

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By DIANA WYATT CHAIR, on March 11, 1991, at 3:00 P.M.

ROLL CALL

Members Present:

Diana Wyatt, Chair (D)
Jessica Stickney, Vice-Chair (D)
Joe Barnett (R)
Arlene Becker (D)
Vivian Brooke (D)
Dave Brown (D)
Brent Cromley (D)
Paula Darko (D)
Tim Dowell (D)
Budd Gould (R)
Stella Jean Hansen (D)
Harriet Hayne (R)
Ed McCaffree (D)
Tom Nelson (R)
Sheila Rice (D)
Richard Simpkins (R)
Norm Wallin (R)

Members Absent: Rep. J. Rice (R)

Staff Present: Bart Campbell, Legislative Council
Lois O'Connor, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 224

Presentation and Opening Statement by Sponsor:

SEN. VAUGHN, Senate District 1, Libby, stated SB 224 would allow local governments to set up local air pollution programs, and streamline the procedure for establishing local air pollution programs by deleting law that states they must have petitions to set up the programs. They could have a public hearing and the people would be involved. It would allow the counties to apply for state and federal grants and establish fees if necessary.

Proponents' Testimony:

Robert Raisch, Department of Health and Environmental Sciences, provided written testimony. EXHIBIT 1

Jan Gilman, Department of Health and Environmental Sciences, provided written testimony. EXHIBIT 2

Dan Powers, Environmental Health Director, Butte-Silver Bow, stated that the Butte-Silver Bow Health Department has administered an air pollution ordinance for Butte, and they have been successful in lowering the particulate emissions through education and wood burning ordinances. The program was run on inkind cost and donations from the Air Quality Bureau. At present, Butte-Silver Bow does not allot any funding for the air quality program. With these constraints, it makes it difficult to run a viable air pollution program. SB 224 would allow cities to receive funding, at no cost to the taxpayers, and allow needed programs to continue to develop.

Opponents' Testimony: None

Questions From Committee Members:

REP. BECKER asked **Robert Raisch** how the programs will be paid for. **Mr. Raisch** stated the current appropriations bill before the Legislature provides additional federal funds to be granted to the local programs.

REP. McCAFFREE stated that on Page 2, Line 18 it states "provide by ordinance or local law for requirement compatible with", and asked what local law it refers to. **Mr. Raisch** said it is an ordinance adopted by the local Board of Health and approved by the County Commissioners and City Council. **REP. McCAFFREE** asked if the law gives the local Board of Health the authority, which they do not have at present, to adopt an ordinance. **Mr. Raisch** said yes.

REP. WALLIN asked **Dan Kemmis, Mayor, Missoula,** what Missoula has done, without taxing cars, to clean its air. **Mr. Kemmis** stated Missoula has made great progress in cleaning its air but still has problems.

REP. S. J. HANSEN expressed concern about the Senate amendments which do not allow local governments to regulate large industry and asked **SEN. VAUGHN** what the intent of the amendments were. **SEN. VAUGHN** said they wanted to make sure that local governments didn't enact further laws that would make them file extra forms and perform extra duties over and above the federal and state requirements. The local air quality people do not want to be responsible for taking over the large companies. The amendments would make it so that local governments couldn't enact requirements that are more regulatory than what now exists.

Closing by Sponsor:

SEN. VAUGHN stated SB 224 can serve a real purpose where there are air quality problems within local areas and asked that REP. DARKO carry the bill.

HEARING ON SB 221

Presentation and Opening Statement by Sponsor:

SEN. HARDING, Senate District 25, Polson, stated SB 221 would require an election for the consolidation of county offices. County officials are elected and have daily association with their constituents. They would like to be assured, after they have been elected, that their offices will not be consolidated without the vote of the people. SB 221 provides an election in the middle of their four year terms.

Proponents' Testimony:

Merrill Klundt, Yellowstone Clerk and Recorder, provided written testimony. EXHIBIT 3

SEN. VAUGHN stated that people vote for who they want in office. It is only right that they have the say in whether the office is to be consolidated.

Lisa Ferkovich, Sanders County Clerk of Court, said the law should comply with the new constitution and the decision to consolidate county offices should be put to the voter.

Kathleen Brewer, Clerk, District Court, Missoula County supported SB 221.

Tom Harrison, Montana Clerks of Court Association, stated the Association has a structured procedure by which positions are taken. They are presented at its annual convention, fully debated; and only in selected cases, do they adopt a formal resolution of position. He urged support of SB 221.

Opponents' Testimony:

Gordon Morris, Montana Association of Counties, stated there are 56 counties who have consolidated various offices. This is an issue that should be left to the prerogative of the County Commissioners to retain the authority to determine if it is to the county's advantage to consolidate. Currently, the offices can only be consolidated at the end of an election term, with the exception of the Clerks of Court who fall into a different election cycle. If that office is to be consolidated, it would have to be done prior to the election in 1992. It could not be implemented until the end of the office for which it was proposed to be consolidated with at the end of their term prior to the election in 1994. Section 2 of SB 221 takes the prerogative of

consolidation away from the County Commissioners and leaves it only an option when the petition process is involved. Section 3 states "the initiation by the Board of County Commissioner", but is striking the language that consolidation would be at their discretion. Section 4 also substitutes the language "petition" throughout. SB 221 reads that County Commissioners would have to have a petition to consolidate offices.

Questions From Committee Members:

REP. CROMLEY asked Merrill Klundt if on Page 3, Line 12, Subsection 3, are they looking at offices which expire in different years. Mr. Klundt said County Commissioners are not affected by this because they are elected every two years. All the elected officers of the county, except the Clerk of Court, are four year terms which run in the same year.

REP. STICKNEY asked SEN. HARDING if there was a major problem with counties consolidating without due process. SEN. HARDING stated that if anyone decided that they wanted a consolidation of offices, the elected officeholder would have a two year period to prepare for whatever the electorate has decided.

REP. McCAFFREE asked Merrill Klundt if his county is proposing to consolidate with another office and how many Clerk and Recorders offices, in other than the very small counties, have been consolidated with another office. Mr. Klundt said his office was not proposing to consolidate and in Treasure County they have the Clerk of Court and Clerk and Recorder. REP. McCAFFREE asked if there has been a push to consolidate. Mr. Klundt said there has been talk because it might save money.

REP. WALLIN asked if there is a difference in the problems of a first and third class county. Mr. Klundt said yes. First class counties have a large volume of work. SEN. HARDING stated the people in these offices are trained. If the workload is less, they are still trained for the positions.

Closing by Sponsor:

SEN. HARDING urged support for SB 221.

HEARING ON SB 102

Presentation and Opening Statement by Sponsor:

SEN. NATHE, Senate District 10, Redstone, said SB 102 would extend worker's compensation to the volunteer firefighters who are not in an incorporated city or town. It would be the option of the local governing body. The volunteer firefighters in incorporated cities and towns are considered to be employees of city government and are covered by workers compensation. SB 102 applies to rural volunteer firefighters in fire service districts and areas. The volunteer firefighter must be actively enrolled

in a fire company that is organized and funded by a rural district or service area before they are considered volunteer. The County Commissioners may elect to provide the coverage to volunteer firefighters. The compensation benefits, for the purpose of premium, must be based on a wage of no less than \$900 per month nor more than 1 1/2 times the average weekly wage.

Proponents' Testimony:

Gordon Morris, Montana Association of Counties, stated SB 102 would allow volunteer firefighters, who are enlisted members of a company, to be covered by workers' compensations through existing programs either self funded by counties or under the state program.

Henry Lohr, Montana Volunteer Firefighters Association, supported SB 102.

Lyle Nagel, Montana Fire Chiefs Association, stated that the bill arose because a fireman was permanently disabled and has no income. There are 7,500 volunteer firemen and 5,000 are rural firemen who have no compensation protection. They must rely on their own insurance which is very costly.

James Lofftus, Montana Fire Districts Association, stated SB 102 protects volunteer firemen. Many firemen have their own insurance which is expensive. Some coverage for volunteer firemen is not good and SB 102 would help pay medical cost if a volunteer firemen were injured.

Opponents' Testimony: None

Questions From Committee Members:

REP. WYATT asked SEN. NATHE if SB 102 was actuarially sound. He said that it was. SB 102 will cost more than what it costs incorporated cities and towns under their own self-insurance pool. The rate for a volunteer firefighter in an incorporated city or town is 6.41% times the average weekly wage. SB 102 is based on \$900 a month.

Closing by Sponsor:

SEN. NATHE stated rural firefighters have no compensation protection. SB 102 would provide an option for the Board of Trustees or the County Commissioners to provide workers' compensation to volunteer firemen in the respective areas. He asked the REP. L. NELSON to carry SB 102.

HEARING ON SB 160

Presentation and Opening Statement by Sponsor:

SEN. KENNEDY, Senate District 3, Kalispell, stated SB 160 would

revise how the Department of Administration distributes the 911 emergency telecommunications account to the cities and counties. It would correct the problem in the DOA of recovering the cost of administering the program and change the number of warrants issued by the 911 program.

Proponents' Testimony:

Tony Herbert, Department of Administration, stated currently there is a 25 cent fee assessed to all telephone subscribers per month. The fee is collected by the phone companies and deposited with the Department of Revenue on a quarterly basis. The DOA works with the telephone companies and pays them for the work they incur for 911 systems. They then pay the DOR for the fee they incur to collect the tax and then pay themselves for expenses incurred. The balance is allocated to cities and counties, who are part 911 approved programs, on a per capita basis. SB 160 would cut the amount of checks issued from 1,250 to 350 checks a year by being able to send them directly to the 911 jurisdictions. Because of the uneven flow of the DOA's expenses and the even flow of the revenue, they have not been able to collect a complete 7% on an annual basis. The DOR would like to change its limitation to an annual instead of a quarterly factor.

Gordon Morris, Montana Association of Counties, said SEN. WILLIAMS introduced a resolution in the State Administration Committee. He asked that it be tabled in deference to SB 160. It would identify the administrative entity for purposes of the 911 jurisdiction and have the DOA forward the money to that entity rather than all the jurisdictions that are members of the 911 administrative unit.

Lyle Nagel, Montana Volunteer Firefighters Association, said that 911 is a blessing to emergency services of Montana and urged support of SB 160.

SEN. WILLIAMS went on record in support of SB 160.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN KENNEDY urged support of SB 160.

HEARING ON SB 261

Presentation and Opening Statement by Sponsor:

SEN. LYNCH, Senate District 34, Butte, stated SB 261 will address two problems in the Butte-Silver Bow area. Currently, the Butte-Silver Bow water system is owned by a private corporation and the

city will eventually have to purchase it. It would allow eminent domain to be placed in the statute and allow for the inclusion of consolidated governments, which previously only referred to city or county governments. Butte-Silver Bow and Anaconda-Deer Lodge are consolidated counties and SB 261 would include them in the same provisions of the law available to all other cities and counties. It would also allow Butte-Silver Bow to incorporate the water company into its present sewage system districts.

Proponents' Testimony:

REP. D. BROWN supported SB 261 because it affects Butte-Silver Bow.

Alec Hansen, Montana League of Cities and Towns, stated SB 261 allows a consolidated government to acquire a water system. Under current law, that is not possible. There is a great need in Butte-Silver Bow to acquire the private water system.

Jim Johnston, Director, Public Works Butte-Silver Bow, and REP. S. J. HANSEN went on record in support of SB 261.

Arvid Hiller, General Manager, Mountain Water Company, Missoula, provided written testimony. EXHIBIT 4

James Lofftus, Montana Fire Districts Association, went on record in support of SB 261.

Doug Harrison, Employee, Mountain Water Company, provided written testimony. EXHIBIT 5

Opponents' Testimony:

Dan Kemmis, Mayor of Missoula, opposed SB 261 as written but would be a proponent if it were returned to its original form. Section 7-5-4106, MCA, provides that a city or town, in order to acquire property for opening, establishing, widening, or altering any street, alley, park, sewer, waterway in the city or town, or for any other municipal purpose, may exercise the power of eminent domain. This section says that in order to exercise the power of eminent domain for a public purpose, the city or town must pass a resolution to establish the necessity. The city must then determine the value of the property being taken through the court system. The acquisition of water systems for drinking water is a public purpose. The city or town council has the authority to adopt means for securing a supply of water for the use of its inhabitants. If the bill passes in its current form, then Missoula alone will not have the opportunity to own its water system.

Sherman Lohn, Attorney, Missoula, provided written testimony. EXHIBIT 6, 7

Jim Nugent, Missoula City Attorney, stated the water company, if acquired by the city of Missoula, is entitled by the Constitution and Montana state law to just compensation. The eminent domain proceeding is a two step process. There is the necessity decision and evaluation decision. Missoula would like to see SB 261 back in its original form. When they talk about acquiring a water system, you are talking about a natural monopoly. It is impossible to compete with an existing water system. Out of necessity, they must require the existing system if they want public ownership of the system. Because water service is a natural monopoly, it is important for public ownership. Through public ownership, the public will have the right to participate in the administrative and operational decision making that occurs.

Questions From Committee Members:

REP. D. BROWN asked **Sherman Lohn** if he was an opponent of this bill as introduced in the Senate and proponent for it as presented in the House. **Mr. Lohn** said it was introduced in the Senate with amendments that would allow taking the Missoula water system without proving necessity. He is opposed to the amendment and is a proponent for the bill as it stands.

REP. WALLIN asked **SEN. LYNCH** if the water system was as bad as he says it is, wouldn't the owner sell without going through condemnation. **SEN. LYNCH** said even with eminent domain, fair market value must be paid. **REP. WALLIN** stated that condemnation is serious and he doesn't like to make it more available. **SEN. LYNCH** said it is Butte's feeling that their area ought to be included only because they are consolidated. Consolidated governments are not under the normal statutes of condemnation.

REP. BROOKE stated in **Mayor Kemmis's** testimony, with regard to support for infra-structure grants, would preclude any private business from applying for that type of money and asked **Ted Doney, Registered Lobbyist, Mountain Water Company,** if that was his interpretation. **Mr. Doney** said he had not reviewed the bill closely but they could be easily amended to address **Mayor Kemmis's** concern.

REP. SIMPKINS asked **SEN. LYNCH** if some lines of the Butte water system are outside the city limits. **SEN. LYNCH** said they don't have a city limit. It is Butte-Silver Bow. The city is the county and the county is the city.

REP. BROOKE asked **Mr. Lohn** if he interpreted the bill to read if Missoula city and county were to be consolidated, they would have the same privilege that is now afforded the consolidated government of Butte-Silver Bow. **Mr. Lohn** said if the bill passed as approved by the Senate, and later the two consolidated, yes. It could apply to a consolidated system. It would not change the condemnation. **REP. BARNETT** asked **SEN. LYNCH** to respond to the question. **SEN. LYNCH** said the rules would not be changed for

Missoula to acquire its water system. If they consolidated, they would be under the same rules, showing and proving necessity as they are now as a city.

REP. S. RICE asked Arvid Hiller if Missoula has approached him on purchasing Mountain Water and are unable to agree on a price. Mr. Hiller said it has been a 10 year, one way conversation. The owner has insisted that the company is not for sale. REP. S. RICE asked who the owner of Mountain Water was and if he owned several water companies. Mr. Hiller said the owner is H. H. Wheeler Jr., Downey, California. It is not a California owned company. Mr. Wheeler Jr. owns three other water companies.

Closing by Sponsor:

SEN. LYNCH stated if Butte-Silver Bow has to purchase their water company and there is no mechanism to do it, he has no idea what will happen. SB 261 will help make a smooth transition if that day should come. He asked that REP. D. BROWN carry the bill.

HEARING ON SJR 3

Presentation and Opening Statement by Sponsor:

SEN. GAGE, Senate District 5, Cut Bank, stated SJR 3 is a resolution to request a study of consolidation of counties and positions within counties.

Proponents' Testimony:

Riley Johnson, National Federation of Independent Business, stated in 1989, individuals in Helena became interested in the consolidation of counties. There are people who would like answers to the consolidation of counties. Their survey showed 51% in favor of consolidation.

Gordon Morris, Montana Association of Counties, said it made more sense, from a Commissioner's perspective, to endorse the study proposal. The results would be beneficial and pave the way for some changes in county government.

Opponents' Testimony: None

Questions From Committee Members:

REP. SIMPKINS stated the Legislature cannot mandate the consolidation of counties. It has to be done with the vote of the people in the adjacent counties and they must have 51% vote of the people involved; and he asked SEN. GAGE to respond. SEN. GAGE stated the bill doesn't indicate that the Legislature is going to consolidate counties. The bill is asking for a study of the consolidation of counties. REP. SIMPKINS expressed concern that people will get the wrong impression that the Legislature should take action.

REP. BROOKE asked Gordon Morris how a County Commissioner compares to being a lobbyist. Mr. Morris said it is comparable. REP. McCAFFREE asked what percentage of tax dollars does the county government spend. Mr. Morris said counties spend approximately 22 1/2 cents of every tax dollar. The schools get approximately 75 cents, the counties get slightly lower than the 22 1/2 cents, and the cities get the balance.

Closing by Sponsor:

SEN. GAGE stated the study committee could report to the Legislature what areas need to be reorganized. It will be beneficial for the Legislature to know this.

EXECUTIVE ACTION ON HB 939

Motion: REP. S. RICE MOVED HB 939 DO PASS.

Discussion:

REP. S. RICE stated the HB 939 is an urban reforestation bill. She requested that the committee pass the bill unamended so it can be taken directly to Appropriations. There is another source of funding available so they don't have to dip into the Resource Indemnity Trust Fund. REP. NELSON said the reason there was no opposition to HB 939 was because the title doesn't betray the source of funding. REP. D. BROWN said because of the additional funding, he would like to see it go to Appropriations. REP. SIMPKINS said under the Federal Grant Program, this bill would not have any effect on it.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 224

Motion/Vote: REP. DARKO MOVED SB 224 BE CONCURRED IN AND PLACED ON CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON SB 102

Motion/Vote: REP. DARKO MOVED SB 102 BE CONCURRED IN AND PLACED ON CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON SB 160

Motion/Vote: REP. STICKNEY MOVED SB 160 BE CONCURRED IN AND PLACED ON CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON SB 261

Discussion:

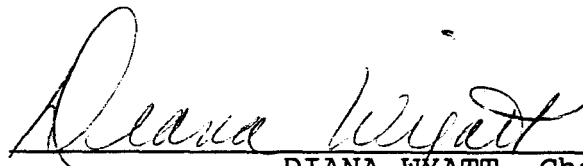
REP. D. BROWN asked the committee not to hold SB 261 very long. He felt that there is no amendment acceptable to the bill. If

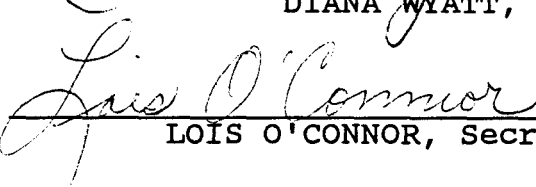
there is an amendment attached the Senate will not take it back. It would kill any opportunity for Butte-Silver Bow to deal with its water company problem. He asked for swift consideration of SB 261 at the next meeting.

Motion: NO ACTION WAS TAKEN ON SB 261.

ADJOURNMENT

Adjournment: 5:50 P.M.


DIANA WYATT, Chair


LOIS O'CONNOR, Secretary

DW/lo

HOUSE OF REPRESENTATIVES
LOCAL GOVERNMENT COMMITTEE

ROLL CALL

DATE 3-11-91

NAME	PRESENT	ABSENT	EXCUSED
Rep. Paula Darko	X		
Rep. Jessica Stickney, Vice-Chair	X		
Rep. Joe Barnett	X		
Rep. Arlene Becker	X		
Rep. Vivian Brooke	X		
Rep. Dave Brown	X		
Rep. Brent Cromley	X		
Rep. Tim Dowell	X		X
Rep. Budd Gould	X		
Rep. Stella Jean Hansen	X		
Rep. Harriet Hayne	X		
Rep. Ed McCaffree	X		
Rep. Tom Nelson	X		
Rep. Jim Rice			X
Rep. Sheila Rice	X		
Rep. Richard Simpkins	X		
Rep. Norm Wallin	X		
Rep. Diana Wyatt, Chair	X		

10:15
3-12-91
T.D.B

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that
House Bill 939 (first reading copy -- white) do pass.

Signed: 

Diana Wyatt, Chairman

10:15

3-12-91

JDB

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that Senate Bill 224 (third reading copy -- blue) be concurred in and be placed on consent calendar .

Signed: 

Diana Wyatt, Chairman

Carried by: Rep. Darko


10:15
3-12-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that Senate Bill 102 (third reading copy -- blue) be concurred in and be placed on consent calendar.

Signed: 
Diana Wyatt, Chairman

Carried by: Rep. L. Nelson


10:15
3-12-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that Senate Bill 160 (third reading copy -- blue) be concurred in and be placed on consent calendar .

Signed: 
Diana Wyatt, Chairman

Carried by: Rep. Simpkins

EXHIBIT 1
DATE 2-11-91
HB SB 334

TESTIMONY
ON
SENATE BILL NO. 224

BEFORE THE LOCAL GOVERNMENT
COMMITTEE OF THE MONTANA
HOUSE OF REPRESENTATIVES

:
:
:
:

BY ROBERT RAISCH,
OF THE AIR QUALITY BUREAU OF THE
MONTANA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO ESTABLISHMENT AND FUNDING OF LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND THE LOCAL AIR POLLUTION CONTROL PROGRAM; RESTRICTING THE TYPES OF AIR POLLUTION SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

INTRODUCTION:

The Montana Department of Health and Environmental Sciences is responsible for improving air quality in six communities which are exceeding state and federal air quality standards for particulates (PM-10) and several communities which are approaching the standards. This bill would streamline the procedures for establishing a local air pollution control program and allow these communities to develop air pollution control plans which are tailored to the specific needs of each community. Failure to establish a local program will lead to a state or federally mandated program.

This bill would also clarify certain aspects of the funding mechanism for local air pollution control programs by differentiating between state aid and federal aid and by allowing any permit fees collected by local programs to serve

as a source of funding for the program.

In addition, this bill prohibits the Montana Board of Health and Environmental Sciences from delegating to a local air pollution control authority the responsibility to regulate large complex industrial sources.

SPECIFIC TESTIMONY:

The current Montana law requires a petition signed by 15 percent of the electorate to establish a local air pollution control program. Furthermore, the Environmental Protection Agency will not recognize a local program unless it is established pursuant to state laws. This bill would replace the petition with a public hearing before the governing bodies of the county and/or municipality, and require the subsequent approval. Petition drives require an enormous amount of volunteerism and are extremely time consuming. This bill would streamline the process while maintaining public involvement.

The adoption of revised federal standards for particulates (PM-10) during 1987 created an immediate need to establish additional local air pollution control programs. Montana is responsible for improving air quality within six communities which are exceeding the state and federal air quality standards for particulates (PM-10), and two areas which are exceeding the standards for carbon monoxide. Several other communities may be approaching these standards. Public health concerns and federal regulations require the development and implementation of an emission control plan for each community which exceeds the standards.

Technical studies conducted by the department indicate that areawide emission sources such as automobiles (exhaust and road dust whipped into the air) and wood stoves are Montana's major sources of PM-10 and carbon monoxide.

Sources such as these are best controlled at the local level where officials can tailor the control plan to the severity of the problem and local customs and resources. For example; the implementation of a program to curtail wood burning during air pollution episodes should consider such local factors as; the number of homes where wood is the only source of heat, the number of low income households, what alternative energy sources are available, and how often violations occur. Furthermore, such a program will require local personnel to monitor air quality and meteorological data to initiate and enforce a curtailment.

The department believes that local officials are in a much better position than the state or federal government to develop and administer an effective emission control program. If a state or federal program were developed it would likely be more general in nature and somewhat insensitive to local needs. Furthermore, it would be inefficient to assign additional state or federal employees to these communities when qualified city/county employees are already available.

This bill would also clarify certain issues concerning the funding of local air pollution control programs. When the Montana Clean Air Act was initially enacted, federal financial aid was granted directly to local programs. In recent years, federal aid has been granted to the state and subsequently granted to local air pollution control agencies. Since state aid is limited to 30 percent of local funds, it is essential that state aid be clearly defined so that it does not include pass through federal aid. This bill would accomplish this objective. The alternative interpretation would result in reduced revenue for local air pollution control programs. Amendments have also been included to clarify that any permit fees collected by a local air pollution control program will remain

with the local agency for administration of the program.

In addition, this bill would allow the Montana Board of Health and Environmental Sciences, for good cause, and after public notice and a public hearing, to withdraw authority for administration of individual parts of a local air pollution control program. Presently, the board must withdraw the authority for the entire local program, even if the shortcomings are limited to just one part of the program. In short, this bill would add flexibility on how the state administers oversight of local air pollution control programs.

And finally, this bill will prohibit the Montana Board of Health and Environmental Sciences from delegating to a local air pollution control program the responsibility to control large complex industrial sources. This would include sources which would require an environmental impact statement or be covered by the Montana Major Facility Siting Act.

In conclusion, the department believes this bill would lead to more efficient and locally acceptable solutions to a public health problem. Therefore, we recommend passage of Senate Bill 224.

INFORMATION SHEET

1. Communities under Montana's Jurisdiction which are exceeding the air quality standards for PM-10 and carbon monoxide:

Butte/Silver Bow: PM-10
Columbia Falls: PM-10
Great Falls: carbon monoxide
Kalispell: PM-10
Libby: PM-10
Missoula: PM-10 and carbon monoxide
Thompson Falls: PM-10

2. Other communities which may be approaching the Air Quality Standards for PM-10 and carbon monoxide:

Billings: carbon monoxide
Bozeman: carbon monoxide
Butte: carbon monoxide
Whitefish: PM-10

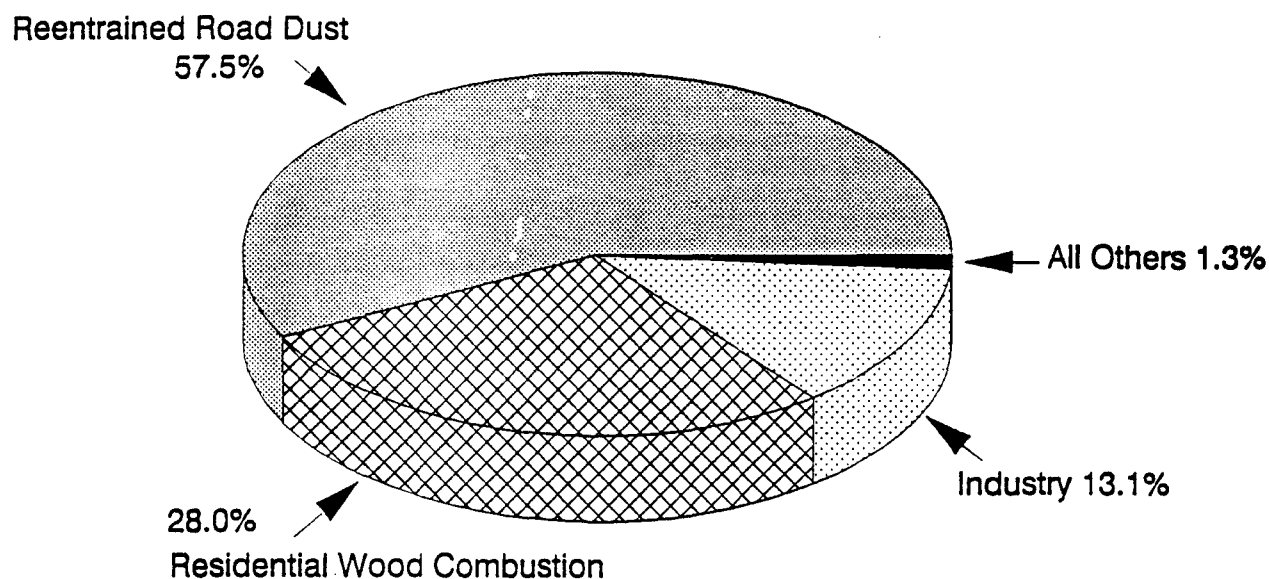
3. Communities with existing local air pollution control programs:

Cascade County
Lewis and Clark County (limited program)
Missoula County
Yellowstone County

PM10 Emissions by Source Category

Typical Montana Community ¹

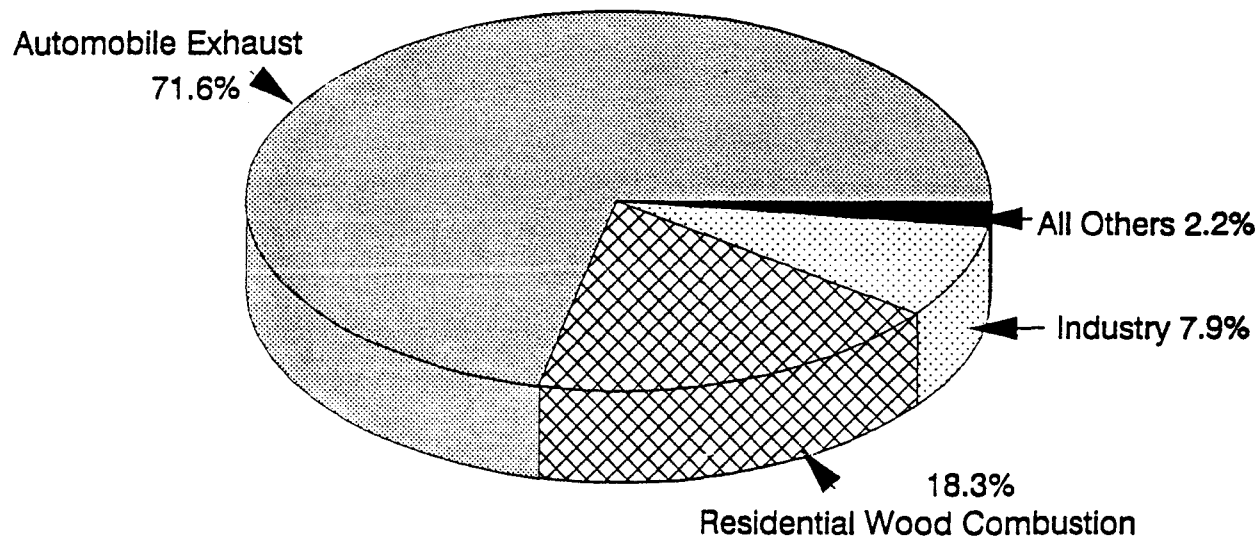
October - March



Carbon Monoxide Emissions by Source Category

Typical Montana Community ²

October - March



¹ Based on data from Libby, Butte, Kalispell and Missoula

² Based on data from Billings, Great Falls, and Missoula



Testimony Concerning Senate Bill 224
House Local Government Committee
March 11, 1991

EXHIBIT 2
DATE 3-11-91
HB SB224

Chairman Wyatt and Honorable Committee Members,

My name is Jim Carlson. I am the Director of Environmental Health Division of the Missoula City-County Health Department. The Missoula City-County Health Department is in favor of the passage of Senate Bill 224. Missoula County has had a local air pollution control program since 1968. In situations where many, many small sources of air pollution contribute to a significant air pollution problem, local government is best able to deal with these problems. Such small sources includes wood stoves, open burning and automobiles. Although there is a regulatory function to local air pollution control programs, public education and cooperation between local government and it's citizens is the only viable means of achieving air quality standards. A program of this type necessitates that the agency be in the town where the problem is occurring so that it can talk to people, cajole people, educate people and even occasionally regulate people. This bill would allow for easier creation of local air quality districts, and it is appropriate that the State encourage the creation of these districts to bring it's cities and towns into compliance with Federal standards.

We must recognize that local programs have been successful. Missoula has been able to go from 150 violations of the particulate standards per year down to 0 TO 1 violations per year. Likewise with carbon monoxide. We have been able to go from 77 violations per year in the mid 70's down to 0-1 violation per year.

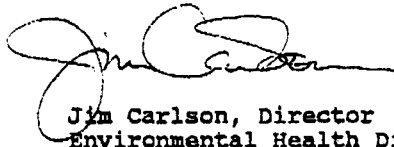
This Bill also provides for a clarification of the difference between Federal pass through monies and State general fund monies which are passed on to local districts. We appreciate this clarification and feel that it should be included.

There is an amendment included in the Senate version which further limits of the powers of local programs to regulate large sources. Missoula has had this responsibility for 21 years, and has not abused that authority. Our local industry has indicated that they appreciate the ability to deal with us at the local level rather than through Helena. Please keep in mind that all local air quality regulations must be approved by the the local air quality Board, the State Board of Health and the elected county commission before they go into effect.

⊗

We are very proud of our industrial community in the way that they have worked with us to develop programs to attain compliance with air quality standards. This is best demonstrated by the fact that the Missoula Chamber of Commerce organized and sponsored Clean Air Week in Missoula for four consecutive years. If the committee feels that further restrictions of local authority are necessary, we will, in the spirit of cooperation, support the language currently included in the Bill.

In summary, we support this Bill and urge you to pass it.



Jim Carlson, Director
Environmental Health Division

DATE 10-11-91
HB SB 221

Diana Wyatt, Chairperson & Members
House Local Gov't Committee
Room 312-2
Capital Building
Helena, MT 59620

Dear Diana Wyatt:

Senate Bill No. 221 is an act requiring an election for the consolidation of county offices.

This Bill does not prohibit consolidation of county offices by petition of the electorate or initiation of consolidation by the Board of County Commissioners.

Under Article XI, Section 9, of the Montana Constitution, adopted in 1972, Section 9 states: "A local government will undertake a review procedure once every 10 years after the first election approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission and etc."

The provision for consolidation of county offices by the Board of County Commissioners is in the 1935 Codes of Montana, Chapter 361, Section 4749.1 through 4749.6 and is currently under Section 7-4-2310 M.C.A.

This Bill is updating the laws so they will be in compliance with the 1972 Constitution, whereby the electorate will vote on the issue of consolidation, whether by the study commission or the Board of County Commissioners.

This Bill also provides that the consolidation issue and election is held two years proceeding the expiration of the term of the respective offices to be consolidated. This will provide adequate time for the transition period, if the decision is to consolidate offices. There will be no additional election costs as it will be held at a regular General Election.

Under the current law, Section 7-4-2310, M.C.A., the Board of County Commissioners shall not less than 7 days before the date on which declarations for nominations may first be filed for any office to be consolidated or not less than 6 months prior to appointment to the office to be consolidated.

This is what I call consolidation at 5 minutes of the twelfth hour. The Board of County Commissioners in Lewis and Clark County consolidated the Auditor and Surveyors, the Clerk and Recorder and Treasurer. The people of Lewis and Clark County by petition placed on the election ballot at the General Election on November 6, 1990, resolutions no.s 1990-7 and 1990-8, a referendum to vote on the issue. This is what I call consolidation at 1 minute of the twelfth hour which does not give adequate time for the transition and budgeting process.

The first words always mentioned is the consolidation saves MONEY!!

Does consolidation save money? As a rule not, just creates a bigger bureaucracy?

In Yellowstone County the office of County Coroner was consolidated with the County Sheriff and the budget has increased from \$62,002.00 expended in 1987 to \$70,639.00 in 1988, to \$77,515.00 in 1989 and to \$86,382.00 in 1990 consisting of \$24,380.00 increase in budget in four years. The Public Administrator was consolidated with County Attorney's Office. The budget for the first year went from \$250.00 per year to \$10,000.00.

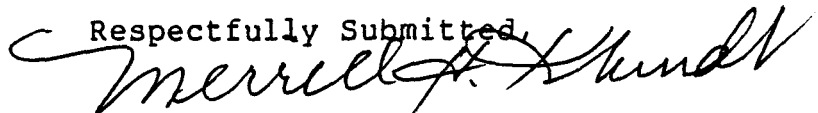
Under the present system, this is one way to remove an Elected Official from his position by consolidating offices when personalities and politics get involved.

More time is needed and proper consideration of the consolidation issue is required to make sure the consolidation issue does:

1. Will there be a savings of taxpayers dollars?
2. Check and balance system in government is not destroyed.
2. The electorate are properly informed and they have the final decision in the consolidation issue.

The issue of consolidation is a very important issue and must be carefully studied and the public properly informed and the electorate make the decision. That is not the case under present law. We have the best form of Government in the world and lets not destroy it. Lets have the electorate more informed and they make this important final decision and keep politics and personalities out of this important issue.

Respectfully Submitted,



Merrill H. Klundt
Clerk and Recorder of
Yellowstone County, Montana
Chairman MACR Legislative
Committee

"We plan to meet any new situation by reorganizing and a wonderful method it can be, for creating the illusion of progress. But normally it just simply creates inefficiency."

Petronius
Rome 66AD

"The way to have good and safe government is not to trust it all to one; but to divide it among the many, distributing to every one exactly the functions he is competent to do. Let the National Government be entrusted with the defense of the Nation, and its foreign and Federal relations; the State government with the civil rights, laws, police and administration of what concerns the State generally; the counties with the local concerns of the counties and each ward direct the interests within itself. It is by dividing and subdividing these republics, from the great national one down through all its subordinations, until it ends in the administration of every man's farm and affairs by himself,that all will be done for the best, What has destroyed liberty and the rights of man in every government which ever existed under the sun? The generalizing and concentrating all cares and powers into one body, no matter whether of the autocrats of Russia or France or the aristocrats of a Venetian Senate."

Thomas Jefferson

"(to) those who argue that the election of certain county department heads is an 'antiquated' form of government, ...We say: Yes, it is 'antiquated.' Democracy is one of the most antiquated forms of government in existence, and it is also the best form created by the fertile minds of human kind."

Jerry Warner, 1983
Deputy Prosecuting Atty.
Pontiac, Michigan
Michigan

"The claim that professionals should be appointed by the court to replace elected officials so as to bring about greater efficiency in the court system is fraught with serious consequences..... Efficiency is not the primary objective of government. The hallmark of free government is justice, peace, fairness, the protection of the unprotected, the expansion of freedom. Almost the very first acts of dictators, including Hitler, Stalin, Mussolini and Franco was the abolishment of local elected officers in the name of efficiency. That efficiency almost led to the destruction of western civilization. As the Wall Street Journal recently noted, Hitler had no problems finding an appointed civil servant to carry out his orders but he had an awful problem with local officials, local elected officials."

James R. Killeen, 1983
Wayne County Clerk
Detroit, Michigan

DATE 3-11-91
HB SB 261

TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
IN SUPPORT OF

SENATE BILL 261

HOUSE OF REPRESENTATIVES LOCAL GOVERNMENT COMMITTEE

MARCH 11, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Arvid Hiller. I am appearing before this Committee as a resident of the Community of Missoula and Vice-President and General Manager of Mountain Water Company.

For your information I have attached my written testimony presented to the Senate Local Government Committee in hearing on February 12, 1991. That testimony will give you the background and reasons for Mountain Water's interest in this legislation. This attachment includes not only my testimony but also a letter delivered to Mayor Kemmis of the City of Missoula.

I am here to support this legislation as it was amended by the Senate Local Government Committee. Subsequent to our testimony and that of others, the bill was amended and passed **unanimously** by the Committee and sent to the Senate floor where it was also passed unanimously 49 to 0.

As originally introduced the bill would have allowed the water supply districts created in the bill to condemn privately owned water supply systems without any showing in court that taking over the private system was in the public interest. That was patently unfair and contrary to normal condemnation laws which have served this state well for the last 100 years. However, we were very gratified that the Senate Committee listened to our concerns and amended out those portions of this bill.

We do support this legislation as now amended because we realize the Butte Silverbow consolidated government needs to have the same condemnation rights as all other government entities.

For those reasons listed above and in my attached testimony we feel Senate Bill 261 needs to be given your support as presently amended and passed by the Senate.

Thank You

**TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
IN OPPOSITION TO**

SENATE BILL 261

**SENATE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 12, 1991**

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Arvid Hiller. I am appearing before this Committee as a resident of the Community of Missoula and Vice-President and General Manager of Mountain Water Company, a privately owned Montana Corporation that has as its only business the responsibility of serving potable water to approximately 50,000 Missoula residents. I have lived my entire life (42 years) in the community. Of those 42 years I have spent the last 21 employed in the utility industry. The last 11+ years I have been an officer and employee of Mountain Water Company.

Throughout the last 11 years the City of Missoula has continually taken a position of claiming that they should own the water system. They have spent considerable time and money (nearly \$500,000) in Montana District Court and the Montana Supreme Court. Their efforts to show the court that they should own the private water company have failed. The Courts have unanimously determined that the City has not shown by a preponderance of evidence that City ownership is a necessity for the public good. This has all been done in spite of the fact that the City of Missoula was offered the opportunity to buy the water system in 1979 prior to the Montana Power Company selling the system to Mountain Water. At that time the city declined the opportunity and said they didn't think they wanted the responsibility.

I have always been perplexed by the City's desire to own our Company, more now than ever. The reasons for my concerns are listed below.

1. Throughout the Court hearings the city has never argued that we give bad service. In fact they complimented us.
2. We not only paid \$8,000,000 for the system we have also invested nearly \$8,000,000 for much needed replacement and improvements to the system.
3. In property taxes alone we have paid nearly \$3,000,000.
4. Our annual payroll of \$1,000,000 is spent in and supports the local economy.
5. Over the past 3 years we have spent \$300,000 on ground water protection. These efforts have centered on:
 - a. Identification of possible sources of contamination.
 - b. Participation in a local task force to create a program to protect our water.
6. Over the past 6 months we have contracted with a Helena engineering firm(Hydrometrics) to assist us and the

local governmental agency in designing and implementing a Wellhead/Groundwater protection plan for the Missoula aquifer. This is the first program of its type in Montana and the State Water Quality Bureau has said they will probably use our program as a model for a State Wellhead Protection program.

Throughout the past 11 plus years we have been complimented by all of the State and local agencies which have oversight of our company's performance and actions. The State Water Quality Bureau has said we are a very proactive and responsible company. The Missoula City-County Health Department has stated that we are a pleasure to deal with because we recognize our responsibilities and deal with them in an expeditious and professional manner. The Montana Public Service Commission recognizes us as a well managed and efficiently operating company. The City of Missoula has always said they know we give excellent service. It also needs to be recognized that we give this excellent service with rates to our consumers that are near the lowest in the State. We do this in spite of the fact that we, unlike municipally owned systems, pay our fair share of taxes.

The current Mayor of Missoula and I have pledged to each other that we will work together for the common good of our community. There are many areas in our community that can benefit from a cooperative effort between government and private enterprise. My company and I are committed to taking a proactive stance as it relates to protection of the community's water. **The Mayor of Missoula knows this.** For this reason, if the Mayor is asked and he responds as he did to me on January 15th this year, he will say "No, I don't have any problem with the present management or ownership of Mountain Water Company." He will ask, however, "what will this community do if the present ownership of the water system should decide to sell its interest to another company with an irresponsible approach to the water system." Our first response has been, there are many agencies which ensure that any private water company exercises their duties in the best interest of their consumers. Those being, the E.P.A., State Water Quality Bureau, Missoula City- County Health Department and the Montana Public Service Commission and, of course, ultimately, the Courts.

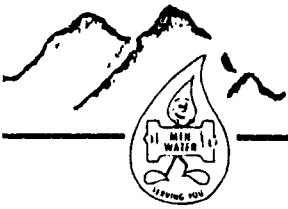
Even given all this protection to the community's water system, Mountain Water Company felt that it would be appropriate to alleviate the City of Missoula and the Mayor's concerns if we offered them an opportunity to purchase the water system in the event the current ownership should ever decide to sell. Therefore on January 15, 1991, I had a conversation with Mayor Kemmis, followed up by a letter to him (copy attached), and told him that our owner and management were willing to give the City an **irrevocable document which would give the City of Missoula first right of refusal** to purchase the company in the event the present ownership decided to sell the company.

In light of the aforementioned offer I fail to see the reason for this latest effort by the Mayor and City of Missoula to incorporate language into Butte legislation that says (page 16, line 25; page 17, lines 2-8; and page 18, lines 6-13), in essence, that a government entity can take ownership of a private company

without showing that it is necessary for the public good. I feel the built-in protections afforded by the present condemnation laws in Montana are far too important to be changed and provide for something that is already taken care of by an agreement offered by our company to the City of Missoula.

I realize that this Senate Bill originated in Butte Silverbow and, for their situation, the first 15 pages of it may be needed. I think the purposes for which the bill was written can still serve Butte's needs without including the sections mentioned in the previous paragraph. For that reason Mountain Water Company supports the removal of those portions addressing the rights of a water district to take a private company without proving necessity.

Thank You.



MOUNTAIN WATER COMPANY

P. O. Box 4826 • 1345 West Broadway • Missoula, Montana 59806 • Phone (406) 721-5570

EXH.B. 4
DATE 3-11-91
HB SB261

ARVID M. HILLER
V.P. and General Manager
(406) 721-5570

January 15, 1991
Hand delivered
January 16, 1991

Mayor Dan Kemmis
City of Missoula

Re: Our conversation January 15, 1991, 10:15 a.m.

Dear Mayor:

Thank you for the opportunity to visit with you this morning. This letter is a confirmation of Mountain Water Company's commitment to the proposal I discussed with you.

It is evident to me from our past conversations and your reaffirmation and acknowledgement this morning that you know the present management and ownership of Mountain Water Company have a long-term commitment to groundwater protection and supply of the best quality water possible to the Missoula Community. In light of your confidence in Mountain Water Company, we recognize your concern that, should ownership change to a private company which is not so responsible, to the Missoula Community that the water supply may be adversely affected.

As I stated to you this morning, in an effort to put this continual "Condemnation Issue" to rest forever, Mountain Water Company is willing to draft an irrevocable document that would give the City of Missoula the **first right of refusal** to purchase the company in the event the present ownership decided to sell the company.

Please do not interpret this letter as an intention to sell Mountain Water Company. We feel that we have the resources, experience, and expertise to continue the fine service and delivery of quality water at a fair price to the Missoula Community, now and for years to come.

We are interested in getting together with you and the council to delineate this document forthwith. Please contact me upon your return from Helena.

Very truly yours,

Arvid M. Hiller
Arvid M. Hiller
Vice-President,
General Manager

TESTIMONY OF DOUGLAS R. HARRISON
CUSTOMER SERVICE SUPERVISOR
MOUNTAIN WATER COMPANY AND
ALDERMAN WARD 4, CITY OF MISSOULA
IN SUPPORT OF

SENATE BILL 261

HOUSE OF REPRESENTATIVES LOCAL GOVERNMENT COMMITTEE

MARCH 11, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Doug Harrison. I am an employee of Mountain Water Company, which is a private water utility supplying most of the City of Missoula. I am also serving my second term on the Missoula City Council.

The purpose of my participation here today is to encourage you to pass this bill as it has been amended. In its original form, this bill had the potential of impacting many of my constituents and the people of this state in a very negative way. I will leave with you the written testimony given before the Senate committee that deals with my specific concerns.

The Senate Local Government Committee, by a unanimous decision, deleted that portion of the bill with which I was concerned. As amended, this bill passed the Senate by a 49 to 0 vote.

I would urge you to concur with the Senate's finding and pass this bill as amended.

Thank you

**TESTIMONY OF DOUGLAS R. HARRISON
CUSTOMER SERVICE SUPERVISOR
MOUNTAIN WATER COMPANY AND
ALDERMAN WARD 4, CITY OF MISSOULA
IN OPPOSITION TO**

SENATE BILL 261

**SENATE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 12, 1991**

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Doug Harrison. I am an employee of Mountain Water Company, which is a private water utility which serves most of the City of Missoula. I am also serving my second term on the Missoula City Council. The portion of the Bill I would like to address deals only with Pages 16, 17, and 18, beginning with Section 34.

Today I am not speaking on behalf of the Government of the City of Missoula. I do speak on behalf of my constituents from the Ward I have represented for over 5 years, as well as many, many people from across the City of Missoula, who are adamantly opposed to this portion of the Bill.

The idea of a simple majority vote of a city council as being conclusive on the issue of necessity is chilling, even to those of us who are supposedly in control.

I am not anti-government. There are different times and situations where governments need to use their powers of Eminent Domain. The laws which are in place protect the people from a government that may be too aggressive and they protect governmental bodies from taking actions which would later prove to be rash! A simple majority vote subjects this very important issue to the politics of the hour and does not serve the best interest of a community as a whole. If a government needs to use this power of Eminent Domain, it is not unreasonable that they prove it is necessary for the public good in order to do so.

The current law has been a good law for the State of Montana and that is why it has been on the books for so long.

Being on the City Council, I understand the need for local governments to have certain powers. However, I also recognize there needs to be a balance. The current State law dealing with Eminent Domain protects us from ourselves and gives us that balance. I would encourage you to delete this portion of the bill,

DATE 3-11-91

HB SB 261

not only for the good of the people of Missoula, but for everyone in the State of Montana.

While I am here, I would like also to give an employee's perspective. Mountain Water Company was in court for several years fighting condemnation by the City of Missoula. After extensive testimony, both the lower court and the Montana Supreme Court, by unanimous decision, ruled that it **was not** in the best interest of the citizens of Missoula to allow this condemnation.

After so much pressure for so long, the employees felt great relief and continued the excellent service for which they are known. When the employees heard about the proposal before you today, they were shocked. Morale has nose-dived. They can not believe the City might be able to change the rules to suit their particular situation. These employees are not political--they do not know how to fight something like this. Most have never been to the Legislature. These are working people, the majority born and raised in Montana, who just do not have the time or experience necessary to appear here and argue about what's fair. These people are extremely concerned about what might happen here. That makes me angry!

This little portion stuck at the end of this bill is not in the best interest of people of Missoula, not in the best interest of the employees affected by this legislation, and it can not be in the best interest of the people of the State of Montana. I believe you will do what is right.

Please delete this portion of the bill!

Thank you.

EXHIBIT 6
DATE 3-11-91
HB SB 261

TESTIMONY OF
WILLIAM EVAN JONES
PARTNER
GARLINGTON, LOHN & ROBINSON
MISSOULA, MONTANA
IN OPPOSITION
TO A PORTION OF
SENATE BILL 261
SENATE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 12, 1991

Nearly 70 years ago, our Supreme Court, commenting on condemnations by municipalities, stated:

"The power to condemn private property against the will of the owner is a stringent and extraordinary one, based upon public necessity or an urgent public policy."

State, ex rel. McLeod v. District Court, 67 Mont. 164 (1923).

Proposed Senate Bill 261, with its insidious language, seeks to allow a municipality to condemn not just bare land or something similarly innocuous, but rather an operating business, involving people and jobs, without a showing of public necessity.

In a water company such as Mountain Water of Missoula, the employees are the most important asset of the business. They should be considered in determining the public interest.

Those people who seek to condemn Mountain Water in Missoula have lost before fair and impartial judges again and again.

They lost a lengthy trial.

They lost an evidentiary hearing.

They lost three times before the Montana Supreme Court.

They have cost the taxpayers of Missoula hundreds of thousands of dollars, not only for their own misguided efforts, but also for the efforts of Mountain Water, whose fees and expenses the taxpayers were required to pay.

EXHIBIT 6
DATE 3-11-91
HB SB 261

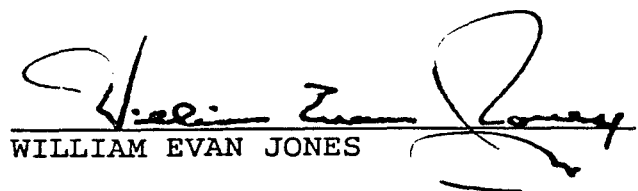
In virtually every type of condemnation proceeding, including highways and power lines, state law requires the condemning authority to show public necessity.

There is no reason why those people associated with the City of Missoula should be entitled to special, discriminatory legislation.

There is no reason they should be entitled to accomplish through the legislature what they cannot accomplish through fair and impartial trials and hearings before the courts.

Attached to this brief statement is one of the many opinions rendered by judges during the City of Missoula's attempt to condemn the Mountain Water system. This opinion, rendered January 19, 1988, by the district judge in jurisdiction, sets forth with great clarity the reasons why public necessity is so significant.

Thank you.


WILLIAM EVAN JONES

TESTIMONY OF SHERMAN V. LOHN
PARTNER, GARLINGTON, LOHN & ROBINSON
MISSOULA, MONTANA
IN OPPOSITION TO

HOUSE BILL 261

HOUSE LOCAL GOVERNMENT COMMITTEE
JANUARY 26, 1989

I am appearing before this Committee as a resident of the City of Missoula and as an attorney for Mountain Water Company, a Montana corporation, in opposition to House Bill 261. This bill seeks to amend a portion of an ancient Montana law which has its genesis in enactments made by the territorial government, the law remaining basically unchanged and unused. The proposed amendment is, on its face, a simple one. It merely adds to a list of special items regarding streets, alleys, waterways, sewers, ditches, etc., the acquisition of a water supply system under the provisions of another section of Montana, which is also an ancient and unused provision. The kicker is contained in the existing statute, a portion not amended, which states in part "The ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking . . ." (Emphasis supplied).

The City of Missoula in 1984 filed a condemnation action against Mountain Water seeking to condemn the entire operation of the privately owned water system. The attempt has been unsuccessful because, after 4 years of active litigation, the City has been unable to establish that the proposed condemnation is in the public interest or is necessary. There have been three appeals to the Supreme Court, numerous hearings in District Court, a lengthy trial and a subsequent evidential hearing. The case is once again pending on appeal in the Supreme Court, which has in its past decisions made it very clear that for the condemnation to succeed it must be in the public interest, and the City simply has not been able to meet that burden.

By this proposed amendment the City seeks to achieve the result it has been unable to secure to date under existing law, simply by providing that no showing of necessity or public interest is necessary.

The concept of condemnation is an awesome one -- private property can be taken by the government against the wishes of the owner. This concept is accepted, though often with protest, because the government can show a need. However, couple the taking by the government as an absolute without any showing

that the taking is necessary or in the public interest and the concept is down right frightening.

In this state, the Montana state government does not have the power which this amendment would grant to every City Council in the State. The County governments do not have such power. It is accepted that each governmental body must establish need based on public interest. By this piece of legislation, the City of Missoula, apparently admitting that it cannot establish a public need, seeks to change the law for its benefit.

It should be noted that most condemnation actions with which we are familiar involve highways, power lines, gas lines, access roads, etc. where the necessity is clear and the general public will be benefitted. However, this amendment deals with an operating business, involving people and jobs, not just a piece of land with some improvements. A business in which the employees are to be considered as the most important asset and are vitally involved in determining the public interest.

Mountain Water serves a substantial number of County residents who certainly would not be benefitted by a City acquisition but would be deprived of the protection of the Public Service Commission as to rates, charges, service complaints, fire protection etc.

The Rural Fire District representing a great number of Missoula County residents protested the attempt of the City to acquire the system asserting that such an acquisition would substantially harm the District.

As has been noted, a substantial tax base would be lost by School Districts, the County and the State.

Recognizing that this forum is not one in which we should re-litigate a public interest issue which the City lost in Court, but believing that you should be advised of specific findings of the District Court, there is attached to this statement a copy of "Additional Findings". I would suggest that you might find this document of interest to understand more fully why the City wants to condemn a business, not only against the will of the owner, but without the necessity of establishing that it is in the public interest.

I would suggest to you that in addition to establishing a bad precedent in condemnation actions, the adoption of this amendment in its present form may well grant new powers of condemnation to all City Councils beyond that which might presently be contemplated. The original law is not divided into sections (a) through (d), as is contained in this bill. As a consequence the act has been interpreted not to give a City unlimited authority to condemn for "(d) any other municipal and

public use". If such an interpretation was correct, the City surely would not need this enactment. As redesigned, the passages of this bill would read:

(1) The City or Town Council has power to condemn private property for:

(d) Any other municipal and public use --

This result would hardly be acclaimed by the public in general as being either necessary nor in the public interest.

In 1923 our Supreme Court, commenting on condemnations by municipalities stated:

The power to condemn private property against the will of the owner is a stringent and extraordinary one, based upon public necessity or an urgent public policy.

State ex rel. McLeod v. District Court, 67 Mont. 164.

Do not by the adoption of this bill, a piece of special legislation, wipe out a doctrine that has been established for so long and has protected the public so well.

Thank you.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Local Government COMMITTEE BILL NO. SB 221
 DATE 3-11-91 SPONSOR(S) Harding

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Tom Harrison	mt. Clerks of Court @ 5.50			X
Lisa Ferkonich	Clerks of Court			X
Joe Brown	Clerks of Court / Lisa			X
Kim C. King	Clerks of Court			X
Gordon Morris	MHL		X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Local Government

COMMITTEE

BILL NO. SB-160

DATE 3-11-91

SPONSOR(S) Kennedy

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tony Herbert	Administration	✓	
Larry Leeson	Administration	✓	
Anita Moon	Administration	✓	
Lyle May	N.H. State Fire Safety Assn	✓	
Gordon Morris	MA Co	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Local Government COMMITTEE BILL NO. SB102
 DATE 3-11-91 SPONSOR(S) Nathe

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Henry E Lohr	Mt. St. Vol. Firefighters Assn.	SB102		X
JAMES A. LOFTUS	MT FIRE DIS? ASSN	SB102		✓
Lyle P. Nagel	Mt. St. Fire Chiefs Assn Mt. St. Vol. Firefighters Assn			✓
Gordon Morris	MADs			✓
Nancy Butler	State Fund	SB102		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Local Government COMMITTEE BILL NO. SB 261
 DATE 3-11-91 SPONSOR(S) Lynch

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
4609-GHARATT. #0582610 JACK TRAYLER 89803	MONTANA SCHOOL TRANSPORTATION ASSOCIA.	261		✓
Arvid M. Miller	Mountain Water Co.	261		✓
Dorothy Traylor	Montana Eagle Forum	261		✓
Doug Harrison	Mountain Water Co.	261		✓
JAMES A. LOFFTUS	MONTANA FIRE DIST ASSN	261		✓
Sherman V. Soler	Attorney -	261		✓
Dan Kemmis	City of Missoula	261	✓	OP
JIM Nugent	City of Missoula	261	✓	OP
Alec Hansen	MLCT	261		✓
Ted Jones	Mountain Water Co.	261		✓

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Local Government COMMITTEE BILL NO. SJR-3
 DATE 3-11-91 SPONSOR(S) Lage

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<u>Riley Johnson</u>	<u>NFIB</u>			<input checked="" type="checkbox"/>
<u>Gordon Morris</u>	<u>MA Co.</u>			

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Local Government COMMITTEE BILL NO. SB 224
 DATE 3-11-91 SPONSOR(S) Vaughn

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Robert Ralsch	MT. Dept of Health & SNS			X
Jan Gilman	MT Dept of Health & SNS			X
Dan Powers	Burke-Solzer Bow Health			X
Senator Vaughn	Sponsor			X
Gordon Morris				
Jim Jensen	MEIC			X
Susan Leonard	MT Audubon			X

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