement to Mr. Morris, that she assumes he is familiar with the larger counties. She asked him if there were any counties other than Missoula where they had a problem. Mr. Morris stated that his own experience is from Missoula, and that he did not have any firsthand knowledge of problems in any other counties. He stated he did not know of any other county where it has come to the attention as Missoula county.

Representative Waldron closed HB 133.

CONSIDERATION OF HOUSE BILL NO. 128 and 145: Representative Kitselman sponsored both of these bills and requested these bills be opened simultaneously, as they need to be together. He stated that in Billings there is difficulty for a quorum bill at times. The other problem (HB 128) is when someone leaves office, there is no time limit, so they are asking for three years. The other problem that happens and due to delay of a board meeting because there isn't a majority present, they cannot continue business. They would like to go from a quorum of 4 to 3. It has to be unanimous of 3 present. If it is preset, 3 out of 5 would be a majority. It costs \$100 to postpone a board meeting. The person who is waiting for action by the board is delayed in finding out their decision.

PROPOSERS TO HB NO. 128: Jim Tillotson, city attorney from Billings, stated his main objective is to give the local governing body jurisdiction to set up terms of members of the board of adjustment.

There were no opponents to HB 128.

PROPOSERS TO HB NO. 145: Jim Tillotson, city attorney from Billings, stated he is in favor of HB 145. He stated the real problem is that under the present law, the majority cannot make a decision. This bill is necessary to provide some economy to the city and does not disturb the concept of majority rules.

Alec Hansen, Executive Director of the League of Cities and Towns, stated that this country operates on the system of majority rule. A board of adjustment would save money by not having to wait for enough members to be present to take a vote.

There were no further proponents on HB 145.

OPPONENTS: Thomas L. Finch, representing the University Area Homeowner's Association from Missoula, appeared before the committee to oppose this bill. He stated he had participated on a planning and zoning board in Missoula. He stated this bill will have a broader impact than what is shown on the face of it (exhibit 1). He felt this bill should not go beyond this committee.

There were no further opponents.

DISCUSSION OF HOUSE BILL No. 145: Representative Kitselman said this bill needs an adjustment. He suggested that when there is a hardship case, the state mandate that the board must make that change. In his opinion it is difficult to get a zoning change or variance.

Representative Kadas asked if there are alternatives allowed. Jim Tillotson said it does not provide alternatives. Mr. Fince said that alternatives are used in Missoula. Representative Gilbert asked what makes up a board. He was told the board consists of 5 members which would be appointed by the mayor for a term. They are a decision-making board. Any appeal is to the district court. They have the alternate decision making.

Representative Gilbert asked if it can be made on a case by case situation. Representative Kadas stated that in the law that is being amended it says that the term is 3 years. He stated he did not see why we have to change it. The term is not set by city zoning. Representative Switzer asked how many times they had only 4 members. He said it might be necessary to have 4 if there is no appeal to the decision making. In a 5 member board, a 3 member majority has authority to review.

Representative Pistoria asked Jim Tillotson if this applies to all forms of government. Mr. Tillotson answered yes and that we are stuck with state law in that area. Representative Pistoria said that all that is being done here is making it easier for the board.

Discussion closed on House Bill 128 and 145.

The committee then went into executive session for action on the bills. It was decided to hold up action on HB 133.

DISPOSITION OF HOUSE BILL NO. 125: Representative Sales moved that HB 125 DO PASS. It was seconded by Representative Wallin. Motion PASSED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 128: Representative Kitselman moved that HB 128 DO PASS. It was seconded by Representative Brandewie. Motion PASSED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 145: Representative Sales moved that HB 145 DO NOT PASS. It was seconded by Representative Fritz. The motion carried on a 8 to 5 Roll Call Vote. See attached Roll Call Vote.

Representative Hansen pointed out when you have a simple majority of 3 you don't need a 4th. Representative Kitselman said it takes a unanimous vote of those who are in the meeting. Representative Fritz said there are exceptions. The defenders did not address the problem.

Representative Brandewie stated it is not necessary to have a unanimous rule to make a recommendation. The county commissioners have final say. He stated he believes in the majority rule, and Representative Gilbert stated he agrees with the majority rule.

Representative Switzer stated that in zoning and annexing areas where people have been in the area for some time prior to the arrival of those who choose to have annexing and zoning, these people need protection. They may have no option to go anywhere else. Representative Pistoria stated that this would be different if this were an advisory, but it is not, it is final.

Representative Brandewie stated that there is always an appeal process, and they would have to go through the court.

Representative Kitselman said in defense of the process, that there are cases where the minority can block the majority. The individual's rights are safeguarded.

Representative Gilbert stated this is a case of trying to solve local problems with state laws, when it can be handled at a local level.

DISPOSITION OF HOUSE BILL NO. 59: Representative Sales moved, seconded by Representative Switzer, that HB 59 DO NOT PASS.

Representative Sales stated that we had three amendment proposed by the proponents of the bill and about half a dozen requests by the opponents. He said they can tell anyone that the only remaining purpose of the bill is that they want the money. Rep. Sales stated it does create a severe problem,

to take half of the money and he feels it is a bad bill.

Representative Wallin stated that the consensus was that the program was a good program, if the problems could be worked out.

Representative Hansen made a substitute motion to DO PASS HB 59. It was seconded by Representative Fritz. Representative Kadas moved to amend HB 59, Representative Hansen seconded it.

Representative Connelly explained the amendment. She said the concerns of the opponent was that cities were not included. They were intended to be included in the original bill.

Representative Connelly passed out a copy of DUI fines for 1985 (exhibit 2). She explained that they are trying to not take money from the county and the city, and they are trying to arrange that they will not lose money because of the program. The amendments have changed to include that only fines from highway patrol convictions are used. Instead of half the money being taken, only 27% of the \$500,000 will be taken.

Representative Gilbert said he has a problem understanding going from a county fund to a general fund. Representative Connelly said she is trying to make the program be paid for by the DUI fines. She feels that the people causing the problems should pay for them.

Representative Sands stated the amendments say that a city can participate in this. It says the city can join, but it is an agreement between the governing bodies. Representative Sands asked if we didn't need a fiscal note before taking action.


Representative Brown moved to amend HB 59. Representative Kadas seconded it. Representative Brown wanted to make it clear that the cities and counties cannot pay for it. He feels this committee will kill it quick. This amendment only takes money from highway patrol fines collected. The only alternative is to take it out of general funds. He urges adoption of the amendment.

Representative Brandewie asked if the county stops the DUI program, would the county continue to keep the money. Representative Brown answered that if he understands it correctly, it would revert to the source it would go to, and in this case it would be the general fund.

Representative Kadas moved that HB 59 DO PASS AS AMENDED; this was seconded by Representative Wallin. The motion carried on a Roll Call Vote of 8 to 6. See attached Roll Call Vote. Representative Brown stated he didn't think this bill would be considered on the floor without a fiscal note. It was decided to wait to report the bill out of committee to the clerk until we have a fiscal note.

Representative Sales made the motion to DO PASS the Statement of Intent. Representative Switzer seconded it.

There being no further business before the committee, the meeting was adjourned at 5:20 p.m.

  
\_\_\_\_\_  
PAULA DARKO, Chairman



(Type in committee members' names and have 50 printed to start).

DAILY ROLL CALL

LOCAL GOVERNMENT COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-17-85

NAME	PRESENT	ABSENT	EXCUSED
Paula Darko, Chairman	X		
Norm Wallin, Vice Chairman	X		
Ray Brandewie	X		
Dave Brown			<i>late by 11:15</i>
Harry Fritz	X		
Stella Jean Hansen	X		
Bob Gilbert	X		
Mike Kadas	X		
Les Kitselman	X		
Paul Pistoria	X		
Bing Poff	X		
Walter Sales	X		
Jack Sands	X <i>late</i>	X <i>late?</i>	
Dean Switzer	X		

Please attach to minutes.

# STANDING COMMITTEE REPORT

Page 1 of 3

January 17 19 35

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 59

FIRST reading copy ( WHITE )  
color

## TO ALLOW COUNTIES TO ESTABLISH DRUNK DRIVING PREVENTION PROGRAMS

Respectfully report as follows: That HOUSE Bill No. 59

### BE AMENDED AS FOLLOWS:

1. Title, line 7.

Following: "FINES"

Insert: "FROM APPREHENSIONS AND ARRESTS MADE BY THE HIGHWAY  
PATROL."

2. Page 1, line 19.

Strike: "shall"

Insert: "may"

3. Page 1.

Following: line 30

Insert: "(3) "A municipality may participate in the program upon  
such terms as may be agreed to between the governing bodies  
of the county and municipality."

Re-number: subsequent subsections

XXXXXX  
DO PASS

Continued on page 2

January 17, 195

4. Page 3, line 6.

Strike: "one-half"

Insert: "27%

5. Page 3, line 6.

Following: "fines"

Insert: "from persons apprehended or arrested by highway patrolman and"

6. Page 3, line 8.

Following: "61-8-401"

Strike: "1,"

Insert: "or"

Following: "61-8-406"

Strike: "1, or an ordinance enacted under"

7. Page 3, line 9.

Strike: "61-8-401(5)"

8. Page 3, line 13.

Following: "terminated,"

Insert: "any"

Following: "moreover"

Insert: "received pursuant to this section"

9. Page 3, line 14.

Strike: "may"

Insert: "shall"

10. Page 3, line 15.

Strike: "any account chosen by the governing body"

Insert: "the state general fund"

AND AS AMENDED

DO PASS

STATEMENT OF INTENT ATTACHED

HB59, 195

PCB/kjp

January 17, 1985

STATEMENT OF INTENT FOR HB 59

Under 5-4-404, MCA, the legislature shall, by its joint rules, provide a procedure by which a statement of intent may be included with a bill that does not delegate authority.

This bill does not grant rulemaking authority.

It is the intent of the legislature that the governor's approval authority under section 1 and 61-2-105 be exercised by him through that official in the department of justice who administers highway traffic safety programs. It is also the intent of the legislature that the report required by section 2 to be submitted to the governor be submitted to him through such official and that such official exercise the governor's authority under section 2(2)(d)(v).

-final- etc

(Type in committee name, committee members' names, and names of secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

HOUSE COMMITTEE LOCAL GOVERNMENT

DATE 1-17-85 House Bill No. 59 Time \_\_\_\_\_

NAME	YES	NO
Darko, Paula - Chairman	✓	
Wallin, Norm - Vice Chairman	✓	
Brandewie, Ray	✓	
Brown, Dave	✓	
Fritz, Harry	✓	
Hansen, Stella Jean	✓	
Gilbert, Bob		✓
Kadas, Mike	✓	
Kitselman, Les		✓
Pistoria, Paul	✓	
Poff, Bing		✓
Sales, Walter		✓
Sands, Jack		✓
Switzer, Dean		✓

Marianne Bagley \_\_\_\_\_ Paula Darko \_\_\_\_\_  
Secretary Chairman

Motion: DO PASS AS AMENDED  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Include enough information on motion -- put with yellow copy of committee report.)

# STANDING COMMITTEE REPORT

.....January 17,..... 1935.....

MR. ....SPEAKER.....

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

having had under consideration .....HOUSE..... Bill No. 145.....

FIRST reading copy ( WHITE )  
color

**CHANGING VOTE NEEDED FOR ACTION BY BOARD OF  
ADJUSTMENT**

Respectfully report as follows: That .....HOUSE..... Bill No. 145.....

~~DO NOT PASS~~  
~~DO PASS~~

Jw 1/18

(Type in committee name, committee members' names, and names of secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

HOUSE COMMITTEE LOCAL GOVERNMENT

DATE 1-17-85 House Bill No. 145 Time 4:30 p.m.

NAME	YES	NO
Darko, Paula - Chairman	✓	
Wallin, Norm - Vice Chairman		✓
Brandewie, Ray		✓
Brown, Dave		✓
Fritz, Harry	✓	
Hansen, Stella Jean		✓
Gilbert, Bob	✓	
Kadas, Mike	✓	
Kitselman, Les		✓
Pistoria, Paul	✓	
Poff, Bing	✓	
Sales, Walter	✓	
Sands, Jack		✓
Switzer, Dean	✓	

Marianne Bagley  
Secretary

Paula Darko  
Chairman

Motion: DO NOT PASS

(Include enough information on motion -- put with yellow copy of committee report.)

# STANDING COMMITTEE REPORT

.....January 17,..... 19 85.....

MR. ....SPEAKER.....

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

having had under consideration .....HOUSE..... Bill No. ....125.....

.....FIRST..... reading copy ( WHITE )  
color

WITNESS AND JUROR FEES TO BE PAID OUT OF COUNTY  
DISTRICT COURT FUND

Respectfully report as follows: That.....HOUSE..... Bill No. ....125.....

DO PASS

*Sw 1/18*

STATE PUB. CO.  
Helena, Mont.

.....  
Paula Darko,

.....  
Chairman.

COMMITTEE SECRETARY



# STANDING COMMITTEE REPORT

January 17, 1935

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 128

FIRST reading copy ( WHITE )  
color

PROVIDING FOR DISCRETIONARY TERM OF APPOINTMENT  
TO BOARD OF ADJUSTMENT

Respectfully report as follows: That HOUSE Bill No. 128

DO PASS.

*Jw 1/18*

#B 59  
Rep. Connelly  
1-17-85

MONIANA  
DUI Fines - CY 1984

	No. of Convictions	Total Fines	City Gen.	Co. Gen.	Dr. Ed. (25%)	Crime Victims (18%)	Gen. School (97%)	State Gen. (54%)
Highway Patrol	Avg. Fine	\$250	-	\$7.50	\$62.50	\$45.00	-	\$135.00
Totals	2,000	\$ 500,000	-	\$15,000	\$125,000	\$90,000	-	\$270,000
County Sheriff	Avg. Fine	\$250	-	\$7.50	-	-	\$242.50	-
Totals	1248 (22%)	\$ 312,000	-	\$ 9,360	-	-	\$302,640	-
City Police	Avg. Fine	\$250	\$250	-	-	-	-	-
Totals	2750 (49%)	\$687,500	\$687,500	-	-	-	-	-

TOTAL	5998	\$1,499,500	\$687,500	\$24,360	\$125,000	\$90,000	\$302,640	\$270,000
(%)			45.8%	1.6%	8.3%	6.0%	20.2%	18%

\$270,000. that is generated by the Highway Patrol  
 DUI fines (last column) could be earmarked  
 as incentive money back to the  
 counties with a program. The approach  
 would not cause anything except the  
 mental from it  
 Exhibit 2  
 #B 59  
 1-17-85  
 Rep. Connelly

WITNESS STATEMENT

NAME Thomas L. Finch BILL No. HB 145  
ADDRESS 415 E. Beckwith, Missoula, MT. 59801 DATE 1-17-85  
WHOM DO YOU REPRESENT University Area Homeowners Association  
SUPPORT \_\_\_\_\_ OPPOSE X AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Reducing Board of Adjustment votes from four to three to approve variances, and other purposes, will adversely affect homeowners and the tax base of local governments. Variances should not be too easy to get because they are exceptions to established zoning. Variances and violations hasten the decline of good quality residential districts as people will move to newer and better areas. Such urban sprawl raises the cost of providing services.

Please kill HB 145.

HOUSE *Local Government* COMMITTEE

DATE 1-17-85

SPONSOR Rep. Les Kitzelmann

[illegible]

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE Local Government COMMITTEE

DATE 1-17-85

DATE 1-17-85

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE Local Government COMMITTEE

DATE 1-17-85

[illegible]

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE Local Government

BILL HB 125

DATE 1-17-85

SPONSOR Rep. Ray Peck

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.