

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

February 16, 1987

The meeting of the Local Government Committee was called to order by Chairman Norm Wallin on February 16, 1987, at 12:30 p.m. in Room 312-F of the State Capitol.

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

CONSIDERATION OF HOUSE BILL 722: Rep. Cobb, House District 42 and sponsor of the bill, stated HB 722 is an act to require inspection of public water supplies and sewer disposal systems for subdivisions in Montana. He said the changes are on pages 3 and 4 which give the reviewers authority to make at least one inspection immediately before or after completion of any construction of a public water system or sewage disposal system approved to validate that the system is being or has been constructed according to the approved specifications. The reviewing authority shall require certification from a registered professional engineer that the system has been constructed according to approved specifications.

Rep. Cobb stated the problem is the builders agree to how these systems should be built but the approved plans are not followed correctly. The bill gives the reviewing authority the ability to make sure the approved plans are followed and the systems are built correctly and if not, there is a liability problem. As an alternative, an engineer from the developer could inspect the project. If it is not built correctly and the engineer states that it is, then he becomes liable.

PROPONENTS: Steve Pilcher, Chief of Water Quality Bureau in the Department of Health and Environmental Sciences, stated they would be the reviewing authority mentioned in the bill. He said they supported anything that would ensure the system is being constructed as far as water and waste water systems the way it was approved by their reviewing engineers. Mr. Pilcher said he could provide a long list of horror stories where people might invest their life savings in a home and assume everything is built properly only to find they do not have water. The developer either cannot be found or has gone bankrupt and as a result

the people lose their home. He said this does happen quite often.

OPPONENTS: None.

DISCUSSION (OR QUESTIONS) ON HOUSE BILL 722: Rep. Brandewie asked Mr. Pilcher why a bill needs to be passed to tell them to do what they should be doing anyway? The county sells a permit for these systems and theoretically people are being paid to do these inspections.

Mr. Pilcher responded the Department of Health and Environmental Sciences recognizes that it is the Department's responsibility to monitor this and that there is problems. The Department has made some rule changes under the Safe Drinking Water Act to require within 90 days of completion of a project that the professional engineer certify that the project was built according to approved plans. He said as far as the inspections the Department might do, with the number of subdivisions around the state it would take considerable resources to provide on-site inspections. They have felt it the best use of their resources to review the plans to make sure they are correct from the Department's standpoint and then allow the engineer to tell them it is correct.

Rep. Brandewie asked what good it would do to inspect 90 days after the project is completed? To be sure that the correct size pipe and all specifications approved are correct, Rep. Brandewie said it would seem the inspection should be done before closing the project in.

Mr. Pilcher stated that was correct and if his agency is the reviewing authority and are to conduct the inspection the wording is to require at least one inspection immediately prior to or immediately after completion of the construction. He said he was referring to with the 90 days, the project engineer has a grace period to provide them with the paperwork showing that he did inspect it and it was constructed properly.

Rep. Sales asked how this bill fit in with Rep. Harper's bill?

Mr. Pilcher replied it does not fit in directly but both bills are trying to deal with the problem of someone telling the reviewing authority he will do a project one way and then doing it an inferior way. Rep. Harper's bills are intended to strengthen the enforcement provisions. Both bills are getting toward the same problems and are attempting to make the developer responsible for his actions when there is an innocent third party who may be harmed.

Rep. Wallin asked if this bill would change the requirements of a county health officer getting approval for a subdivision,

would both have to approve the project?

Mr. Pilcher stated that would remain as it currently is. The working relationship and the authority of the local board of health under the Sanitation and Subdivision Act is not impacted by this legislation.

Rep. Hansen asked if the professional engineer would be one that would be hired by the contractor working on the subdivision?

Mr. Pilcher stated that is correct. He does have professional engineers on their staff but they do not do the construction inspection. The rules require that a public system be designed by a licensed professional engineer and it is that individual who is being held accountable for the construction of the system within the Department.

Rep. Hansen was concerned with the inspection immediately before or after construction. She asked Mr. Pilcher if he would send someone out to do that inspection?

Mr. Pilcher responded that was a concern they discussed with Rep. Cobb. He said if they had someone inspecting during construction, it would merely tell them what things were like at that point in time. They would prefer to place the majority of the burden on the licensed professional engineer whose job it is to monitor the construction on a day-to-day basis. By the professional engineer certifying that the project is built according to plans, Mr. Pilcher said that is based on a longer period of construction.

Rep. Hansen asked if it would not be logical to have the county do the inspections?

Mr. Pilcher said he did not think there was anything in the bill that would preclude a type of arrangement like they have in the Safe Drinking Water inspection program whereby they would contract with the county local agency to do some of the inspections. It would significantly reduce the Department's cost of conducting the inspections.

Rep. Hansen stated there is required to be a sanitarian in every county and didn't see why the sanitarian couldn't do the inspections.

Mr. Pilcher stated there is a conflict between licensed professional engineers and sanitarians. They do not have the same type of background and training. Mr. Pilcher said he would have some concern with having a sanitarian passing judgement on the work of licensed professional engineers. It might cause some problem.

Rep. Ramirez stated that right now the review authority under Subsection 1(a) on page 1, allows an inspection for a \$48 maximum fee to inspect a project. He asked with the separate inspection of immediately before or after construction, would there be a separate charge?

Rep. Cobb stated there would be an additional charge for the inspection but if the committee did not want the fee to be more than the \$48 then the language "unless an inspection is required pursuant to 76-4-107(2)" could be stricken.

Rep. Ramirez asked how they would determine how much that charge would be to do the inspections mandated in the new lanaguage of the bill, pages 3 and 4?

Rep. Cobb responded that he left that up to rulemaking. He commented the purpose of the bill is to make someone liable besides the developer in the event that something goes wrong. If the reviewing authority agrees with the plan, they should go out to inspect to make sure it was built properly.

Rep. Hansen commented that now this registered professional engineer will be responsible for the final inspection rather than the Department.

Rep. Cobb stated it could be either one. The Department can go inspect or the Department can send a registered professional engineer. In most cases a professional engineer will do the inspection because if something is wrong the Department will be liable.

Rep. Ramirez asked why certification from a professional engineer that the system has been constructed according to approved specifications could just not be required and the rest eliminated?

Rep. Cobb responded that could be done. He was more concerned with the larger public water systems. He said the smaller ones can be corrected more easily. The larger ones with ten or more families were the systems he was concerned with. Rep. Cobb said the reviewing authority has to require certification from a registered professional engineer and Section 2, (2) (a) could be stricken. That way there could be no fee charged for the inspection by the reviewing authority.

OPPONENTS: None.

Rep. Cobb closed on HB 722.

CONSIDERATION OF HOUSE BILL 697: Rep. Connelly, House District 8 and sponsor of the bill, stated the bill is basically revising the city SID laws to conform to the county SID laws and came about as a result of the default in Columbia Falls. She said Bozeman, Polson and some other areas have had similar problems. The bill covers both city special improvement districts and county and rural improvement districts and is set up so there is a section for each of those. The bill would allow for semiannual payment in Sections 1 and 3 based on the fact that it would fit better with the semiannual tax and assessment payments of the landowners. Section 2 and 4 allows for refunding of bonds if there is or will be payment default on the bond payment even if the refunding bonds do not carry the necessary 1/2 of 1 percent better interest rate than the bonds being refinanced. Section 5 provides an assessment method for cities and authorizes the city to use the assessed valuation option for assessments to special improvement districts. This would just allow the cities to do it the way the counties are now doing it. Section 6 and 7 deal with changes in the assessments and allow for relieving of assessments upon refunding.

PROPOSERS: Bruce MacKenzie, Representing Counsel from D. A. Davidson, stated the key issues from their point of view is the bill brings into conformity the city SID provisions along with the county in respect to semiannual payments and in respect to the changing of the assessment methods. He said HB 697 provides some relief to the unimproved property owner because it would allow them to change the assessment method during the terms of the bonds, lowering the assessment on the unimproved property and shifting the assessments to the improved property. This gives the city a little more flexibility and can only be done after a hearing process notifying the property owners.

OPPOSERS: None.

Rep. Connelly closed on HB 697.

CONSIDERATION OF HOUSE BILL 588: Rep. Darko, House District 2 and sponsor of the bill, stated the purpose of the bill is to collect water bills that are unpaid in the same manner that sewer bills are collected by providing for a lien on the property.

Rep. Darko stated Libby has just recently purchased the water system from Pacific Power and Lights. While they were in control of the water system if the water bill was not paid they would shut off the power bill. In Libby they do not have shutoff valves for the water

for a lot of homes. The city cannot turn off the water because there is no place to do so and they cannot shut off the power because they are not the power company. Rep. Darko stated the water is a service provided to the property and not the people living on the property.

PROPONENT: Fred Brown, Libby Mayor, stated the City of Libby has been in the water business for one year and has run into some major water collection problems. He stated they did not feel the individual city should be placed as a collection agency. They have expanded their water system, have given a 20 percent decrease to users of the water and have allowed a 15,000 gallon per month sprinkling rate for the city. Mr. Brown said they are doing great things but have to be able to use that level of efficiency and that is to be sure a collection of water bills is being made.

OPPONENTS: Larry Witt, Bozeman and Vice President MT Landowners Association, presented written testimony to the committee (Exhibit 1). He stated the Association is in total opposition to HB 587 and 588. Mr. Witt felt that Libby has a unique problem.

Robert Holding, Representative MT Association of Realtors, stated if the city wants to get into the water business then they have to run it like a business. Special interest legislation could be applied to all cities if they go into the water business. He said the big problem for them is it would cause title policy problem. He said the charges for water will fluctuate not like sewer charges. Mr. Holding commented that private people who run water systems have deposits be made if people are not to be trusted. He said if the landlord gets stuck for a large water bill then he will have to raise the rent and that will get into the low income problem.

Mr. Holding stated if a city takes over a water system collection is one of the problems they incur like other business.

Brian McCullough, President of the Helena Chapter of MT Landlords' Association, stated the Association speaks against HB 588 which will allow the utility provider of services to collect for the cost of those utilities from someone who did not receive the benefit of the service. He stated that MT Power has a policy regarding the collection of utilities from the tenants versus the property owner. MT Power shifts the account of a person who has moved over to the property owner. If there is a vacant period the cost of the utility goes to the owner but the responsibility is the tenant's while he is there.

When the tenant goes behind on the power bill, MT Power goes after the tenant because he received the benefit of the service. Under HB 588 the property owners will be responsible for water utility service used by the tenant. Mr. McCullough stated this is a dangerous precedent for placing the liability for paying a service to a resident against the property. It also causes title insurance credibility problems for those companies and property purchasers.

Mr. McCullough mentioned the following persons who called him but were unable to be present and wanted their opposition recorded: Donna Hilliard, Landlord; Wayne Hartmann, Landlord; Irene Loveless, Real Estate Broker; Mel Hilliard, Landlord; Larry Speardrop, Title Insurance; Don DeShazer, Real Estate Broker and Martha Hendricks. All were from Libby.

In closing Mr. McCullough suggested that the landlords, real estate agents and local government get together to look at the problem and provide some legislation that would be more appropriate for the next biennium.

Rep. Darko asked that Alec Hansen who had been previously called from the room, be able to testify as a proponent. There was no objection.

PROPOSERS: Alec Hansen, League of Cities and Towns, stated the problem is a very perplexing problem that they have tried to work with for many years and have not been able to find an adequate solution for. The bill is attempting to protect the interest of the other rate payers on the water system. It is not fair when someone leaves town leaving a large water bill that the other users should have to pay for that. He stated they support both HB 587 and 588.

Rep. Darko in closing, stated it is a local problem and is thought to be of special interest but she said it is of interest to the people in her community. She stated she has had contact with all those opposed. Rep. Darko commented that if the first months bill is not paid it will be forwarded to the landlord so they would know that the bills are not being paid. She felt the bill a way for other users to not have to pick up the tab from nonpayers. She stated she had spoke with Alec Hansen and the city cannot pass a city ordinance to require that the landlord be responsible for the water service delivered to property and their is no way to place a lien on the property. She said they need a way to attach the property.

CONSIDERATION OF HOUSE BILL 587: Rep. Darko, House District 2 and sponsor of the bill, handed out an amendment which would change dates relating to sewer charges. She stated

she would like consideration of the amendments when the committee considered the bill.

Rep. Darko stated HB 587 is a housekeeping bill which condenses a sequence of collection and reduced the amount of time to six months. It would usually take a period of up to two years for the collection process.

PROPONENTS: Fred Brown, Mayor of Libby, stated the bill will reduce the time lapse. He said an opponent of HB 588 spoke of the title and new ownership problems where arrears have been in affect longer than two years prior to the time they appear on the tax roles or tax notices. HB 587 and the amendments propose to reduce this length of time down to a maximum of six months. The first notification would be to the person in arrears for sewer charges. Notification would be made to the county treasurer and assessor and then appear on the tax role. Prior to the language as it exists now, an individual could go into arrears in February of any one month, it would appear on tax role in November, notification would be in January and would not appear on the tax roles until the following November 30, almost two years would go by.

OPPONENTS: None.

Rep. Darko closed on HB 587.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 638: Rep. Hansen moved to DO PASS HB 638. Rep. Hansen moved to DO PASS the amendment.

Rep. Bulger commented that Gordon Morris had problems with the bill and asked if the amendment took care of those problems?

Rep. Wallin replied that it did not. Gordon Morris had a problem with line 13 of the bill.

Rep. Sales stated he would still like to know why maintenance is referred to when the district itself is not a maintenance district.

Rep. Bulger commented that Gordon Morris stated this section should be repealed and the RSID statutes used.

Rep. Sales commented that Mr. Morris' testimony stated this section has never been used and there were other sections for doing the same thing that have been used consistently. There is no need for this section and the whole section should be repealed.

Rep. Wallin stated Mr. Morris testified as neither a proponent or opponent.



Rep. Bulger moved to TABLE HB 638. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 722: Rep. Darko moved to DO PASS HB 722.

Rep. Sales asked Rep. Ramirez if he figured out when the \$48 fee would be applied and when it would not?

Rep. Ramirez stated he had and would move TO AMEND HB 722 as follows: Title, line 4, strike "inspection" and insert "certification". Line 6, following Chapter 4, strike "allowing additional lot fees for the inspections". Line 7 would read "amending section" and the rest of line 7 would be stricken. Section 1 would be stricken in its entirety. On page 3, line 23, following (2), strike all of subsection (a). Page 4, line 4, strike "(b) alternatively," and capitalize the "T" on "the".

Rep. Hoffman asked if the bill is necessary and what is the need for it?

Rep. Sales stated there is a liability problem.

Rep. Ramirez commented there isn't anything wrong with having the registered professional engineer certify that the projects are done correctly. Then he has the responsibility for the project. Rep. Ramirez stated this requirement should be in the law but the rest of the bill allows for an extra fee to be charged over the \$48 to go out and do inspections.

Rep. Pistoria asked if this was a result of Sun Prairie?

Rep. Bulger replied yes it could be a result of that.

Rep. Pistoria commented that protection is needed so that doesn't happen again.

Rep. Hansen was concerned that if the legislature is delegating the authority to the Department of Health than the Department should be liable. She said anyone planning a subdivision would have a certified engineer and asked what kind of engineer is required? She stated some sanitarians are engineers and was bothered that this duty couldn't be delegated to the county sanitarian who is there and can monitor the project.

Rep. Ramirez commented that he wouldn't argue with that. His concern was requiring two inspections that will have to be paid for without any limit or indication of what the fee will be that will be charged for the inspections. He said if the language that he suggested amending out of the bill left in that will leave a wide-open fee.

The question was called on Rep. Ramirez' amendment.  
The motion carried unanimously.

Rep. Brandewie moved to DO PASS HB 722 AS AMENDED. The question was called. All were in favor with the exception of Rep. Gould and Rep. Whalen who voted no.

DISPOSITION OF HOUSE BILL 697: Rep. Brandewie moved to DO PASS HB 697. The question was called and the motion carried unanimously.

DISPOSITION OF HOUSE BILL 588: Rep. Darko moved to DO PASS HB 588.

Rep. Sales made a substitute motion to DO NOT PASS HB 588.

Rep. Brandewie made a nondebatable motion to TABLE HB 588. The bill was tabled with Rep. Darko and Rep. Whalen voting no.

DISPOSITION OF HOUSE BILL 587: Rep. Sales moved DO PASS on HB 587. Rep. Sales moved the amendment. The amendments passed with all in favor.

Rep. Brandewie moved to DO PASS HB 587 AS AMENDED. The question was called and the motion carried unanimously.

ADJOURNMENT: There being no further business to come before the committee, the meeting was adjourned at 1:40 p.m.

  
Rep. Norm Wallin, Chairman

DAILY ROLL CALL  
 LOCAL GOVERNMENT COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 16, 1987

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 16

19 37

Mr. Speaker: We, the committee on LOCAL GOVERNMENT  
report HB 783

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|---|--|---|
| <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 Hallin

Chairman

**FIRST**

reading copy (

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color

# STANDING COMMITTEE REPORT

February 16

19 87

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report HB 692

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

Rep. Horn Wallin

Chairman

**FIRST**

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**WHITE**

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# STANDING COMMITTEE REPORT

February 16

19 87

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 697

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|---|--|---|
| <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

*W.S.*

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# STANDING COMMITTEE REPORT

February 16

19 87

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report \_\_\_\_\_

do pass  
 do not pass

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 be not concurred in

as amended  
 statement of intent attached

Rep. Norm Wallin

Chairman

1. Title, line 6.

Following: "COLLECTION;"

Insert: "PROVIDING OTHER CHANGES IN DATES RELATING TO SEWER CHARGES;"

2. Page 1, line 13.

Page 1, line 16.

Strike: "January"

Insert: "July"

3. Page 1, line 22.

Strike: "July 1"

Insert: "August 15"

  
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# STANDING COMMITTEE REPORT

February 15

19 37

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report HB 722

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

Rep. Nora Wallin

Chairman

1. Title, line 4.

Strike: "INSPECTION"

Insert: "CERTIFICATION"

2. Title, lines 6 and 7.

Strike: "ALLOWING" on line 6 through "INSPECTIONS;" on line 7

Strike: "SECTIONS 76-4-105 AND" on line 7

Insert: "SECTION"

3. Pages 1 through 3.

Following: the enacting clause

Strike: Section 1 in its entirety

Renumber: subsequent sections

4. Page 3, line 23 through line 3 of page 4.

Following: "(2)" on line 23

Strike: subsection (2)(a) in its entirety.

5. Page 4, line 4.

Strike: "(b) Alternatively, the"

Insert: "The"



From: Montana Landlords' Association

To: The Local Government Committee

Mr. Chairman, members of the committee, my name is Larry Witt, and I reside at 1601 West Olive in Bozeman. I am Vice-President of the Montana Landlords' Association. Our association is in total opposition to House Bills 587 & 588.

If a person is provided with a service he should expect to pay for it. If that person doesn't receive a service or a benefit he shouldn't be expected to pay for one. House Bills 587 & 588 require the owner of a property to pay for someone else's bill for a service the owner did not receive. Is this fair?

Providing water and sewer service is a business and the water departments should run this service like a business. If they need to make credit checks on tenants first, they should do it. If they need to charge a deposit, they should do it. If they need to raise their rates to cover bad debts, they should do it. But they should not expect someone else (namely Landlords') to pay for their losses or collect their bills.

If landlords are forced into being collection agents for the water department, we couldn't afford to let a few months of current bills pile up. How would we as landlords know if a tenant wasn't paying their bill each month? Every landlord in town would have to call the water department each month and check on each tenants' bill!!

Although forcing an owner to pay someone else's water bill might be a simple solution to a collection problem ... it is a solution that shouldn't even be considered. It is a totally unjust solution.

If the local governments are to be granted this power, they should only be granted this power if the people vote to give it to them.

Amend House Bill 587 Introduced Copy

1. Title, line 6.

Following: "COLLECTION;"

Insert: "PROVIDING OTHER CHANGES IN DATES RELATING TO SEWER  
CHARGES;"

2. Page 1, line 13.

Page 1, line 16.

Strike: "January"

Insert: "July"

3. Page 1, line 22.

Strike: "July 1"

Insert: "August 15"

Amend House Bill 638

1. Page 1, line 15.

Following: "(4)"

Strike: subsection (4) in its entirety

Insert: "Local improvement districts shall be subject to availability of funds from the county road budget up to 10% of funds annually budgeted for construction and maintenance of county roads"







