

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

March 19, 1985

The twenty-fourth meeting of the Local Government Committee was called to order at 12:30 p.m. on March 19, 1985 by Chairman Dave Fuller in Room 405 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 384: Representative Toni Bergene, District #41, is the sponsor of this bill. The bill was introduced to provide that an election on the question of whether to annex is not necessary if all the property owners in the territory to be annexed have signed the annexation petition.

PROPOSERS

Alec Hansen, representing the Montana League of Cities and Towns, stated his support of the bill.

Al Sampson, representing the City of Missoula, spoke in favor of the bill. His written testimony is attached as Exhibit A to these minutes.

Vern Erickson, representing the Montana State Firemens' Association, stated his support of the bill.

Gene Thompson, a member of the Board of Directors of Flathead Water District No. 1, spoke in favor of the bill. His written testimony is attached as Exhibit B to these minutes.

OPPOSERS

There were no opposers to HB 384.

Chairman Fuller opened the hearing for Committee questions.

Senator McCallum expressed concern as to whether this bill would apply to non-contiguous land. Karen Renne explained that the purpose of the bill is to allow an absent property owner to petition for annexation. The bill has nothing to do with contiguous or non-contiguous land.

The hearing was closed on HB 384.

CONSIDERATION OF HOUSE BILL 505: Representative Dennis Nathe, District #19, is the sponsor of this bill. The bill was introduced to clarify that towns and cities of the second and

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third class are governed by the annexation provisions of Sections 7-2-4321 through 7-2-4325, MCA.

PROPONENTS

Alec Hansen, representing the Montana League of Cities and Towns, spoke in favor of the bill. He said the bill merely moves towns in front of third class cities where they belong.

OPPONENTS

There were no opponents to HB 505.

Chairman Fuller opened the hearing for Committee questions. There were no Committee questions regarding HB 505.

ACTION TAKEN ON HOUSE BILL 505: Senator Crippen moved that HB 505 BE CONCURRED IN. The motion passed unanimously. Senator Crippen will carry the bill.

CONSIDERATION OF HOUSE BILL 727: Representative Stella Jean Hansen, District #57, is the sponsor of this bill. The bill was introduced to expand the rulemaking authority of local boards of health to ensure maintenance of sewer systems not controlled by the department and to increase penalties.

PROPONENTS

Jim Carlson, Sanitarian for the Missoula City-County Health Department, spoke in favor of the bill. He said the bill would allow local boards of health to adopt rules for the maintenance of small sewer systems. He said some entire sewer systems have failed due to a lack of maintenance. He said the bill would apply to systems that do not dump into State waters. He would also like to see the section on protecting ground water from contamination put back in the bill. It was amended out of the bill in the House. Some places dump into uncontrolled holes and contaminate ground water.

Howard Newman, a Missoula private consulting hydrologist, spoke in favor of the bill. He said Missoula County and other counties are unique for having a potential for ground water problems.

Will Selser, representing the Lewis and Clark County Health Department, spoke in favor of the bill. He supports the bill in its original state, which included the language regarding ground water.

Jim Campbell, Lewis and Clark County Commissioner, spoke in favor of the bill. He said it is very necessary that we have a way to respond to these potential problems.

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Senator Dorothy Eck, District #40, said it is important for local boards of health to address this problem. She also said it is critical that the section regarding ground water be put back in.

OPPONENTS

Julie Hacker, representing the Missoula County Freeholders' Association, spoke in opposition to the bill. She is concerned with giving local boards of health more flexibility and authority. She is also concerned about what effect the bill would have on people who own animals.

Chairman Fuller opened the hearing for Committee questions.

Senator Pinsoneault asked why they took out the section on ground water in the first place. Alec Hansen said it had to do with the animal matter that Ms. Hacker mentioned.

Senator Fuller asked Mr. Carlson what the term "control and disposal" meant. Mr. Carlson said this means they could adopt rules for the design and installation of systems also, so that maintenance would then be easier to control.

Senator Fuller expressed his feeling that local health boards should not get into a situation of duplicating duties that the State already performs. Mr. Carlson said they diligently try not to duplicate efforts.

Senator Fuller asked if the State Health Department was in support of the bill. Mr. Carlson said they are.

The hearing was closed on HB 727.

CONSIDERATION OF HOUSE BILL 558: Representative Dennis Rehberg, District #88, is the sponsor of this bill. The bill was introduced to make any freeholder eligible to approve or disapprove annexation of property by a municipality providing services.

PROPONENTS

Lowry Risdahl, a Missoula resident, stated his support of the bill.

OPPONENTS

Jeff Stevens, Vice President of the Wapikiya Homeowners' Association in Missoula, spoke in opposition to the bill. He said the bill would require out of State property owners to respond within a twenty day time period. He feels the time period should be extended to forty-five days or thirty days at the least.

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Chairman Fuller opened the hearing for Committee questions.

Senator Crippen asked why the time period was not extended in the House. Representative Rehberg said the House did not want to cause local governments a problem by extending the time period.

Senator Crippen asked if payment of SIDs are based on a percentage of land owned and, if so, would land owners' protest votes also be based on a majority interest. Senator Rehberg said their vote would be based on the same method they are assessed for SIDs.

The hearing was closed on HB 558.

CONSIDERATION OF HOUSE BILL 673: Representative Mike Kadas, District #55, is the sponsor of this bill. The bill was introduced to change the time when a local government may bring a suit challenging the validity and constitutionality of a petition and proposed action; to revise the provision relating to contents of the complaint in such a suit; changing the defendant from the petitioner to the county election administrator; providing for precedence of such a suit in the court; and tolling the time limit for collection of signatures.

PROPONENTS

Robert Anderson, representing Montana Common Cause, spoke in favor of the bill. He said the bill would shorten the time when action must be taken on a suit. The bill provides sufficient means for timely review of suits.

Mark Mackin, representing the Citizen Legislative Coalition, spoke in favor of the bill. He said court suits could delay people from signing petitions or hold up on them until they are dissolved because of time delays. He said naming petition signers as defendants has a chilling effect on the ability to gather petition signatures. He feels the election administrator is the proper defendant.

Jim Nugent, Missoula City Attorney, spoke in favor of the bill. His written testimony is attached as Exhibit C to these minutes.

OPPONENTS

John Larson, representing the Superintendent of Public Instruction, stated his opposition to the bill. He said he does agree with the idea of making the election administrator the defendant.

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Gary Marbut, representing the Montana Council of Organizations, spoke in opposition to the bill. He does not agree with local government having the ability to stop the time period by challenging the validity of a petition before the signatures are collected. The bill has great potential for frustrating the usefulness of the petition process to the cities.

Pete Penner, a Missoula resident, spoke in opposition to the bill. His written testimony is attached as Exhibit D to these minutes.

Senator Ethel Harding, District #25, spoke in opposition to the bill. She said to have an appointed person put on the line for doing their job is absolutely appalling.

Arwood Stickney, a Missoula resident, spoke in opposition to the bill. He said government already has too heavy of a hand and this bill would only make it worse.

Chairman Fuller opened the hearing for Committee questions.

Senator Pinsoneault expressed his concern that the city would be suing itself in this bill. Representative Kadas responded that he tried to pattern the bill on the same procedures used at the State level.

The hearing was closed on HB 673.

ACTION TAKEN ON HOUSE BILL 384: Senator Mohar moved that HB 384 BE CONCURRED IN. The motion passed with Senators McCallum and Hirsch voting no. Senator Mohar will carry the bill.

ACTION TAKEN ON HOUSE BILL 558: Senator McCallum moved that the twenty days in the bill be replaced by forty-five days.

Senator Eck made a substitute motion that it be replaced with thirty days. The substitute motion failed with Senators Crippen, Hirsch, Harding, McCallum, Story, Pinsoneault, and Mohar voting no and Senators Eck, Regan, and Fuller voting yes.

Senator McCallum's original motion passed with Senator Mohar voting no.

Senator Eck moved the bill be amended to extend the time period in the title of the bill. The motion passed unanimously.


Senator Crippen moved that HB 558 as amended BE CONCURRED IN. The motion passed unanimously. Representative Rehberg will let us know who will carry the bill.

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ACTION TAKEN ON HOUSE BILL 727: Senator Eck moved the bill be amended back to its original state. The motion passed with Senator McCallum voting no.

Senator Eck moved that HB 727 BE CONCURRED IN. The motion passed with Senators Hirsch, McCallum, and Story voting no. Senator Eck will carry the bill.

The meeting adjourned at 2:40 p.m.



Senator Dave Fuller, Chairman

ROLL CALL

LOCAL GOVERNMENT

COMMITTEE

49th
~~XXXX~~ LEGISLATIVE SESSION -- 1985

Date 3-19-85

SENATE
SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
13 Senator Crippen, Bruce	✓		
18 Senator Eck, Dorothy	✓		
11 Senator Harding, Ethel	✓		
47 Senator Hirsch, Les	✓		
4 Senator McCallum, George	✓		
28 Senator Mohar, John (V.Chair)	✓		
44 Senator Pinsoneault, Dick	✓		
19 Senator Regan, Pat	✓		
21 Senator Story, Pete	✓		
43 Senator Fuller, Dave (Chair)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

MARCH 20

85

19

MR. PRESIDENT

We, your committee on **LOCAL GOVERNMENT**
having had under consideration **HOUSE BILL** No. **384**
THIRD reading copy (**BLUE**)
color

(MOEAR WILL CAREY)

**NO ELECTION ON ANNEXATION IF ALL PROPERTY OWNERS OF
AREA SIGN PETITION**

Respectfully report as follows: That **HOUSE BILL** No. **384**

BE CONCURRED IN

~~XXXX~~
DO PASS

~~XXXX~~
DO NOT PASS

Senator Dave Fuller

Chairman

STANDING COMMITTEE REPORT

MARCH 20

85

19.....

MR. PRESIDENT

LOCAL GOVERNMENT

We, your committee on.....

HOUSE BILL

505

having had under consideration..... No.....

THIRD

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reading copy ()

(CRIPPEN WILL CARRY)

color

ANNEXATION OF CONTIGUOUS LANDS - 2ND AND 3RD CLASS CITIES - CLARIFICATION

HOUSE BILL

505

Respectfully report as follows: That..... No.....

BE CONCURRED IN

XXXXXX
DO PASS

XXXXXXXXXS

Senator Dave Fuller

Chairman.

STANDING COMMITTEE REPORT

MARCH 20

19... 85

MR. PRESIDENT

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

having had under consideration..... **HOUSE BILL** No..... **558**

THIRD reading copy (**BLUE**)
(**HALLIGAN WILL CARRY**) color

ANY FREEHOLDER ELIGIBLE TO VOTE ON ANNEXATION

Respectfully report as follows: That..... **HOUSE BILL** No..... **558**

be amended as follows:

1. Title, line 6.
Following: "SERVICES"
Insert: "AND INCREASING THE TIME ALLOWED FOR RECEIVING WRITTEN
EXPRESSIONS OF APPROVAL OR DISAPPROVAL"
2. Page 1, line 11.
Following: "period of"
Strike: "20"
Insert: "45"

AND AS AMENDED

BE CONCURRED IN

~~XXXXX~~

DO NOT PASS

~~XXXXXXXXXX~~

DO NOT PASS

Senator Dave Fuller

Chairman.

STANDING COMMITTEE REPORT

MARCH 20

19 85

MR. PRESIDENT

LOCAL GOVERNMENT

We, your committee on.....

HOUSE BILL

727

having had under consideration..... No.....

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reading copy ()

color

(ECK WILL CARRY)

REK

RULEMAKING AUTHORITY OF LOCAL HEALTH BOARDS RE: SEWER SYSTEMS

HOUSE BILL

727

Respectfully report as follows: That..... No.....

be amended as follows:

1. Title, line 7.
Following: "CONTAMINATION"
Insert: "AND TO PROTECT GROUND WATER FROM CONTAMINATION"
2. Page 3, line 12.
Following: "lives;"
Strike: "AND"
3. Page 3, line 19.
Following: "and"
Strike: " "
Insert: "; and"
4. Page 3, line 24.
Following: "water."
Insert: "(vi) to protect ground water from chemical and bacterial contamination from surface runoff, bulk materials transport and storage facilities, and other sources that could affect the present or future beneficial uses of ground water on adjacent properties."

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

DO PASS

~~XXXXXX~~

DO NOT PASS

Senator Dave Fuller

Chairman.



201 W. SPRUCE • MISSOULA, MT 59802 • (406) 721-4700

TO: SENATE LOCAL GOVERNMENT COMMITTEE

RE: HOUSE BILL 384: ANNEXATION BY PETITION

This bill simply gives a property owner who does not reside on his properties the same right to petition the city government to annex his properties as a resident freeholder now enjoys.

Presently, a resident freeholder may request by petition and the city may annex property if they feel it is in the best interest of the city even if the property is not contiguous to the existing city limits.

This is not true if an owner does not reside on the property. Even though the owner petitions and the city deems it in the best interest of all concerned, the property may not be annexed unless it is contiguous to the existing city limits.

There are several such areas in the Missoula area where people have requested the extension of sewer and the receipt of other city services. In some instances, the city has allowed the sewer extension under a contract sewer arrangement with an annexation protest waiver. And, in some cases, it was found not to be practical and the request was either dropped or denied.

This bill would give citizens more flexibility and options to develop their land and also will aid cities and planning departments in a more orderly growth. I urge your favorable consideration.

A handwritten signature in cursive script, reading 'Al Sampson', is written over a horizontal line.

Al Sampson
Alderman
Missoula, MT

HB384

LOCAL GOVERNMENT COMMITTEE
MARCH 19, 1985
EXHIBIT B

My name is Gene Thompson. I am a member of the Board of Directors of Flathead Water District No. 1, better known as the Evergreen Water District, and I speak in their behalf in favor of HB384.

When the Water District was formed in 1966 several areas within the boundary were excluded. These islands within the District, but not a part of the District, were the result of individuals and small Home-owner's Associations petitioning for exclusion, because they had their own wells.

Over the years these wells have failed through lack of maintenance, or they have become contaminated by septic tank pollution. The Water District has extended service to these areas, but has been unable to annex them into the District, because of the present law. It requires that 40% of those registered to vote in both the annexation areas and the existing District must vote to validate the election. It is not difficult to get those requesting annexation to vote, but there is no incentive for those already in the District.

HB384 will make consolidation much easier, and will make it possible for all those now receiving water to have a say in the administration of the District.

NAME Gene Thompson BILL NO. H B 384
ADDRESS 330 Chasant Drive, Kalspell, Mt. DATE 3-19-85
WHOM DO YOU REPRESENT Evergreen-Waterbury District
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

LOCAL GOVERNMENT COMMITTEE

MARCH 19, 1985

EXHIBIT C

March 19, 1985

85-126

Senate Local Government Committee Members
Montana State Senate
Capitol Station
Helena, Montana 59620

Re: HB-673 to change the time when a local government may bring
a suit challenging the validity and constitutionality of
a petition

Dear Senate Local Government Committee Members:

City of Missoula officials urge your favorable support in enacting House Bill - 673 to change the time when a local government may bring a suit challenging the validity and constitutionality of a petition. Pursuant to Article III, Section 4(1) and Article XI, Section 8, of the Montana Constitution, the people are only authorized to enact laws by initiative.

Historically, several Montana cities have initiated lawsuits to determine the legality of an initiative petition. The Montana Supreme Court has for decades followed the generally established legal rule that initiative does not exist for city government matters that are administrative in nature. Four Montana Supreme Court decisions in this area of the law involving petitions are as follows:

1. City of Billings v. Nore, 148 Mont. 96, 417 P.2d 458 (1966) held that initiative did not exist to repeal a city ordinance creating a city-wide special improvement district for a storm sewer system and establishing rates, charges and manner of collection for use of sewer facilities, for the reason the ordinance was an administrative act executing existing law, and as such was not subject to initiative.

2. Dieruf v. City of Bozeman, 173 Mont. 447, 568 P.2d 127 (1977) held that a city ordinance adopting a formula for assessing property for the purpose of creating an off-street parking facility was a city commission act performing an administrative function and not a legislative function.

3. Allen v. City of Butte, 55 Mont. 205, 175 P. 595 (1918) held that a city council resolution for the creation of a special improvement district for the grading of streets and construction of a sanitary sewer was not a matter of general legislation; and therefore, initiative and referendum did not apply.

4. City of Shelby v. Sandholm, 676 P.2d 178 (1984) held that a city council resolution creating a special improvement district to construct and install a storm sewer system that involved most of the property within the city limits was not

a legislative, but was instead an administrative act which was not subject to the initiative or referendum procedure. The Supreme Court in this case also again decreed a long-established legal "policy that a city must be free to perform valid administrative acts without having to refer them to the voters. Otherwise, small groups of dissatisfied voters would have it in their power to constantly frustrate the efforts of local government." Supra at 180.

The Montana Supreme Court in the cases of City of Billings v. Nore, 148 Mont. 96, 417 P.2d 458 (1966), and Dieruf v. City of Bozeman, 173 Mont. 447, 568 P.2d 127, 129 (1977) has recognized that a reasonable test to be used in determining whether a city ordinance is a legislative action or instead an administrative or executive action is to determine whether the act (i.e., enactment of an ordinance) was an act creating a new law (legislative) or executing an already existing law (administrative). The Montana Supreme Court in these two (2) decisions quoted with approval the following language from a Utah Supreme Court decision:

"The problem of differentiating between legislative actions and administrative or executive actions is often difficult. Appellants suggest, and we accept, that one reasonable test to be used in making such differentiation is whether the act was one creating a new law (legislative) or executing an already existing law (administrative). See Keigley v. Bench, 97 Utah 69, 89 P.2d 480, 122 A.L.R. 756.

Obviously, a legal mechanism and procedure must exist pursuant to which legal questions concerning the validity and constitutionality of a petition can be determined by a court. The public interest would be better served if this legal determination could be obtained prior to the circulation of a petition.

The purpose of HB-673 is to move up the point in time at which a local government could request a court ruling as to the validity or constitutionality of an initiative petition proposal.

Further, HB-673 as amended would amend the existing law to provide that instead of suing petition signers, if there are any legal questions concerning a petition's validity or constitutionality, the County Election Administrator, as defendant in the proceeding, would be named, and the petition organizers would have a right to intervene.

If the point in time at which a local government governing body was expressly authorized to raise an issue concerning the validity or constitutionality of a petition was moved up to a point in

Senate Local Government Committee Members
March 19, 1985
Page Three

time prior to the circulation of the petition, it would save the public and local government officials the time and expense of circulating and responding to a petition that is fatally defective.

In a 1982 Montana Supreme Court decision involving a lawsuit against the Yellowstone County Election Administrator for rejecting petitioners' recall petition, the Montana Supreme Court in Steadman v. Halland, 641 P.2d 448, at 452 (1982) stated:

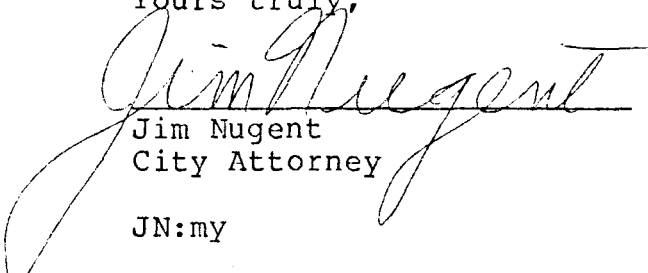
"... the initial review of recall petitions is intended to save the public and government officials the time and expense of circulating and responding to a petition which is fatally defective. . . ."

Currently, an elected county clerk and recorder or an elected county attorney could most likely also reject an initiative petition or referendum if they thought it might be fatally defective, and the legal questions could be decided at that point in time, prior to circulation of the petition. However, if it is a politically controversial issue, or an issue whose legality is uncertain, or if the elected county official agrees philosophically with the petition and therefore declines to reject the petition, a local governing body is not statutorily authorized to challenge the validity or constitutionality of that petition until after it has been circulated. The timing of the current statutory authorization for local government challenge has the potential to waste a lot of time, money and effort of the public and governing body, as well as needlessly create a lot of ill will in the community.

Therefore, your support is urged for the enactment of HB-673.

Thank you in advance for your support.

Yours truly,



Jim Nugent
City Attorney

JN:my

cc: Alec Hansen, Executive Director Montana League of Cities
and Towns
Senators Fred VanValkenburg, Bill Norman, Mike Halligan
and Jack Haffey

LOCAL GOVERNMENT COMMITTEE
MARCH 19, 1985
EXHIBIT D

HB673

Mr. Chairman, and Members of the Local Government Committee:

My name is Peter H. Penner. My residence is rural Missoula County.

I oppose House Bill 673 for the following reason: This bill would further stifle the initiative process; and reduce voter involvement in our governmental process.

Evidence of this is - reliance on "judicial prudence" to take precedence over the TRUE desires and responsibilities of the communities.

I also feel that this bill is a further repression of the people of Montana. This is just one more step in the complete control of every aspect of our lives.

DATE 5-11-85

COMMITTEE ON LOCAL GOV'T

VISITORS' REGISTER

[illegible]

AMENDMENTS TO HOUSE BILL 558
(bill concurred in as amended by Senate Local Government
Committee March 19, 1985)

1. Title, line 6.
Following: "SERVICES"
Insert: "AND INCREASING THE TIME ALLOWED FOR RECEIVING WRITTEN
EXPRESSIONS OF APPROVAL OR DISAPPROVAL"
2. Page 1, line 11.
Following: "period of"
Strike: "20"
Insert: "45"

AMENDMENTS TO HOUSE BILL 727 (bill concurred in as amended
by Senate Local Government Committee, March 19, 1985)

1. Title, line 7.
Following: "~~CONTAMINATION~~"
Insert: "AND TO PROTECT GROUND WATER FROM CONTAMINATION"
3. Page 3, line 19.
Following: "and"
Strike: ". "
Insert: "; and"
2. Page 3, line 12.
Following: "lives;i"
Strike: "AND"
4. Page 3, line 24.
Following: "water."
Insert: "(vi) to protect ground water from chemical and
bacterial contamination from surface runoff, bulk
materials transport and storage facilities, and other
sources that could affect the present or future beneficial
uses of ground water on adjacent properties."