

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Vice Chairman Eleanor Vaughn, on February 12, 1991, at 3:20 p.m.

ROLL CALL

Members Present:

Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: Esther Bengtson, Chairman (D)

Staff Present: Connie Erickson (Legislative Council).

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

Announcements/Discussion: Senator Vaughn turned the chair over to the senior member of the committee, Senator Eck.

HEARING ON SB-224

Presentation and Opening Statement by Sponsor: Senator Vaughn, District #1, Lincoln County, opened by stating that she was carrying this bill for the Department of Health and Environmental Sciences. She read the bill. In many of the areas there are real difficult air quality problems, and the Federal and State Government are finding it necessary to establish rules and regulations to operate these. Right now it is very difficult for local governments to set up programs that they can manage themselves. This bill would allow them the authority to control these programs. There are some amendments being purposed that will make this bill comply with the Federal Regulations, and there are proponents from the local air quality board who will explain them.

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Proponents' Testimony: Bob Raisch, Montana Department of Health and Environmental Sciences (MDHES), outlined the four major objectives of the bill. (Exhibit 1). Mr. Raisch said four communities have local air quality control programs, they are Missoula, Cascade, Yellowstone and Lewis and Clark counties. Mr. Raisch said the amendments (Exhibit #2) are necessary due to new federal guidance concerning requirements of the new Federal Clean Air Act. The second set of amendments (Exhibit #2A) were worked out with several industry members who were concerned that local government not enact a second set of standards that these industries would have to comply to.

Dan Powers, Environmental Health Department, supported this bill. (Exhibit #3).

Gerald Griner, County Commissioner, Lincoln County, said in Lincoln county they do have a severe air quality problem. The board of county commissioners and the sanitarian, Ron Anderson, have been working hard to come up with a solution. By adding the local control program, it would allow each county to address the problems in the particular area. Through the process of the public hearings and comment period it would allow the local people ample opportunity to be involved in the proposal. He urged the committee to support this legislation.

Larry Fenster, Lewis and Clark County Health Department, said that Lewis and Clark does have an air pollution control district. They were fortunate to get 15% of the population to sign up for support of the program. He could see a problem in a community such as Lincoln or Augusta trying to develop a district to control air pollution. He felt it would be a real problem getting enough signatures, and therefore he is a proponent of this bill.

Jan Gilman, State Air Quality Bureau, presented written testimony from Jim Carlson, Director, Department Health and Environmental Sciences, letter of support (Exhibit #4). She read part of the testimony. She asked the committee to support this bill.

Steve Brown, Noranda Minerals, said the company supported this bill with the amendments presented. He thanked the State Health Department for the cooperation on preparing amendments with the industries involved. They agree with the concepts and feel the amendments address those major industrial sources already covered by federal regulations. He thanked Mr. Raisch for sitting down with them. It is Noranda's hope, that over the next few years, local governments that have spoke today can in

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fact finalize these amendments and deal with the concerns that affect the air quality in the state. There are two significant changes in this bill of existing law. The key section is the one that allows local air pollution district to impose standards or permit requirements that are more extensive than state of federal requirements. That is an existing proviso in the law. The difference is, as you have heard in testimony today, that it is very difficult if not impossible to create local air pollution districts, and secondly, they don't have a funding source. Both of those problems will be addressed by this bill. Noranda's concern and the concerns of others, is that absent of the amendments that we have worked out with the State Health Department, major sources in the state could find themselves in a situation where they have spent 3-5 years going through an EIS process, paying for the EIS and the permit from the State Health Department, only to find that if there was some dissatisfaction with that permit at the local level, that a local district would be formed. Then we would find ourselves subject to a third set of standards and or a more extensive permit requirement. So conceptually the amendments worked out with the Health Department satisfy everyone. We have no objection to a local air pollution program that is aimed at auto exhaust, wood stoves, road dust, etc. The other things that perhaps do not have a priority attention of the State Air Quality Bureau. No one has said at the local level that they want to get into regulating of major sources such as power plants, stone container, or major hard rock developments. The amendments need to define the scope of the bill to those concerns such as auto exhaust. The two sets of amendments, and (Exhibit #2A) address Noranda's concern, and allow local governments the flexibility to deal with problems they want to address. As a resident of Lewis and Clark county, he is very thankful that we have local air quality districts that deal with wood stove smoke and other problems. He urged the committee's adoption of the amendments.

John Fitzpatrick, Director of Community and Governmental Affairs, Pegasus Gold Corporation, and he has been fortunate to work with the Department of Health in drafting the amendments to SB-224. He did not come prepared to discuss this, and there may be a gap not covered. As a representative of the mining industry, he is concerned that this bill not get involved with duplicate permit processes, and multiple standards that a mine might need to obtain. He suggested that an additional Part d. be added that would add "is regulated under a state reclamation act, Title 82, Chapter 4, Part 1-3. That would clarify that coal mines and hardrock mines would not be subject to regulation by the local district, but sand and gravel operations that are currently operated, can be regulated if so desired by the local areas. He

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will submit the wording to this amendment to C. Erickson, the committee's Legislative Council member.

Ken Williams, Montana Power Company and Entech, he wanted to reiterate Mr. Fitzpatrick's concerns about the Department of Health letting the industry representative help work on the amendments. He offered one additional amendment that would cover and clarify that existing major stationary sources that may not be regulated under the Federal Clean Air Act prior to the passage of the amendments of last fall, would be subject to this same amendment. Specifically, Title 4 which is the acid rain provision to the Federal Clean Air Act. (Exhibit #5).

Ward Shanahan, Stillwater Mining Company, they have a mine at Nye, and one will be south of Big Timber, and a smelter at Columbus. They certainly would support this bill if the amendments can be adopted. Stillwater Mining would be regulated under the Federal Clean Air Act and the Montana Act as well as the Reclamation Act. They feel those are sufficient, and another level of regulation is one too many.

Opponents' Testimony: none

Questions From Committee Members:

Senator Eck asked Senator Vaughn if she could state what the original intent of this bill was before any amendments were presented? Senator Vaughn said it was to let local governments work on their small problems like wood burning problems. By setting up these districts they would have a better way to deal with these problems. They could control the wood burning and enforce the regulations in a manner that the communities could live with. It also enables local district to get funding to do something about it. The initiative petition that is currently available is cumbersome, and some areas of the county are not concerned with the problems, so it was difficult to get the signatures on the petition. This way the district can be established within the areas that particularly need it right now, and expand it later if needed. They still have to go through the public hearing process and involve the local people. They just don't have to gather signatures. The main concern was to address the woodstoves and these kinds of problems that they are having in the areas.

Senator Hammond asked if there is still a vote with this bill? Senator Vaughn said that there is a public hearing, just like any other district formation. There is no voting in this process. Senator Hammond asked why it is so difficult to get 15% on a

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petition? Senator Vaughn said it is hard to find people who will sign a petition. This allows districts within counties. Signature gathering is difficult. The people can still be heard, but this process is simpler. Senator Hammond asked how the people decide if they want the district or not? Senator Vaughn said they did that through the public hearing. They can petition the commission not to establish the district. Senator Hammond asked if this bill would give the districts the right to enforce stricter air standards than the state or federal regulations allow? Senator Vaughn said yes it would, if they decided to have stricter standards.

Senator Thayer asked if there was a fiscal note to this bill? Senator Vaughn said that there was not because the funding for these districts is currently available through the Federal Government loans and state grants programs, and funds would be raised by the fee system if the district enacted one.

Senator Thayer asked Larry Fenster why he felt it would be hard to get a district in Lincoln or Augusta? Mr. Fenster said that it would be difficult to get the signatures because of the types of fuels that are available to the people there. Natural gas is not available in Lincoln, and electric heat is supplemented with wood. Senator Thayer said what he was getting at was that the people did not want to pay for permits? Mr. Fenster said he assumed that they would not want to pay for permits, or have a drastic change in their lifestyles.

Senator Eck asked Senator Vaughn what section of the bill addresses how the districts will be formed? Senator Vaughn said that districts can be set up anywhere, for a whole county or areas within one. Senator Eck asked if there was no cost to be imposed on the area setting a district up? Senator Vaughn said only the area within the district would pay the fee if one is set. She said people don't always want these regulations, but in time, the federal regulations from the Federal Clean Air Act will come down and impose standards on these areas. This bill gives them a better way to get a hold of the problem. Regulations can be worked out before the Federal Government tells them what they have to do within a certain length of time. They will already have started, and be able to comply with what they have prior to the federal regulations. Senator Eck asked what kind of permit fees would be imposed? Mr. Raisch answered the question by saying that there are two aspects to the permit fees. Some communities have woodstove programs that charge permit fees for stoves. Other existing programs like Missoula, Cascade, Yellowstone, and Lewis and Clark counties, issue permits to smaller industrial sources. This would provide the authority for

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them to continue these fees at the local level. There are some federal changes that require a special fund at the state level. This would make sure that if counties are issuing the small industrial permits that the money does not go to the state, it stays where the work is being done. Senator Eck asked if there were any communities that are now collecting fees from some of the industries that would be exempted? Mr. Raisch said no, none of the industries that pay fees would be on the exempt list.

Senator Beck said the amendment use words like more stringent and more extensive, he wonders if there is a cap or realistic figure? Mr. Raisch said that this particular part of the bill is existing statute. The crossed out section is a duplication of what was put in. This is important because the Federal Clean Air Act requires areas that are violating the ambient standard to develop control plans to bring the area into compliance. The amount of control necessary varies from community to community. Some are marginally above the standard while others are drastically above. It is important for the local district to have authority if needed to adopt fairly stringent requirements in those areas way above the standard.

Senator Hammond asked if local areas can provide permits how are the permits going to help provide for better air? Mr. Raisch said that it is two-fold. There are no communities right now that are collecting fees for woodstoves in Montana. The idea is to use some of the funding to support their air quality program that does the monitoring, issues the curtailments, the equipment and personnel to do this. Part of this would be to fund this, to insure that the alert is called at the right time. The other reason would involve new construction of homes to make sure that the stove put in is a very clean burning stove. Senator Hammond asked if this would become part of the building code? Mr. Raisch said that Missoula stoves have to be clean burning. He thought the building inspector that does the inspection of new homes, and then there is periodic renewal that requires the reporting of parts replaced or wear out. Senator Hammond said it sounded like the charge for the permits was so that there was money to operate? Mr. Raisch said it would be up to the local district. Permit fee is not required for woodstoves by the state. If the local community felt it was a way to develop their program they would have the option to do that.

Senator Eck asked Mr. Raisch if they have a pollution control district in Billings? Mr. Raisch said yes they do. Senator Eck asked how this would allow them to address that problem? Mr. Raisch said this wouldn't change their system because they already have a local control program which was authorized by

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petition drive over 15 years ago. They do a lot of air monitoring, some work in road dust, and they may do some additional work with regard to carbon monoxide in the future. This would probably not change anything for them. They are already receiving state and federal aid at this time. Senator Eck asked if it would limit their ability to monitor the large plants? Mr. Raisch said that the Board of Health is the one who monitors large facilities, not this local control district. They have some smaller industrial facilities like the grain mills and asphalt plants that they issue permits on and do enforcement and the inspection. The large ones like the refineries and power plants are under the Department of Health and Environmental Sciences. The board withheld authority for those large sources when they approved those programs years ago. This bill would put what the board has done in the past into the statutes.

Closing by Sponsor: Senator Vaughn said that she felt the committee had a good discussion of the bill. She said the local governments were not interested in trying to control the big sources like the mines, mills, and refineries. They want to get a handle on these smaller problems before the Federal Governments says they have to. She has no reason to feel the amendments would not be acceptable. She asked the committee to look favorably on SB-224 as amended.

Senator Vaughn took over the chair after the hearing on SB-224.

HEARING ON SB-261

Presentation and Opening Statement by Sponsor: Senator J.D. Lynch, District 34, said that has been four years since he brought a water bill before this committee. He successfully brought legislation that dealt with the two major water companies that are here today. That bill was ultimately brought to the 9th Court of Appeals in San Francisco to prove it unconstitutional. He wanted to report to the committee, that their diligence in passing the legislation was proved to be constitutional and was upheld 3-0 by the 9th Circuit Court of Appeals. SB-261 is a different matter. It is a bill, that many people hope will never have to be utilized. It provides the ultimate taking over the

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responsibilities of the water companies involved. He could relate the many horror stories of the problems in the Butte and Anaconda area and the water company there. For close to a year, they were unable to drink any of the water they were paying for. Hundreds of thousands of dollars were spent by members of his community for bottled water. As a father of a three year old, you wouldn't dare let a child drink the water that was condemned. In fact the schools were told to shut off their drinking fountains because it simply was not fit for human consumption. Yet, along with paying the water bills, the people had to buy additional water in order to survive. So we have problems with the Butte water system. We had hoped and the Butte Water Company tried to find financing of \$40 million dollars to get the system caught up. The financing is apparently not going to be available. There is a suit going on, where people have sued for the lack of service. SB-261 is an attempt to prepare ourselves for the time may occur and looks inevitable in his mind, when the local governments in Butte-Silver Bow situation will in fact have to take control of the water company. Realizing they will pay a fair market value, and then will have to go to bonding or improvement districts to try to improve the lines that were left in disrepair for past 40 years. This is not a pleasant situation to have to pay that amount of money, but his own feeling is that if they have to pay this amount, it is better to own it than to foot the bill for someone else. He understands that there are several proponents and opponents to the bill.

Proponents' Testimony: Jack Lynch, Chief Executive, Butte-Silver Bow, said that they have a horrible problem with their water system, and it is a problem that they have attempted to address by meeting with the PSC, the Butte Water Company, and the local constituents. If Butte-Silver Bow does end up in ownership of the water system there are two things that this bills does that are critical to the city and county of Butte. If they do end up as proprietor of the water company, it would allow Butte-Silver Bow to establish the water district with lines that co-exist with the current metro-sewer lines. This would avoid any disruption of service. Secondly it includes consolidated city/county governments. All of the legislation now refers to a city or a county. As the only two consolidated city/county governments in Montana, this bill would include us in the statutes that currently exist. This is our intent. We hope through amicable means we will be able to resolve the problems we have. In the event that the problems are resolved, or the water is not interested in maintaining its proprietary interests this bill gives us the vehicle to continue to deliver water to the people of Butte-Silver Bow.

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Dan Kemmis, Mayor of Missoula, said that only two areas do not own their own water, Missoula and Butte, and this bill addresses this in two different ways. Mr. Lynch described one section. The other portion would change the eminent domain law in Montana specifically where it applies to the acquisition of municipal water systems. It would provide that in the acquisition of the municipal water system, that by passing a resolution of intention to acquire, that the issue of necessity of the acquisition would be conclusively settled by the passage of the resolution. What this means is that there would be a recognition in the state law that municipal water systems are necessary to the existence of cities. No one here would doubt that. The current law requires that a city has to prove the value of the system and it has to prove that it is a necessity. We do not want to change the proof of value, but change it so it is not necessary to prove necessity. Water is necessary, but it is difficult to prove. The concern is that the Missoula might be the only city in the state that does not own its water system. This is not a bad thing under current circumstances. We have a good water company that is well managed. His concern is that you can not count on the current management lasting forever. The city has to look forward to the possibility of the management changing or circumstances changing. The city might find that it needs to be in the position of every other city in Montana, aside from Butte-Silver Bow, and that is to acquire their water system. Without the change in the law of eminent domain, it is simply not possible for Missoula to do. All we ask is that we be put in a position of parity. One reason that parity is important is the Big Sky Dividend Program. The first type of expenditure listed in the Big Sky Dividend Program is for government owned municipal water systems. Whether that program is adopted, Missoula will not, or can not qualify because we don't own our own water system. Thus we are put at a severe disadvantage to acquire public funds for purposes of improving the system. Those are the reasons we ask for your support of SB-261.

Robert McCarthy, County Attorney, Butte-Silver Bow Local Government, and as the Chief Executive, Jack Lynch, mentioned before, the existing law that deals with what is called "metro-sewer districts" refers to operation of these districts by counties and boards of county commissioners. For fourteen years, in Butte-Silver Bow, we have operated a metro-sewer district that was created more than 25 years ago under the laws that apply to a form of government that we no longer have, and probably never will have again. So laws that refer to annual action taken by boards of county commissioners and refers to county commissioners doing certain things which we no longer have. So one of the new things set forth in this bill is to restate the existing

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provisions in Montana law which are currently referred to as metro-sewer districts and would repeat these sections and provide that they be applicable only for city/county consolidated governments. In addition the bill would not refer to this district as a metro district, but refer to it just as a district. It would expand the authority to provide for treatment of sewerage as given to metro-sewer districts, but also provide for operation of water system and all the requisite duties that are attached to public water supply. This is common throughout the law, municipalities, through broad authority, have the ability to operate public water and sewer systems, and we could operate under that. This bill makes it simpler for us in the event that it is necessary for us to operate a public water system, we could operate it along with what is now called a metro district, but in the new bill it would be referred to as a district for provision of water and sewer services. This current metro district has definite boundaries, all the properties within the district are identified, evaluations are established, and separate records are kept for this property. There are crews available, equipment, and it would be simply to operate this combined services. It would seem difficult to provide service if we have to take over the municipal water system to the county at large, but this bill would provide that advantage in that this district already exists. This is also common in rural areas. The laws that deal with the operation of sewer systems in rural areas are called the county water and sewer law, so this simply provides for a system that is commonly in effect in either municipalities, populated areas, county water/sewer system in rural areas, or consolidated governments. This calls for some changes in language to take into account consolidated governments, and it would make for a system, if necessary, that could be done and the service provided to the public.

Alec Hanson, Montana League of Cities and Towns (MLCT), stated that he felt there was no municipal service that is more important than the provision of adequate, clean, safe drinking water. The purpose of the bill is to simply give Anaconda, Butte, and Missoula the authority to meet that challenge. The members of MLCT agree with this idea when they supported a resolution and this bill by unanimous vote at our convention last fall in Bozeman. Nothing should get into the way of the people of Montana and clean, safe, drinking water.

Vern Erickson, Montana State Fireman's Association (MSFA), and those are the firemen that are in the 1st and 2nd class cities. We urge the committee's concurrence in this bill.

Opponents' Testimony: Arvid M. Hiller, Mountain Water Company,

stated that he is glad to see that Senator Lynch and Mayor Kemmis made a differentiation between the first 15 pages of this bill, and two pages that deal with eminent domain. (Exhibit 6, 6A). Mr. Hiller stated that Missoula already has the first right of refusal if the Mountain Water Company decided to sell.

William Evan Jones, Partner, Garlington, Lohn & Robinson of Missoula, opposed the last two pages of SB-261 that dealt with changing the eminent domain law. (Exhibit #7). He has represented condemnation from both sides. He presented a copy of the court case that Mountain Water Company won against the City of Missoula and their condemnation case. (Exhibit 7A)

Doug Harrison, Employee, Mountain Water Company, as Customer Service Supervisor, and also a Missoula City Councilman, addressed only the amendments. (Exhibit #8).

Dennis Lind, Washington Corporation based in Missoula and Butte Water Company, opposes the last two pages of this bill that deal with condemnation and eminent domain. The first portion of the bill and the creation of the water districts for the cities of Butte and Anaconda are appropriate. He agreed with both Senator and Executive Manager Lynch that there is a need for this kind of concentration of ownership within a county. This would be advantageous to Mr. Washington and the Butte Water Company if they took over the water company, but at this particular time with the various legal issues and practical considerations this is not possible. We do not oppose the creation of the water districts, but we do not think it is appropriate to change the traditional condemnation procedures as they exist historically in the state of Montana and throughout the United States. Provision that are on the last two pages of the bill speak conclusively saying that a resolution or ordinance is conclusive to necessity. What about the individual property rights? What about the concerns our Governor has expressed about privatization and the economies provided by that? If there truly is a need to take over the system, then that necessity will not be difficult to prove. This is like having the fox in the hen house. Why is it appropriate to a local government body to make the determination that there is no necessity, that there is conclusive evidence of necessity, without allowing the private owners of that entity to present themselves to an independent arbitrator for determination of what is fair and in the best interest of the public. He submitted that the last two pages of the bill be deleted, and they only oppose that section of the bill that speaks to condemnation and eminent domain.

Lauren Frank, Montana Farm Bureau (MFB), and we oppose pages 17

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and 18 of this bill which you have heard quite a bit of testimony on. We are very concerned with the taking of private property. If the committee will delete those pages, then the MFB could support this bill.

Bruce Suernram, Missoula Rural Fire District, brings a different perspective to this issue. They have dealt with Missoula trying to annex fire districts, and see this as just another attempt through the back door. He concurred with the amendments offered (Exhibit #9).

James Lofftus, Montana Fire District's Association, and we oppose the bill as currently written. If the amendments offered by Mountain Water company are adopted we can support this bill.

Jack Fraxler, Missoula resident, opposed the last two pages of the bill. It is an infringement on private property. He spoke for the Montana School Bus Operators/Private Contractors. They felt if the cities can take a going proposition like Mountain Water Company, then who is next? If the precedent is set, it could happen. Some of Mayor Kemmis' remarks that we are one of two entities in the state that have private water, may be to our advantage. It has been that way since Missoula was founded. MPC did a magnificent job, and in 1979 the city of Missoula had the chance to buy it. Since then, the last four mayors have tried to get the water system. He hoped the committee would strike pages 17 and 18, and leave the rest of the bill.

Reba Falk, Ravalli County resident, sent a letter opposing the bill (Exhibit #10)

Questions From Committee Members:

Senator Eck asked Mayor Kemmis to what extent does this address the annexation problem and what reason does Missoula feel that they want the water? Mayor Kemmis said that this is separate from annexation issues. This is not an annexation tool. There concern is that Missoula be given the opportunity to do what all other cities, except Butte-Silver Bow, have done, and that is to own their water system. He added that the language about the conclusiveness of the finding of necessity has been borrowed from another section of state law that says the same thing in a number of other incidence. This is not something new, and it would not only apply to water companies alone. He was sorry he did not have the section it was taken from nor the list of other facilities that can be acquired this way.

Senator Beck had been looking diligently through the code books, and said that he hadn't found any resolution that you can use

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eminent domain without proving the need and the necessity in the code book. This sounds perfectly logical that you should have to prove that. You should not be given the authority just by resolution to go take over a water company. How would Mayor Kemmis argue that Missoula needs this authority? Mayor Kemmis said that again he was sorry he did not have the section of the law that this was taken from, but he would supply it to the committee, so they have a list of other acquisitions that cities and towns can do in this exact manner proposed here. Then they can determine whether water systems should or should not be included in this list. There are a number of places that by simply passing a resolution you can show necessity. The law says in general, in order to condemn, you have to prove that the use is one which is authorized as a public use, and then with the acquisition, is necessary to that use. The difficulty with a water system, is figuring out how you ever prove, to the satisfaction of a judge, that it is necessary that you should own the water system. It does not appear to be enough to say that water is vital to life were the waters is vital to municipal existence. Missoula has tried that, and it is not enough. All we are asking, is that water systems be added to the list that already exists in state law where exactly this procedure is in place. He will provide that statute to the committee, so they can make those comparisons. Senator Beck asked Mayor Kemmis if he had the authority, at this time with the statutes as they are, and they could prove need and necessity that Missoula could evoke eminent domain to acquire a water system? Mayor Kemmis said if they could prove necessity then under the law now we could acquire the water by eminent domain. Missoula has tried to do that, and have failed to prove need and necessity. Senator Beck asked if the water system in Missoula is in such shape that you have a need to purchase that water system at the present time? Mayor Kemmis said no not at this time, but the last place he wants to be is in the position that Butte is in. None of you want to put us into the situation that the only time you can acquire a water system is when it is deteriorated so badly that it needs emergency attention. That is not the condition under which any other city acquired their water system. They got theirs in at the ground floor and that's the difference. That's the place the law seems to put us. In order to prove necessity, we would have to prove that things are in the shape they are in Butte. We can't prove that, but we never want to be in that position either.

Senator Thayer asked Mr. Lind why the Washington Corporation or Butte Water Company did not respond to the statement that the people of Butte had to buy bottled water? Mr. Lind said he did not respond to that statement. He is well aware, as well as the

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residents in Butte, to the multitude of problems that exist with the water company there. Those are the result of many years of historical deterioration, lack of usage, and maintenance and repair. It is true that bottled water had to be brought in. The problem with the Butte Water Company is the massive number of dollars needed to bring it up to a standard, and who is responsible for that. This is a matter that is before the PSC and in the courts. He did not feel it was appropriate for him to respond.

Senator Harding asked Mayor Kemmis why if Mountain Water is doing such a good job, as he stated in his testimony, and they pay \$3 million dollars in property taxes and payroll, why would he want to buy this company? Mayor Kemmis said that they did not want to buy at this time, but we want the ability by law to do it at a fair chance if it was determined to be necessary. Some reasons we think it might be necessary are: #1 has to do with the close relationship between an entire water system including the sewer system. The water drawn from the ground that goes through homes and businesses and then into the sewer. We have had difficulty in Missoula in being able to set sewer rates in a flexible way because our water usage is not metered. Because the water widely unmetered, we can not determine how much various residences are adding to the sewer system. If you own the water system, like most cities, you have it within your own control to decide whether to meter water systems. We in Missoula are dependent on a sole source aquifer. Prior to the time we relied on this aquifer, we relied heavily on surface water from Rattlesnake Creek. Many people feel that we need to protect and possibly reactivate that surface source. We can not force Mountain Water to do that. So we are left helpless in controlling domestic supply policy in Missoula. We are left to decision made by Mountain Water. By in large, Mountain Water makes good decisions, but for us to be left at the mercy of a private water system after watching what happened, it makes us nervous. So we would like to have the capacity to acquire that water system before a crisis occurs.

Senator Eck asked Mr. Hiller why Mountain Water does not meter the source of water? Mr. Hiller asked how metering 10,000 addresses will help, when they in fact acknowledged as recently as 2 weeks ago, that along where our lines run they do not know if 50% of the homes are connected or not. To address your question about metering. It is a matter of economics, and the best way to spend your money in relation to your consumers' dollars. The reference to the Rattlesnake water, in 1984 it cost 60 cents to each customer to make improvements to replace Rattlesnake water. If we were to build a filtration plant today,

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at today's cost, it would cost each customer more than \$6.70/month to build. He submitted that if they entered a metering program to meet all their flat rate accounts, and the PSC said it was more wise to repair leaks, which they have done over the last 10 years, then the PSC would determine it wasn't prudent use of money. Then to build a \$7 million dollar water treatment plant that will increase the customer bill 1000% over what has been done, they would never allow it. Rattlesnake Creek in August, which is its most needed time, is at its lowest flow. It could not even supply 10% of what is needed. He asked what the wisdom of building a treatment plant, raise everyone's bill by \$7/month, and not have the water when you needed. Senator Eck asked what the connection was between using surface water and having to put in a filtration plant, and the advise of putting in metering. Metering usually cuts down on the use of the water by residences. Mr. Hiller said that during the condemnation process and hearings that Mountain Water had to submit its budget every year while they were under the threat of condemnation for their approval. The last year under the threat, Mountain Water asked Missoula to permit them to go to a capital investment program of putting in 2,000 meters/year. The response at that time was no, we do not want to get involved with that. Senator Eck asked if that meant Mountain Water would consider meters? Mr. Hiller said that they have proposed meters before, and it is a prudent thing to do the most economical thing first. As we speak, Mountain Water is entering into contract to find out what the leak rate is across the system. In 1981 it was found to be more cost effective to repair leaks than it was to install meters. As soon as they get statistics on water loss, then they intent to propose meters. They do supply the city of Missoula with all the consumption of all the multiple line units to the businesses in Missoula. This is to assist them in coming up with sewer billing rates. We intend to mechanize this through computerization, and that flows right along with the line of cooperation the he is committed to with the city. We help them, and they help us to insure our community water is protected. It has to be done at the best rates for the consumer. Otherwise the PSC says it is not prudent and they will not pay for doing it.

Senator Beck asked Mr. Hiller if Mountain Water has a long range plan, and what they are looking at for the volume of water for Missoula? Do they expect any big increases in demand, and if so, do they have a plan to meet those increases? Mr. Hiller said that their long range plan is far reaching and includes finding the best source for water that will go beyond the demand. He has four children, and he is committed for at least the next 20 years until he retires, that Missoula has as good or better water. He only does this because his owner supports him in doing this.

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Closing by Sponsor: Senator Lynch closed by saying that it was a fine hearing. He momentarily got upset when Mr. Lind, the lawyer from Missoula was telling us about the condition of the Butte Water Company. Then he remarked about the right's of property owners. He only thought about people's rights and his daughter's rights if we didn't have the ability to bring in bottled water. What about the poor kids' rights that no one gave a damn about for a year or more, that some kids were still drinking contaminated water from the Butte water system. The water company didn't give a damn, they didn't try to help out, they didn't give subsidies to those people that could not afford the bottled water, and they didn't reduce their rates because the water was filth. So he said he gets a little testy when people talk about property owners' rights versus small children's rights and the consumers' rights. In some instances, nothing was done to help the problem in Butte. Hundreds of thousands of dollars was spent on bottled water to keep our children healthy, virtually alive, rather than drink the filth that was coming from the taps of the Butte Water Company. He didn't remain angry, he cooled off! You have a decision before you in regards to the ability of allowing Missoula, which is going to be singled out, will be penalized by the Big Sky Dividend if it passes, and so will Butte-Silver Bow. At the time it passes, if we don't make arrangements to include all water systems, then Missoula and Butte will not have opportunity to receive funding. This may encourage all of us to look into changing that. That's a decision for the committee. He was not sure that a city should have a right to own their own water, but by the same token, he certainly understand that they should be guaranteed the fair market value. This committee will decide those issues. The rest of the bill is a clear need for us to be prepared, in the cases of consolidated governments in the event negotiations are conceived and can continue in an orderly matter. He will trust the judgement of the committee.

HEARING ON SB-221

Presentation and Opening Statement by Sponsor: Senator Ethel Harding, District 24, stated that this bill is a matter that addresses a lot of people in local government and also concerns people in the local communities. It is an act to require an election for the consolidation of county offices. Currently the law provides that the board of county commissioners may, in their discretion, consolidate any two or more of the offices. This bill has struck the board of any county, and have made the bill read that the consolidation must be approved by the electorate of the county. This bill puts the decision in the hands of the local people that would like to have a say in the consolidation

SENATE LOCAL GOVERNMENT COMMITTEE

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of county offices. Presently, we elect these people, and they feel they have a right to an elected official. You become their property, and they have a jealous position over the county offices. They want to control what officers they have. We have seen counties throughout the state that have done this, and there is concern from the electorate that they did not have the opportunity to vote.

Proponents' Testimony: Senator Harding submitted letters of support (Exhibit #12,13,14).

Merrill H. Klundt, Clerk and Recorder, Yellowstone County, and Chairman MACR Legislative Committee, supported this bill (Exhibit #15)

Tom Harrison, Montana Clerks of Court Association (MCCA). The benefit loss ratio has been pointed out by Mr. Klundt. He just wanted to make a couple of points. There is a question of where the debate and decision will take place. Will it be a room like this, or will it be a debate that involves the people that elected those public officials? He was interested in Senator Beck's concern from the hearing on SB-261 that if you can't prove necessity or demonstrate the need to the people, then why should you do this. They should not be afraid to demonstrate and justify the need to the electorate. Here in Helena, this debate was started, and it ended up that the county commissioners submitted to the vote of the people, and they voted to consolidate. In this case, the governing officials took the correct choice, under the present law, to allow the people to have the say if the need was there. Why don't voters in every county have the right to vote.

Opponents' Testimony: Gordon Morris, Executive Director, Montana Association of Counties (MACo) said he was embarrassed by this law. It is attempt to air dirty laundry. There are 34 consolidated offices across Montana and none were done by the vote of the people. This committee has said in the past that local government needs authority to control local issues. This would take away the discretion of the county commissioners to have that authority. If you consider passing SB-221 you would take that away from them. This committee voted to recommend SJR-3 that was a study on consolidation from Senator Del Gage. This would be conducted in the interim, and the results would be reported back to the 1993 Legislature. This law as it functions now, the next opportunity for consolidation is not until the general elections in 1994. There are no opportunities for

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consolidation when there are incumbents in office. This is important because SJR-3 calls for a study, and you'll probably find in that study greater need to give commissioners leeway to discriminate and determine opportunities and savings in consolidation. Many cases, the initial phase is more costly, but in terms of office consolidation, the end result is that in many cases, a more qualified applicant in lieu of the preference created by the popularity contest in elections. He asked the committee to weigh SJR-3 against the benefits you might determine are in SB-221. He feels if there is merit in SB-221 they should be obvious during the 1993 session when there will be ample time to enact a law like this and pursuant to the findings and conclusions of SJR-3. He asked for a Due Not Pass.

Questions From Committee Members:

Senator Waterman stated that Lewis and Clark did vote on consolidation and this is available to the electorate. Senator Harding said that they can only vote by petitioning it. That is after the commissioners have decided to consolidate, and the voters have to go through a process to get the say on it.

Senator Eck said the difference in Lewis and Clark was that the commissioners acted by resolution and voters can request to have it put on the ballot.

Senator Vaughn asked Senator Harding this would avoid unnecessary petition process? Senator Harding said yes. Senator Waterman asked if that wouldn't add expense by allowing an election? Senator Vaughn asked if this would be done at the General Election? Senator Harding said it is not an additional special election, but one held with the general election. There can be no consolidation during the term of an office.

Senator Kennedy asked if the consolidation could only be for elected officials? Senator Harding said yes.

Closing by Sponsor: Senator Harding closed by saying that good ideas were brought out. She agreed with the need for the study that SJR-3 would provide. Whether consolidation is going to accomplish anything needs to be documented. It seems that we are rambling in the dark. Where she feels we need local government control, she is concerned when she sees local government control only in the hands of the commissioners. The study will show whether you really want a commission form of government or whether you want a form of government that allows a manager type, and would eliminate county commissioners. It is up for election,

SENATE LOCAL GOVERNMENT COMMITTEE

February 12, 1991

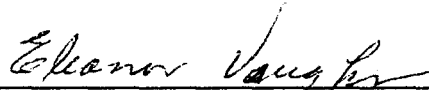
Page 19 of 19

and is turned down in most of the counties throughout the state. Then the commissioners decide above the hearing that people object to consolidation, yet they consolidate by rights in law, she questions that. The right of public hearing if the governing body can just go do what it wants anyway. We have seen this. This bill puts local government in the hands of the electorate who decides then whether they want to consolidate offices.

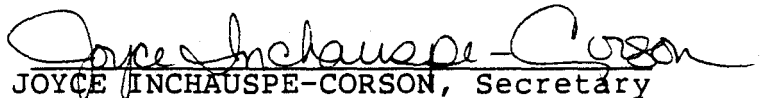
The committee did not have a quorum to take any Executive Action, so they moved to adjourn.

ADJOURNMENT

Adjournment At: 5:25 p.m.



ELEANOR VAUGHN, Vice-Chairman



JOYCE INCHAUSPE-CORSON, Secretary

EV/jic

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ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 2-12-91

57 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		X
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

TESTIMONY
ON
SENATE BILL NO. 224

BEFORE THE LOCAL GOVERNMENT
COMMITTEE OF THE MONTANA
SENATE

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."

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.

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.

And finally, 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.

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

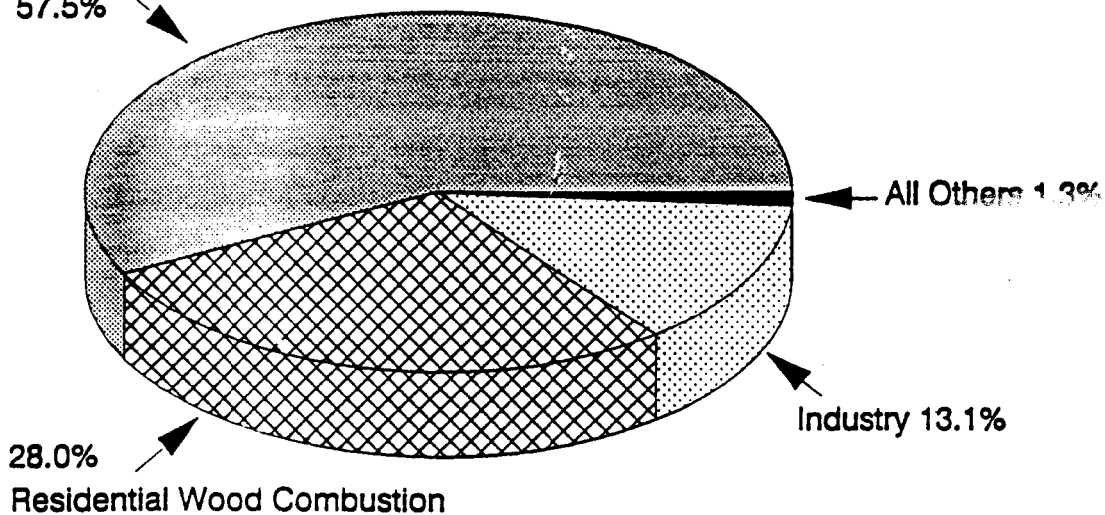
PM10 Emissions by Source Category

Typical Montana Community ¹

October - March

Reentrained Road Dust

57.5%



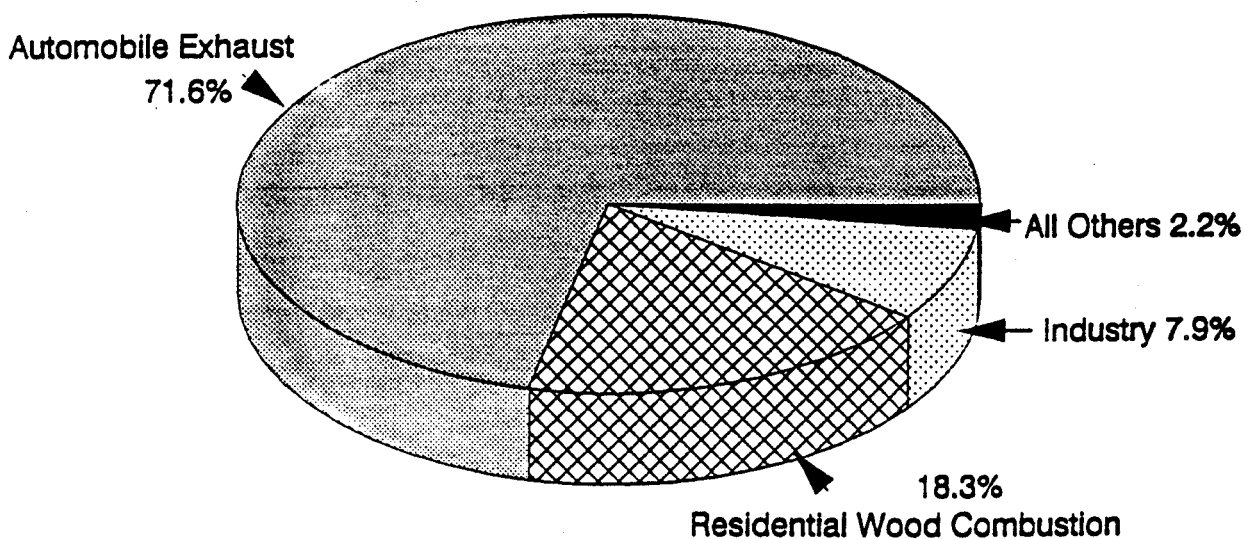
Carbon Monoxide Emissions by Source Category

Typical Montana Community ²

October - March

Automobile Exhaust

71.6%



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

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

AIR QUALITY BUREAU

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 2

DATE 2-12-91

BILL NO. SB-224

(406) 444-3454
FAX # (406) 444-1374

February 12, 1991

MEMORANDUM

TO: Senator Vaughn
FROM: Bob Raisch, Air Quality Bureau
SUBJECT: Proposed Amendments to SB 224

These amendments to SB224 are necessary due to new federal guidance concerning requirements of the new Federal Clean Air Act and to accommodate concerns of Montana's industrial sector.

The first and second amendments are necessary to ensure that the state has backup enforcement authority to enforce those aspects of a local program which are part of the State Implementation Plan (SIP). This ensures implementation even if the local air pollution control agency fails to enforce them. For example, if a local wood stove curtailment program has been incorporated into the SIP as a means to achieve compliance with federal air quality standards, the state must have backup enforcement powers to ensure the curtailment program is carried out. The board order will serve as the legal basis for state enforcement, if it is necessary.

The third amendment is necessary because the new clean air act amendments allow permit fees to be spent on a broader spectrum of permitting activities (such as enforcement, inspections, emission inventory, air monitoring and emission monitoring) than might be construed by reference to 75-2-211 and 75-2-215.

Finally, the fourth amendment was developed at the request of several of Montana's industries and is acceptable to the department. This amendment ensures that the authority to regulate large complex industrial sources will remain with the state and not be delegated to a local air pollution control program.

BR/ckp

PROPOSED AMENDMENTS TO LOCAL PROGRAMS LEGISLATION

NOTE: These amendments are to the draft legislation as it currently reads (SB 224-LC1194/01).

1. Section 1

(3) the board BY ORDER may approve a local air pollution control program that:

(a)

2. Section 1

(7) If the jurisdiction fails to . . . , all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary . . .

3. Section 1

(3)(c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-211. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of program permitting activities conducted pursuant to 75-2-211 and 75-2-215.

4. Section 1

(8) If the board finds that the control of a particular air contaminant source, . . . in which they are located. in approving a local air pollution control program pursuant to this section, the board shall not delegate the authority to control any air contaminant source that:

(a) requires the preparation of an environmental impact statement pursuant to Title 75, chapter 1;

(b) is subject to regulation under the Major Facility Siting Act, Title 75, chapter 20; or

(c) is regulated as a major stationary source pursuant to provisions of the federal Clean Air Act (42 U.S.C. 7401 - 7626), as amended, relating to either the prevention of significant deterioration of air quality (42 U.S.C. 7470 - 7479), or the plan requirements for nonattainment areas (42 U.S.C. 7501 - 7508).

Senate Bill 224, first reading copy, is hereby amended to read as follows:

1. Page: 1

Line: 12

Following: "Programs;"

Insert: "Restricting the types of air pollution sources that may be regulated by a local air pollution control program;"

2. Page: 2

Line: 13

Following: (3)

Strike: "The"

Insert: "Except as provided in subsection (4), the"

3. Page: 3

Following: Line 7

Insert: "(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate authority to control any air contaminant source that:

(a) requires the preparation of an environmental impact statement pursuant to Title 75, chapter 1;

(b) is subject to regulation under the Major Facility Siting Act, Title 75, chapter 20; or

(c) is regulated as a major stationary source pursuant to provisions of the federal Clean Air Act (42 U.S.C. 7401 - 7626), as

amended, relating to either the prevention of significant deterioration of air quality (42 U.S.C. 7470 - 7479), or the plan requirements for nonattainment areas (42 U.S.C. 7501 - 7508).

Renumber all subsequent subsections.

4. Page: 5

Line: 3

Following: "subsection ~~(5)~~"

Strike: "(7)"

Insert: "(8)"

Feb. 11, 1991

EXHIBIT NO. 3DATE 2-12-91NO. SB-224

RE: Opponent of Senate Bill # 224

Mr. Chairman and Members of the Committee:

For the record, my name is Dan Powers. I am the Environmental Health Director for Butte-Silver Bow.

At this time, I would like to voice my opinion as being a strong proponent of Senate Bill # 224.

In July of 1987, the Environmental Protection Agency promulgated new ambient air quality standards known as the PM-10 Law or Rule. PM-10 stands for particulate matter of 10 mic or less. With this, cities and towns were placed in 3 different categories; Group I areas - 95% chance or $>$ of exceeding standards; Group II areas - 20-95% chance of exceeding standards; Group III areas - 0-20% chance of exceeding these new standards.

Butte was designated a Group I area which means that it has a substantial, long term air pollution problem which directly affects the health and well being of the citizens of Butte-Silver Bow and visitors alike.

Prior to the 1987-88 burning season, Butte-Silver Bow did not have an air pollution program. With a tremendous amount of assistance from

help us develop our program further. Also, at the present time, Butler Silver Bow does not provide any money for an air quality program.

Efforts during the past few years to secure the signatures of 15% of the registered voters in Butler Silver Bow have failed. We need approximately 2500 signatures. We now have roughly 400 signatures. This has proved to be a very time consuming and difficult process. With this, our recognized designation as an air pollution control district has eluded us.

Through much hard work, we have reduced our air pollution problem to some degree. We still have a very long way to go and with passage of this bill, we could provide adequate staffing, enforcement, equipment, and education which will make our city a more attractive and livable area.



Testimony Concerning Senate Bill 224
Senate Local Government Committee
February 12, 1991

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 4DATE 2-12-91BILL NO. SB-224

Chairman Bengston 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.

The creation of Missoula's district occurred when most of our air quality problem was from industrial sources. At that time (1968) there was a "them" and "us" attitude in town which made it relative easy to get the adequate signatures to create the district under current law. I am sure it would be much more difficult for us to have done this in the mid 1970's when we had 50% of our population was causing our wood stove smoke problem.

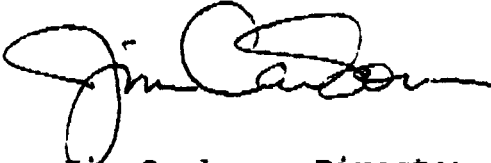
We must recognize that local programs have been successful. Missoula has been able to go from 150 violations of the particulate standards per year down to 0 TO 1 violations per year. Likewise with carbon monoxide. We have been able to go from 77 violations per year in the mid 70's down to 0-1 violation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

There is an amendment which may be proposed requesting further limitation 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 drafted by DHES which I am attaching.

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



Jim Carlson, Director
Environmental Health Division

4. Section 1

(B) If the board finds that the control of a particular air contaminant source in which they are located. In approving a local air pollution control program pursuant to this section, the board shall not delegate the authority to control any air contaminant source that:

(a) requires the preparation of an environmental impact statement pursuant to Title 75, chapter 1;

(b) is subject to regulation under the Major Facility Siting Act, Title 75, chapter 20; or

(c) is regulated as a major stationary source pursuant to provisions of the federal Clean Air Act (42 U.S.C. 7401 - 7526), as amended, relating to either the prevention of significant deterioration of air quality (42 U.S.C. 7470 - 7479), or the plan requirements for nonattainment areas (42 U.S.C. 7501 - 7508).

Purposed Amendment to
Senate Bill 224

SENATE LOCAL GOVT. COMM.

EXHIBIT NO.

5

DATE

2-14-91

BILL NO.

SB-224

Page 3, following line 7, insert:

- (4) "The board may not delegate authority to control any air contaminant source that:
- (d) is an "affected source" as that term is defined by Title IV, The Clean Air Act of 1990 and amendments.

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

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 6
DATE 2-14-91
BILL NO. SB-261

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

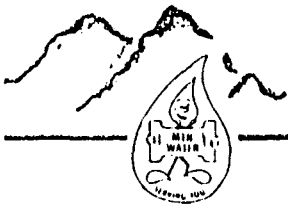
local governmental agency in designing and implementing a Wellhead/Groundwater protection plan for the Missoula aquifer. This is the first program of its type in Montana and the State Water Quality Bureau has said they will probably use our program as a model for a State Wellhead Protection program.

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



MOUNTAIN WATER COMPANY

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

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
Vice-President,
General Manager

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 6A

DATE 2-14-91

BILL NO. SB-761

Proposed Amendments
to
Senate Bill 261
by
Mountain Water Company

Senate Local Government Committee
February 12, 1991

1. Page 1, in the title, delete lines 11, 12, and 13 through "SYSTEM;"
2. Page 17, line 1, after "domain" insert "in accordance with Title 70, chapters 30 and 31";
3. Page 17, delete lines 2 through 8 in their entirety;
4. Page 18, line 5, after "domain" insert "in accordance with Title 70, chapters 30 and 31";
5. Page 18, delete lines 7 through 13 in their entirety;

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 7

DATE 2-14-91

BILL NO. 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.

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

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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

THE CITY OF MISSOULA, a Montana)
municipal corporation,)

Plaintiff,)

-vs-)

MOUNTAIN WATER COMPANY,)
a Montana corporation,)

Defendant.)

No. 60539

COURT'S ADDITIONAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT,
AFTER REMAND

Warren Bache, LaMarr Baldwin,)
Jacqueline D. Beck, Linda D. Dunn,)
Dennis L. Falk, Sharon R. Fraser,)
Gary L. Frey, Georgette Gerlach,)
Shirley S. Guy, Bradley E. Hafar,)
Diane R. Hamilton, Arvid M. Hiller,)
M. Susan Hunt, Jerry E. Kirkpatrick,)
Gerald L. Lukasik, Louis F.)
McConaughy, Edmond L. Magone,)
Gary M. Mitchell, Ray W. Mitchell,)
Richard A. Morse, Michael L. Ogle,)
Susan L. Ori, Timothy J. Schwenk,)
Julie K. Stanley, Robert B. Ward,)
and Bonita L. Wilder,)

Intervenors.)

THIS MATTER originally came before the Court on March 18, 1986. A four-day trial was conducted without a jury. Evidence was submitted to the Court in the form of oral testimony and documentary evidence. On August 20, 1986, the Court issued its Opinion and Judgment finding that the City of Missoula (City) had failed to carry its burden of proving by a preponderance of the evidence that it was necessary for the City to acquire the Mountain Water Company (Mountain Water). The City appealed.

On appeal, the Supreme Court affirmed the judgment in part, reversed it in part, and remanded for further consideration of several factors. On December 9, 1987, the Court heard evidence on the specific issues raised by the Supreme Court in its opinion. The City was represented by Dexter L. Delaney and James P. Nugent. Mountain Water was represented by Sherman V. Lohn. The Intervenors (Employees) were represented by William H.

1 Coldiron. After receiving such additional evidence and having
2 weighed all the evidence in the entire record of both hearings,
3 the Court herein adopts findings and conclusions previously made,
and now makes additional Findings, Conclusions and Judgment as
follows:

4 FINDINGS OF FACT

5 1. Mountain Water is a Montana corporation which owns
6 and operates a water distribution system serving 16,201
7 customers; 11,720 customers are within the Missoula city limits
8 and 4,481 customers (27.3%) reside outside the city limits.

9 2. Mountain Water acquired the water system from the
10 Montana Power Company in 1979. In January, 1979, Mr. Kenneth
11 Dodd, a representative of Park Water Company, which owns all the
12 shares of stock of Mountain Water, met with Missoula Mayor Bill
13 Clegg, members of his staff and members of the Missoula City
14 Council. Also present was Vice-president Jack Burke of the
15 Montana Power Company, which company then owned the water
16 system and wished to sell it. (Tr. 596, l. 17) (Exhibit 100,
17 p. 112) The purpose of the meeting was two-fold:

- 18 (1) To inform the Mayor that Montana Power
19 was in position to sell the water system.
20 (2) To see if the Mayor and the City of
21 Missoula were interested in purchasing the
22 company. (Tr. 597, l. 8)

23 The reason behind all of this was that Park Water Company did not
24 want to purchase Mountain Water if they would just be faced with
25 a condemnation action. (Tr. 597, l. 13) Park Water Company had
26 other subsidiaries condemned by local governments in California.
27 (Tr. 537, l. 16)

28 The City of Missoula did not express any interest in
29 purchasing the water system (Tr. 599, l. 1) and based upon that
30 lack of interest Park Water Company purchased the system in early
31 1976. (Tr. 559, l. 5)

32

1 3. On August 6, 1979, the City passed a resolution
2 declaring its intent to acquire the system. No further official
3 action was taken upon this resolution until October 1984. The
4 proceedings of the City's meetings for July 30, 1979,
5 (Exhibit 100) and August 6, 1979, (Exhibit 101) clearly show
6 knowledge by the city commission of the acquisition by Park Water
7 Company and of City's inaction. During the 1979 to 1984 five
8 year period, the City adopted a wait and see attitude. Also
9 during this time Mountain Water was engaged in long deferred
10 maintenance of the system.

11 4. In 1983, Giardia infested Rattlesnake Creek causing
12 the water from that source to be harmful to human consumption.
13 Mountain Water quickly obtained additional wells to eliminate use
14 of Rattlesnake Creek water. At the present time, 100% of the
15 system's water supply comes from wells. Mountain Water retains
16 its water rights in the Rattlesnake Creek.

17 5. Mountain Water is a Montana Corporation, the
18 capital stock of which is solely owned by Park Water Company of
19 California. Henry Wheeler owns nearly all the capital stock of
20 Park Water Company. Park Water Company's headquarters are
21 located in California. Mountain Water is a public utility
22 subject to the requirements of the Montana Public Service
23 Commission, it's regulations and the Montana statutes.

24 6. Early in 1984, the City started negotiations to
25 purchase Mountain Water. An agreement for purchase could not be
26 reached and the City then adopted a resolution reaffirming its
27 1979 ordinance authorizing the City to acquire the system by
28 purchase or condemnation. In the latter part of 1984, the City
29 brought the present condemnation proceeding against Mountain
30 Water.

31 7. In September 1985, some citizens of Missoula
32 started an initiative to stop condemnation proceedings under

1 City's ordinances of 1979 and 1984. A lawsuit ensued because the
2 City did not think the subject matter a proper one for
3 initiative, hence public vote. The Court ordered the election to
4 take place deeming the City's action legislative in character,
5 therefore subject to initiative. That ruling was not appealed.
6 The question presented on the ballot was whether the city voters
7 would prohibit the City from purchasing Mountain Water Company
8 the question was complex, the ballots were confusing. The
9 ambiguous ballot included unnecessary multi-syllable words and
10 was expressed in the negative. As such, it is impossible to tell
11 whether it was truly representative of the will of those who
12 voted. No motion or other effort was made to the Court to
13 "clean up" the language of the ballot. The ballot, with the
14 exact question submitted, reads as follows:

15
16 PROPOSITION

17
18 MISSOULA CITY INITIATIVE NO. 2

19 INITIATIVE TO ENACT AT THE NEXT REGULAR ELECTION IN THE CITY OF
20 MISSOULA LOCAL GOVERNMENT AN ORDINANCE WITHDRAWING NOTICE
21 PREVIOUSLY GIVEN TO MONTANA POWER COMPANY AND PARK WATER COMPANY,
22 INC., A CALIFORNIA CORPORATION PURSUANT TO CITY ORDINANCE 2045
23 AND CITY RESOLUTION 4385 EXPRESSING THE CITY OF MISSOULA'S DESIRE
24 TO PURCHASE BY NEGOTIATION OR BY EMINENT DOMAIN THE WATER SYSTEM
25 SERVING THE CITY OF MISSOULA CURRENTLY OWNED BY PARK WATER
26 COMPANY, INC., A CALIFORNIA CORPORATION.

27 The election ballot issued requests City electors to vote that it
28 is now their will that the City of Missoula does not purchase or
29 acquire by eminent domain the Mountain Water water system serving
30 the Missoula community which is currently owned by Park Water
31 Company, a California corporation. A vote for enactment of the
32 proposed ordinance is a vote to prohibit the City of Missoula's
acquisition of Mountain Water water system by withdrawing the
statutorily required notice previously given to Park Water Company
by ordinance and reaffirmed by resolution expressing the City's
desire to acquire the Mountain Water system serving Missoula.



FOR prohibiting the City of Missoula's
acquisition of the Mountain Water water
system currently owned by Park Water
Company, a California corporation, by
enacting proposed ordinance.

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AGAINST prohibiting the City of Missoula's acquisition of the Mountain Water water system currently owned by the Park Water Company, a California corporation, by enacting proposed ordinance.

The ballot is not accurate because it recites the water system sought to be condemned is owned by Park Water Company, Inc., a California corporation. The system was and is owned by Mountain Water Company, a Montana corporation, which is the sole Defendant in this action. Only forty-two percent of all of the persons registered to vote within the city limits voted at the election, of the total 7765 voting, 7481 voted on this issue. Of the total voting on this issue (including absentee ballots) 4006 voted to support the City and 3474 against. In the 23 precincts within the city of Missoula which exclusively use Mountain Water, 3339 supported the City's efforts to acquire Mountain Water and 2744 voted against that effort. In the 9 precincts within the City who are only partially served by Mountain Water, 626 voters supported the City and 704 supported Mountain Water. Five small precincts within the city are not served by Mountain Water at all; the vote in these precincts was 22 for the City and 21 for Mountain Water. The campaign upon this issue involved the expenditure of considerable funds on both sides. From the turnout of only 42% of all persons eligible to vote, one can conclude that ownership by the public is not an important issue in the minds of most city residents.

Whether the water users outside of Missoula supported the position of the City or Mountain Water, is not possible to demonstrate with certainty. However, the loss of substantial tax revenue to the County and the School Districts as a result of a condemnation, as demonstrated by the prior testimony, would support a finding that county residents would be opposed to City acquisition with its result of increased taxes to such residents.

1 There is another reason water users outside the city
2 would not support city ownership, and that is the issue of
3 enforced annexation of these outside areas into the City. It was
4 an item of great concern to a State Senator and others at the
5 City's March 5, 1984, proceeding and other public meetings
6 concerning City's acquisition of Mountain Water. While the
7 City's position was that ownership of water would not provide
8 significant power to force annexation, it could be used to get
9 compliance by providing service only if an owner agrees to not
10 protest annexation. (Ex. 104, pages 5,9,10,11, 12,13)

11 In 1979, Alderman Toole said: (Ex. 100, p. 113)

12
13 "... the ownership of the water system
14 by Montana Power has given us good service
15 at low rates and has posed a tremendous
16 political problem in this community, in
17 fact it's posed a problem which is beyond
18 repair, we now have 25,000 people living
19 outside the city and as the Mayor said
20 tonight we can't get them in, if we had
21 50,000 people we could get immense sums
22 from the federal government to help us
23 with our problem, why did the Montana
24 Power Company deliberately go out and
25 extend it's water service to people
26 beyond the corporate limits of the city.

27

28 Alderman Toole asked (Mr. McCann) if they
29 couldn't do what Great Falls and Billings
30 did and just say no water unless they annex."

31 This additional factor would make it appear the 27.3% of the
32 Mountain Water users outside the city would not support city
ownership. They would probably vote to stop the condemnation
proceedings of the water system. One could easily conclude that
if they wanted into the City, they would already be there.

8. Twenty-six people are employed by Mountain Water
for the purpose of operating its system. If the City acquired
the system, at least seven such employees would lose their jobs.
Those employees remaining would suffer salary reductions which

1 would work an extreme hardship upon them. The severe hardship of
2 the employees resulting from the City's acquisition of the system
3 is one factor which must be considered in determining whether the
4 taking is necessary. Since 1979, Mountain Water has added
5 thirteen employees to its payroll, all of whom are necessary to
6 its operation.

7 9. City claims there will be substantial savings to
8 the City resulting from the reduction in the employees' salaries
9 and the termination of certain other employees. The Court finds
10 City has made assumptions in arriving at these alleged savings
11 which are unrealistic. Nor has the City proved that there will
12 be any savings of any consequence to the City by the proposed
13 reduction in the number of employees and the salaries of the
14 employees remaining at Mountain Water. On the other hand, these
15 proposals would work substantial and severe hardships upon the
16 employees for no real gains. The employees are loyal to Mountain
17 Water and their morale is high. They provide water to the
18 consumers in an exemplary and economical fashion. Rather than
19 being overpaid, the salaries that the employees now receive
20 provide them with a reasonable standard of living. The public
21 interest would not be served by such a detrimental impact upon
22 these employees.

23 10. Mountain Water employees have a substantial amount
24 of experience in operating this water system; whereas, no city
25 employees have any significant experience in operating the
26 system. Were the City to acquire the system and begin operating
27 it, there would be at least a temporary decrease in the present
28 efficiency in operation of the system. This factor, together
29 with a lesser number of employees operating the system, would
30 impair the availability and quality of water service to the
31 consumer. This result would not be in the public interest.

32 The City offered to prove an instance in 1987 where

1 there was lack of cooperation between the City and Mountain
2 Water. That offer was refused because it was an issue which had
3 been previously determined; this instance arose clearly after the
4 trial of this cause. If this issue were allowed, it would open
5 the door for all of the parties to bring in essentially new
6 issues such as fines City has paid for discharging sewage into
7 the Clark Fork River, making a virtual serial proceeding out of
8 it. The Court has considered none of these circumstances in
9 making these findings, nor has it based these findings upon any
10 offer of proof.

11 11. The City contended at the original hearing that
12 water from Rattlesnake Creek must be utilized. The use of this
13 water is not necessary; a more than adequate supply of water is
14 available from existing wells. Interesting but heretofore
15 unnoted information was noticed during the re-reading of the
16 transcript (Tr. 667, l. 5) of the 1986 trial and Exhibit 104,
17 page 6. In 1949, the whole city of Missoula was without water
18 for eleven days because the entire water system was frozen. At
19 that time, the basic supply was surface water from Rattlesnake
20 Creek. Rattlesnake water entered the system at temperatures as
21 low as 31°F, or below freezing. When water enters the system at
22 that low temperature, and when ground frost depth is 5 or 6 feet,
23 the system will freeze. Well water, pumped from greater depth,
24 has a higher temperature, and for these purposes, is more
25 desirable because it poses less danger of freezing the whole
26 system.

27 12. Mountain Water has realized annual profits in the
28 past and, under present projections, will realize annual profits
29 in the future. The City contends that it would operate the
30 system without realizing a profit and would be able to pass on
31 those savings to the consumer. The Court finds that the profits
32

1 realized by Mountain Water enable it to make substantial capital
2 improvements to the overall system resulting in a more efficient,
3 economical, and modern system to the consumer. Mountain Water
4 will spend approximately 1.5 million dollars each year for
5 capital improvements to the system over the next five years. The
6 City maintains that it can operate the system with less than one
7 half million dollars each year in capital improvements. This
8 projection is either unrealistic, or, if that amount is actually
9 expended by the City, will result in a steadily declining water
10 system with problems occurring more and more frequently. This
11 result would not be in the best interest of the public.

12 Profit realized by Mountain Water is regulated by the
13 Montana Public Service Commission; which also assures utilities
14 will not make excessive profits at the expense of the service
15 provided to the consumer. The Court finds that the continuing
16 efficiency of the system, annual improvements to the system, and
17 overall exemplary service provided to the consumer is, in part, a
18 result of the profit incentive of Mountain Water. The City does
19 not have that same incentive.

20 13. The City alleged it is in the public's best
21 interest for the City to acquire the water system because
22 Mountain Water is presently owned by an out-of-state company.
23 City asserts it has reason to look out for the best interests of
24 its citizens and will do what is in the City's overall best
25 interest as it relates to its citizens' water needs; whereas, an
26 out-of-state company will not because it has no allegiance to the
27 City or this state, being motivated primarily by profit. The
28 proof of these assumptions fails. There is no showing the service
29 rendered by Mountain Water is any less than that rendered by any
30 other water company or that the City will give more or better
31 service.

32 Contrary to the City's position, the Court finds that

1 Mountain Water has acted at all times with the best interest of
2 the consumer in mind. It has done a commendable job in providing
3 the City with an efficient, modern water system. Mountain
4 Water's quick response to the Giardia infestation problem amply
5 demonstrates its concern for the health of the citizens of
6 Missoula who use its water. Mountain Water's plan for capital
7 improvements to the system also demonstrates its concern that the
8 citizens have the healthiest and most efficient water system
9 possible. Mountain Water has, at all times, cooperated fully in
10 community planning and has supplied the City with annual updates
11 of its five-year plans. All these facts clearly demonstrate that
12 Mountain Water has acted, and will continue to act, with the
13 health and welfare of its customers and citizens of Missoula and
14 has done as much to benefit the City in relation to the water
15 system as would the City itself have done.

16 14. The City argues a problem exists because a large
17 number of its citizens are dependent for their supply of water
18 upon a privately owned company. It asserts that a resource so
19 vital to the health of its citizens should not rest in the hands
20 of one person but should be controlled by the citizens themselves
21 through their elective government. The Court is cognizant that
22 it may be more comforting to the City and some of its citizens to
23 know that their water supply is controlled by the City itself.
24 But the City has not submitted any evidence which shows that the
25 citizens long-range access to supplies of water would be
26 endangered in any way by the continued ownership thereof by
27 Mountain Water. Again, Mountain Water operation is regulated in
28 accordance with law and regulations promulgated for the operation
29 of utilities.

30 Mountain Water has done an excellent job in providing
31 and expanding water supplies to the citizens. Upon taking over
32 ownership from Montana Power Company, Mountain Water immediately

1 began rebuilding and re-equipping the water system, which had
2 fallen into bad repair. This extensive modernization was done
3 at great cost to Mountain Water and resulted in substantial
4 benefits to the users of the system and to the City as a whole.
5 It infused capital into Missoula economy by the non-Montana
6 owners of Mountain Water Company since mid-1979 as follows:

7	1979 (six months)	\$1,915,350
8	1980	\$1,308,509
9	1981	\$ 672,353
10	1982	(\$ 537,443)
11	1983	(\$ 767,671)
12	1984	\$ 803,895
13	1985	\$ 253,403

14 The capital for 1982 and 1983 did not actually leave Montana but
15 instead was invested in the plant and equipment. Mountain Water
16 has long-range plans to continue this modernization which will
17 result in further benefits to the public. In addition, new water
18 sources were developed through the drilling of additional wells.
19 Mountain Water has a formal five-year plan which is updated
20 annually and informal ten to twenty-year plans which are more
21 flexible and designed to meet future needs of the City. Mountain
22 Water has cooperated to a high degree with the City in order to
23 accommodate the City's planning. The great amount of money spent
24 by Mountain Water in the past in renovating the system and the
25 substantial expenditures that will take place in the future for
26 capital improvements demonstrate its commitment to the citizens
27 of Missoula of providing the highest quality water system
28 possible. There has been no substantial complaint of the
29 services provided by Mountain Water by its customers. The Court
30 finds that the citizens long-range access to water will be
31 assured through the continued ownership of Mountain Water.
32 There is no substantial proof to the contrary.

1 15. The City maintained that during the first five
2 years of ownership, the rate payers would enjoy a net savings of
3 \$3,500,000.00. To support this contention, the City made several
4 unsupported assumptions. First, the City assumed that it could
5 purchase the system for \$11,000,000.00 and could float a bond
6 issue of \$14,000,000.00 to finance the purchase. The City did
7 not authorize or conduct any appraisals to determine the worth of
8 the Mountain Water Company's assets, and did not contest the
9 expertise of the present owner of the system who valued those
10 assets at approximately \$19,000,000.00. Furthermore, no expert
11 testified that a \$14,000,000.00 bond issue was feasible or
12 appropriate. The City did not make an evaluation of the amount
13 of a bond issue needed in the event that it could not purchase
14 the system for \$11,000,000.00. If the City cannot purchase the
15 system for \$11,000,000.00, then its projections of savings
16 dramatically decrease as the cost of purchase increases.

17 The City also assumed that it would not increase rates
18 for at least five years and that Mountain Water would increase
19 rates every year. This claim is nothing more than an assumption.
20 No witness for the City guaranteed that the rates would not be
21 increased during the first five years of operations, nor could
22 anyone guarantee the effects of inflation. As revenue demands
23 increase, new administrations could very well increase water
24 rates. The City's assumption that Mountain Water would raise
25 rates every year beginning in 1984 for the next five years
26 explains some of their assumptions but is completely unfounded.

27 City's financial projections assume it could spend no
28 more than \$500,000.00 annually for capital improvements. This
29 estimate is completely unrealistic in light of the amount of
30 money Mountain Water has spent in the past to upgrade and the
31 systems requirement of future capital expenditures. Because of the
32 needs of the system, the Court finds that expenditures of less than

1 \$500,000.00 annually will result in a disservice to the public.

2 City claims the services provided by Mountain Water's
3 home office in California could be replaced by the City at no
4 cost. This assertion is contrary to the rulings of the Public
5 Service Commission which found that the services provided by the
6 home office are valuable and allowed those costs to be included
7 in the present rate base. Contrary to the City's assertion, the
8 home office provides such services as planning, finances,
9 consultation, engineering, and overall support. The City would
10 not be able to run the system efficiently without these services.

11 The City represents it would not build a filtration
12 plant for Rattlesnake Creek during the first five years of its
13 ownership, and it did not, therefore, include the cost of a
14 filtration plant in its financial projections. But City also
15 represents it is committed to the construction of the filtration
16 plant, that the plant is needed immediately, and that the
17 Rattlesnake Creek surface water must be used. If the City were
18 to construct the plant now, as it contends that it would do, the
19 effect would be to increase the cost of water to the consumer and
20 eliminate all claims of savings.

21 Over the next five years, Mountain Water would pay over
22 \$1,300,000.00 in taxes to various city and county entities. Were
23 the City to acquire the water system, these tax revenues would be
24 lost to the public interest, and other taxes reshuffled to make
25 up the loss.

26 16. 4,481 customers of Mountain Water live outside the
27 Missoula city limits and were unable to express their voice on
28 the ballot initiative. Were the city to acquire the system, a
29 significant number of those customers would be forced to convert
30 to the City's system without ever having had the opportunity to
31 express their opinion on the subject. Those customers would have
32 no means of expressing their voice in or vote in the affairs of

1 city government. The City would be allowed to make rate
2 increases of up to 12% per year on its own initiative and without
3 any control by the Public Service Commission. At present, the
4 rate making process for Mountain Water is controlled by the
5 Montana Public Service Commission and all Mountain Water
6 customers have some voice in the rate making process. Were the
7 City to acquire the system, 27.3% of the system's users would
8 have no voice in the rate making process. This result would not
9 be in the public interest. Because of these additional
10 considerations, the Court finds that the City resolution and
11 results of the initiative election is entitled no greater weight
12 than other factors that must be considered under the
13 determination of necessity.

14 From the foregoing Findings of Fact, the Court makes
15 the following:

16
17 CONCLUSIONS OF LAW

18 1. Section 7-13-4404, M.C.A., provides:

19
20 Before property can be taken, City must
21 show by a preponderance of evidence that
22 the public interest requires the taking
23 based on the following findings:

- 24 (1) that the use to which it is to
25 be applied is a use authorized
26 by law;
- 27 (2) that the taking is necessary to
28 such use;
- 29 (3) if already appropriated to some
30 public use, that the public use
31 to which it is to be applied is
32 a more necessary public use.

29 Considering relevant factors set out in the original findings,
30 and these findings, including the City resolution and the public
31 vote, the Court concludes that the City has failed to meet its
32 burden of proving by a preponderance of the evidence that it is

1 necessary that the City operate the Mountain Water system. Since
2 this property is already a public utility, and hence to some
3 degree dedicated already to a public use, it is not more
4 necessary the City take over its operation. The public interest
5 will be best served by the City not being permitted to condemn
6 Mountain Water.

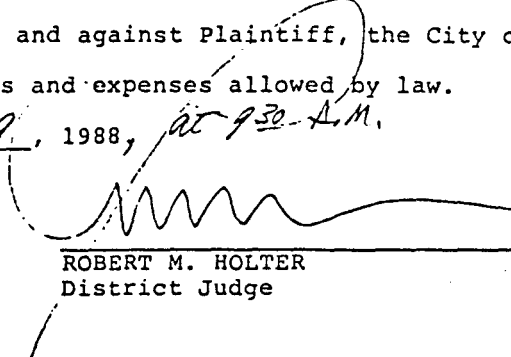
7 2. Having failed to carry its burden of proof, the
8 Court now denies the City relief in this proceeding.

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JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
Judgment be entered in favor of the Defendant, Mountain Water
Company, and the Intervenors and against Plaintiff, the City of
Missoula, together with costs and expenses allowed by law.

DATED January 19, 1988, at 9:30 A.M.



ROBERT M. HOLTER
District Judge

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 10

DATE 2-18-91

BILL NO. SB-261

Reba Falk
283 South Crest Ave.
Hamilton, MT 59840

Senator Esther Bengtson, Chairman
Senate Local Government Committee
Capitol Station
Helena, MT 59620

RE: SB 261

Dear Senator Bengtson:

For the record, I would like to submit testimony regarding the above referenced Senate Bill. I am opposed to passage of this bill for the following reasons;

- 1) Municipalities can raise rates up to 12% without going before the Public Service Commission - Private owned cannot - they have to justify every increase.
- 2) Once municipalities obtain public water system, rates usually go up substantially and regularly.
- 3) Repair service is limited to certain hours.
- 4) Jobs are frequently jeopardized.
- 5) A recent study indicates that privately owned utilities operate more efficiently than public utilities.

For these reasons, please DO NOT PASS SB 261.

Sincerely,

Reba Falk
Reba Falk

Ravalli County
Hamilton, MT 59840

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 12 day of Feb, 1991.

Name: Bruce SUEWRAN

Address: 2521 S. AVE West, Missoula Mt.

Telephone Number: 549-6172

Representing whom?
Missoula Rural Fire Dist.

Appearing on which proposal?
SB 261

Do you: Support? Amend? Oppose?

Comments:
We concur with the amendments offered by Mr. Doney ^{and Mr. Heiler.} Without the amendments, this bill simply allows condemnation of the Mountain Water System. This would allow the City of Missoula to use the water service as an annihilation tool as they now use the sewer system.

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

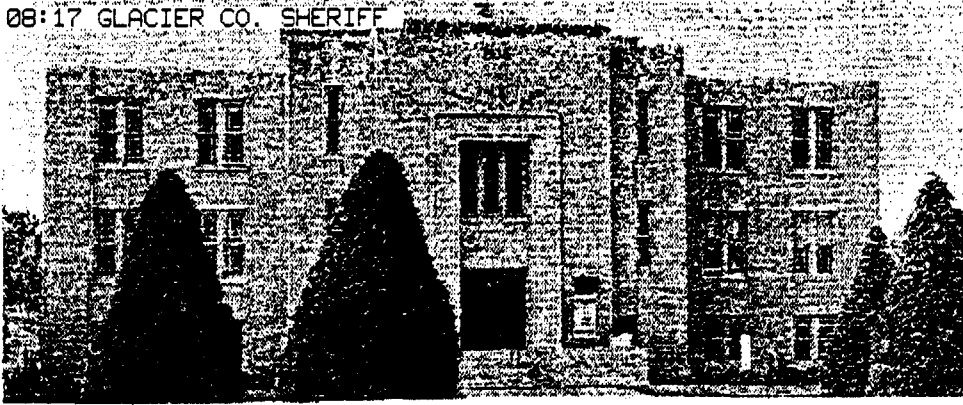
While I am here, I would like also to give an employee's perspective. Mountain Water Company was in court for several years fighting condemnation by the City of Missoula. After extensive testimony, both the lower court and the Montana Supreme Court, by unanimous decision, ruled that it was **not** in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



GLACIER COUNTY

CUT BANK, MONTANA

MARY PHIPPEN
 CLERK OF DISTRICT COURT
 GLACIER COUNTY COURTHOUSE
 512 EAST MAIN STREET
 CUT BANK MT 59427
 873-5063 Ext. 36

SENATE LOCAL GOVT. COMM.
 SENATE LOCAL GOVT. COMM.

EXHIBIT NO. _____
 EXHIBIT NO. _____

DATE _____

BILL NO. _____

BILL NO. _____

12

2-12-91

SB-221

February 8, 1991

Eleanor Vaughn, Vice Chair
 Senate Local Government Committee
 State Capitol
 Helena, Montana 59620

RE: SB 221

Dear Ms. Vaughn:

Please be advised that I am in support of SB 221 an act requiring an election for the consolidation of county offices. Your support of this Bill is appreciated.

Very truly yours,

Mary Phippen

Mary Phippen
 Clerk of District Court
 Glacier County

County of Yellowstone

CHARMAINE R. FISHER
CLERK OF THE DISTRICT COURT



(406) 256-2860
BOX 35030
BILLINGS, MT 59107

February 7, 1991

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 13

DATE 2-12-91

BILL NO. SB-221

Senator Esther Bengston, Chairman
Local Government Committee
Capitol Building
Helena, Montana 59601

RE: Senate Bill 221

Dear Senator: *Esther*

I am writing in support of SB 221, which will be heard February 12, 1991 at 3:00 P.M.

Consolidation of offices does not save money in all cases. A few years ago, our County Commissioners did away with the Public Administrator's position, his budget was \$250.00. He did a marvelous job. The Commissioners gave the job to the County Attorney's office with a \$10,000.00 increase in the budget. I don't really know if that was all for the County Administrator, but I am here to tell you that they never performed to the level of competence that the elected official did. They finally got private firms to do this attorney's job.

The Coroner's budget was \$62,000.00 and went to \$86,000.00 when it was placed with the Sheriff. I presume they are doing a good job, as I do not have knowledge of that first-hand, but the monies spent were more—and in the case of the Public Administrator who filed papers in this office, I do know about.

Elected officials are responsible to the citizens of their County and I believe more frugal than those persons hired by department heads who themselves are hired by the Commissioners.

Please vote to support SB 221.

Sincerely,

Charmaine R. Fisher
CHARMAINE R. FISHER
Clerk of District Court
Yellowstone County

CRF/rgj



COUNTY OF RAVALLI

memo 7871	# of pages > 3
From Ravalli Co.	
Co. Clerk & Recorder	
Phone #	363-6345
Fax #	363-1833



HAMILTON, MONTANA 59840

PLEASE DELIVER TO THE SENATE LOCAL GOVERNMENT COMMITTEE FOR HEARING FEBRUARY 12, 1991 AT 3:00 P.M. THANK YOU SENATE LOCAL GOVT. COMM.

February 11, 1991

EXHIBIT NO. 14

DATE 2-12-91

RE: SB 221 "AN ACT REQUIRING AN ELECTION FOR CONSOLIDATION"

BILL NO. SB-221

Mr. Chairman and Members of the Committee:

For the record my name is Betty T. Lund, Ravalli County Clerk & Recorder/Superintendent of Schools and vice president of the Montana Association of Clerks and Recorders.

SB 221 was a result of a resolution passed at the MADR convention in September. We, as one group of the elected officials, feel the power of the County Commissioners to consolidate offices has sometimes been miss guided. For example in 1986, the Ravalli County Commissioners consolidated two more offices against the will of the people. They had the required public hearing and the court room was packed with people. Everyone spoke against the consolidation with the exception of one person. The commissioners did not even consider the public input. Immediately after the hearing, they adjourned to their office and signed an all ready prepared resolution for consolidation. The opponents of the consolidation hadn't even left the courthouse! As of the present time, the only offices in the courthouse that are not consolidated with another is the County Treasurer, Clerk of Court and the Public Administrator. In some counties, most of us agree that consolidation saves the taxpayers' money but unfortunately they are steady by jerks losing their voice in the running of the government. Perhaps we could save money by changing the law that if a full time elected official is not necessary for the function of the office, the office holder would be elected part time as was tried with SD 127 but with a board of citizens who could study the functions of the office to see if part time is a feasibility.

The following are the consolidated offices in Ravalli County:

- County Sheriff/Coroner
- County Clerk & Recorder/Supt. of Schools
- County Attorney/County Auditor
- County Assessor/County Surveyor

By this track record, almost 40 per cent of the elected offices in Ravalli County, have not been chosen by the people due to consolidation.

Please consider a DO PASS for SB 221 to preserve the voice of the people in government. Thank you.

Sincerely,

Betty T. Lund

Betty T. Lund
Ravalli County Clerk & Recorder
Hamilton, MT
363-6345

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 15

DATE 2-12-91

BILL NO. SB-221

Senator Esther Bengston
Chairman Senate Local Gov't Committee
Room 405
Capitol Building
Helena, MT 59620

Dear Senator Bengston and Members of this Committee:

The purpose of Senate Bill No. 221 is to change the time for consolidation of County Offices and requiring an election for the consolidation of County Offices as outlined in Sections 7-4-2301 through 7-4-2311 M.C.A.

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

At the present time under Section 7-4-2310 M.C.A., which states "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, make and enter an order combining any two or more of the within named offices."

This is what I call consolidation at 5 minutes of the twelfth hour and with the past situation in Lewis and Clark County, whereby a petition of the people of Lewis and Clark County by petition placed on the Election Ballot a referendum on the County Commissioners, Resolution No. 1990-7 and Resolution No. 1990-8 to consolidate County Clerk and Recorders Office and County Treasurers Office and the County Auditor and County Surveyors Office. The election was held on November 6, 1991. This is what I call 1 minute of the twelfth hour, which does not give adequate time for the transition of duties and etc. plus proper budgeting.

This bill will change the time to be 2 years preceding the expiration of the term of the respective offices to be consolidated, whether initiated by a petition of the electorate or by the action of the Board of County Commissioners.

Further this bill requires that the final decision of the consolidation of County Offices, whether by petition of the electorate or by the Board of County Commissioners will require a vote of the electorate and the election is to be held at the General Election, 2 years proceeding the expiration of the term of the offices to be consolidated.

Under Section 7-4-2310, order for consolidation, the Board of County Commissioners shall 3 months prior to the General Election, publish an order calling for the election. More public discussion and input from the electorate is necessary so they are aware of what is happening in the County.

Under present law at a hearing which few attend, there can be a 99% protest against consolidation, however the Board of County Commissioners can proceed and do as they see fit in their own wisdom.

Does consolidation save money? No, not too often. In Yellowstone County the office of the 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. My budget has not increased near that amount, but infact is bare bones and County Commissioners are still hacking at these bare bones.

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

More time is needed and proper consideration of the consolidation issue is needed to make sure that the consolidation issue ~~does~~;

1. There will be a savings of taxpayers dollars.
2. Check and balance system in government is not destroyed.
3. 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