

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

March 16, 1987

The meeting of the Local Government Committee was called to order by Chairman Norm Wallin on March 16, 1987 at 1:00 p.m. in Room 312-F of the State Capitol.

All members were present with the exception of Rep. Jan Brown who was absent. Lee Heiman, Committee Counsel from the Legislative Council was also present.

CONSIDERATION OF SENATE BILL 288: Senator Harry McLane, Senate District 42 and sponsor of the bill, stated the bill is to clarify the applicability of the town meeting form of government. He said it was requested by former Representative and Senator Pat Ryan of Cascade and the other Cascade county commissioners. He stated as the bill reads now, the town meeting form of government may be adopted only by incorporated cities or towns of less than 2,000 people. He stated a situation arose in Cascade County where the bill was interpreted that incorporated only referred to cities. The new bill will read that the town meeting form may be adopted only by incorporated cities of less than 2,000 persons and incorporated towns of less than 2,000 persons. Senator McLane stated this clarifies that it applies to towns as well as cities.

PROPONENTS: None.

OPPONENTS: None.

The hearing was closed on SB 288.

Rep. Hansen volunteered to carry the bill on the House floor.

EXECUTIVE ACTION

DISPOSITION OF SENATE BILL 288: Rep. Pistoria moved that SB 288 BE CONCURRED IN. The question was called and the motion carried unanimously.

Reps. Dave Brown, Ramirez and Whalen joined the meeting at this time.

CONSIDERATION OF SENATE BILL 220: Senator Bill Yellowtail, Senate District 50 and sponsor of the bill, stated SB 220 was introduced at the request of the Association of Clerks of District Court. He said the bill would simply revise the incidental fees collected by the clerks. The present

fees have been in effect since before 1977. This bill would bring the incidental fees in line with those now charged by the clerk and recorder and the county treasurer.

Senator Yellowtail explained the fee changes in the bill. He stated the jog in the bill is a function of current law. On pages 3 and 4, the first pages are repeated because of a delayed effective date in desolution of marriage. He said it had to do with distribution of fees that takes effect in 1990.

PROPOSERS: Tom Harrison, MT Clerks of Court Association, stated the bill also follows a change that has gone on in the federal and bankruptcy court systems and brings the fees in line with that. He stated when record searches are done pages and years of suits have to be gone through. The clerks maintain the records in ledgers and they are first inserted chronologically and then alphabetically. Mr. Harrison stated the searching of these records does take a lot of time and that is the reasons for the increases in fees. He said the records are available and turned over to someone who will want to search on their own but most requests are by phone and have to be done by the clerks.

OPPOSERS: None.

DISCUSSION (OR QUESTIONS) ON SENATE BILL 220: Rep. Sales asked why depositions was stricken from the bill?

Senator Yellowtail replied that this was used so seldom that there was no point in having the charge involved.

Rep. Sales asked if depositions were normally taken by a court reporter or someone in the clerks office?

Tom Harrison replied that depositions are handled by a court reporter or privately and the clerk comes in contact with them when filing incidentals to the case.

Rep. Sales asked if depositions are covered as far as court reporters are concerned under another section of the law.

Tom Harrison responded the charge for them is and is set on a folio basis which is so many lines or words to a line.

Rep. Whalen responded that depositions are taken by a court reporter and arranged privately with the individual taking the deposition. He said they may or may not be filed with the clerk of court and it is rare that depositions are looked at except by the judge for purposes of making decisions.

Rep. Sales stated in previous sessions court reporters have been to the legislature wanting to change the fees for folio costs and there have been some arguments over that. He wondered if the bill would turn something lose, saying they could go ahead and charge whatever they want to.

Rep. Sales stated it appeared from the sections Lee Heiman pointed out to him that the transcript costs and so on are covered in a different section.

Senator Yellowtail in closing stated if the committee passed the bill he would be confident with whomever they picked to carry it on the floor.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 220: Rep. Gould moved that SB 220 BE CONCURRED IN. The question was called and the motion carried unanimously.

Rep. Whalen was asked to carry the bill on the House floor.

DISPOSITION OF SENATE BILL 316: Rep. Sales stated the legislature wants the state to get the best value they can from state lands whether it be an exchange or a sale. He asked Dennis Hemmer, Commissioner of State Lands, if there was anything in the law that hinders them from getting the highest and best value? He said there is a situation where the land has to be assessed in a certain manner which may not be the highest and best use for that land. He asked if that was really a problem that the board cannot handle or was the board handling it properly?

Mr. Hemmer replied the answer to the land board being barred from appraising the lands correctly was no. He stated the first determination in appraising is highest and best use. Once that is determined then comparable sales is added to that to come up with the principle price for a particular parcel of land. The land board is required to do a value for value exchange and they typically go along with the appraisals.

Rep. Sales asked what happens in a case where the board looks at an appraisal and states that they have information that the land next to the appraised land has sold for 8 to 10 times as much. He asked what were the alternatives?

Mr. Hemmer stated the board has two alternatives. One alternative was if they felt the information was sufficient they could reject the appraisal. The other alternative would be even though there may be a value for value exchange the board is not bound to make that exchange.

Rep. Pistoria stated that on March 11 during the hearing on SB 316 that Mr. Hemmer testified as neither an opponent or proponent. Rep. Pistoria stated the committee did not really know how he stood on the bill. He asked if the bill passed if it would not be a detriment to Mr. Hemmer's department?

Mr. Hemmer replied that what is being looked at with the bill is a policy decision the legislature needs to make. He said it boils down to bank rolling these lands for the future or continuing to go along with it as is being done today. He stated one consideration that needs to be taken if the bill passed was if an exception would be made for local governments. He said local governments often seek to exchange land with state lands for the landfills because it is the best way to accomplish that.

Rep. Dave Brown understood Senator Hammond had concern with the bill because of the potential impact in Ravalli County. He asked if Mr. Hemmer knew of the problem there?

Mr. Hemmer stated Ravalli County needs a new landfill site. They have looked at a number of sites, have found one on state lands and would like to pick up 160 acres which would keep them in landfill for a long time. He said this morning they had gotten preliminary approval by the board to receive that exchange. Mr. Hemmer said it seemed that was the best method for them to come up with a landfill site.

Rep. Dave Brown had requested Mr. Hemmer to bring information back to the committee in regards to the 4 1/2 mile limit and local land exchanges that have occurred within the limit. He asked Mr. Hemmer for the information?

Mr. Hemmer stated they had found a half dozen exchanges that were either consummated or in the process within the 4 1/2 miles. He found there are approximately 25,000 acres of state land within 3 miles of the 10 largest cities in the state.

Rep. Brandewie asked what Mr. Hemmer thought the potential for increasing value for the state is on the parcels of land that are in question around Billings? He asked if there were more potential for this land to appreciate in value or would ten years down the road see the state coming out short?

Mr. Hemmer replied respectfully that was a decision made by the land board and was a decision that should be taken by the land board. He said regarding the specific case in Billings, the land board has taken a position that they will look towards the next exchange and see what the appraised

value would be on that specific exchange. He stated he would prefer not to give his personal opinion.

Rep. Brandewie asked if he was to judge the potential of increase or appreciation of land value within five miles compared with 20 miles of Billings, which would have the most potential to appreciate?

Mr. Hemmer replied there is some land the Bureau of Land Management is trying to get adjacent to the city limits which has no ability to appreciate but there are other areas that have a better potential to appreciate. He said it would depend on the site.

Rep. Sales asked when the law was changed that within 3 miles would have to be subdivided into 5-acre tracts to sell?

Rep. Brandewie responded in 1973.

Rep. Sales asked if that was a reasonable approach in determining the highest and best value from the ground?

Mr. Hemmer responded when looking at sales that yes 5 acres or small within 3 miles has been a very defensible and logical process. If something is going to be sold within 3 miles, particularly of the larger cities, and someone is going to take advantage of the increased value through subdivision, he thought it should be the school trust.

Rep. Sales asked what the difference was between selling and trading land? He asked what the difference was in using the same approach for selling and trading?

Mr. Hemmer replied if there is land for one reason or another that is not worth dividing, the exchange has been another avenue to take. He stated in either instance, the body that decides what to do with that land is the land board who is directed to be the trustee for the school trust.

Rep. Sales asked if it was a good deal for a sale why would it not be a good deal for an exchange?

Mr. Hemmer stated he had no reason.

Rep. Dave Brown stated it seemed the law was changed along these lines and the primary reason was for local government exchanges for landfill purposes even though there is a broader impact than that.

Mr. Hemmer responded that he did not know that would be the case but one advantage is local governments can obtain an

easement which gives them the ability to do the things they need to do in those areas. He said if the bill was passed local governments would still have the option of easements but with hazardous wastes these days, it is State Lands recommendation that those be with exchanges so the local governments would own the land fee simple.

Rep. Brown commented the bill cuts down on the flexibility of state lands and the state land board to look at those kinds of exchanges at least as long as there is the language of the 5 acres. He said in the Glasgow case, the local government would have to come up with four times what they are presently contemplating in that exchange.

Rep. Brown commented that there were people present from Billings that wanted to put on record their testimony. Chairman Wallin asked the committee if there were any objections. There were none.

Rep. Ramirez stated it was suggested that he may have a conflict of interest. He said he did not feel that was true but would not sit as a committee member during the action on the bill. Rep. Ramirez stated he appeared before the committee as a private citizen. He has property that butts upon both state sections that are the subject of the trade. He said he has leased one of those sections in the past and could possibly lease in the future but the bill does not affect those things. He said the bill does not stop the trade from happening. He said perhaps if it were to stay in public use he might have some indirect benefit but the bill does not say the land has to stay in public use.

Rep. Ramirez stated the bill is talking about only one thing--should the state give away value. He said the legislature has a trust responsibility and duty to make sure that it maximizes the potential from state lands. He felt it the state's obligation and said it was in the spirit of fulfilling that obligation that he came before the committee.

Rep. Ramirez said if there is a 640 acre tract and it is appraised, the appraisers will have a lower dollar value on that tract as a 640 acre tract. If it is subdivided, the unit acre value will go up because it is easier to sell something in a smaller tract. He stated if there is a requirement in the law that the best value be received when land is sold by subdividing then he could not understand that that value would be foregoed and a loophole created that would permit a trade for less than that value. He felt that distinction should not be permitted to exist in the law because of the trust responsibility.

Rep. Ramirez stated the problem that Rep. Brown has raised could be dealt with by an amendment. He said the exchange was for private land and not public land in the law right now. He said that could be made more specific by saying local governments could trade without meeting this requirement.

Rep. Ramirez gave an example of what he felt the potential was that the land held. He stated if Section 16 became residential property someday and the property was divided into lots and sold, there is a potential sale value of \$12 million. He stated the land is one water tank away from being developed. The water could be pumped through the rims to the land. He said this land is targeted for development. The city/county planning board wants land in that area above the rims developed rather than the agricultural land in the valley floor.

Tom Ebzery, Attorney from Billings representing the people involved in the land exchange in Billings, stated the bill is aimed at the specific exchange contrary to what Rep. Ramirez had stated. He said the exchange process has gone on since 1983 and there have been no decisions made on the exchange. Mr. Ebzery stated he would like for the clients to speak to the committee to explain the exchange.

Tom Scott, Billings, said he and his partner Mr. Nance have been in a proposed land trade with the state. He stated Section 16 is fragile land and their use of this land which is next to where they live would be to expand their horse pastures. He stated he objected to the bill because they have been working on the land trade since before 1983. Their earliest investigation was in 1981. He stated they have been before the land board twice. There were two votes called for and each time the land board voted to have Mr. Scott and Mr. Nance proceed to the next step. Mr. Scott stated during these years they have spent money for appraisals and for coming up to appear before the land board. He said he has confidence in the land board to make the judgement as to whether or not the trade is in the best interest of the State of Montana.

Mr. Scott stated they are not contesting as to the relative values of the land. He said he did not think the appraiser would say their land was worth more than the state land. He said it does have wheat on it and the income from the property is about \$8,000 a year. The two state sections give less than \$500 each in income to the state. He said in regards to the use of the state land that it is not good land. Water is a problem. He said as Rep. Ramirez has pointed out, access to Section 16 is a critical point if the land is going to be subdivided. He said the land

does not have access. An easement was given to the state by Rep. Ramirez. He said the access the highway department approved has since expired. The question the land board would have to determine would be whether the land has access or not.

Mr. Scott stated because of the time and the money spent on the exchange, he felt they deserve to have their proposals heard and hope there is a way to grandfather this regardless of the merits of the bill. He said he knew the bill was introduced specifically to prevent the exchange and besides objecting to that, he felt they deserved to have their case presented and to have the land board determine what the best action would be for the state.

Janice Rehberg appearing for her husband Rep. Dennis Rehberg, stated Mr. Scott feels the bill is pointed directly at them. She said this is not the case. Mr. Scott is proceeding as he has every right to do. She stated they became aware of the problem because of this particular exchange.

Mrs. Rehberg stated the fiscal note states there is not a fiscal impact. She presented a handout to the committee which showed a comparison between selling the 640 acres as subdivided to trading them (Exhibit 1). She said the difference between selling and trading would be \$768,000 to \$3.3 million on just the one 640 acre tract. She stated Mr. Hemmer testified there are 25,000 acres within 3 miles of the larger municipalities which are subject to the two systems for sale and exchanges. Mrs. Rehberg stated there is a tremendous fiscal impact on these types of proposals.

Mrs. Rehberg stated the concern for landfills is one that should be recognized. She said the public lands have a value on them which are distinct for public use.

She commented that at the last land board hearing, the land commissioner recommended that the proposed exchange not be approved. She said the opinion was that the state lands would appreciate more than the proposed lands for exchange. She said that was taken from the minutes of the land board. At that meeting Mr. Scott appeared and indicated that their intention was not to subdivide. Mrs. Rehberg stated, however, during the hearing conducted in Billings, Mr. Nance stated they would like to develop the lands. She stated that was in reference to Section 8. Mrs. Rehberg stated she was not present to criticize Mr. Scott or Mr. Nance but to point out that this was a potential problem and a potential loss to the education trust fund.

Mrs. Rehberg stated an easement has been granted and approved by the state. She said Highway 3 for which access would be



taken off of is on the RID schedule for improvements and that should solve any access problems there are. She said simply giving the access raises the appraisal almost \$300,000.

Mrs. Rehberg stated this is not a special interest bill or a bill designed to throw Mr. Scott off the track. She stated this is a problem in this situation and a potential problem for the other 25,000 acres out there. She commented the restrictions were legitimately placed on the sale provisions and there are no reasons for them to not be placed on the exchange provisions.

DISCUSSION (OR QUESTIONS) ON SENATE BILL 316: Rep. Sales asked Mr. Scott what the appraisal was with and without access?

Mr. Scott replied the land was appraised at \$500,000 without access and \$800,000 if access was provided. He stated the value was given hypothetically. The easement that was given was offered later by Rep. Ramirez to be able to establish a higher value.

Rep. Sales asked if the easement was offered during the negotiations?

Mr. Scott stated the easement was given on the land after the last land board meeting.

Rep. Gilbert asked if it would not be out of the realm of reason to see access being provided across the land owned by either Mr. Scott or Mr. Nance?

Mr. Scott replied that there is a gulley on the land where they live and they would have to bridge it to have access. He said the access realistically could not go through their property.

Rep. Ramirez responded that his family gave the access across their property for Section 16. He said it is a 30-foot easement with an option for the state if they develop property to go to 60 feet so it would be a full county road. He stated it was laid out by a surveyor and is an approved access site from the highway.

Mr. Scott stated there was a misconception regarding the access. The useability of the access is contingent upon the upgrading of Highway 3. He stated the state engineers have said the upgrade is on the board for 1992 but they do not know where the money to do it will come from. Mr. Scott stated in his opinion at this point in time, it is an unsafe location for any kind of access to the highway.

Rep. Bulger asked if it was Mr. Scott's impression that Rep. Ramirez gave this access in order to increase the value of the land that he wished to transfer thereby frustrating the transfer?

Mr. Scott replied not necessarily frustrating the transfer. He said they accept the value that was put on the land based on access or no access. He said it means that they have to recognize that and put up more land.

Rep. Bulger asked when Mr. Scott bought the land they are using for trade with the state parcels?

Mr. Scott replied they purchased the land back in 1979-80.

Rep. Bulger asked if Mr. Scott bought the land to transfer for the state lands?

Mr. Scott responded no.

Rep. Bulger asked why he would not subdivide the land? He asked where the assessment goes wrong?

Mr. Scott responded the assessment is accurate but there has to be a demand. He said there has not been land that has sold out there now. He said 15 or 20 years from now that might be different. Mr. Scott stated they would put on restrictions or would agree to give the land back to the state rather than subdivide Section 16. He said they would propose this to the state in future negotiations. He said they would give up on the other section if their motivations were suspect.

Rep. Bulger asked if they did not intend to subdivide Section 8?

Mr. Scott stated depending on the value, they would have to look at how they would propose the trade or how they would modify their existing trade.

Rep. Bulger said there was testimony that Mr. Nance stated in a public forum that subdivision and development was an intention for the land. He asked Mr. Scott if that was the intention for one section?

Mr. Scott stated since that statement a lot has happened and their intentions have changed. He said that statement was made in 1983 and since then they have learned a lot. Mr. Scott stated they are not trying to do anything that anyone else would not try to do honorably.

Rep. Bulger asked Rep. Ramirez what he intended to do with his land?

Rep. Ramirez stated his land was subdivided. He has not tried to sell anything except one tract on the highway. He said they were holding it because they feel they could make more money in the future because there is no market now.

Rep. Bulger asked why a law was being put into the legislature for a single instance. He said it bothered him to make a law for a specific situation.

Rep. Ramirez said it is not just a problem in Billings. This is just the situation that brought it to his attention and other people's attention. He stated it was very difficult for him to testify because Tom Scott was a friend of his and an outstanding citizen of the community. He stated he was doing it because he felt he had an obligation.

Rep. Ramirez stated the bill is to prevent a loophole. He said the land board cannot deal with this because they deal with the appraisals. When they get an appraisal based on 640 acres then that is the value they trade at. If they have an appraisal based on 5-acre tracts then they would be able to take that into account. Rep. Ramirez said the land board did not have that ability under the present law and are not required to treat a sale and a trade at the same value.

Rep. Brandewie asked Mr. Scott which land would have more value, the state sections or the land that he would be trading for the state land? Which land would have more potential to appreciate assuming the economy of Montana is doing well and it is ten years down the road?

Mr. Scott replied if the opportunity is there the state land would appreciate more in the kind of environment that Montana used to have. He added that there is income associate with the land he proposed to trade. He said when he calculated what the income would do he said if the money was left to build up over a 15 year period, it would be over \$200,000.

Ms. Rehberg responded to Rep. Brandewie's question of which land would be more valuable. She read from minutes from the land board meeting that the trust land would appreciate more rapidly than the proposed exchanged lands and based on that opinion Commissioner Hemmer recommended that the proposed exchange not be approved.

Rep. Hoffman commented that the bill involved the whole state and asked Rep. Ramirez if he felt it would be a good bill to relate to every municipality in the state?

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Rep. Ramirez responded that it was a good bill for the whole state for the reason that the land is treated one way for a sale and less value should not be taken in a trade. He said this would be true whether the area is in Billings, Bozeman, Missoula or any city.

Rep. Bulger commented that he would prefer to wait until Wednesday before any action was taken. He said it was a complex issue and would have a large affect on many people's financing.

Rep. Gilbert agreed with Rep. Bulger.

The committee concensus was to wait until Wednesday at 1:00 p.m.

ADJOURNMENT: The meeting was adjourned at 2:50 p.m.

  
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Rep. Norm Wallin, Chairman

DAILY ROLL CALL  
 LOCAL GOVERNMENT COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-11-87

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

# STANDING COMMITTEE REPORT

March 16

19 57

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 238

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Rep. Nora Wallin

Chairman

(Rep. Hansen)

THIRD

BLUE

reading copy ( \_\_\_\_\_ )  
color

# STANDING COMMITTEE REPORT

March 16

19 57

LOCAL GOVERNMENT

Mr. Speaker: We, the committee on

report

SB 220

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Rep. Horn Wallin

Chairman

(Rep. Whalen)

THIRD

BLUE

reading copy ( color )

COMPARISON OF ONE 640 ACRE PARCEL

EXHIBIT 1  
DATE 3-16-87  
58 316

1. 640 Acres at \$800/A = \$512,000. Total Exchange Value

2. 640 Acres at \$2,000/A = \$1,280,000.

640 Acres at \$6,000/A = 3,840,000.

TOTAL SALE VALUE - \$1.2 Million to \$3.8 Million

3. Difference between exchange and sale value \$768,000 to \$3.3 Million

(Loss to Education Trust Fund)



