

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

February 23, 1987

The meeting of the Local Government Committee was called to order by Chairman Norm Wallin on February 23, 1987 at 12:15 p.m. in Room 312-F.

All members were present with the exception of Rep. Gould and Rep. Sales who were excused and Rep. Bulger who was absent.

DISPOSITION OF HOUSE BILL 809: Rep. Hansen moved to DO PASS HB 809.

Rep. Dave Brown moved to AMEND HB 809. The amendments from the subcommittee had been incorporated into the bill and were presented in the gray bill the committee had before them.

Rep. Brown commented the subcommittee had spent five hours on Sunday working on the bill. He stated as has been the process all along on the bill, all sides were represented--planners, builders, water development people, agricultural groups, audibon, conservation organizations, etc. Rep. Brown stated the amendments that were offered to the committee in the hearing were presented in a handout (Exhibit 1). The handout listed the amendments offered by page number in the bill. It showed who offered the amendment, gave the content of the amendment and whether it was rejected or adopted by the subcommittee. Rep. Brown stated with the exception of one area that essentially the bulk of the conflicts that were a major concern during the hearing process had been resolved.

He asked if Bob Thompson, EQC, who staffed the subcommittee could explain the amendments. With no objection from the committee, Mr. Thompson explained the amendments.

Rep. Brandewie voiced concern regarding Amendment 4 which dealt with the definition of primitive tract. He asked if the definition precluded construction of a small permanent A-frame cabin?

Mr. Thompson replied that it did.

Rep. Ramirez commented he appreciated the work the subcommittee had done. He still felt there were insurmountable problems. He said there were two or three people on the committee that knew what all the consequences of the bill and the amendments were. He was not one of them. Rep. Ramirez stated the bill would be putting a tremendous burden on local governments and the committee did not know if the amendments will meet the concerns of the people that hadn't a chance to see the bill. He resisted the amendments and the bill.

The question was called on the amendments. The motion carried with Rep. Hoffman, Pistoria and Ramirez voting no.

Rep. Brandewie moved to AMEND HB 809. On page 6, lines 3 - 8, strike the definition of primitive tract, the whole section.

Rep. Brandewie explained that half of his districts are primitive tracts and a lot of Rep. Darko's district are primitive tracts. Many people are served off of forest service roads. They can't afford to build county roads. Some people that have built roads, maintain them themselves. Rep. Brandewie stated he was giving the amendment as a representative of these people. There would be a serious detrimental affect on the value of the peoples' property by not being able to build a dwelling. He said there is nothing that says a primitive tract can't handle a septic tank and that is what is being said in the bill with the definition of primitive tract. Rep. Brandewie said he couldn't support the bill with that definition in there.

Rep. Kitselman commented that the definition is there to say what a primitive tract is. Rep. Brandewie's question about putting in a septic tank, a well, or building a permanent structure is covered under a different portion of the Subdivision and Platting Act. This is clearly stating that if property is going to be designed as primitive tract that the same regulations be followed as federal which says it is temporary, for temporary use, with no permanent structures or permanent dwellings, If a person wants to sell that land and put a permanent A-frame on the land and put in a septic tank, it will go under a different review process.

Rep. Brown commented that Rep. Brandewie's amendment would tie up all the land so no one would ever be able to use it and it would do just the opposite of what he would want it to do. Basically the standard if that provision is removed would be the county road standard which is much higher than the ones built in under the bill. He

referred Rep. Brandewie to page 21, lines 12 through 20. He said if something was to be done other than the primitive tract designation than "for any other tract physical access must be provided subject to the requirements of subsection (2)". This was the kind of property Rep. Brandewie was talking about where what would otherwise be a primitive tract except for putting in a hunting cabin. It comes under the county road standard it just moves it into a different category.

Rep. Brandewie withdrew his amendment.

Rep. Ramirez felt so strongly that there wasn't the time needed for HB 809. He said the stream access was one bill where there were many problems and mistakes made trying to rush it through. He said with water adjudication two sessions were taken. Everyone was in a hurry to get it done and it just could not be put together adequately so it was brought back the next session. The issue was still there and no harm was done. He said this issue will still be here two years from now.

Rep. Ramirez moved to TABLE HB 809. A roll call vote was taken and the motion failed 6 to 11.

ADJOURNMENT: The meeting was adjourned at 1:20 p.m.


Rep. Norm Wallin, Chairman

DAILY ROLL CALL

LOCAL GOVERNMENT

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 5/23/87

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			

RECOMMENDED ACTION ON
PROPOSED AMENDMENTS TO HOUSE BILL 809

HB 809 Subcommittee
House Local Government Committee
February 23, 1987

A subcommittee appointed by the Chairman of the House Local Government Committee met from 1 p.m. to 6 p.m. on Sunday, February 22, to consider the amendments offered during the hearing on HB 809 and to develop recommendations for full committee action. The subcommittee meeting was attended by about 25 persons, including representatives of virtually all the parties that offered specific amendments to the bill during the February 20 hearing.

Following are the amendments considered by the subcommittee, with the source of the amendment provided in parentheses. Amendments relating to a single concept have been grouped. In some cases, suggested language has been modified to conform with the language of the bill or with correct bill drafting style.

The recommended disposition of each of the substantive amendments considered by the subcommittee is presented in the left margin. The subcommittee also adopted some technical amendments that are reflected in the "gray bill" and in the formal amendment list submitted to the House Local Government staff; these proposed amendments are not listed below.

ADOPTED 1a. Page 2, line 22.
Strike: "significant"
Insert: "substantial"

1b. Page 32, line 10.
Strike: "significant"
Insert: "substantial"
(Montana Association of Realtors)

Amendment 1 would provide consistency throughout the bill in specifying that effects on critical resources must be "substantial" to trigger review.

REJECTED 2. Page 4, lines 18 through 20.
Strike: ", except" on line 18 through "subdivision" on line 20
(Montana Association of Realtors)

Amendment 2 would allow multiple minor subdivisions from a tract of record as of October 1, 1987.

MODIFIED 3. Page 4, line 21 through line 4, page 5.
AND Strike: subsection 13
ADOPTED Renumber: subsequent subsections
(Montana Association of Realtors)

Amendment 3 would eliminate the definition of "mitigation".

Modification: Subcommittee limited, but did not eliminate, the
definition of "mitigation". (see gray bill)

ADOPTED 4. Page 6, line 3.
Strike: "use"

Amendment 4 would change the name of the "primitive use tract" to
"primitive tract".
(Subcommittee)

MODIFIED 5. Page 6, lines 3 through 5.
AND Strike: "located more than 2 miles from a state, federal, or maintained
ADOPTED county road"
(Montana Association of Realtors)

Amendment 5 would remove the consideration of distance from a road as a
qualification for a subdivision to be considered a primitive tract.

Modification: Page 6, line 3. Strike: "2 miles" Insert: "1 mile"
A "primitive tract" is thus to be located at least 1 mile from a road,
not 2 miles as in the original definition.

REJECTED 6. Page 7, lines 4 through 6.
Strike: "in order that the title to or possession of the parcels may be
sold, rented, leased, or otherwise conveyed"
(Montana Association of Planners)

ADOPTED 7. Page 7, line 9.
Strike: "mobile homes"
Insert: "dwelling units"
(Subcommittee)

Amendment 7 would replace the specific reference to mobile homes with
the language "dwelling units".

ADOPTED 8a. Page 9, line 18.
Following: "Violations."
Insert: "(1)"

8b. Page 10, following line 2.
Insert: "(2) The governing body may file an action in district court in
the name of the state to enjoin the violation of any provisions of
[sections 1 through 43] or of any local regulations adopted pursuant to
[section 27] or to compel action necessary to remedy any damage caused
by the violation of any provisions of [sections 1 through 43] or of any
local regulations adopted pursuant to [section 27]."
(Montana Environmental Information Center; Montana Audubon)

Amendment 8 would allow a governing body to seek an injunction if subdivision laws or regulations are being violated.

REJECTED 9a. Page 12, line 10.
Strike: "must"
Insert: "may at the discretion of the governing body"

9b. Page 15, line 3.
Strike: "must"
Insert: "may at the discretion of the governing body"
(Montana Association of Planners)

Amendment 9 would remove the requirement that certain hearings be conducted as informal contested case hearings and would allow the governing body to make the decision on the hearing type.

ADOPTED 10a. Page 14, line 15.
Following: "(5)"
Insert: "(a)"

10b. Page 14, line 17.
Strike: "(a)"
Insert: "(i)"

10c. Page 14, line 21.
Strike: "(b)"
Insert: "(ii)"

10d. Page 14.
Following: line 24
Insert: "(b) The hearing must be limited to consideration of factors related to the critical resource within the critical resource area or to factors specifically relating to fiscal impacts within the fiscal impact area."
(Montana Association of Realtors)

Amendment 10 would specify that hearings on minor subdivisions must be limited to those factors that can be used to trigger the requirement for a hearing.

REJECTED 11. Page 17, lines 17 through 21.
Strike: "In reviewing a subdivision application, the review authority shall presume initially that the subdivision complies with these requirements. This presumption does not affect the burden of proof in a proceeding before a district court."
(Montana Association of Planners)

Amendment 11 would remove the presumption that subdivisions are in compliance with the law.

MODIFIED AND ADOPTED 12. Page 21, line 5.
Following: "plat"
Insert: "unless described as provided for in [section 39]"
(Montana Association of Realtors)

Amendment 12 would clarify that not all plats must be filed.

Modification: Page 21, line 5.
Strike: "plat"
Insert: "description"

ADOPTED 13a. Page 21, line 14.
Strike: ":"
Insert: ","

13b. Page 21, line 15.
Strike: "(A)"

13c. Page 21, lines 15 through 18.
Strike: "and" on line 15 through line 18
(Montana Association of Realtors)

Amendment 13 would eliminate the requirement that legal access be certified on the plat and instruments of transfer for primitive tracts.

REJECTED 14a. Page 21, line 23 through line 10, page 22.
Strike: subsection (1)(f) in its entirety

14b. Page 22, line 19 through line 13, page 23.
Strike: subsection (3) in its entirety
(Montana Association of Realtors)

Amendment 14 would eliminate review for natural hazards in the subdivision review process.

REJECTED 15a. Page 22, line 9.
Strike: "and"

15b. Page 22, line 10.
Strike: "."
Insert: ";"

15c. Page 22, following line 10.
Insert: "(iv) man-made hazards such as high pressure gas lines; and (v) other hazards as defined by the governing body in adopting local regulations."

15d. Page 23, line 5.
Following: "plat;"
Insert: "and"

15e. Page 23, lines 6 through 10.
Strike: subsection (3)(e) in its entirety
Renumber: subsequent subsection
(Montana Association of Planners)

Amendment 15 would specify additional hazards that could be the subject of subdivision review.

REJECTED 16. Page 22, line 14.
Following: "standards"
Insert: "may not require roads exceeding standards demonstrated by existing county roads in the immediate area,"
(Montana Association of Realtors)

Amendment 16 would indicate that a governing body may not require roads in a subdivision to exceed standards of county roads in the area.

REJECTED 17. Page 22, line 25 through line 1, page 23.
Strike: "otherwise agreed to by the subdivider and review authority"
Insert: "the governing body justifies, in writing, the public safety necessity for requiring on-site tests"

Amendment 17 would allow the governing body to require on-site tests for hazards if it can provide written justification based on public safety.

REJECTED 18. Page 23, lines 4 through 5.
Strike: "notice of the hazard must be placed on the final plat"
Insert: "and it cannot be mitigated by approved construction methods or the arrangement of lots cannot be redesigned to minimize the impact of the hazard, the review authority may deny the subdivision"

Amendment 18 would allow the governing body to deny a subdivision if existing hazards cannot be mitigated.

REJECTED 19. Page 26, line 20 through line 4, page 29.
Strike: section 21 in its entirety
(Montana Association of Realtors)

Amendment 19 would eliminate the park dedication requirement.

ADOPTED 20a. Page 26, line 22.
Following: "cash"
Insert: "or land"

20b. Page 27, lines 19 through 23.
Strike: subsection (4) in its entirety
Insert: "(4) (a) The governing body may request a cash park dedication from the subdivider, who shall have the option to decide whether to donate land or cash. The request may include an arrangement for the cash payment to be made in installments as lots within the subdivision are sold.

(b) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated."
(Subcommittee)

Amendment 20 would allow the subdivider to decide if he wants to dedicate land or cash for the park dedication, would allow the governing body to request cash at the option of the subdivider, and would reinsert

existing language relating to cash in lieu of park land (subsection (4) (b) above.

ADOPTED

21a. Page 29, lines 3 and 4.

Strike: "and" on line 3 through "parks" on page 4

21b. Page 36, line 25 through line 2, page 37.

Strike: "If" on line 25 through line 2, page 37 in its entirety.

(Subcommittee response to suggested amendment 19)

Amendment 21 would prevent a park dedication fee from being required if the subdivision is assessed a capital improvement fee or a fiscal impact fee.

REJECTED

22. Page 29, line 5 through line 21, page 33.

Strike: section 22 in its entirety

(Montana Association of Realtors)

Amendment 22 would eliminate the section providing for review of subdivision effects on critical resources.

ADOPTED

23a. Page 32, line 18 through line 5, page 33.

Strike: subsection (3) in its entirety

23b. Page 25, lines 5 and 6.

Strike: "for" on line 5 through "wildlife" on line 6

23c. Page 25, lines 9 through 20.

Strike: subsection (5) in its entirety

(Subcommittee response to suggested amendment 22)

Amendment 23 would eliminate review for effects on critical wildlife habitat on a case-by-case basis for subdivisions in areas without master plans or "mini" plans. Under this amendment, a governing body must adopt a qualified master plan or must designate critical resource areas for wildlife habitat in order to review subdivisions for effects on wildlife habitat.

REJECTED

24. Page 33, following line 21.

Insert: "(5) Notwithstanding the provisions of this section, a subdivision may not be reviewed for effects on critical wildlife habitat if the preliminary plat meets one of the following conditions:

(a) the subdivision plat provides for a planned unit development in which no more than 50% of the total area is planned for development (including lots, roads, buildings, yards, and parking areas) and at least 50% of the total area, having similar or greater wildlife habitat values to the 50% proposed to be developed, is designated as permanent open space, park land, or agricultural land that will not lie fallow during critical seasons; or

(b) the subdivision plat is accompanied by an enforceable designation (by deed, covenant running with the land, easement, or other equivalent instrument) of an equal or greater amount of adjacent or nearby land having similar or greater wildlife habitat values as

permanent open space, park land, or agricultural land that will not lie fallow during critical seasons."
(Richard Kalar, Corwin Springs)

Amendment 24 would allow a subdivider to make a permanent designation of 50% of his land and thus avoid review for effects on wildlife habitat.

ADOPTED 25a. Page 33, line 23.
Strike: "and"

25b. Page 33, line 24.
Strike: "or"

25c. Page 34, line 2.
Strike: "or"

25d. Page 34, line 4.
Strike: "or"

25e. Page 34, line 11.
Strike: "or"

25f. Page 25, line 2.
Strike: "and"

Amendment 25 would specify that subdivisions are to be reviewed for effects on agricultural water users, not agricultural and water users.
(Subcommittee)

REJECTED 26. Page 34, line 9.
Strike: "require"
Insert: "make reasonable suggestions that"
Strike: "to"
(Montana Association of Realtors)

Amendment 26 would allow the subdivision review authority to make reasonable suggestions on minimizing conflicts with agricultural water users, but would not allow the authority to require that the subdivision be designed to minimize such conflicts.

REJECTED 27. Page 34, lines 12 through 16.
Strike: section 24 in its entirety
Insert: "Where local governing bodies do not prepare and adopt a capital improvement program or establish a fiscal impact area, they shall have authority to exact reasonable fees or dedications from subdividers. The fees must be used to mitigate impacts of the development on community services and facilities, such as roads, water supply systems, sewage disposal systems, storm drainage systems, schools, police protection, fire protection and other public facilities or services, thus preventing excessive expenditures of public funds for the supply of these facilities or services."
(Montana Association of Counties; Montana Association of Planners)

Amendment 27 would allow governing bodies to exact fees for capital costs in the absence of a capital improvement program.

ADOPTED

28. Page 34, line 23.

Following: "facilities"

Insert: ", which shall include useful remaining life estimates, debt retirement considerations, and the concept of future value of present dollars"

(Montana Association of Realtors)

Amendment 28 provides additional criteria to be used in the development of a capital improvement program and fee.

REJECTED

29. Page 35.

Following: line 13

Insert: "(b) Notwithstanding subsection (3) (a), in developing a capital improvement program the governing body shall clearly demonstrate and substantiate incremental capital costs attributable to the newly created parcels in relation to the entire jurisdictional area."

Renumber: subsequent subsections

Amendment 29 provides additional criteria to be satisfied in the development of a capital improvement program and fee.

(Montana Association of Realtors)

ADOPTED

30. Page 36, line 2.

Strike: "whether"

Insert: "that"

(Montana Association of Realtors)

Amendment 30 provides stronger direction that fees exacted are to be used for capital improvements related to the proposed subdivision.

REJECTED

31a. Page 36, line 6.

Strike: "and"

31b. Page 36, line 8.

Strike: "."

Insert: ";

31c. Page 36.

Following: line 8

Insert: "and (vi) a fee is not necessary or payable until the impact is created."

(Montana Association of Realtors)

Amendment 31 would specify that a capital improvement fee may not be collected until the impact is created.

ADOPTED

32. Page 38, line 21.

Following: "(e)"

Insert: "minimum"

(Montana Association of Realtors)

Amendment 32 indicates that standards are to be minimum standards.

REJECTED 33. Page 38, line 23.
Following: "utilities;"
Insert: "these standards must be written to provide maximum flexibility
in design."
(Montana Association of Realtors)

Amendment 33 would require subdivision design standards to have maximum flexibility.

MODIFIED 34a. Page 41, line 20.
AND Following: "subdivision;"
ADOPTED Insert: "and"

34b. Page 41, lines 23 through 25.
Strike: "; and (3) additional relevant and reasonable information as
may be required by the governing body"
(Montana Association of Realtors)

Modification: Page 41, line 25.
Following: "body"
Insert: "in its regulations"

Amendment 34 would require that any additional information required in the environmental assessment must be listed in the local governments regulations.

REJECTED 35a. Page 65, line 17.
Strike: "shall"
Insert: "may"

35b. Page 65, line 18.
Strike: "shall"
Insert: "may"
(Montana Association of Realtors)

Amendment 35 would allow city or county governments the option of requiring that subdivisions conform to a qualified master plan.

REJECTED 36. Page 69, lines 20 through 25.
Strike: "and rules that address any cumulative effects of subdivision
development on water quality"
(Montana Association of Realtors)

Amendment 36 would remove specific reference to cumulative effects on water quality from the Sanitation in Subdivisions Act.

MODIFIED 37a. Page 81, line 25.
AND Strike: "September 30, 1987"
ADOPTED Insert: "June 30, 1989"

37b. Page 81.

Following: line 25

Insert: "New Section. Section 67. Effective date. This act is effective July 1, 1989."

(Montana Association of Counties)

Modification: Page 81, line 25.

Strike: "September 30, 1987"

Insert: "June 30, 1988"

Page 81.

Following: line 25

Insert: "NEW SECTION. Section 67. Effective date.

This act is effective July 1, 1988."

Page 4, line 19.

Strike: "October 1, 1987"

Insert: "July 1, 1988"

Amendment 37 would make the act effective July 1, 1988, and applicable to subdivisions filed after that date.

ZLEG2: HB 809A

ROLL CALL VOTE

LOCAL GOVERNMENT

COMMITTEE

DATE _____ BILL NO. 809 NUMBER _____

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

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not there

TALLY

6 11

Vonnie Evans
Secretary

Chairman

MOTION:

Rep. Ramirez table bill.
Rep. Brandewie table bill.
Motion Failed

Rep. Sales left a yes vote on the bill. Interpreted as no on holding.
Rep. Gould left a no vote " " " " " " " " yes " "