

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 6, 1987

The meeting of the Local Government Committee was called to order by Chairman Norm Wallin on February 6, 1987, at 1:00 p.m. in Room 312-F of the State Capitol.

ROLL CALL: Roll call was taken with all members present. Lee Heiman, Committee Counsel, was also present.

CONSIDERATION OF HOUSE BILL 403: Rep. Ben Cohen, House District 3 and sponsor of the bill, handed out copies of the table of contents from Chapter 2 of the state codes (Exhibit 1). He stated Part 1, County Planning and Zoning Commission specifies how a group of residents can decide to form a zoning district in their neighborhood and explains the procedure. Part 2 deals with county-wide zoning. He said 76-2-211, violations and penalties, is the provision that exists for county-wide zoning. It calls for misdemeanors for people who violate the zoning code. He said the problem was violations can only be applied through the county attorney if the county has county-wide zoning. Under the existing laws, if someone were in violation of these regulations for a zoning district the only recourse would be to file a suit against them and go into court. Rep. Cohen stated the bill would take the violation section that applies to county-wide zoning and allow it to apply to areas where there are just residence initiated districts.

PROPOSERS: Gordon Morris, MACo, stated he would like to go on record in support of HB 403.

George Ochenski, MT Environmental Information Center, stated they would also like to go on record in support of HB 403.

OPPOSERS: Robert Holding, MT Association of Realtors, stated they felt the bill was another example of regulations that were not needed. He commented in the upcoming subdivision act this subject was treated in that review by the Environmental Quality Code Council and felt it would get an adequate debate at that hearing.

DISCUSSION (OR QUESTIONS) ON HOUSE BILL 403: Rep. Sales asked for further clarification on how violations are handled now.

Rep. Cohen replied that with a resident initiated district, when someone infringes on the regulations of that zoning

district, the neighbors have to file a civil procedure. He stated he was not an attorney but said it would be a difficult and time consuming process.

Rep. Sales stated he assumed that an official in the county or city is hired to see that the laws are enforced. He asked if permits are required, how do people know before building a permit is needed. How do people find out if they are doing something wrong?

Rep. Cohen stated there are many things that are written into civil or criminal codes but yet are not directly out in front of us. He said there are a lot of different kinds of zoning. If a county does not have county-wide zoning, they probably do not have a county zoning officer.

Rep. Pistoria asked what the bill would make people do that they are not doing now?

Rep. Cohen replied it will depend on the county attorney and local justice of the peace. He thought it likely that first the violation would be pointed out and there might be fines for the violation. Then if no action was taken a citation would be issued and the person would have to go before a justice of the peace. He doubted that any county would want to waste resources incarcerating someone but felt it much more likely to see a fine imposed and an attempt made to get the violator to correct the noncompliance.

In closing, Rep. Cohen stated the reason why a group of residents get together to have zoning restrictions was important. He said one reason would be for protecting the water quality of the area where they live. He commented people would like that protection and to be able to go to the county attorney to ask for some relief instead of going through a civil suit process if there was a nonconforming use in their area.

CONSIDERATION OF HOUSE BILL 405: Rep. Ed Grady, House District 47 and sponsor of the bill stated the bill allowed county commissioners to set a flat fee in an area where 50 percent of the residents in an unincorporated town or village petition the commission to set up a volunteer fire department. He stated there have been some problems with the system now being used with large landowners having a negative reaction to getting into the volunteer fire departments.

PROPONENTS: Henry Lohr, MT State Volunteer Firemen's Association, stated they were in support of HB 405 and the flat fee to support fire protection. He said it would not

cost the large landowner more than the person with 1/2 an acre of ground and a trailer house. Mr. Lohr stated in some of these protection areas not everyone pays their fair share of the cost and as a result they cannot get the types of equipment needed. With the flat fee assessment, they will be able to purchase needed equipment and provide house and other maintenance.

Lyle Nagel, MT Volunteer Firefighters' Association, stated to establish a fire district there must be 50 percent of the voters plus 50 percent of the freeholders wanting the district. He said there are areas where people have tried to set up a district and as high as 85 percent of the people sign the petition but two people owning 50 percent of the district can stop the district from going through. He stated the reason is the district is set up on a tax levy and the tax goes on everything. He said they wanted to get the tax on structures and dwellings that would be more of the expense in the case of a fire. He said there was already a provision in the statutes for fighting wildland fires. Mr. Nagel stated the expensive equipment for fighting fires was the structure fire equipment.

Stan Kangas, Lakeside Volunteer Fire Department, stated in the nine years he has been on the department they have gone on annual dues drives to try to generate the necessary revenue they need to maintain a least satisfactory amount of fire protection in that area. He said they have had problems because of the absentee landowners and homeowners in coming up with 2/3's of the landowners contributing. He stated they cannot get financing needed for equipment purchases or upgrades because of not having a set amount of money that they generate each year. Mr. Kangas stated by maintaining their own equipment to fight their area's fires they are relieving the sheriffs of responsibilities and workload in them not having to send crews out to the rural areas.

Norman Waterman, Volunteer Fireman from Canyon Ferry area, stated he had been on that fire department for 15 years and has run into the same problems in trying to generate the revenue through bake sales, auctions and sponsoring dances. He said they break even but not much more than that and stated it would be much better for all if there was a way to raise a given amount of money each year.

Gordon Morris, MACo, referred the committee to 7-33-2209. He stated in unincorporated areas in the absence of a fire district, county commissioners have the authority to levy against the property to be protected up to a maximum of \$15,000. They can also fund from the general fund up

to \$15,000. He stated HB 405 would be an alternative to the county commissioners taking money from the general fund or assessing taxes against the property.

OPPONENTS: None.

DISCUSSION (OR QUESTIONS) ON HOUSE BILL 405: Rep. Darko stated the problems in her area for the people who live outside of a fire district was insurance. She asked if it happens that insurance becomes unavailable?

Mr. Lohr replied that in some areas when people apply for insurance they will have a higher insurance than they would if they had protection in the area.

Rep. Jan Brown asked on page 2, line 5 where the bill refers to each business, if that meant in a building with three businesses that each business would be assessed a fee?

Rep. Grady commented that wasn't the intention. It would be the building itself.

Rep. Jan Brown asked why land containing no structure would still be assessed the flat fee if they wanted the tax to be related more to structures? She asked if that was the intent?

Rep. Grady replied that was the intention to assess the fee on the land. He said a lot of land is bought but does not have a building on it but sits within the fire area and so they would want to include it.

Rep. Gilbert asked if this applies to all volunteer fire districts?

Mr. Nagel stated the bill applies to fire companies. In the city fire protection is established as a fire department. If a fire district is formed, there can be fire departments within the district. The fire companies are established in rural areas under statute 7-33-2301 by submitting a roster of the personnel to the county clerk and recorder once a year. Fire companies are outside of other established fire districts.

Rep. Gilbert commented that under 7-33-2311 fire companies could organize but it did not say they could go outside of the city or the limits.

Mr. Nagel responded there were other statutes dealing with fire companies and he did not know the specific titles.

Rep. Gilbert commented in talking about fire companies and they organize under 7-33-2311, and 7-33-2101 does not apply then how can they apply to private land and should other statutes be included in the bill?

Mr. Nagel stated that 7-33-2101 establishes a fire district. HB 405 takes care of the rural areas outside of incorporated cities and towns and fire districts. He said the fire districts have their method of funding. The area outside of the fire districts does not have statutes setting up a method of funding for them as fire companies. Mr. Nagel stated he could see the problem and the number of the statute which allows a fire company to be formed anywhere in the county in a rural area needed to be amended into the bill.

Rep. Ramirez asked how the boundaries were determined for a fire company?

Mr. Nagel responded there are no established boundaries. An area is determined that will be protected. With the petition system the people in an area petition for the fire protection and so then there are boundaries.

Rep. Ramirez asked how the fire company would deal with wildland fires or grass fires? He asked if they would fight the fires?

Mr. Nagel replied they would fight those fires. He stated under the permissive levy that is county-wide, the county commissioners can levy up to \$15,000 a year. That money can only be used for fighting wildland fires. They can rent equipment with that money or pay the expenses of a fire company or others who are hired to fight the fire.

Rep. Hoffman commented this concept of funding through the unit system sounded the same as the funding for the solid waste disposal programs and presents a lot of problems. He asked who determines the units and whose units they are?

Rep. Grady responded the volunteer firemen would have to put that together. If they take the area of the county off the tax roles, they would know what structures would be in that area.

Mr. Kangas responded that they have a board of directors in their department and they do have a definite area of coverage. He stated they cannot go outside the district and even though it is not a taxed-based district, it has been set up by the county commissioners as a definite fire protection area. Under the bill, they would establish the

amount of money they would need for the year and submit it to the county commissioners. The county commissioners would then make sure the information was accurate and would set it on the tax rolls.

Rep. Grady, in closing, stated there was some confusion because of what was involved. He stated the real problem was these people are volunteers trying to do a job and having a difficult time in collecting fees in order to cover their costs. He said the volunteer fire districts addressed in the bill are very essential to the rural areas. Rep. Grady felt the bill had real potential and suggested the committee get together with the fire people and work out some of the problems.

CONSIDERATION OF HOUSE BILL 549: Rep. John Mercer, House District 50 and sponsor of the bill, stated he sponsored the bill at the request of the Polson Mayor. He said the bill attempts to expand the multijurisdictional district option to include airports. He explained multijurisdictional districts. He said cities and counties have artificial boundaries that were created but do not often represent the boundary lines for which services are provided. The bill states the city and county people could draw new boundaries for taxing purposes to fund the airport. The procedure set forth in the statute essentially states it takes an interlocal agreement and resolution to do this. If there is no resolution the people can do it by petition and then each jurisdiction, city and county would vote on it. If it is voted down the people can try by referendum to pass it. It would take a 50 percent petition to get rid of the boundary change if it passed.

PROPOSERS: Gordon Morris, MACo, stated the bill was much debated in the '85 session. MACo and the League of Cities and Towns jointly sponsored the bill in '85 and he felt the inclusion of airports appropriate. He asked for the committee's favorable consideration.

OPPOSERS: None.

Rep. Mercer closed on HB 549.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 549: Rep. Brandewie moved to DO PASS HB 549. The question was called and the motion carried unanimously.

DISPOSITION OF HOUSE BILL 403: Rep. Brandewie moved to DO PASS HB 403.

Rep. Sales commented he still needed to know how someone would know they were in violation of county planning and

zoning laws. He asked when someone moved into a county planning district, what is their responsibility and what is the district's responsibility to let them know what they can do?

Lee Heiman responded the zoning commission's actions are done by resolution. The only thing a person would find would come from the county resolutions.

Rep. Gould stated there was testimony that a better bill was coming from the EQC. Rep. Gould moved to TABLE HB 403 until the other bill came through. The motion carried with Reps. Brandewie, Dave Brown and Hansen voting no.

DISPOSITION OF HOUSE BILL 531: Rep. Brandewie moved DO PASS on HB 531.

Rep. Bulger moved as a substitute motion to DO NOT PASS HB 531.

He stated the county commissioners closing offices or curtailing hours would never work in his county. He stated the commissioners are constantly fueding with the other elected officials and with the bill could decide to close the treasurer's office of the justice court. He said they have the option of decreasing the salary of any of the other elected members but there is nothing in the bill which states that their salaries could be decreased.

Rep. Pistoria stated he agreed with Rep. Bulger.

Rep. Sales commented the legislature has to allow some flexibility at the local level to handle the fund shortage they are facing.

Rep. Hoffman stated he supported the do not pass motion. He said if there is such a financial crunch in a county they could leave the offices open with just a skeleton crew.

Rep. Ramirez felt it important that something be put into the statutes. He said it might save a potential special session. He said there are a number of bills that give property tax relief but no replacement revenue. If one of those bills pass, he commented that the county could be put into a real bind. He stated it was not a bad idea to plan for some of these contingencies.

There was continued discussion on the affects on county budgets with the drop in revenues.

The question was called on Rep. Bulger's DO NOT PASS motion. A roll call vote was taken and the motion failed 7 to 10.

Rep. Sales moved DO PASS on HB 531 for purposes of amendment. He moved to amend on page 2, line 9, by striking "shall" and inserting "may at their option elect to receive a pro rata reduction in compensation".

Chairman Wallin commented that the sponsor had told him that subparagraph 4 could be eliminated completely and asked if the committee would want to consider that.

Rep. Sales stated that by completely eliminating that the employee's hours would be reduced and their salaries but not the elected officials. He did not feel the officials would want that.

The question was called on the amendment. The motion carried with Rep. Bulger, Pistoria and Whalen voting no.

Rep. Dave Brown stated during the hearing on the bill there was discussion on the constitutionality and he had eluded to that before. He agreed that there was flexibility needed but because of not knowing whether the bill was workable and because he did not feel it good for the committee to put the bill on the floor and find it did not have the ability to work he would move to TABLE HB 531. The motion carried unanimously.

ADJOURNMENT: There being no further business to come before the committee, the meeting was adjourned at 2:35 p.m.



Rep. Norm Wallin, Chairman

DAILY ROLL CALL

LOCAL GOVERNMENT

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/10/87

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN	✓		
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓		
REP. BUDD GOULD	✓		
REP. REP. TIMOTHY WHALEN	✓		
REP. PAULA DARKO	✓		
REP. TOM BULGER	✓		
REP. JAN BROWN	✓		
REP. BOB GILBERT	✓		
REP. LARRY GRINDE	✓		
REP. WALTER SALES	✓		
REP. STELLA JEAN HANSEN	✓		
REP. PAUL PISTORIA	✓		
REP. ROBERT HOFFMAN	✓		
REP. LES KITSELMAN	✓		
REP. JACK RAMIREZ	✓		
REP. DAVE BROWN	✓		
REP. CAROLYN SQUIRES	✓		

STANDING COMMITTEE REPORT

February 6 1937

LOCAL GOVERNMENT

Mr. Speaker: We, the committee on _____
report _____ **SB 549**

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> do pass | <input type="checkbox"/> be concurred in | <input type="checkbox"/> as amended |
| <input type="checkbox"/> do not pass | <input type="checkbox"/> be not concurred in | <input type="checkbox"/> statement of intent attached |

Rep. Norm Wallin

Chairman

FIRST

WHITE

reading copy (_____)
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CHAPTER 2

PLANNING AND ZONING

Part 1 — County Planning and Zoning Commission

- 76-2-101. Planning and zoning commission and district.
- 76-2-102. Organization and operation of commission.
- 76-2-103. Powers of commission and employees.
- 76-2-104. Development pattern.
- 76-2-105. Continuation of prior nonconforming uses.
- 76-2-106. Adoption of development district.
- 76-2-107. Preparation of resolutions and other materials.
- 76-2-108. Permits authorized.
- 76-2-109. Effect on natural resources.
- 76-2-110. Appeal procedure.
- 76-2-111. Cooperation by public agencies with commission.
- 76-2-112. Effect on powers of incorporated communities to plan adjacent areas.

Part 2 — County Zoning

- 76-2-201. County zoning authorized.
- 76-2-202. Establishment of zoning districts - regulations.
- 76-2-203. Criteria and guidelines for zoning regulations.
- 76-2-204. Role of planning boards.
- 76-2-205. Procedure for adoption of regulations and boundaries.
- 76-2-206. Interim zoning map or regulation.
- 76-2-207. Permits authorized.
- 76-2-208. Continuation of nonconforming uses.
- 76-2-209. Effect on natural resources.
- 76-2-210. Enforcement of zoning provisions.
- 76-2-211. Violations and penalties.
- 76-2-212 through 76-2-219 reserved.
- 76-2-220. Zoning commission — appointment — duties.
- 76-2-221. Board of adjustment.
- 76-2-222. Membership and term of board members — vacancies.
- 76-2-223. Powers of board of adjustment.
- 76-2-224. Vote needed for board action.
- 76-2-225. Public access to board activities.
- 76-2-226. Appeals to board of adjustment.
- 76-2-227. Appeals from board to court of record.
- 76-2-228. Awarding of costs upon appeal from board decision.

76-2-301. Municipal zoning authorized.

- 76-2-302. Zoning districts.
- 76-2-303. Procedure to administer zoning laws — hearing and notice.
- 76-2-304. Purposes of zoning.
- 76-2-305. Alteration of zoning regulations — protest.
- 76-2-306. Interim zoning ordinances.
- 76-2-307. Zoning commission.
- 76-2-308. Enforcement of zoning regulations and ordinances.
- 76-2-309. Conflict with other laws.
- 76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries.
- 76-2-311. Administration of regulations in extended area.
- 76-2-312. Exclusion for commission-manager plan municipalities.
- 76-2-313. Renumbered 76-2-411 by Code Commissioner, 1983.
- 76-2-314. Renumbered 76-2-412 by Code Commissioner, 1983.
- 76-2-315. Violations and penalties.
- 76-2-316 through 76-2-320 reserved.
- 76-2-321. Board of adjustment.
- 76-2-322. Membership and term of board members — vacancies.
- 76-2-323. Powers of board of adjustment.
- 76-2-324. Vote needed for board action.
- 76-2-325. Public access to board activities.
- 76-2-326. Appeals to board of adjustment.
- 76-2-327. Appeals from board to court of record.
- 76-2-328. Awarding of costs upon appeal from board decision.

Part 4 — Application to Governmental Agencies Group and Foster Homes

- 76-2-401. Definitions.
- 76-2-402. Local zoning regulations — application to agencies.
- 76-2-403 through 76-2-410 reserved.
- 76-2-411. Definition of community residential facility.
- 76-2-412. Relationship of foster homes, youth group homes, and community residential facilities to zoning.

Chapter Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

County Zoning Penalties Section

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding \$500 or imprisonment in the county jail not exceeding 6 months or both.

ROLL CALL VOTE

LOCAL GOVERNMENT

COMMITTEE

DATE 2-6-87

BILL NO. HB 531

NUMBER 1

NAME	AYE	NAY
REP. NORM WALLIN, CHAIRMAN		X
REP. RAY BRANDEWIE, VICE CHAIRMAN		X
REP. DAVE BROWN	X	
REP. JAN BROWN		X
REP. TOM BULGER	X	
REP. PAULA DARKO	X	
REP. BOB GILBERT		X
REP. BUDD GOULD		X
REP. LARRY GRINDE		X
REP. STELLA JEAN HANSEN		X
REP. ROBERT HOFFMAN	X	
REP. LES KITSELMAN	X	
REP. PAUL PISTORIA		X
REP. JACK RAMIREZ		X
REP. WALTER SALES		X
REP. CAROLYN SQUIRES	X	
REP. TIMOTHY WHALEN	X	

TALLY

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Vonnie Evans
Secretary

Rep. Norm Wallin
Chairman

MOTION: Rep. Bulger moved to DO NOT PASS HB 531.

The motion failed.

ROLL CALL VOTE

LOCAL GOVERNMENT

COMMITTEE

DATE 2-6-87

BILL NO. HB 531

NUMBER 2

NAME	AYE	NAY
REP. NORM WALLIN, CHAIRMAN	X	
REP. RAY BRANDEWIE, VICE CHAIRMAN		X
REP. DAVE BROWN	X	
REP. JAN BROWN	X	
REP. TOM BULGER	X	
REP. PAULA DARKO	X	
REP. BOB GILBERT		X
REP. BUDD GOULD		X
REP. LARRY GRINDE		X
REP. STELLA JEAN HANSEN		X
REP. ROBERT HOFFMAN		X
REP. LES KITSELMAN		X
REP. PAUL PISTORIA	X	
REP. JACK RAMIREZ	X	
REP. WALTER SALES		X
REP. CAROLYN SQUIRES	X	
REP. TIMOTHY WHALEN	X	

TALLY

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Vonnie Evans
Secretary

Rep. Norm Wallin
Chairman

MOTION: Rep. Dave Brown moved to TABLE HB 531.

The motion carried.

VISITORS' REGISTER

LOCAL GOVERNMENT

COMMITTEE

BILL NO. HB 405

DATE February 6, 1987

SPONSOR Rep. Grady

NAME (<u>please print</u>)	REPRESENTING	SUPPORT	OPPOSE
<i>[Handwritten Name]</i>	<i>[Handwritten Representing]</i>	✓	
<i>[Handwritten Name]</i>	<i>[Handwritten Representing]</i>	✓	
<i>[Handwritten Name]</i>	<i>[Handwritten Representing]</i>	✓	
<i>[Handwritten Name]</i>	<i>[Handwritten Representing]</i>	✓	
<i>[Handwritten Name]</i>	<i>[Handwritten Representing]</i>	✓	
JOHN K. KROTE	LA RESIDE FIRE DEPT	✓	
John Delano	Plum Creek	✓	
<i>[Handwritten Name]</i>	<i>[Handwritten Representing]</i>	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

LOCAL GOVERNMENT

COMMITTEE

BILL NO. HB 549

DATE February 6, 1987

SPONSOR Rep. Mercer

NAME (<u>please print</u>)	REPRESENTING	SUPPORT	OPPOSE
<i>W. Gordon Mercer</i>	<i>Rep. Mercer</i>	<i>X</i>	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER
LOCAL GOVERNMENT COMMITTEE

BILL NO. HB 403

DATE February 6, 1987

SPONSOR Rep. Cohen

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
BOB HOLDING MT. ASSOC. OF RENTORS	NELOMIT		X
Holdon Assoc.	M.H.CO.	X	
GEORGE OCHENSKI	MT. ENV. INF. CNTR	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.