

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

March 11, 1987

The meeting of the Local Government Committee was called to order by Chairman Norm Wallin on March 11, 1987, at 12:30 p.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Gould and Rep. Ramirez who were excused but joined the meeting at a later time. Rep. Bulger and Rep. Whalen were absent. Rep. Whalen joined the meeting at a later time. Lee Heiman, Committee Counsel from the Legislative Council was also present.

CONSIDERATION OF SENATE BILL 316: Senator Les Hirsch, Senate District 13 and sponsor of the bill, stated SB 316 attempts to close a loophole in the law which allows state lands within 4 1/2 miles of a municipality to be exchanged without the criteria of allowing the land to be appraised into five-acre tracts prior to the exchange. Senator Hirsch said what they are doing in the bill is simply applying the criteria that is already applied to sales of state lands to the area of exchanges. Senator Hirsch had been advised from the Department of State Lands that most of the land that changes ownership is usually done by exchanges rather than by sales. If the criteria is not used for exchanges the Education Trust Fund does not get the highest and best value for the state lands. Senator Hirsch felt it only proper to describe that criteria under the exchange provisions as is done under the sale provisions.

PROPOSERS: None.

OPPOSITION: Tom Ebzery, Billings Attorney, stated he was appearing on behalf of Robert Nance and Tom Scott, homeowners from Billings, who were in opposition to SB 316. Mr. Ebzery stated Scott and Nance reside about 4 miles north of Billings and have acreage which they use to run horses and for other recreational uses. Mr. Ebzery stated they proposed under 77-2-203, an exchange of their private acreage on a 2 to 1 ratio for a state section of land. This was done three years ago. Mr. Ebzery stated there have been hearings before this and other proposals made by Scott and Nance before the land commission. He stated there has been some opposition voiced during hearings. A hearing was set for December on the exchange but was postponed.

Mr. Ebzery stated with SB 316 no private/state exchange will ever occur within 4 1/2 miles of a municipality because the state lands would be appraised as if they were lots. Private lands would be appraised on a normal basis. The requirements in 77-2-203 provide that lands must be of equal or greater value in order to make an exchange with state lands. He said this would require so much more private land and would place a ridiculous strain on the person who was trying to exchange. Mr. Ebzery stated it is clear that the bill is intended to stop or kill the Scott/Nance exchange. He said its effect will also be to kill all or a number of private state exchanges within the 4 1/2 miles of a municipality.

Mr. Ebzery stated his clients have pursued this exchange and have spent thousands of dollars to do so under a carefully defined statutory and administrative process. They believe a 2 for 1 ratio makes sense and benefits the state. He stated this decision should be made by the commissioner and the land board who are aware of the facts and the value of the land and not by the legislature through SB 316 which puts the exchange out of bounds. He said the bill sets a bad precedent and has wide ranging implications not only to his clients but the commissioner and the public who could benefit from such exchanges. He urged the committee to table or kill the bill.

Dennis Hemmer, Director Department of State Lands, stated he was giving testimony as neither a proponent or opponent. He presented written testimony to the committee and read from his testimony (Exhibit 1).

DISCUSSION (OR QUESTIONS) ON SENATE BILL 316: Rep. Brown had concerns relating to the rural areas of the state with the 4 1/2 mile limit. He said landfills are one reason that local governments exchange lands with the state. He asked Mr. Hemmer if he could provide information on how many of those kinds of exchanges go on in the state?

Mr. Hemmer replied the exchanges of landfills would occur two to three times per year. Exchanges for other uses by the cities and municipalities have not been that common because they will go for an easement or some other means of acquiring lands.

Rep. Sales commented it appears the attempt is for the state to get the most value out of its land. He said it has been changed so now the assessed values are based on an assumption rather than actually subdividing the land. He asked if this was correct?

Senator Hirsch replied that was correct. Rather than incurring the cost of a subdivision the bill asks that it be appraised as though it could have that possibility in order to get the highest value from the land. He stated under current law they can only appraise it as raw land value.

Rep. Sales asked if the land commission can be restricted from using what they think is the highest and best value for that land?

Senator Hirsch responded that is correct under the exchange provisions. He said under the sale provisions they can use the other criteria.

Mr. Hemmer responded current appraisals are done by looking at the highest and best use of the land. He stated a subdivision is a consideration in an appraisal if the land is adjacent to a currently developed area. He stated the farther out the land is the more the value declines until at some point it is valued as agricultural or something like that. Mr. Hemmer said typically this close in, there is a subdivision potential that is rolled into the appraisal.

Rep. Sales stated that this type of subdivision could be a detriment as well as an advantage to the land. He asked Mr. Hemmer if there was something in current law that restricts the land commission from getting the best price at the highest and best use for this ground?

Mr. Hemmer replied under a proper appraisal there is no way to appraise future value. He said future potential could be appraised and that is included.

Rep. Gilbert asked Senator Hirsch what the reason was for going from the 3 1/2 miles?

Senator Hirsch responded the zoning laws have been changed to 4 1/2 miles and the bill conforms with the zoning regulations that are now worked with.

Rep. Gilbert was concerned that because the land would have to be appraised as if it were subdivided that the state appraiser could revalue his land because of using like sales of the land in close approximation. He stated his land value then would shoot up arbitrarily because the state would mandate that the land be sold as subdivided even if was not. He asked if Senator Hirsch could see the concern of the average citizen whose lands might border the state lands?

Senator Hirsch replied that he wasn't certain that comparable sales were used in appraisal matters for the exchanges

of state lands. He said if that were true then it would be a concern.

In closing, Senator Hirsch stated the purpose of the bill was not to stop any exchanges of state lands for private land. He stated the origination of the bill came from former Senator Bill Mathers of Mile City who stated to him that the highest and best value for state lands was not being received given the exchange loophole and asked that it be corrected. Senator Hirsch stated speaking with Senator Max Conover, author of the provisions for the sale arrangement under 77-2-312, that Senator Conover stated that was not intended to be a loophole. He had inadvertently left out the criteria that should have applied to exchanges also. Senator Hirsch commented that Rep. Ramirez was quite familiar with the specific situation talked about around Billings and before the committee took executive action, he thought Rep. Ramirez would like to talk to the committee and inform them of those specifics.

DISPOSITION OF SENATE BILL 368: Senator Pete Story, Senate District 41 and sponsor of the bill, stated the bill is a committee bill adopted by the Senate Local Government Committee. He said there are exemptions to the state building codes. SB 368 adds to that list of exemptions mines, mine buildings and mine property regulated by the federal government.

PROPONENTS: John Fitzpatrick, Manager of Administration MT Tunnels Mining, Inc., a subsidiary of Pegasus Gold Corporation, stated they have been impacted by the regulations from the state in respect to construction of the facility and with mine safety in general. He said there are three agencies that regulate the construction of mine and mineral processing facilities. Mr. Fitzpatrick stated the largest and perhaps the most important is the Federal Mine Safety and Health Administration (MSHA) that works under the federal Mine Safety and Health Act of 1977. Their jurisdiction over mining and mining properties is very comprehensive. There is also a State Mine Inspection Bureau located in the Workers' Comp Division. They use a standard for regulating very similar to MSHA. The third agency that regulates and has only regulated since 1981 is the MT Building Codes Bureau which is in the Department of Commerce. Mr. Fitzpatrick stated prior to 1981 mines were not subject to building codes instructions or standards. In 1981 the definition of public place was stricken from the statutes and unless it was an exemption then it was included in the building code. He stated to their knowledge there was no intention to bring mines under the building codes. He felt it was just something that happened when they reconstructed the act.

Mr. Fitzpatrick stated the problem is three different agencies are inspecting them for much the same type of things and there is a duplication of regulations. He said they do incur financial costs even if just for time spent with the inspectors touring the facility. Mr. Fitzpatrick stated they had spent close to \$10,000 in building code fees. He said that the facility was acceptable by MSHA and the state mine inspector but was not acceptable to building codes. He said there was a dispute over the use of handrails in their facility. He passed out a letter which he had sent to Senator Crippen which described the handrail situation (Exhibit 2). He stated the handrail design at the MT Tunnels is used throughout the United States in mines and chemical facilities and is acceptable. He stated in Montana it is not acceptable because the state building codes have a different requirement for the spaces between the rails. Mr. Fitzpatrick stated in order to receive a variance from the state to use the original handrails they had to go to a contested case hearing. Mr. Fitzpatrick passed out photographs of mines and other places in the U.S. to the committee for their review. The pictures showed the interior of MT Tunnels and the construction involved in the facility. He said to replace and redesign the handrails as MT Building Codes required, would have cost an estimated \$120,000. He stated similar problems would have been faced at the Sunlight Mines.

Mr. Fitzpatrick said in their opinion the use of the MT Building Codes is inappropriate. He stated they feel they are adequately covered and supervised by MSHA. He said MSHA may not use the same type of standard in many instances as the building codes but they do have the authority under the act to shut down and vacate the premises in the case of a dangerous condition and order that the condition be corrected before allowing reopening (Exhibit 3). Mr. Fitzpatrick said that is a far more compelling standard for the money that would be lost than anything promulgated by MT Building Codes. He stated there has been some concern expressed by people in the construction industry about the application of the national electrical code. He stated MSHA uses the national electric code as their standard just as MT Building Codes does.

Ward Shanahan, Lobbyist Chevron Resources Corporation and Attorney for Golden Sunlight, presented the committee with testimony (Exhibit 4). He pointed out that the uniform building codes is a broad code that is designed to protect the general public walking in and out of public buildings and places where public access is afforded especially to children, elderly and disabled people. Mr. Shanahan stated that kind of construction is not being dealt with here. He said the people are required by the Mine Safety and Health

Act to be expressly educated in what they are suppose to do around the facility. They are given special shoes, special protective equipment, helmets, breathing apparatus, first aid kits and are taught about the dangers in an industrial facility. Mr. Shanahan stated when post office type standards are imposed on this kind of facility the costs increase substantially and it is more difficult to operate the facility. He felt the Mine Safety and Health Act and Occupational Safety and Health Acts adequately cover them.

Gary Langley, Executive Director of the MT Mine Association, stated the mining industry is not trying to avoid any regulations but are trying to avoid duplication and conflicts. He stated the mining association would appreciate support of the bill.

Kenneth Williams, Entech, a subsidiary of Western Energy Company, stated the other proponents had commented on the duplication of regulations. He stated even in a situation where changes are not required there is still an impact. Mr. Williams stated they recently built a safety building at Rosebud Mine. The total cost was about \$46,000 and the fee to comply with the state building codes was \$452, almost one percent of the cost. He stated in that case there was not any change in construction needed but the added review costs were also significant.

Jim Kembel, Administrator of the Business Regulation Division Department of Commerce, presented testimony to the committee (Exhibit 5).

OPPONENTS: Gene Fenderson, MT Building and Construction Trade Unions, stated the building trade unions have had a long-term stated policy to promote and protect the building codes for cities and counties across the nation. He said the original intent of the building codes were for safety of not only the construction workers but those who would work inside those buildings. He said they feel that those reasons still prevail today.

He pointed out that the people who testified on behalf of the bill represent large corporations. He said those owners and stockholders have a great deal invested in those properties and because of that they are done properly. He said the exemption for mines in the bill would also include those operators who may not have the track record as the Pegasus Gold Mine Operation and MT Tunnels and Golden Sunlight. Mr. Fenderson stated they believe that OSHA and MSHA are built for the safety of workers but they do not look at the structure of the buildings and how they are put together. For those reasons, he asked the committee to look at the bill very closely.

Bill Eagen, President of MT Conference of Electrical Workers and First Vice President of the MT Building Construction Trades, stated he has been involved with mining all his life. He gave his background in mining and construction for the committee. Mr. Eagen stated with this type of background he knew that the average mine operator, supervisor and engineer does not have the experience or technical know-how unless they have considerable previous background in the construction field. He said he knew this to be true because he has also gone into the electrical construction field and he gave his background in the electrical field.

Mr. Eagen stated the idea that OSHA and MSHA mine safety requirements will take care of the problems is a fallacy. He said construction itself is covered by OSHA and their work forces are covered by OSHA, even the electrical contractors. He stated OSHA never has anything to do with the actual building of the structure as far as requirements and proper installation. He said he was addressing just the electrical aspects. Mr. Eagen stated the actual structural mechanical, and electrical problems are usually covered up or out of sight as pertaining to the new erection. He commented that anyone in the mining industry or construction industry can honestly say that OSHA and MSHA laws do not cover those issues for concerns that SB 368 considers here today. He asked the committee to not pass SB 368. He stated he was more concerned with the electrical and mechanical end of the bill and stated that possibly there could be some amendments to those facts.

DISCUSSION (OR QUESTIONS) ON SENATE BILL 368: Rep. Brown stated the bill refers to Title 82, Chapter 4 and asked if that covers hardrock as well as coal and the other things in the Chapter?

Gary Langley replied that he assumed it did.

Mr. Fitzpatrick responded to the question that Chapter 4 is all mines except small mines. He said Mr. Fenderson raised a question about the small operator. Mr. Fitzpatrick stated the bill does not exempt them.

Rep. Brown stated he was curious as to whether this is a problem with Golden Sunlight?

Mr. Langley commented he could furnish Rep. Brown with testimony from the Senate hearing from Golden Sunlight.

Rep. Hansen stated Mr. Kembel's testimony pointed out that there would be no building inspection for structures, foundation or fire since OSHA only addresses other things

such as guardrails and so on. She asked who then would inspect it and how often would OSHA come to inspect the buildings?

Mr. Fitzpatrick stated there needed to be a correction on Mr. Kembel's testimony. He said mines are handled exclusively by MSHA. OSHA does not come on the property. He stated MSHA comes on the property sometimes twice a month to do inspections that can take three or four days. He said they also do a follow-up investigation on the entire property if an accident occurs. Mr. Fitzpatrick stated they do look at the facility as it is being constructed. He said they use documents like the national electrical code and even use the building codes as a reference document in inspection of the facility.

Rep. Hansen stated that would really then leave portions uninspected.

Mr. Fitzpatrick responded not as far as they were concerned.

Rep. Darko commented she has had some experience with commercial buildings in her area in regards to the building codes. She said it seems that those people that do the building code inspections are very highly trained and could not believe that MSHA inspectors have that kind of technical expertise to inspect those kinds of things the building code inspectors do. She asked for a response.

Mr. Fitzpatrick stated he would disagree and felt MSHA is a more appropriate inspection because of having specific experience with the mining industry. He said they are familiar with the facilities, the process, piping systems and electrical systems. He commented that when they were involved in a contested case hearing, the building code inspector admitted that it was the first time he had ever dealt with a mining facility. Mr. Fitzpatrick said in his judgement, the people at building codes are very capable of handling schools, hospitals, shopping centers, residential facilities and things of that nature but they do not have the expertise in this state to handle mining facilities.

Rep. Squires asked Gene Fenderson if he felt that MSHA has the technical skill for these inspections?

Mr. Fenderson stated MSHA and OSHA do not normally have the expertise to do structural bearing walls and that type of inspection on structures. He stated they get into the personal safety of employees or other people that may go into a building.



Rep. Squires asked what would happen if there was an addition or correction, or if something went wrong with the electrical facilities? She asked who would be responsible and would protect the worker when he is employed in this situation?

Mr. Fitzpatrick responded it is the companies' responsibility for providing a safe working environment. They did not feel it possible to build and operate a working environment that would meet MSHA and OSHA certification and build an unsafe structure. He said the two are incompatible. Mr. Fitzpatrick stated the state building inspector did not challenge their designs or major structural components but hit them with things such as guardrails, fire doors, and enclosing stairwells in a certain manner.

Rep. Squires stated her understanding is that the building code inspector would be responsible for those particular things. She asked Mr. Fitzpatrick if he felt that was not an important factor?

Mr. Fitzpatrick replied he considered them very important factors but did not feel that the state building codes should override the MSHA codes. He said MSHA codes have been designed and work in 50 states for mining facilities. He said they thought the building code is not appropriately placed. He said they accept the regulation but think the regulation should be from a specialist.

Senator Story in closing showed the committee the book of regulations and stated they were very thick and very detailed. He read regulations dealing with electricity and on locating joists. He thought the public and the people that work in these places are protected by these codes. He said the bill tightens up the rules so these groups regulated by MSHA do not get contradictory regulations from a state agency. He stated mines that are not covered in the section are still under the regulation of state. Senator Story commented major industry for the state is being talked about and the bill will give them some financial assistance and not tie them up in unnecessary types of red tape.

#### EXECUTIVE ACTION

DISPOSITION OF SENATE BILL 367: Rep. Kitselman moved that SB 367 BE CONCURRED IN.

Rep. Brandewie moved to AMEND SB 367 with the amendments proposed by the planners (Exhibit 6).

Rep. Hansen commented the amendments would ruin the bill.

Rep. Brandewie withdrew his motion to adopt the amendments.

Rep. Sales moved as a substitute motion that SB 367 BE NOT CONCURRED IN. He said he could not see why the legislature should write things into law that tells the local governments how to zone in a particular area. He said the system they are using works very well. If the local governments only want to allow certain types of uses then they hold public hearings where the people of the community are heard. A determination is made at the local level. Rep. Sales said that is exactly where it belongs.

The question was called and the motion failed.

The committee reverted back to Rep. Kitselman's motion that SB 367 BE CONCURRED IN. The question was called and the motion carried with Rep. Sales and Rep. Gilbert voting no.

DISPOSITION OF SENATE BILL 368: Rep. Kitselman moved that SB 368 BE CONCURRED IN. The question was called and the motion carried with Rep. Brown and Rep. Squires voting no.

DISPOSITION OF SENATE BILL 28: Rep. Brown moved that SB 28 BE CONCURRED IN.

Rep. Sales stated with a charter form of government, Butte-Silver Bow could have passed a regulation to take care of the problem. He said the city should be responsible for what happens in the street. Rep. Sales felt it ridiculous for the legislature to take an agreement between a city and a private service and change the rules. He said this is not a legislative problem but a problem because of having a private water system. He said the bill is a terrible piece of legislation and hoped the committee voted against it.

Rep. Brandewie moved to AMEND SB 28, page 1, line 22, after "for", insert "labor costs".

He said the property owner would then pay for the labor costs, pipe and other supplies.

Rep. Pistoria stated he was for the bill 100 percent because he knows what they are going through. He asked if Senator Lynch mentioned labor too.

Rep. Brandewie stated Senator Lynch did not want to pay for the labor cost. Rep. Brandewie stated it is the homeowners responsibility to pay for the labor from the main to the house and if they are going to have the company doing it they ought to pay for the labor. He stated if the bill passed, the company should not be forced to pay the labor costs on the customers' line.

The question was called on the amendment. A roll call vote was taken on the motion to AMEND SB 28. The motion failed 5 to 9.

The question was called on Rep. Brown's motion that SB 28 BE CONCURRED IN. A roll call vote was taken and the motion carried 9 to 7.

DISPOSITION OF SENATE BILL 135: Rep. Brandewie moved that SB 135 BE NOT CONCURRED IN.

Rep. Brandewie stated the bill was simply not needed for a lot of reasons. He read from a letter from Lake County Wester Surveying to the committee. He said the bill talked about adding land to an existing subdivision that has already been approved not of the complicated process of creating a subdivision. He stated the bill would not create much of a problem this year but as time goes by it will be more and more difficult to keep track of what is happening to this land. Rep. Brandewie stated there were conditions put on that subdivision at the beginning and if there will be changes with that subdivision then it should be looked at again. Rep. Brandewie stated his main concern in addition to that was Senator Bishop indicated there would be no problem for realtors or anyone else dealing with land. He stated no one is left out in a lawsuit when there is confusion over a piece of property. He stated the bill would introduce confusion into the recordkeeping. He stated in order to avoid paying a small amount of money in filing an amended plat, the public will be saddled with recordkeeping that over a period of time would become onerous and expensive.

Rep. Pistoria felt the bill was a good bill because of not only what he has been involved in but others he knew.

The question was called on the motion that SB 135 BE NOT CONCURRED IN. The motion carried with Reps. Gould, Kitselman, Pistoria, Ramirez and Whalen voting no.

DISPOSITION OF SENATE BILL 141: Rep. Dave Brown moved that SB 141 BE CONCURRED IN.

Rep. Kitselman stated what disturbed him was that MACo presented a need for a management tool. He said he still would go back to I27. He said the way this works the 55 mills are earmarked for specific uses. He said I27 was almost a mandate by the people; I105 is. He stated the people have had enough taxes and although there is some merit with the flexibility, by passing the bill there would be a 10 mill increase to the county taxpayers.

Rep. Hansen stated in her county they cannot get the county commissioners to levy the mills that are mandatory now. She did not think the county commissioners would levy the 55 mills because they have to answer to the people more so than the legislators do.

Rep. Brandewie stated in Lake County the voters voted for C127. Flathead County was the same and other counties in the state did the same thing. He said his voters do not want more taxes because their taxes in relation to their income are too much. He stated he could not support the bill as a blanket 55 mills because he could see it raising about 10 mills in his county.

Rep. Hoffman stated the true purpose of the bill was not to give the commissioners more taxing authority but to give more flexibility within their budgets. He suggested an amendment that MACo agreed to. The amendment would state that the total aggregate mill levy of the county general fund would be certified the same way all other mill levies are certified so that in one year they cannot spend over 105 percent of what they had spent the previous year. He moved the amendment.

He explained every year the area assessor is required to certify every mill levy the county commissioners have. He said they take the new taxable value and determine what the mill levy would be in order to raise the same amount of money that was raised the previous year within the same fund. He said they are allowed to increase that by 5 percent. If the commissioners exceed this certified levy they are required to hold public meetings. Rep. Hoffman stated this is existing law. He commented with the amendments increased spending would be controlled but the county commissioners would still be given the flexibility within the general fund that they are asking for.

Rep. Kitselman commented on page 2, lines 1-8 of the bill, that the funds are set up specifically earmarking certain areas. He said the DD facility levy has a specific levy to take care of the DD facilities. He stated the bill allows for funds to be moved if the county commissioners decide not to fund the DD facilities. He felt it important that these specific needs not be short changed by shifting the funds around.

Rep. Hoffman stated these are not required levies that are listed but merely funds that have caps on them. The commissioners cannot exceed the caps that are specified in the law. If the county commissioners decide to not fund the DD, they can do that now. They just cannot exceed a certain mill levy if they do fund them.

Rep. Kitselman stated by allowing a 55 all purpose mill levy, if the county commissioners decide to levy the maximum 55 mills there is no guarantee under the proposed legislation that DD will be funded or recreation or the county fair or even weed control if they decide to fund say the poor fund.

Rep. Hoffman responded that this is true but there is no guarantee that they will be funded as things are now.

Rep. Kitselman said that currently if they don't levy this specific cap then they do not levy it for that program. Under the new proposed legislation if these particular programs are not funded the county commissioners are granted additional taxing authority that they may not be levying at this time.

Rep. Hoffman stated if these mill levies are certified, than the legislature is not granting more taxing authority to the commissioners only more flexibility in how they can spend the money.

Rep. Sales commented that the amendment is a good amendment. He said they could only increase what they spend in the whole area the previous year by 5 percent without a public hearing. He said the amendment builds a second cap for the all purpose levy.

The question was called on the amendment. The motion carried with Rep. Dave Brown voting no.

Rep. Dave Brown moved that SB 141 BE CONCURRED IN AS AMENDED. The question was called and the motion carried with Reps. Brandewie, Gould and Kitselman voting no.

DISPOSITION ON SENATE BILL 274: Rep. Sales moved that SB 274 BE CONCURRED IN. He moved the amendments (Exhibit 7).

Rep. Sales explained that the amendments require a publication of the summary of the significant findings and he would like to change that to not exceed 800 words. He stated for years there has been concern with the cost of the audits and publication of the audits. Changes in the law have allowed for annual audits to not be required and publishing to be cut down. He said when just the auditors' comments were required to be published it was felt to be the right thing to do. He said the auditors' comments are 70 to 80 percent meaningless so by having the auditor prepare a summary of the significant findings, it should satisfy the public and the needs of the public notice.

Rep. Pistoria asked if anyone had spoken with the press or George Moore.

Rep. Sales commented he did not discuss it with the press only with the local government officials and representatives.

The question was called on Rep. Sales's amendments. The motion carried unanimously.

Rep. Brandewie moved that SB 274 BE CONCURRED IN AS AMENDED. The question was called and carried with Rep. Dave Brown and Rep. Pistoria voting no.

DISPOSITION OF SENATE BILL 309: Rep. Brandewie moved that SB 309 BE CONCURRED IN. The question was called and the motion carried unanimously.

DISPOSITION OF SENATE BILL 316: Rep. Dave Brown moved to TABLE SB 316. The motion carried unanimously.

DISPOSITION OF SENATE BILL 382: Rep. Brandewie moved that SB 382 BE NOT CONCURRED IN.

Rep. Sales stated when the bill was first heard he was opposed to it also but thought with the amendments Senator Jergeson proposed it was a reasonable bill and in line with what was done in the taxing area. He said he would like to see it amended and passed.

Rep. Dave Brown stated Jerry Anderson from Billings was authorized by the city to say that with the amendments they did not have any objection to the bill.

Rep. Dave Brown moved to adopt the amendments. The question was called and the motion carried unanimously.

Rep. Sales moved as a substitute motion that SB 382 BE CONCURRED IN 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 2:50 p.m.

  
Rep. Norm Wallin, Chairman

## DAILY ROLL CALL

LOCAL GOVERNMENT

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date \_\_\_\_\_

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

March 11

19 87

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 274

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

Rep. Norm Mallin

Chairman

1. Title, line 6.

Following: First "TO"

Insert: "A SUMMARY OF SIGNIFICANT FINDINGS AND"

2. Page 1, line 17.

Following: "include"

Insert: "a summary of significant findings not to exceed 800 words prepared by the auditing agency or firm, and"

3. Page 1, line 24.

Following: "2-7-503"

Insert: "within (1)(c) through (1)(h) of 2-7-503"

(Rep. Sales)

THIRD

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# STANDING COMMITTEE REPORT

March 11

19 87

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

**SB 135**

report \_\_\_\_\_

☐ do pass  
☐ do not pass

☐ be concurred in  
☒ be not concurred in

☐ as amended  
☐ statement of intent attached

Rep. Nore Wallin

Chairman

**THIRD**

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color

# STANDING COMMITTEE REPORT

March 11

19 37

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 28

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

Rep. Norm Wallin

Chairman

(Rep. Dave Brown)

THIRD

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color

# STANDING COMMITTEE REPORT

March 11

19 27

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 141

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

Rep. Norm Wallin

Chairman

1. Page 1, line 19.

Following: "exceed"

Insert: "the lesser of: (a)"

Following: "dollar"

Insert: ";or"

(b) 105% of the number of mills levied under the all-purpose levy or of the total number of mills levied pursuant to the levies set forth in [section 2] in the previous year"

*7/10*  
(Rep. Hoffman)

THIRD reading copy ( SLUL )  
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# STANDING COMMITTEE REPORT

March 11

19 87

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 309

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

Rep. Norm Wallin

Chairman

(Rep. Jan Brown)

THIRD

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reading copy ( )  
color

# STANDING COMMITTEE REPORT

March 11

19<sup>87</sup>

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 367

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

Rep. Norm Wallin

Chairman

(Rep. Stella Jean Hansen)

THIRD

BLUE

reading copy ( )  
color

# STANDING COMMITTEE REPORT

March 11

19 37

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 358

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

Rep. Norm Wallin

Chairman

(Rep. Kitzelman)

THIRD

BLUE

reading copy ( color )

# STANDING COMMITTEE REPORT

March 11

19 37

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 382

☐ 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 5.

Strike: "ALL"

Insert: "CERTAIN"

2. Page <sup>1</sup>2, line 14.

Strike: "All"

Insert: "Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal"

3. Page 1, line 16.

Strike: "irrigation district,"

4. Page 1, line 17.

Strike: "is"

Insert: "are"

5. Page 2.

Following: line 22

Insert: "(3) This act does not apply to any special assessments for the repayment of bonded indebtedness incurred before the effective date of this act if the bonds were issued on representations that the property exempted from special assessments by this act would be liable for repayment of the bonded indebtedness."

(Rep. Spaeth)

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color

# ROLL CALL VOTE

LOCAL GOVERNMENT COMMITTEE  
 DATE 3-11-87 BILL NO. SB 28 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 Absent		
REP. PAULA DARKO		X
REP. BOB GILBERT		X
REP. BUDD GOULD		
REP. LARRY GRINDE	X	
REP. STELLA JEAN HANSEN		X
REP. ROBERT HOFFMAN	X	
REP. LES KITSELMAN	X	
REP. PAUL PISTORIA		X
REP. JACK RAMIREZ		
REP. WALTER SALES	X	
REP. CAROLYN SQUIRES		X
REP. TIMOTHY WHALEN		X

TALLY 5 9

Vonnie Evans Rep. Norm Wallin  
 Secretary Chairman

MOTION: Rep. Brandewie moved to AMEND SB 28  
page 1, line 22.  
The motion failed.



# ROLL CALL VOTE

LOCAL GOVERNMENT

COMMITTEE

DATE 3-11-87 BILL NO. SB 28 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 Absent		
REP. PAULA DARKO	X	
REP. BOB GILBERT		X
REP. BUDD GOULD Proxy	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 Proxy		X
REP. WALTER SALES		X
REP. CAROLYN SQUIRES	X	
REP. TIMOTHY WHALEN	X	

TALLY

9

7

Vonnie Evans  
Secretary

Rep. Norm Wallin  
Chairman

MOTION: Rep. Dave Brown moved that SB 28 BE CONCURRED IN.

The motion carried.

DEPARTMENT OF STATE LANDS  
TESTIMONY ON SENATE BILL 316

(March 11, 1987, Room 312 F, House Local Government Committee)

The Department of State Lands neither supports nor opposes Senate Bill 316. Senate Bill 316 as presently written requires that in order for an exchange of state lands to be executed within the city limits of any municipality or within 4 1/2 miles of such limits, the land must be appraised as if it were subdivided into lots or tracts of ~~more~~ more than five acres. This is a change from the original bill which would have required that the land first be subdivided before it be exchanged. The actual effect of the bill is that land will have to be subdivided before it is exchanged or sold. Few parties would be willing to go through with an exchange when the subdivision has not actually occurred.

The Department does have a concern. The most frequent party in exchanges within the 4 1/2 mile limit has been local government. Most of these exchanges have been for landfills. The committee may wish to exempt local government from the 4 1/2 mile requirement for exchanges.

This is a policy decision that is rightly made by the legislature. However, the decision should be made as one of policy and not one of reaction. The Department would be happy to answer any questions that it can on this bill.



**PEGASUS GOLD CORPORATION**  
**Montana Tunnels Mining Inc.**

February 12, 1987

Sen. Bruce Crippen  
Chairman  
Senate Local Government  
State Capital Station  
Helena, MT 59601

Dear Sen. Crippen:

This letters is to request the consideration of the Senate Local Government Committee in drafting a bill to exempt mines and buildings on permitted mine property from the Montana Building Code. At present, mine and mineral process facilities are subject to regulation under the Montana Building Codes Act, Montana Mine Safety Act, and the Federal Mine Safety And Health Act.

Background

Prior to 1981 mines and mineral processing facilities were not subjected to the Montana Building Code. In that year, the Act was revised by deleting reference to "public places". As a consequence, all structures, public and private, were made subject to the building code unless specifically exempted by section 50-60-102 MCA. There is not evidence from the record that the 1981 building code revision specifically sought to bring mine and mineral processing facilities under the Act.

Problem

Three agencies using two separate standards for evaluating building and equipment safety now regulate the construction of mine and mineral processing facilities. The Federal Mine Safety And Health Administration (MSHA) and Montana Mine Safety Bureau use a standard developed by MSHA and administered through the Code of Federal Regulation (CFR, Volume 30, Parts 0-199). The Montana Building Codes Bureau administers the Uniform Building Code. The two standards either duplicate or conflict with one another and in the process subject firms like Montana Tunnels with regulatory impediments that can be difficult to resolve. For example,

Montana Tunnels was designed by Wright Engineers Limited, world leaders in the design of mining and metallurgical facilities. For Montana Tunnels, Wright specified a handrail design that is considered to be the standard for the industry with a top rail approximately 40 inches from the ground, a toe plate, and a guard rail half way between the toe plate and top rail. The spacing between the guards is about 16 inches. The proposed design is available "off the-shelf" in relatively inexpensive, prefabricated panels. That design is used in all 50 states and approved by both MSHA and the Montana Mine Safety Bureau. The proposed handrail design does not meet specifications of the Montana Building Code. It requires handrails with a spacing between guards not to exceed 12 inches. The State had no evidence to show that handrails with a 12 inch spacing were superior to or safer than handrails with 16 inch spacing.

Montana Tunnels and the Colden Sunlight Mine requested a variance from the building code and were granted same after winning a contested case hearing. Had we lost the case this firm would have been required to reorder and/or refabricate handrails with an increase in cost of approximately \$ 115,000.

#### Effect of Proposed Bill

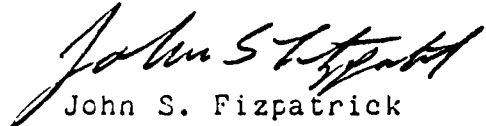
Attached please find a draft of the proposed legislation. As drafted, mines and building's located on mine properties that have been permitted under Title 82, Chapter 4 MCA but subject to inspection by MSHA would be exempt from the State building code. The effect of the legislation is as follows:

1. It will eliminate one layer of regulation. Buildings located on mine property would continue to be inspected and subject to regulation by the Montana Mine Safety Bureau and MSHA.
2. It will place mine safety regulation in the hands of agencies with specific experience and expertise in mine design, construction, and operation. The Montana Building Codes Bureau is staffed by dedicated, straightforward, and cooperative individuals but their experience is predominately with commercial and residential construction, and not with metallurgical facilities.

3. It will not disrupt the State Building Code program nor will it shift the code or inspection responsibility to local government. Regulation will continue at the Federal level with support from the Montana Mine Safety Bureau.
4. It will expedite construction of mine and metallurgical facilities and reduce their cost.
5. It returns both the mining industry and state of Montana to a regulatory relationship that existed prior to 1981. There is not evidence that the application of the state building code to mine and mineral processing facilities since that date has had one bit of positive effect on the health, safety, or welfare of mine employees.

Thank you for your time, help, and consideration.

Very truly yours,

  
John S. Fitzpatrick  
Manager of Administration

JSF:pap  
enc.

(k) In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

### CITATIONS AND ORDERS

**Sec. 104.** (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an operator of a coal or other mine subject to this Act has violated this Act, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, he shall, with reasonable promptness, issue a citation to the operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act.

(b) If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) that a violation described in a citation issued pursuant to subsection (a) has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(c) The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal or other mine subject to an order issued under this section:

(1) any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the Secretary, to eliminate the condition described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, qualified to make such mine examinations or who is accompanied by such person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

(4) any consultant to any of the foregoing.

(d)(1) If, upon any inspection of a coal or

other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) until such time as an inspection of such mine discloses no similar violations. Following an inspection of such mine which discloses no similar violations, the provision of paragraph (1) shall again be applicable to that mine.

(e)(1) If an operator has a pattern of violations of mandatory health or safety standards in the coal or other mine which are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards, he shall be given written notice that such pattern exists. If, upon any inspection within 90 days after the issuance of such notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine health or safety hazard. The withdrawal order shall re-

INDEX	3
DATE	3-11-8
BB	368

ceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within 30 days after issuance of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such 30-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 105, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the operator named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 110, in addition to invoking any other available remedies.

(c) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Commission or the Panel.

### PROCEDURES TO COUNTERACT DANGEROUS CONDITIONS

**Sec. 107.(a)** If, upon any inspection or investigation of a coal or other mine which is subject to this Act, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 104 or the proposing of a penalty under section 110.

(b)(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.

(2) Upon the conclusion of an investigation pursuant to paragraph (1), and an opportunity for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (c) of section 104 to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(c) Orders issued pursuant to subsection (a) shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger and a description of the area of the coal or other mine from which persons must be withdrawn and prohibited from entering.

(d) Each finding made and order issued under this section shall be given promptly to the operator of the coal or other mine to which it pertains by the person making such finding or order, and all of such findings and orders shall be in writing, and shall be signed by the person making them. Any order issued pursuant to subsection (a) may be modified or terminated by an authorized representative of the Secretary. Any order issued under subsection (a) or (b) shall remain in effect until vacated, modified, or terminated by the Secretary, or modified or vacated by the Commission pursuant to subsection (e), or by the courts pursuant to section 106(a).

(e)(1) Any operator notified of an order under this section or any representative of miners notified of the issuance, modification, or termination of such an order may apply to the Commission within 30 days of such notification for reinstatement, modification or vacation of such order. The Commission shall forthwith afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, vacating, affirming, modifying, or terminating the Secretary's order. The Commission and the courts may not grant temporary relief from the issuance of any order under subsection (a).

(2) The Commission shall take whatever action is necessary to expedite proceedings under this subsection.

### INJUNCTIONS

**Sec. 108.(a)(1)** The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal or other mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent—

(A) violates or fails or refuses to comply with any order or decision issued under this Act,

NAME: Ward A. Shanahan

BILL NO. SB 368

ADDRESS: 301 First National Bank Building, Helena, MT

WHOM DO YOU REPRESENT: Chevron Corporation

SUPPORT

Dear Chairman and Members of the Committee:

Chevron Resources and Stillwater Mining Company strongly support SB 368.

The imposition of Montana Building Code standards to an industrial facility is inappropriate and conflicts with other existing law.

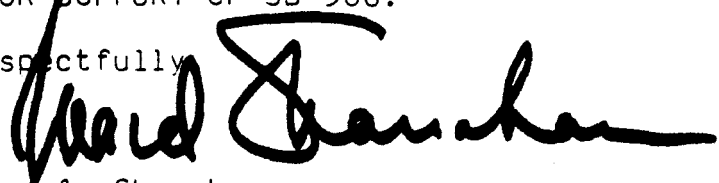
Industrial facilities, and in particular mining facilities, are regulated by the Mine Safety and Health Act (MSHA) and the Occupational Safety and Health Act (OSHA). It is inappropriate to impose upon an industrial facility "public access concepts which were designed for buildings into which the public is invited."

The public is not invited into a mining facility on a day-by-day basis. MSHA and OSHA are designed to provide worker safety in industrial areas where workers are required to be given special training to protect themselves, special equipment to protect their bodies and the work place is designed to afford health safety and still get the job done in the facility.

An industrial facility therefore does not require the additional protection required for members of the public in various states of health, suspecting and unsuspecting, who are allowed to wander at will, in and out of public buildings. To require the industrial owner to provide those extra precautions necessary to protect the casual visitor is both unnecessary and burdensome.

WE WOULD APPRECIATE YOUR SUPPORT OF SB 368.

Respectfully,



Ward A. Shanahan  
Chevron Corporation  
301 First National Bank Building  
P.O. Box 1715  
Helena, MT 59624  
Tele: (406)442-8560



DATE 3-11-87  
55 368

WITNESS STATEMENT

NAME JIM KEMPF BILL NO. 368

ADDRESS Business Registration Division DATE 3-11-87  
DOC

WHOM DO YOU REPRESENT? DOC

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

<sup>Information</sup>  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Attached.

TESTIMONY OF W. JAMES KEMBEL  
BUSINESS REGULATION DIVISION - DEPARTMENT OF COMMERCE

SB 368

AN ACT TO AMEND THE APPLICABILITY OF THE MONTANA BUILDING CODE TO EXCLUDE MINES AND BUILDINGS ON MINE PROPERTY REGULATED UNDER TITLE 82, CHAPTER 4

As drafted the bill will leave the department with a manageable program.

The department wishes to note that even though the bill is workable there is a need to clarify some points. The intent of the proposed legislation is to eliminate a duplication of effort concerning structures under the regulation of the Federal Mine Safety and Health Act and the states inspection program.

The OSHA inspection program, whether at the state or federal levels, is solely for the protection of the employees from direct work hazards and does not concern itself with the impact the building structure itself has on the safety of the building's occupants.

The code enforcement program of the state is concerned with the adequacy of the building's foundation and structural system, the fire resistance of the building based on the use housed therein and the size of the building, the ventilation of the building to maintain healthy air, adequate restroom facilities, adequate exiting, safe electrical system to prevent fire and shock hazards and a number of other safety concerns.

The OSHA inspection program is concerned with such things as safe ladders, guardrails, slipping hazards, hard hats and other direct work related items.

If anything the two inspection programs are complimentary rather than duplicative. With the passage of this legislation there will be a number of large office and other plant facilities that will go without inspection except for those standards of OSHA. The buildings at mine sites are no different than those type structures at other industrial facilities that we now cover and would continue to cover should this legislation pass.

In closing we would note that Sec. 50-60-203, MCA makes the department the sole state agency for the adoption of standards relating to building construction.

1. Page 1, line 14  
Following: "youth group home",  
Insert: "licensed and"
2. Page 1, line 17  
Following: "persons",  
Insert: "where licensed or registered as required by law"
3. Page 1, line 18  
Following: "home",  
Insert: "or facility"
4. Page 1, line 24  
Following: "The"  
Insert: "homes and"
5. Page 2, line 3  
Strike: "the-department-or"
6. Page 2, line 3  
Strike: "a"
7. Page 2, line 7  
Strike: "or-a-day-care-home-serving-12-or-fewer-children"
8. Page 2, line 10  
Following: "home",  
Insert: "or facility"
9. Page 2, line 11  
Strike: "subsection-(1)"  
Insert: "subsections (1) and (2)"
10. Page 2, lines 11-17  
Strike: "provided-such-home-is-licensed-by-the-department-of-health-and  
environmental-sciences-and-the-department-of-social-and-re-  
habilitation-services---No-city-or-county-may-require-a-conditional  
use-permit-in-order-to-maintain-a-day-care-home-registered-by-the  
department-of-social-and-rehabilitation-services."

*Amended*  
 INTRODUCED BY *LD 1218*

BY REQUEST OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLASSIFY FAMILY AND GROUP DAY-CARE HOMES AS A RESIDENTIAL USE OF PROPERTY FOR THE PURPOSE OF ALL LOCAL ORDINANCES; AMENDING SECTION 76-2-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, youth group homes, and community residential facilities, and day-care homes to zoning. (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons, where licensed or registered as required by law, is considered a residential use of property for purposes of zoning if the home provides care on a licensed and or facility about a day basis.

(2) A family day-care home or a group day-care home regulated by the department of social and rehabilitation services under Title 50, chapter 4, part 5, is considered a residential use of property for purposes of zoning.

(3) The homes and facilities listed in subsections (1)

and (2) are a permitted use in all residential zones.

including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of ~~the department or~~ any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons.

(3)(4) Nothing in this section shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home or facility pursuant to the provisions of this section subject to and 2 ~~the provisions of this section~~ ~~and the department of social and environmental services and the department of health~~ ~~in city and county may require a conditional use permit to order to maintain a day-care home~~ ~~regulated by the department of social and rehabilitation services~~

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

End

PROPOSED AMENDMENTS TO SB-274

Title: line 6, following "to" insert, "a summary of significant findings and"

line 19, following "include" insert, "a summary of significant findings not to exceed ~~400~~ words prepared by the auditing agency or firm, and" <sup>800</sup>

line 23, insert, "within (1) (c) through (1) (h) of 2-7-503

## LOCAL GOVERNMENT

BILL NO. SB 368

DATE March 11, 1987

SPONSOR Senator Story

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## LOCAL GOVERNMENT

BILL NO. SB 316

DATE March 11, 1987

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

March 6, 1987

Representative Wallin,

As a resident of Boyman, a former family home child care provider and a parent, I am very concerned about the effect of restrictive zoning laws on the availability of quality day care.

Registered home providers are supplying a very necessary service to their communities, working long hours for little pay and enabling parents to contribute in the work force, worry free.

However, many cities are now asking these women to apply for conditional use permits costing hundreds of dollars, put in paved parking spaces and turn-around driveways that could cost thousands, on incomes which net little beyond costs.

In Boyman, at this time, only a handful of registered family and group homes could meet the city zoning requirements. If the city were to repeal the regulations which they have instituted, most of the homes