

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Senator Kennedy, on January 14, 1993, at
1:00 p.m.

ROLL CALL

Members Present:

Sen. Ed Kennedy, Chair (D)
Sen. Sue Bartlett, Vice Chair (D)
Sen. Dorothy Eck (D)
Sen. Delwyn Gage (R)
Sen. Ethel Harding (R)
Sen. John Hertel (R)
Sen. David Rye (R)
Sen. Bernie Swift (R)
Sen. Eleanor Vaughn (D)
Sen. Mignon Waterman (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Council
Roselyn Cooperman, Committee Secretary

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

Committee Business Summary:

Hearing: SB 10, SB 63, SJ 5
Executive Action: SB 25, SB 49, SB 50, SB 52

HEARING ON SB 10

Opening Statement by Sponsor:

Senator Tom Towe, Senate District 46, stated SB 10 would permit the combining of two separate mill levies already authorized by law. He noted SB 10 was drafted at the request of the Billings MetraPark. He said the first levy was for the two mills available for arena facilities as authorized in 7-16-2102 while the second levy was for one-and-a-half mills available for county fairs as authorized in 7-21-3410. Senator Towe stated SB 10 would allow the counties to combine the two levies into one

three-and-a-half mill levy for a combined fair and arena facility like the Billings MetraPark. He added SB 10 would only apply to Billings and perhaps Great Falls since no other cities have a combined fair and arena facility. Senator Towe stated Section 2 of SB 10 would allow the electors to petition, upon signatures of fifteen percent of the resident taxpayers of the county, out of the mill. He said this petition for arena facilities is currently authorized under 7-16-2102.

Proponents' Testimony:

Mr. Bill Chiesa, General Manager, Billings MetraPark, stated his support for SB 10 since it would allow the county commissioners the flexibility to combine the two mills. He said MetraPark is a multi-purpose facility that would run more efficiently if the mills were combined.

Senator Bruce Crippen, Senate District 45, stated he was a cosponsor of SB 10 and fully supports the measure.

Mr. Gordon Morris, Director, Montana Association of Counties, (MACo), stated his support for SB 10. He said SB 10 would apply primarily to Billings and possibly Great Falls. Mr. Morris concluded SB 10 would not be outside the realm of I-105 so it would not constitute a property tax increase.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Gage asked Senator Towe if the petition to get out of the mill could be signed by a non-taxpayer. Senator Towe replied the language was taken from existing statute under 7-16-2102. He said some constitutional court cases have argued it is unconstitutional to limit a vote to taxpayers, however, there has not been a challenge to the statute that has affected petitions. Senator Towe concluded a petition could exclude non-taxpayers but a vote must include all eligible voters.

Senator Gage asked Senator Towe if the petition was done every two years. Senator Towe replied the petition is available every two years. He said this petition referendum would occur if a petition requesting a vote on a single tax was signed by fifteen

percent of the resident taxpayers and was filed with the clerk at least ninety days before the next general election.

Senator Gage asked Senator Towe about line 24 of SB 10 which states "The board of county commissioners shall submit the question of imposing or continuing the imposition of the single tax". Senator Towe replied the provision would pertain only if a petition was filed.

Closing by Sponsor:

Senator Towe stated he would quit while he was ahead.

HEARING ON SB 63

Opening Statement by Sponsor:

Senator Jeff Weldon, Senate District 27, stated SB 63 would assist Montana's municipalities and counties in financing the conversion of overhead utilities to underground utilities. He said SB 63 was drafted at the request of the City of Missoula. Senator Weldon noted SB 63 seeks two procedural changes. First, SB 63 would add to Title 7 the authority for a local government to create a Special Improvement District (SID) for the conversion of overhead utilities. He added this is not the creation of a new authority since the authority already exists in Title 69. Second, he said SB 63 cross-references the authority of a local government to create SIDs in Title 69 to Title 7. Senator Weldon stated the purpose of this cross-referencing would be to allow improvement of SIDs in Title 69 as the SIDs in Title 7 are improved and modernized. He concluded the amendments to be offered by the City of Missoula and the Montana Power Company for SB 63 were friendly to the original intent of SB 63.

Proponents' Testimony:

Mr. Alec Hansen, Montana League of Cities and Towns, stated delegates at the League Annual Meeting voted unanimously to endorse SB 63. He said members of his organization believe SB 63 would authorize a necessary change in the law.

Mr. Chuck Stearns, Finance Officer and City Clerk, City of Missoula, gave members of the Committee some background on the need for SB 63. He said a number of years ago, when people wanted to create SIDs to bury overhead power lines, a section of law was lifted out of the SID law and put in Title 69 which pertains to utility law. Mr. Stearns added with the progression of time, the SID procedures and bond requirements in Title 7 have been changed and modified to reflect federal law while the provisions in Title 69 have languished and grown stale. He noted

this difference in law became apparent this year when the City tried to bury a power line. Mr. Stearns said the authority for the City to this existed in Title 69, however, Title 69 requires some procedural changes that were not normal compared to a regular SID. As an example, he stated all the bond resolutions and resolutions of assessment normally adopted for SIDs are bond and assessment ordinances which, by state law, do not take effect until thirty days after their enactment. Mr. Stearns noted this caused unnecessary and costly delays which could have been avoided. He said in requesting SB 63, the City of Missoula felt it best to keep the substantive parts of Title 69 and utility law in Title 69 but to move the SID procedures over to Title 7 where they face constant scrutiny and update. Mr. Stearns offered three amendments to SB 63. (Exhibit #1)

Mr. Mike Pichette, Montana Power Company, spoke in support of SB 63 and offered one amendment to SB 63. (Exhibit #2)

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Gage asked Mr. Stearns to identify the repeal sections as requested in SB 63. Mr. Stearns replied the repeal sections are a number of the sections in Title 69 which used to dictate the procedures for SIDs also present in Title 7. He said the intent of repealing these sections is to cross-reference them to more modern codes.

Senator Swift asked Mr. Pichette if the expected cost for the SID had to be noted during the bid process if the reference to per lineal cost is deleted from SB 63. Mr. Pichette replied there is no bid process on existing utilities since the work must be completed by the entity by which it was created. He concluded the final cost could not exceed the cost incurred, as suggested by Montana Power.

Closing by Sponsor:

Senator Weldon stated SB 63 would be a good opportunity to assist towns and counties. He concluded there was local control of SID costs through local public review and approval of the SID.

HEARING ON SJ 5Opening Statement by Sponsor:

Senator Delwyn Gage, Senate District 5, stated SJ 5 was a request for an interim study to reorganize and consolidate Montana counties. He said the Legislature should be examining all kinds of reform, including reform of our tax system plus school and university and county systems. Senator Gage stated he was interested in learning more about county consolidation because he was unsure of its specific consequences. He added there has not been enough evaluation of the method by which services are provided to the taxpayers. Senator Gage stated there was no logic to the establishment of counties other than for the consideration that the county seat not be more than one day's horseback ride from anyone in the county. He noted this was no longer a practical consideration for the majority of Montana residents, and added the issue of county consolidation is popular among the voters.

Proponents' Testimony:

Mr. Doug Olson, resident of Helena, Montana, spoke from prepared testimony in support of SJ 5. (Exhibit #3) He also submitted two articles on the history of Montana's counties. (Exhibits #4 and #5)

Mr. Riley Johnson, National Federation of Independent Businesses (NFIB), stated his organization does not take positions on issues unless the members vote to do so. He said two years ago, when the issue of county consolidation was examined by the Legislature, over sixty percent of NFIB's members were in support of the concept. He agreed with Senator Gage's concern of avoiding running government by initiatives and said this issue would be an easy target for an initiative given the level of discontent among many Montana residents. He concluded SJ 5 was not an attempt to consolidate counties, rather an attempt to determine whether or not such a course of action would be prudent.

Mr. Don Waldron, Montana Rural Education Association, stated his organization's official position on SJ 5 was to monitor its proceedings. He said the only fair way to determine if and where county consolidation is needed is to look at the counties on an individual basis.

Mr. Ed Hall, Montana Board of Crime Control (MBCC), stated his support for SJ 5. He said one of the main tasks of the MBCC has been to study jail services, particularly jail standards and recodification plus the development of regional juvenile detention services. Mr. Hall concluded SJ 5 would assist the

MBCC in determining how to recommend a more streamlined delivery of jail services.

Opponents' Testimony:

Mr. Gordon Morris, Montana Association of Counties (MACo), stated his organization is not opposed to a study, but raised a few questions concerning its intent. First, Mr. Morris stated Montana is a unique state in regard to its state constitution which mandates a review of local governments every 10 years. He added the last review period occurred in 1984-86, with the next one coming due in one year. Mr. Morris said the Montana Constitution gives broad and flexible options in determining local government structure and organization. He stated in 1984, twenty four counties and ninety cities and towns in Montana participated in the review process which resulted in minor changes in the makeup of local government. Mr. Morris stated in the event SJ 5 is prioritized and funded, the results of the study would be reported at the same time as the local assessments. It was his opinion reform should come from the bottom up, not from the top down, and any heavy-handed findings to be imposed from the top down would be met with opposition from MACo and others. Mr. Morris also noted the "whereases" contained in SJ 5 make some subjective statements concerning the funding of county governments. He reminded the Committee that Montana is the fourth largest state in the country and the fourth smallest in population. Mr. Morris said Montana taxpayers accept and pay a terrible price for the government they have accepted, and, if the taxpayers think there are more taxes than desired, they have the means to do something about it.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Kennedy asked Mr. Morris what constitutes an "ideal county". Mr. Morris said there have been many ideas as to what constitutes an ideal county organizational structure, however, no studies have been conducted to measure county population by the number of people served by government.

Senator Vaughn asked how much SJ 5 would cost. Senator Gage stated if passed, SJ 5 would go in with all the other study requests for which \$50,000 has been appropriated for the prioritized ones.

Senator Eck stated SJ 5 should also examine existing multi-county service districts and regions, to which Senator Gage agreed.

Senator Rye asked Senator Gage if he favored the inclusion of school districts in SJ 5. Senator Gage stated it was a completely separate issue but hopes it is examined as well.

Senator Bartlett asked Senator Gage if he was interested in a study which assumes Montana would be better off with county reorganization and consolidation or a study which examines the potential drawbacks and benefits of county consolidation. Senator Gage replied he hoped the study would not be conducted with any pre-conceived notions but said he believes the taxpayers perceive there are benefits to county consolidation.

Senator Hertel asked Senator Gage who assigns the members to the interim study. Senator Gage replied the assignments are made by Leadership in determining who will serve on the study committees.

Connie Erickson stated in the event SJ 5 is funded, the Legislative Council researcher who is assigned to the study designs the project with no pre-conceived notions in regard to intended outcome. She believes the House and Senate Local Governments would participate in the study committee selection process.

Senator Weldon stated his support for SJ 5 but expressed concern with the subjective phrasing of the resolution given the emotional public sentiment regarding county consolidation. Senator Kennedy asked the Committee whether or not they would care to work with the wording of SJ 5 to make it more neutral in purpose.

Closing by Sponsor:

Senator Gage stated he noticed two things about the nature of Montana politics. First, he said there is a serious problem with "turf protection" where people are interested in reform as long as it does not affect them. Second, he stated the greatest detriment to progress in the Legislature is party caucuses. Senator Gage said Montana took a big step forward during the last Legislature with the move towards regionalization of juvenile detention services. He added a problem with government studies is that they are usually done in a vacuum with no regard to the system as a whole. Senator Gage said SJ 5 should examine how services can best be provided by taking into consideration the range and scope of services delivered by different counties. Senator Gage concluded by suggesting Butte-Silver Bow county as an ideal county given the pride of the Butte people.

EXECUTIVE ACTION ON SB 10

Motion/Vote:

Senator Harding moved SB 10 DO PASS. Senator Gage made a substitute motion to amend SB 10 to include an immediate effective date on passage and approval. Senator Gage's motion CARRIED UNANIMOUSLY.

Discussion:

Connie Erickson stated the Committee could pass SB 10 out since the amendment would only add an immediate effective date.

Motion:

Senator Gage moved SB 10 DO PASS AS AMENDED.

Discussion:

Senator Bartlett asked Connie Erickson if there was another section, other than the one mentioned in SB 10, which allows for county park levies. Ms. Erickson replied it was the only one unless it is a park district.

Vote:

MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 25

Discussion:

Connie Erickson stated there was some concern from the Committee as to whether or not dispatch services would be provided if subsection 2 was removed from SB 25. She stated dispatch services involves fire, ambulance and law enforcement which are all authorized under Title 7. Ms. Erickson concluded dispatch services would be included if the Committee removed subsection 2 from SB 25, however, she added, this deletion could potentially cause some controversy.

Senator Vaughn asked what would happen if the Committee struck subsection 2, including the provision for dispatch services, and then the House or Senate insisted in restoring subsection 2 without the dispatch services included. Connie Erickson stated if subsection 2 was amended back into SB 25 without the dispatch

services, the services would probably not be authorized. Senator Vaughn stated this was precisely her concern. Ms. Erickson said the Committee may want to consider putting in a bill draft request in the next session to remove subsection 2 from SB 25. Senator Eck stated she was not concerned if the House amended subsection 2 back into SB 25 because they could not do so without including dispatch services since its inclusion was the purpose of SB 25. She said SB 25 does not exist without the provision for dispatch services.

Senator Weldon asked Connie Erickson if a description of the services authorized to be provided by local governments existed in any statute. Ms. Erickson replied references to authorized services are made throughout Title 7, however, they are not contained in a single location. Senator Weldon suggested the Committee table SB 25 and come up with a Committee bill which strikes subsection 2. He said the Committee would then send the bill through the Senate and the House, and, if at any phase the substitute bill looked to be in trouble, the Committee would then resurrect SB 25 and run it through the appropriate channels. Connie Erickson said the Committee could table any bill and then act on it as long as the Committee has not killed the bill. She added the Committee can also request a committee bill before February 13th but stated there could be a problem running up against transmittal. Ms. Erickson concluded Senator Weldon's strategy for SB 25 was procedurally correct but could be difficult to implement. Senator Rye complimented Senator Weldon on his imaginative strategy, however, he said there should be a simpler and more direct way to authorize dispatch services. He suggested the Committee proceed with SB 25 in whatever form Senator Vaughn preferred.

Senator Swift asked if the language in the title would have to be changed if the Committee struck subsection 2 from SB 25. Connie Erickson stated the Committee could remove subsection 2 and still remain within the scope of the title as long as "dispatch services" was removed from the title of SB 25. Senator Vaughn again stated she wanted to be sure dispatch services were included in the list of services authorized to be performed by local governments, even if the Committee did strike subsection 2.

Mr. Morris suggested the Committee pass SB 25 as introduced and let the House consider the possibility of a favorable amendment which would strike subsection 2. He said in the event the House or Senate did not wish to delete subsection 2 from the bill, SB 25 would probably still pass and dispatch services would be added to the list of authorized services.

Senator Gage asked Connie Erickson of the intent of the original bill which authorized services to be provided by local governments. Ms. Erickson replied the bill was introduced in 1985 without a list of services authorized to be provided. She said when the bill was heard in the House Local Government Committee, the sponsor of the bill then introduced an amendment to list the

services authorized to be provided. Ms. Erickson said she could find no reference in the minutes as to why the amendment was offered. Senator Gage suggested the Committee adopt Mr. Morris' suggestion to pass SB 25 as is and then see if the House adopts an amendment to strike subsection 2.

Motion/Vote:

Senator Gage moved the Committee amend SB 25 to include an immediate effective date. MOTION CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Swift moved SB 25 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 52

Discussion:

Connie Erickson stated there was one set of amendments to SB 52 which would add the county bridge fund to the available funds to which a county could credit any interest earned by those funds. (Exhibit #6) She said the amendments met with the approval of the sponsor, Senator Devlin.

Motion/Vote:

Senator Weldon moved the amendment to add the county bridge fund to SB 52. MOTION CARRIED UNANIMOUSLY.

Motion:

Senator Harding move SB 52 DO PASS AS AMENDED.

Discussion:

Senator Gage suggested the Committee amend SB 52 to add an immediate effective date. Connie Erickson replied she did not think SB 52 needed an immediate effective date since SB 52 pertains to investments, not tax levies. She said new codes are not published until September or October which is the reason why most law does not become effective until October 1st. Ms. Erickson said when law goes into immediate effect many people will not become aware of the changes until the updated code books are published. She concluded an immediate effective date would not be of much value to SB 52.

Senator Eck asked Ms. Erickson if there was a Legislative Council policy which makes bills effective October 1st. Connie Erickson replied it was not an official policy but a legislative consideration by those who draft the bills. Mr. Morris agreed with Ms. Erickson and stated SB 52 would become effective close to the end of this fiscal year which could force the transferral of funds and create a budget imbalance. He suggested the Committee amend SB 52 to provide for a July 1st effective date which would be consistent with the fiscal year. Mr. Morris concluded MACo gets the word out across the state to county governments on all of the legislation passed during the session which directly affects them.

Senator Gage stated SB 52 was permissive and does not require counties to move funds around. He noted a July 1st effective date would allow counties to set budgets on anticipated revenues.

Motion/Vote:

Senator Bartlett moved the amendment to add a July 1st effective date to SB 52. MOTION CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Harding moved SB 52 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 49

Discussion:

Connie Erickson stated there were two sets of amendments offered to SB 49. (Exhibits #7 and #8) She said the first set was offered by MACo which would clarify the creation of the road. She added Senator Bianchi supported this first set of amendments. Ms. Erickson said the second set were offered by the Missoula County Surveyor which would add a fifth way of creating a county road. She concluded Senator Bianchi did not support the second set of amendments.

Motion/Vote:

Senator Waterman moved the adoption of the first set of amendments to SB 49 as offered by MACo. MOTION CARRIED UNANIMOUSLY.

Discussion:

Senator Eck stated no one else came forward in support of the second set of amendments offered by the Missoula County Surveyor. Connie Erickson said it was her opinion the amendment granting authority to create a county road if it is shown on the government land office plats is similar to the fourth way of classifying a road as designated in 43 USC 932. Senator Bianchi stated some people who wish to determine whether or not a road is a public road look to US Geological Survey (USGS) maps to see if the road exists. He added Montana statutes state public roads do not use the definition of a USGS map, and these amendments move beyond the original intent of SB 49. Senator Swift stated the Department of Interior through the Bureau of Land Management is currently defining and locating roads which may have been the reason for this second set of amendments.

Motion/Vote:

Senator Waterman moved SB 49 DO PASS AS AMENDED. Motion passed seven votes to four, with Senators Gage, Harding, Hertel and Swift voting NO.

EXECUTIVE ACTION ON SB 50**Discussion:**

Connie Erickson stated there were two sets of amendments offered to SB 50. (Exhibits #9 and #10) She said the first set of amendments were offered by the Bureau of Land Management (BLM). Ms. Erickson said the first amendment in the set which amends the title of SB 50 might be too restrictive to specify "land management agency" instead of public agency. She stated the second amendment would require formal notification by the county of roads to be abandoned because the BLM is concerned they would not be formally notified of road abandonments. Ms. Erickson said she did not know if this amendment would address their concerns since formal notification could be a legal notice in a newspaper. She suggested the Committee could adopt an amendment to specify the notification be in writing. Ms. Erickson said subsection 4 says when the board of County Commissioners makes an entry on its decision it must include "evidence of the offer and any subsequent response". It was her opinion this would preclude notification via telephone only. Ms. Erickson said the third amendment offered would add a sentence to make the accepting agency responsible for the management of the road.

Senator Bartlett asked if the county would have to sign a right-of-way deed to the agency accepting the road in order to release ownership. Connie stated the county probably would since there would have to be some procedure to release the road from their

jurisdiction. Senator Kennedy asked if there was some section in the law which would state the procedure for releasing roads from county jurisdiction.

Senator Eck stated she would prefer deferring action on SB 50 until legal counsel has had the opportunity to examine the amendments and determine their legality. She said she was concerned the Committee would take action on SB 50 and then discover the amendments were ineffective. Ms. Erickson replied Title 7, Chapter 8, Part 1 makes reference to a procedure for the transferral of local government properties.

Senator Kennedy stated the Committee may want to wait on considering these amendments until their intent is clarified. Connie Erickson stated the second set of amendments offered by the Commissioner of State Lands would make agencies which accept roads not responsible for their maintenance. She said the Department of State Lands was concerned they would be required to maintain roads for which they had accepted responsibility but could not afford to maintain.

Senator Bianchi stated when he worked at the Department of Fish, Wildlife and Parks, the Department would get a quick claim deed from the county to transfer ownership of the land or road. He said the procedure for a quick claim deed is simple, fast and does not require a survey of the land. It was his understanding this same procedure would work regarding the county transfer of roads. Senator Bianchi stated he would prefer if SB 49 and 50 were acted on together to give him an opportunity to debate them on the Senate floor at the same time. He asked the Committee not to submit SB 49 until they had taken executive action on SB 50.

Senator Kennedy asked Senator Bianchi his opinion of the amendments offered to SB 50. He stated he supported the third amendment offered by the BLM. He said he did not support the first amendment and suggested the committee adopt language requiring formal notification of county road abandonment through the U.S. Postal Service. Senator Bianchi said he thought the second set of amendments were taken care of in the language of the first set of amendments, to which Senator Swift disagreed. Senator Swift said the two amendments are contradictory as one requires maintenance and the other one excludes it. Connie Erickson said the amendments are not contradictory since one amendment says the agency is responsible for the road while the other amendment says the agency is not required to maintain the road. Senator Weldon suggested the committee delete "including maintenance" from the third amendment offered by the BLM. Senator Waterman suggested the Committee then add a sentence specifying the agency is not required to maintain the road, to which Senator Swift agreed.

Senator Kennedy asked Ms. Erickson to prepare the corrected amendments to SB 50 so the Committee could take executive action on SB 50 at the next hearing.

ADJOURNMENT

Adjournment: 2:55 p.m.



SENATOR JOHN "ED" KENNEDY, Jr., Chair



ROSALYN COOPERMAN, Secretary

JEK/rlc

ROLL CALL

SENATE COMMITTEE Local Government

DATE 1-14-93

NAME	PRESENT	ABSENT	EXCUSED
Senator John "Ed" Kennedy	✓		
Senator Sue Bartlett	✓		
Senator Dorothy Eck	✓		
Senator Delwyn Gage	✓		
Senator Ethel Harding	✓		
Senator John Hertel	✓		
Senator David Rye	✓		
Senator Bernie Swift	✓		
Senator Mignon Waterman	✓		
Senator Jeff Weldon	✓		
Senator Eleanor Vaughn	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 15, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 10 (first reading copy -- white), respectfully report that Senate Bill No. 10 be amended as follows and as so amended do pass.

Signed: John Ed Kennedy, Jr.
John "Ed" Kennedy, Jr., Chair

That such amendments read:

1. Title, line 7.

Following: "FACILITIES"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 2, following line 24.

Insert: " NEW SECTION. Section 3. {standard} Effective date.
[This act] is effective on passage and approval."

-END-

APK
SS
Amd. Coord.
Sec. of Senate

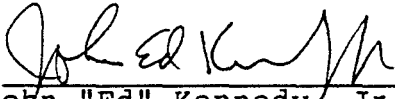
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 15, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 25 (first reading copy -- white), respectfully report that Senate Bill No. 25 be amended as follows and as so amended do pass.

Signed: 
John "Ed" Kennedy, Jr., Chair

That such amendments read:

1. Title, line 6.

Strike: "AND"


Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, following line 24.

Insert: " NEW SECTION. Section 2. {standard} Effective date.
[This act] is effective on passage and approval."

-END-

 Amd. Coord.
Sec. of Senate

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 20, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 49 (first reading copy -- white), respectfully report that Senate Bill No. 49 be amended as follows and as so amended do pass.

Signed: John Ed Kennedy Jr
Senator John "Ed" Kennedy, Jr., Chair

That such amendments read:

1. Page 2, line 11.

Following: "petition"

Insert: "and acceptance by local authorities"

2. Page 2, line 12.

Following: "dedication"

Insert: "and acceptance by local authorities"

3. Page 2, line 13.

Following: "prescription"

Insert: "and assertion of control by local authorities"

4. Page 3, line 8.

Following: "petition"

Insert: "and acceptance by local authorities"

5. Page 3, line 9.

Following: "dedication"

Insert: "and acceptance by local authorities"

6. Page 3, line 10.

Following: "prescription"

Insert: "and assertion of control by local authorities"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 15, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 52 (first reading copy -- white), respectfully report that Senate Bill No. 52 be amended as follows and as so amended do pass.

Signed: 
John "Ed" Kennedy, Jr., Chair

That such amendments read:

1. Title, line 5.

Following: "FUND"

Insert: "OR COUNTY BRIDGE FUND"

2. Title, line 6.

Following: "FUND"

Insert: "OR BRIDGE FUND"

3. Page 1, line 21.

Following: "fund"

Insert: "or county bridge fund"

4. Page 1, line 22.

Following: "fund"

Insert: "or county bridge fund"

5. Title, line 6.

Strike: "AND"

Following: "MCA"

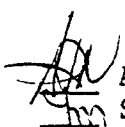
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

6. Page 1, following line 22.

Insert: " NEW SECTION. Section 2. {standard} Effective date.

[This act] is effective July 1, 1993."

- END -

 Amd. Coord.
Sec. of Senate

111202SC.San



MISSOULA

FINANCE/CITY CLERK OFFICE

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GRANT ADMINISTRATION

January 6, 1993
Letter #93-002

The Honorable Jeff Weldon
Montana State Senate
Capitol Station
Helena, MT 59620

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 1

DATE 1-14-93

BILL NO. SB 63

Dear Jeff:

After we talked today, we did receive the printed and introduced copy of SB63, so I can explain the minor amendments that should be proposed based on my conversation with Mae Nan Ellingson, bond attorney for most, if not all state and local government bond issues in Montana. The amendments are basically to clarify our intent, so I will show each amendment and explain it. I am also including a separate page of the amendments that could be handed out at the hearing on January 14th.

1. On page 5, line 21, after 69-4-311, add through 69-4-314

This change just clarifies that Sections 69-4-312, 313, and 314 are still in effect. We did not repeal those statutes with SB63, so I thought the presumption was that they would still be in effect, but Mae Nan felt a reader could be confused and this addition would clarify the language.

2. On page 8, line 22 after 21, add subject to limitations contained in this part,

This change, like number one simply clarifies that the limitations that remain in Title 69, Chapter 4, Part 3 still remain in effect. Again, I thought the presumption was that they would still be in effect, but Mae Nan felt a reader could be confused and this addition would clarify the language.

3. On page 9, line 1 after 42, add subject to limitations contained in this part,

This change is the same as change number two, except it applies to cities, whereas number two applied to counties.

If you are agreeable to these amendments, then you can just plan to hand out copies of this page at the hearing. If you are more comfortable having me hand them out and explain them, I am certainly willing to do so.

Thanks and I'll see you on January 14th.

Sincerely,

Chuck Stearns

Finance Officer/City Clerk

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 2

DATE 1-14-93

BILL NO. SB 63

January 13, 1993

Senate Bill 63 - Special Improvement Districts

The bill makes certain clarifications regarding local government authority to create special improvement districts to finance improvements like underground utility facilities. Our proposed amendment to the bill changes the cost limitation stated in current law so that costs assessed against the special improvement district may be the costs incurred by the utility. The present standard is outdated and understates the costs which may be recovered (the law was last amended in 1979). Further, because construction costs vary substantially with the type of facility and are subject to constant inflation with the passage of time, stating a precise cost per lineal foot is impractical. Our change gives the utility an opportunity to recover the actual costs of the construction that the local government requires it to accomplish.

The Montana Power Company

January 12, 1993
Proposed Amendment

Senate Bill 63

1. Page 7, line 10.
Following: "the"
Strike: remainder of lines 10 and 11.
Insert: "costs incurred."

Proposed by:
The Montana Power Company

DOUGLAS B. OLSON
P.O. Box 1695
Helena, MT 59624
443-0207
443-4345

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 3
DATE 1-14-93
BILL NO. SR 5

January 14, 1993

Senate Committee on Local Government
53rd Montana Legislature
Room 405
State Capitol Building
Helena, Montana 59620

re: Senate Joint Resolution 5
Requesting Interim Study of County Consolidation

Dear Senators:

My name is Doug Olson, I am an attorney residing in Helena and I am appearing before you today on my own behalf to express my personal support for Senate Joint Resolution 5, introduced by Senator Gage. This resolution seeks the support of both houses for funding an interim legislative study of county consolidation and reorganization and the preparation of a report for the 54th Legislature.

Few citizens would argue with the premise that government should be run like a business in an organized manner, providing needed services in a cost-efficient manner. I know of no one that would cut up Montana's geographical area into the present 56 counties if Montana was to be organized into local governmental entities today.

Since the last counties were created in the 1920's, our society has seen many advances in transportation and communication as well as shifts in population and centers of trade. I believe that the claim of many citizens that today we have too much government is applicable to the present county government system in Montana. I am not in a position today, however, to advocate that Montanans can be efficiently served with just 20, 25, 28 or 30 counties instead of the present 56.

Hopefully a detailed study of Montanans' needs for local services in relation to population demographics, transportation services, communication technology (telephones, computers and fax machines, satellites), trade centers will guide you toward making our local government services more effective and less costly.

Letter to Senate Local Gov't Comm.
re: SJR 5
January 14, 1993
Page 2

Montana may be able to serve its citizens with fewer counties or by sharing services with other counties. Perhaps not every county, regardless of population, needs a district court, a county attorney, a county superintendent of schools, or clerk and recorder? If we are willing to travel 50-100 miles or more to shop in another county, couldn't we really combine or consolidate government services with that county?

David Walter, a reference historian with the Montana Historical Society's Library, wrote two articles for Montana Magazine on the creation of counties that appeared in Volumes 78 and 79 of that magazine (July-August 1986 and September-October 1986, copies of which are attached) that may be of assistance to an interim study commission on county consolidation and reorganization. The library also has several files on the formation of counties as well as one that contains articles on counties that were planned but never officially created. I would suggest that Mr. Walter (444-2681) and the resources of the Historical Society Library would be good references for the Legislature to consult.

I believe that Senator Gage should be commended for offering this resolution since he comes from a smaller county that may see some of its services consolidated as a result of such a study. I hope that you will look favorably on his proposal and subsequently vote to fund it. Thank you for your consideration of my views.

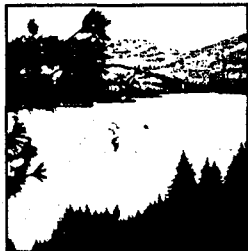
Sincerely,


Douglas B. Olson

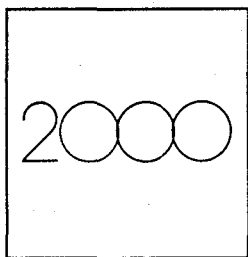
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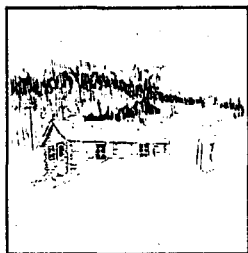
MONTANA



6 Our northwest corner: woody lifestyle



62 The year 2000: look where we'll be by then



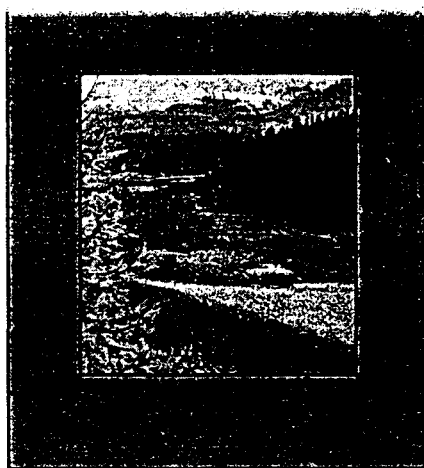
74 The cozy cabins of Ernst Peterson

FEATURES

- 4 MOUNTAIN ASH—Autumn brilliance and ancient superstition
- 6 FAR NORTHWEST MONTANA—A look at life in tall-timber country
- 18 IN SEARCH OF SMALL-TOWN MONTANA—Paradise, Heron, Troy
- 50 NOW PLAYING AT THE WILMA—Missoula's grand, and eclectic, movie houses
- 62 MONTANA IN THE YEAR 2000—A futuristic look at the state of the state
- 74 HOME SWEET HOME—Log cabin photography by Ernst Peterson

COLUMNS

- 22 GEOLOGY—Where's the oil in northwest Montana?
- 24 OVER THE WEEKEND—Visit the Dinsmore Observatory
- 31 HISTORY—Counties that never were
- 55 OUT AND ABOUT—The Grand Hotel in Big Timber
- 58 HUMOR—The Chevy Chase
- 60 BORDER TO BORDER—Montana trivia
- 69 WILDLIFE—Our bug-hungry night hawks
- 71 LETTERS TO THE EDITOR
- 73 MADE IN MONTANA—Truzzolino's Filipino-style Mexican cooking
- 77 HUNTING—An elk survey to complete and send in
- 79 CLASSIFIED ADS
- 80 THE FIRESIDE READER—Book reviews
- 82 WILDERNESS GUIDE—The Mission Mountains Tribal Wilderness



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Western larch along the North Fork, Flathead River—George Wuerthner

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SENATE LOCAL GOVERNMENT

EXHIBIT NO. 4

DATE

1-14-93

NO.

SPR 5

by Dave Walter

*Losers in the
county-busting
craze*

Early in the twentieth century, Montana needed more counties. Its "county busting" mania was rooted in a complex of factors, including a network of new railroad lines, the international promotion of Montana's dryland farming possibilities, and the resultant homesteading population boom (see *Montana Magazine*, July-August, 1986). The national Progressive Movement (1900-1916) then served as a catalyst in Montana. For the Progressives advocated the placement of governmental power in the hands of the people. And what better focus for such "political reform through direct action" than the creation of an

Ismay Journal,
JANUARY 31, 1919

31

accessible, responsive county government, located close to the citizen?

Before 1911, a Montana county could be created only by the legislature. In that year, however, Progressives effected the passage of the Leighton Act, which established a grassroots petition-and-election process as an alternative. Although the Leighton Act was amended repeatedly between 1913 and 1929, it gave Montanans a vehicle with which to pursue their county-splitting dreams.

Suddenly the proliferation of Montana counties ceased, with the exodus of dryland homesteaders and the accumulating drought of the 1920s and 1930s. As county taxes rose and the Depression settled in, a radical change in public sentiment occurred in Montana. For example, in 1934, the Montana Taxpayers Association campaigned statewide to realign the existing 56 counties into a more efficient, economical structure of 16 county units. In the last 50 years, several such consolidation campaigns have been mounted in the state. Yet each has sputtered and died, leaving Montana with its current county-government network of 56 units.

At present the county-government situation in Montana is grave. *Forty-five* of the state's 56 counties sport populations of less than 14,000 and 20 of these counties include fewer than 5,000 people. In the extreme, Treasure County operates a county government with a population of 981, and Petroleum County draws taxes from, and provides services for, only 655 people.

As dire as the county-government picture appears, it could be much worse! Scores of additional counties have been proposed since Montana became a territory (in 1864). And more than 50 of these counties were projected during the first 25 years of this century (see sidebar). The failed counties would have been distributed across the face of Montana, but the vast majority of them were designed for the central and eastern regions of the state.

As these counties were stillborn, little extant information is available concerning them. Most often, they have dropped into imprecise local memory. Yet even their names evoke a sense of



County splitter Dan McKay once remarked, "If you never had the thrill of the hardest kind of a battle that can be fought without artillery, rifles and machine guns, you ought to get into a county splitting fight once."

intrigue and a realization of how the face of Montana *might* appear: Robert Fisher County; Bear Paw County; Paradise County; Merino County; Conrad County; St. Mary's County; Cogswell County; Pershing County; Banner County; Joe Brown County. It is a roll call of "what might have been."

Montana's failed counties exhibit some historical patterns. Occasionally a county would fulfill the legal requirements for establishment and apparently be set to function, only to

be killed by a higher authority. Such was the case with Vivion County in 1866: Although it was created by the Territorial Legislature, it was erased when the U.S. Congress subsequently voided the acts of that session. Similarly, in 1901, the Legislature changed the name of Deer Lodge County (with Anaconda as county seat) to Daly County and converted Powell County to Deer Lodge County (with Deer Lodge as county seat). Such a realignment not only would reunite the town of Deer Lodge with Deer Lodge County (thus avoiding perpetual confusion), but also would honor "Copper King" Marcus Daly, who had died in 1900. The Montana Supreme Court, however, ruled the legislative act unconstitutional, and Daly County disappeared.

In a number of other cases, a county would endure the legislative process under one name, but then have that name altered by amendment just prior to final passage. This kind of name change usually was engineered to gain the support of key legislators, and frequently the ploy worked. Two such cases developed during the 1919 legislative session: Bills to create Jordan County and Cogswell County were altered, at the last minute, to produce Garfield County and McCone County, respectively.

Much more often, however, a proposed county simply could not gain the necessary support in the Legislature, or it could not meet the legal requirements for establishment, or it could not secure a majority of votes in the local election. A look at three proposed-county situations reveals the problems faced by some of these county splitting schemes: Bear Paw County (1903); the Teton County partition (1911); Pershing County (1919).

Bear Paw County—1903

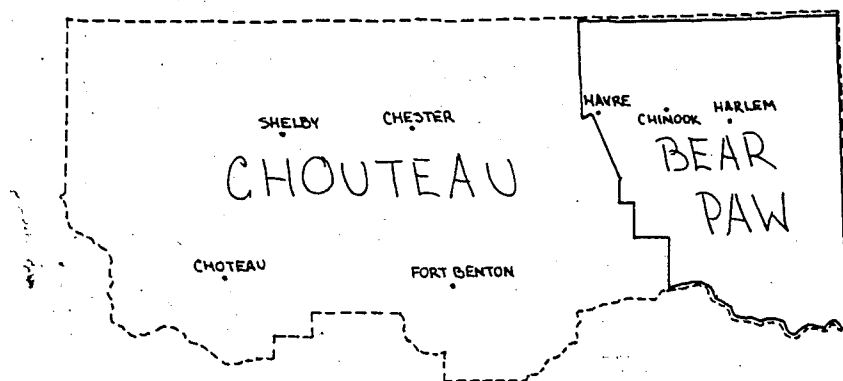
During Montana's territorial period (1864-1889), the largest single burst of proposed counties hit the 1885 Legislature. It was an optimistic time in Montana: The open-range cattle industry was thriving on the central and eastern plains; mining operations showed national potential; the possibility of statehood was invigorating. But the fact that nine coun-

COUNTY CREATED	COUNTY PROPOSED *
1865	
BEAVERHEAD	
BIG HORN (DAWSON- CUSTER)	
CHOUTEAU	
DEER LODGE	
EDGERTON (LEWIS AND CLARK)	
GALLATIN	
JEFFERSON	
MADISON	
MISSOULA	
1866	
MEAGHER	VIVION
1869	
DAWSON	VAUGHN
1871	
	OWEN
	ROBERT FISHER
1876	
	DEARBORN
1877	
CUSTER	DEARBORN
1881	
SILVER BOW	
1883	
YELLOWSTONE	
1885	
FERGUS	BITTER ROOT
	BRIDGER
	DEARBORN
	JUDITH
	PEN D'OREILLE
	STEVENS
	THREE FORKS VALLEY
1887	
CASCADE PARK	FALLS MONROE
1893	
FLATHEAD	BEAR'S PAW
GRANITE	BELKNAP
RAVALLI	BITTER ROOT
TETON	LINCOLN
VALLEY	
1895	
CARBON	
SWEET GRASS	
1897	
BROADWATER	
1901	
POWELL	DALY
ROSEBUD	
1903	
	LINCOLN
	PARADISE
	BEAR PAW
1905	
SANDERS	
1907	
	DALY
	ROOSEVELT
1909	
LINCOLN	HIGHWOOD
	SHAW

COUNTY CREATED	COUNTY PROPOSED *
1911	
MUSSELSHELL	BELT
	BURT
	CARDWELL
	CONRAD
	DALY
	LAKE
	MARIAS
	MERINO
	ORCHARD
	PIEGAN
	ST. MARY'S
	SHAW
1912	
BLAINE HILL	
1913	
BIG HORN	EDWARDS
FALLON	
SHERIDAN	
STILLWATER	
1914	
MINERAL	UNION
RICHLAND	
TOOLE	
WIBAUX	
1915	
PHILLIPS PRAIRIE	
1917	
CARTER	RIVER
WHEATLAND	SYKES
1919	
GARFIELD	ARGONNE
GLACIER	BASIN
McCONE	BELT
PONDERA	COGSWELL
POWDER RIVER	CRUSE
ROOSEVELT	DALY
TREASURE	DEARBORN
	EDGERTON
	GRANT
	JORDAN
	JUDITH
	McKINLEY
	MONTANA
	PERSHING
	REDWATER
	STUART
	SUN RIVER
	WASHINGTON
1920	
DANIELS	BANNER
GOLDEN VALLEY	MILK RIVER
JUDITH BASIN	
LIBERTY	
1921	
	CRUSE
	EDGERTON
	JOE BROWN
	REDWATER
	SANDSTONE
	UNION
1923	
LAKE	BUTTE
	HEDGES
1925	
PETROLEUM	BUTTE

Montana counties created and proposed

*This is a preliminary, and therefore incomplete, list to which the names of other proposed counties can and should be added.



ty bills were introduced in that legislature is really a result of the completion of the Northern Pacific Railroad's main line through Montana in 1883. For the Northern Pacific brought publicity, promotion, immigration and business opportunities; a cosmopolitan spirit began to invade frontier Montana. As population rose along the main line, citizens increasingly demanded accessible county government.

A similar situation developed across northern Montana when the Great Northern Railway laid its rails in Great Falls (1887) and then built through the Flathead Valley into Idaho (1892). With the growth of section-point and division-point communities along the route, the existing county structure proved unrealistic. As late as 1893, for example, Chouteau County stretched from the international boundary south to the Missouri River and from the Continental Divide east almost to Malta. Circumstances improved little during the next decade. The creation of Teton County had consumed the western portion of Chouteau County, but Chouteau remained a governmental unit that encompassed more than 16,000 square miles.

By 1903 the situation had become intolerable for many of the residents of Harlem, Chinook and Havre. With the county seat of Fort Benton tucked in the southwest corner of the county, off the Great Northern's main line, citizens from the eastern stretches of Chouteau County were forced to spend four or five days traveling to and from the county courthouse to transact their business. For the county sheriff to serve a subpoena in Landusky, in the winter, was a major expedition.

Early in January of 1903, civic leaders in Havre, Chinook and Harlem organized the County Division Association to partition Chouteau County into three sections: the original county; a central county, with Havre as the county seat; an eastern county, with Chinook as the county seat. Fairly quickly, however, a rift developed among supporters in the three towns, and Havre leaders refused to lobby legislators on behalf of the plan. The businessmen of Harlem and Chinook then assumed control of the campaign and proposed that only a single county be split from Chouteau, with a north-south dividing line situated just west of Havre. For a couple of weeks the proposed name for the county was "Belknap," but by the time the bill was introduced in the legislature (February 12, 1903), the name had become "Bear Paw County."

The arguments offered in support of this county-splitting scheme included better access to the county seat, the county commissioners' greater familiarity with the land and the people they supervised, and reduced tax levies. The belief that "a smaller county operates more efficiently" became the rallying cry for Chinook advocates—who, incidentally, suggested that the county seat of Bear Paw County ought to be located in their community. The editor of the *Chinook Opinion*, on February 19, 1903, listed 12 reasons why Chouteau County should be divided, presented nine arguments why Chinook should be designated the permanent county seat and provided a 26-point description of the business advantages of his town.

Supporters of Bear Paw County from Harlem, however, had other ideas. They circulated petitions

designating Harlem the county seat, and soon open antagonism developed between Bear Paw boosters in the two towns. On the floor of the House, Representative Thomas M. Everett (R-Harlem) abandoned the coalition's plan and substituted Harlem for Chinook as the temporary county seat. With this amendment, the bill passed the House.

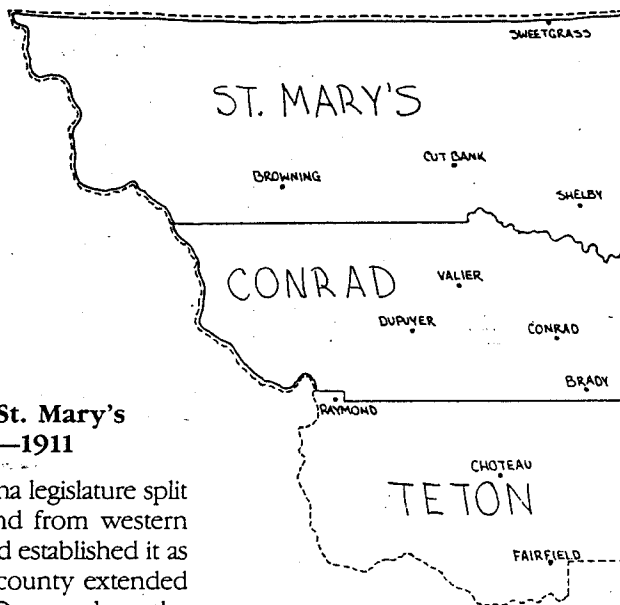
In the Senate, however, friends of Fort Benton rallied opposition to the bill, and it lost by a single vote. Immediately another bill was introduced in the House to create "Lincoln County," a clone of Bear Paw County, with only minor boundary variations. But Lincoln County suffered the same fate: strong endorsement in the House, but defeat in the Senate, 18 to 8. The *Chinook Opinion* (March 12, 1903) pulled no punches in assessing blame for the defeat:

"Who was sincere? The Havre people originally proposed the Chouteau County division, but when division was made possible, they opposed the bill, and now they celebrate its defeat. . . The Havre people boasted that they could kill the division bill in the Senate. Did they do it? You bet they did!"

"On the floor of the House, Colonel James Rice [R-Fort Benton] said that the opponents of the Bear Paw bill had left Havre for Helena with between \$3,000 and \$5,000. He said that he did not know what had become of that money, but he threw out some strong intimations of influence.

"One thing is certain, Chinook will protect herself in the next legislature by having the representation to which she is entitled. Take note Mr. Everett!"

In truth, Fort Benton strategists delayed the partition of Chouteau County for another nine years. The situation became absurd: In 1911, Chouteau County was identified as the largest county in the United States. Not until 1912—after Montanans had gained the power of county creation through the Leighton Act's petition-and-election process—were Hill County and Blaine County formed. Havre became the county seat for Hill County, and Chinook gained the county seat for Blaine County. Harlem was forced to accept the role of the ugly stepsister. The *Chinook Opinion* showed no regret.



Conrad and St. Mary's Counties—1911

In 1893 the Montana legislature split a huge chunk of land from western Chouteau County and established it as Teton County. This county extended from Marias Pass to Devon, along the Great Northern Railway main line, and ran from the International Boundary to the Sun River—an area about the size of Ohio. The town of Choteau became the county seat.

As population in the area increased, however, Teton County residents grew angry with the inaccessibility of their county seat. At the time, no rail line served Choteau, and cross-country travel on the high plains was time-consuming, expensive and dangerous. The *Conrad Observer* noted (March 2, 1911): "At present it is a county of magnificent distances, and a trip to its seat of government and return is one that is fraught with the dangers of being frozen to death."

Unlike the almost frenetic actions of the proponents of Bear Paw County, though, the civic leaders who wished to partition Teton County were well-organized and relatively united in their effort. The impetus for this county-splitting effort originated in Conrad, with the community's Chamber of Commerce. Yet, very early in the campaign, these organizers developed ties with commercial leaders in other significant Teton County towns: Sweet Grass, Kevin, Cut Bank, Shelby, Valier, Dupuyer and Brady. In an astute political move, representatives of these settlements involved the "city fathers" of Choteau, thereby diluting rancor in the existing county seat.

Through a series of public meetings, the "county busters" agreed on a plan that would create the new

county of St. Mary's (with Cut Bank as the county seat), generally north of the Marias River, and the new county of Conrad (with Conrad as the county seat), north of an east-west line running near Brady. Support among the populace was widespread, and one meeting in Conrad, on December 27, 1910, drew more than 200 participants. The familiar arguments of a geographically accessible county government, "a smaller government is a less expensive government," and placing government closer to the people carried the day. Even the *Choteau Acantha*—which held the Teton County printing contract—remarked (December 29, 1910):

"The attitude of Choteau and vicinity, on the question of division, is one of non-resistance. The preponderance of sentiment is probably largely favorable to division. . . . It seems certain that, if anything is to be lost by county division, Teton County would lose least; if there is to be a gain, Teton County would gain most."

On January 30, 1911, Representative Martin Jacobson (R-Cut Bank) introduced HB 236 (St. Mary's County) and HB 237 (Conrad County) in the Twelfth Session of the State Assembly. Both bills were referred to the House Committee on New Counties and Divisions; they were among 18 county-splitting proposals faced by the legislature.

Two factors then conspired against

the immediate partitioning of Teton County. First, legislative observers noted that the Senate did not view favorably the creation of new counties, since each county was entitled to one senator, thereby reducing the power of the members already seated in the upper chamber. Certainly in a state with only 28 counties in 1911, the Senate would not approve the creation of an additional 18 counties!

Second, Progressive sentiment to place greater political power in the hands of the people was growing rapidly in the state. And the legislature was the recipient of much of that pressure, on a number of fronts. In the case of county division, the solons saw a possible solution to their dilemma in a bill introduced by Senator I.A. Leighton (R-Boulder). Surely legislation that would provide a petition-and-election process, by which the voters could initiate county creation, would satisfy the Progressives. And such legislation could be used as an alternative to handling each and every one of the county-splitting bills.

Thus the Leighton Act became law, and all of the county-creation bills in the House and the Senate died. The bills to establish Conrad County and St. Mary's County never were discussed on the House floor. Still, supporters of these counties recognized a partial victory in securing the political tools by which to create these counties themselves, avoiding the recalcitrant legislature.

Teton County eventually was partitioned, but along different lines from those boundaries proposed in 1911: Toole County (1914); Glacier County (1919); Pondera County (1919). Conrad gained the county seat of Pondera County, and Cut Bank became the county seat of Glacier County. Shelby was the victor in the realignment, for it obtained the county seat of Toole County. Thus Conrad County and St. Mary's County slipped into oblivion.

Pershing County—1919

If the 1911 Legislature thought it was deluged with proposals for new counties, the Sixteenth Legislative Assembly (1919) must have believed the county busting was its constituents' only concern. During U.S. participation in

World War I (April 6, 1917-November 11, 1918), county-creation proposals had been deflected by the war effort. Then the 1918 Spanish Influenza epidemic diverted the attention of Montanans. But, by 1919, county-splitting schemes had returned to the state with dramatic vigor.

Although the Leighton Act (1911) had provided the Montana voters with a petition-and-election method of creating counties, the 1913 and 1915 legislatures had amended this law to regain some control over the formation of new counties. The 1919 Legislature would pay the price for these restrictions, which now made county establishment by legislative act at least as attractive as a petition-and-election campaign. Among the two dozen proposals for new counties in 1919 (ranging from Argonne County to Cruse County to Redwater County) was a short-lived attempt to carve Pershing County from south-central Montana.

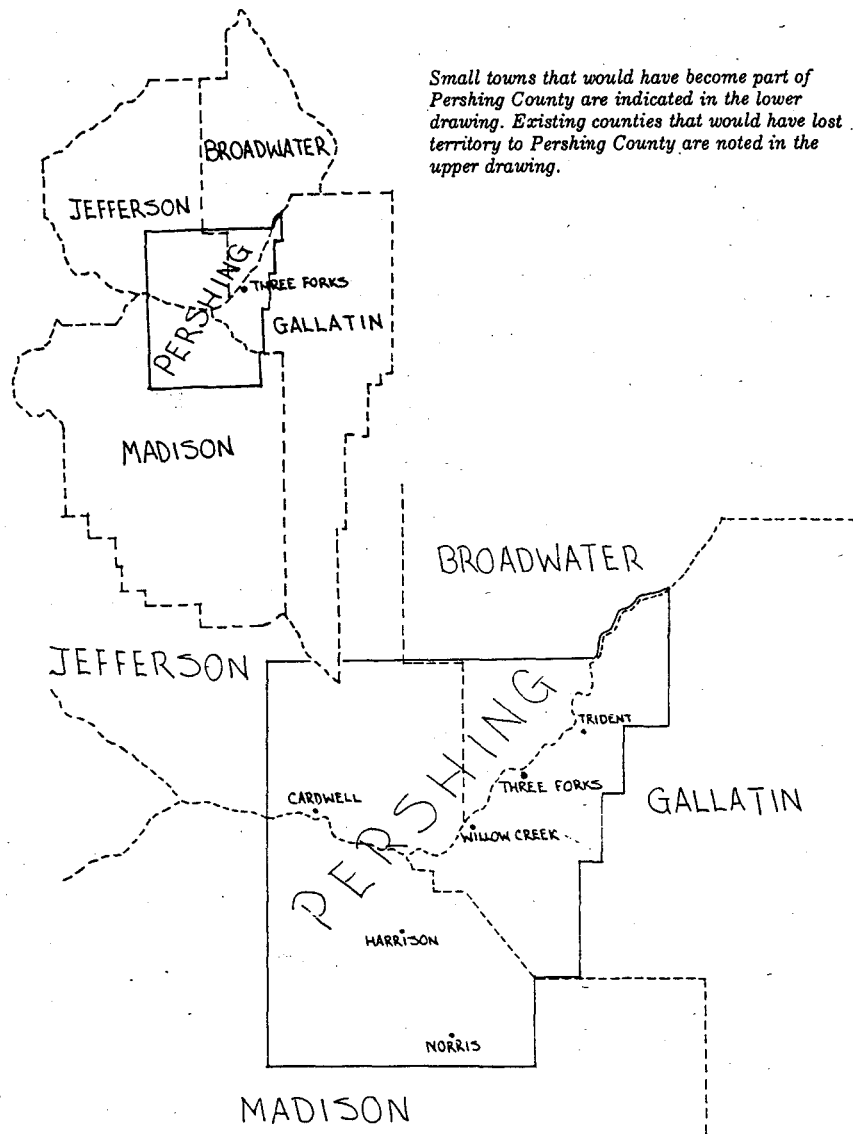
The town of Three Forks, situated at the headwaters of the Missouri River, long had seen itself as a significant community, unjustly ignored by the developing county system. So—when equally dissatisfied residents of north-western Gallatin County, northern Madison County, southeastern Jefferson County and southern Broadwater County all complained of their high county taxes, poor county services, and the distances they needed to travel to their respective county seats—the Three Forks Chamber of Commerce jumped at the chance to promote a new county.

The name Pershing County was chosen by delegates from the area to enhance their chances for creation of the county. For General John Joseph "Black Jack" Pershing had served at Fort Assiniboine near Havre during the mid-1890s and recently had become a national hero, based on his command of the American Expeditionary Forces in France. Rampant patriotism aside, the supporters of Pershing County argued that geographic accessibility to a county seat, as well as reduced governmental costs for a small county, justified their proposal. For the sake of expediency, these organizers decided to ask Representative Samuel J. Crouch (R-Three Forks)

to introduce a Pershing County bill in the 1919 Legislature.

Despite the diligent work of members of the Three Forks Chamber of Commerce, under the direction of H.O. Frohbach, opposition to Pershing County arose from various quarters. Petitions against the county were circulated in Willow Creek, and especially among farmers in southeastern Jefferson County, southern Broadwater County and northern Madison County. Jefferson County commissioners miraculously appeared at their farmers' meetings, promising better road maintenance, bridge construction and additional elementary schools. Willow Creek detractors presented a number of irrelevant arguments to discredit Pershing County, including the news that Three Forks leaders planned to construct a \$250,000 county courthouse, at the expense of

Small towns that would have become part of Pershing County are indicated in the lower drawing. Existing counties that would have lost territory to Pershing County are noted in the upper drawing.



the new county's taxpayers, and that Pershing County's inherited tax indebtedness immediately would triple the average citizen's county taxes.

In Three Forks itself, the *Three Forks News* wholeheartedly endorsed the creation of Pershing County, devoting entire issues to defending the county-splitting movement against its derogators. However, the town's other newspaper, the *Three Forks Herald*, was decidedly less enthusiastic. As the Pershing County bill moved through the House, the weekly became openly opposed to its passage (*Three Forks Herald*, January 23, 1919):

"This writer is not opposed to the creation of a new county—someday—but I am certainly against it at present. We have had two years of poor crops and our people have incurred many obligations—pledges for war savings stamps, Liberty Bonds, the

Red Cross, the Y.M.C.A., among others. Let us get all of our boys home and back to work, and then we will see. Better that we bide our time and await future developments than to jump in now and have a new county so badly enmeshed in debt that it will be a burden upon the taxpayers for years to come."

The *Three Forks News* and the town's Chamber of Commerce countered by bringing in the legendary "County Splitter" Dan McKay, for a one-night stand on January 18, 1919. McKay argued persuasively for the creation of Pershing County, and his appearance bolstered the campaign perceptibly.

Yet the local argument between the Three Forks newspapers was secondary to legislative developments in Helena. There the lawmakers were inundated with new-county proposals, consuming time that might be devoted to more significant postwar issues. They reacted to the onslaught by increasing the requirements for county formation (the "McCone Bill") and by refusing to entertain any additional county bills after January 27, 1919. With an air of resentment, the politicians dispatched the Pershing County measure (*Three Forks Herald*, January 30, 1919):

"The proposed new county of Pershing met its Waterloo when the House Committee on New Counties

and Divisions submitted, and the full House adopted, an adverse report on the bill for its creation. Delegations from Townsend, Bozeman, Willow Creek, and other points 'stormed' the Committee. Despite the fascinating name for the new county, the Committee yielded to their importunities."

The editor of the *Herald* could not resist a jab at the supporters of the county busting scheme (January 30, 1919): "It appears that we are not to have a new county at present—the Legislature evidently accepting your writer's opinion that we had better wait a while before forming a new county."

A composite county at the headwaters of the Missouri River never was formed, and Three Forks remains a town that is not a county seat. Should the present-day residents of Three Forks harbor some historical resentment against Willow Creek, Bozeman, Whitehall and Cardwell, one might well trace that sentiment back almost 70 years, to the events of 1919 and Pershing County.

"I venture to predict that the time will come when Montana will have 300 counties," Dan McKay, the "County Splitter," 1918.

The number of Montana counties doubled between 1910 and 1935, increasing from 28 to 56. And some Montanans have argued, during the past 50 years, that a desirable alter-

native to the state's current county structure is to reduce the number of counties through consolidation. A factor lost in this discussion is the astounding number of counties that were *proposed but never created*. If the current situation is perceived as serious—it could be much worse.

As advocates of county consolidation periodically have discovered, the general concept of consolidation gains wide support in Montana. But when a tentative map is published (showing only 16, or 20 or 24 reconstituted counties), and one of the eradicated counties is *yours*, resistance to consolidation swells.

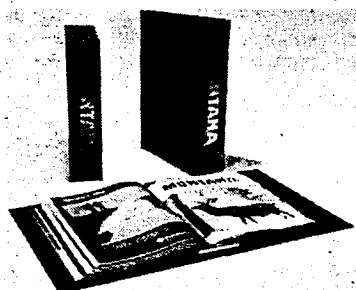
Much of a Montanan's geographical and political identity is tied inexorably to his town and his county. It is still a state where you can identify a vehicle by the coded county number on its license plates. For all of the logic inherent in county consolidation, the next statewide campaign to reduce the number of Montana counties also will encounter staunch resistance. The seeds sown by Big Dan McKay have sunk deep roots.

Consider the possibilities if Bear Paw County, Conrad County, St. Mary's County, Pershing County and their sisters had been given life. ■

Editor's note: Several readers pointed out that we failed to include Liberty County, created in 1920, on the chart appearing in our July-August history column.

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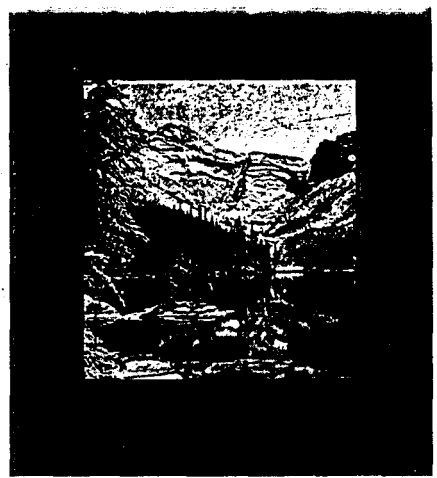
74 Small-town portals
to the park

FEATURES

- 5 McWILLIAMS' MONTANA—A Cartoonist's View of Our State
- 6 FAMILY DAY TRIPS—If You're Summering in Montana, 33 Ways to Go
 - 7 From Kalispell—Chain of Lakes; Hungry Horse; Danny On Trail
 - 9 From Libby—Libby Dam & Kootenai River Area; Bull Lake Area; Yaak Valley
 - 11 From Missoula—D'Aurias Restaurant; Bitterroot-Skalkaho-Rock Creek Loop; Riverfront Park
 - 14 From Dillon—Wise River Loop & Bannack; Centennial Valley & Red Rocks Wildlife Refuge
 - 16 From Helena—Lincoln-Wolf Creek Loop; Butte & the Deer Lodge Valley; Elkhorn Mountains Loop; Pintler Scenic Route
 - 18 From Bozeman—Missouri Headwaters State Park; Gallatin Gateway Inn; Downtown Discoveries; Livingston's Danforth Gallery Variety Shows; Big Timber's Sharps Rifles
 - 24 From Billings—Chief Plenty Coups State Monument; Der Schwartzwald Dinner Theatre; Custer Battlefield; Yellowtail Dam
 - 26 From Great Falls—Fort Benton-Stanford Loop; Little Belt Loop; Glacier Park-Conrad Loop
 - 28 From Lewistown—Crystal Lake & Big Snowies; Judith Mountains Loop; Lake Mason Wildlife Refuge
 - 30 The Big Open—Checkered Highways; Confluence Country; Little Rockies
- 60 VIRGINIA CITY—Take a Vacation to Our Past
- 74 SMALL TOWN MONTANA—Cooke City; Gardiner; West Yellowstone

COLUMNS

- 4 EDITOR'S MESSAGE
- 32 OUT AND ABOUT—Ekstrom's Stage Station
- 33 THE LAWNCHAIR READER—Book Reviews
- 35 OUTDOOR NOTES—Summer Backpacking Gear
- 36 BORDER TO BORDER—Montana Trivia
- 44 WILDERNESS GUIDE—Exploring the Rattlesnake
- 49 HISTORY—County Busting
- 54 CLASSIFIED ADS
- 55 GEOLOGY—Versatile Phosphate
- 72 FISHING—The Risks of Streambed Tampering



COVER PHOTO:

Alpine lake in Cabinet Mountains
Wilderness—Lance Schelvan

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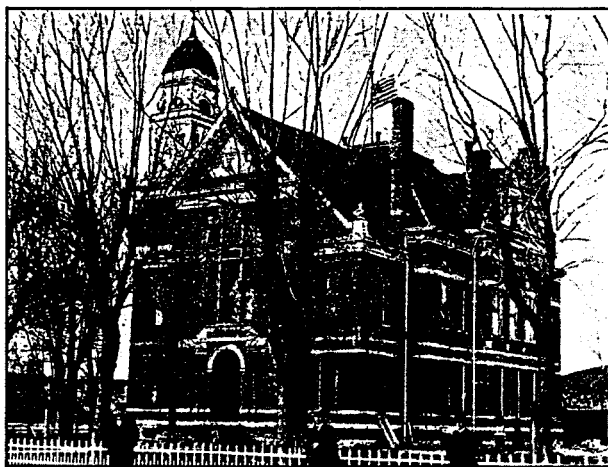
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BILL NO.

SSR 5

County busting

Colorful memories & an economic legacy



The Chouteau County Courthouse, Fort Benton, as it appeared about 1900. COURTESY FORT BENTON MUSEUM.

During the past 50 years, at least once each decade, the call for "county consolidation" has been heard across Montana. "Consolidation" would involve the reorganization of Montana into 12, or 18, or even 30 counties, instead of the 56 counties that have existed since 1925. The crux of the consolidation argument is that such a streamlining of the county structure would eliminate duplicative offices and services, thereby reducing the county tax burden on the Montana property-owner, whether corporate or individual. Given the government budget-crunch of the 1980s, it is about time for the resilient call for "county consolidation" to be sounded again across the land.

On a statistical basis, advocates of "county consolidation" present a strong argument. When you spread Montana's population of 786,690 (1980 federal census) over its 56 counties, the median county draws its taxes from—and provides services for—a little more than 14,000 people. And the public demand for county services has increased since the depression. In truth, however, the situation is more grave. *Forty-five* of the state's counties include fewer than 14,000 people, and 20 of these counties sport populations

of fewer than 5,000. In the extreme, Treasure County operates a county government with a population of only 981; Petroleum County draws taxes from, and provides services for, a mere 655 people.

The question arises, "How did Montana work its way into this predicament?" Indeed, why does a state of fewer than 800,000 people continue to support a county-government structure better designed for a population of several million? Perhaps, in investigating the first question, one can find answers to the second question. For the proliferation of Montana's counties is the story of anything but a measured development.

Montana's First Territorial Assembly (1865) approved nine counties, most of which had been established (1863) when Montana was still included in Idaho Territory: Beaver Head; Big Horn (later Dawson and Custer); Chouteau; Deer Lodge; Edgerton (later Lewis and Clark), Gallatin; Jefferson; Madison; Missoula. The county concentration in western and central Montana (see map sequence) reflects the population distribution of the early placer-gold mining boom.

During the 25-year existence of

Montana Territory (1864-1889), only eight additional counties were created by the Territorial Assembly (see sidebar). This rational development of the county structure parallels Montana's population growth from about 20,000 to 130,000 (a 650% increase) and emphasizes the recognition of new quartz-mining, agricultural and railroad centers in the Territory. Moreover, this moderate county development illustrates the fact that the only way a county could be created was by legislative act. An Assembly faced with widespread Territorial debt was necessarily conservative in establishing new counties. The reasonable approach of the Territorial Assembly to county proliferation does not mean that lawmakers did not "play politics" with counties. For example, in 1866, the Assembly created Vivion County in central Montana, to honor territorial politician Robert Peel Vivion. But then the U.S. Congress annulled the acts of the Second Extraordinary Session of the Montana Assembly. And so disappeared Vivion County, Vivion County's eponym, and his chance for relative immortality. Also, in 1867, the Assembly changed the name of Edgerton County to Lewis and Clark—an outright snub of first Territorial Governor Sidney Edgerton by his political enemies. Finally, the Fourteenth Legislative Assembly (1885) wrestled with at least nine county proposals before partisan politics eliminated all but the creation of Fergus County.

Thus Montana entered the Union (1889) with a county structure of 16 units. During the next 21 years, until 1910, the population of Montana rose from about 130,000 to more than 376,000 (a 289% increase). Yet the Montana Legislature approved the creation of only 12 new counties. These fledgling counties tended to reflect population concentrations caused by new underground mining operations and especially by the development of valley-bottom agricultural areas (see sidebar).

Then all hell broke loose! From a county structure of 28 units in 1910, Montana exploded to a state of *54 counties* in 1920. During that decade, the number of counties almost doubled, thereby producing about twice as many county sheriffs,

county treasurers, county school superintendents, and other county officials to be paid from property taxes. Usually this "county splitting" movement is dismissed with a shrug of the shoulders and a derisive reference to "damned honyockers"! Not surprisingly, the circumstances that spawned 26 counties in 10 years were a bit more complex, and interesting.

Certainly Montana's homestead boom period of 1908-1919 was the prime factor involved in the "county busting" craze. For that era spread tens of thousands of settlers across the state's northern, central and eastern plains on basic 160-acre claims. Sud-

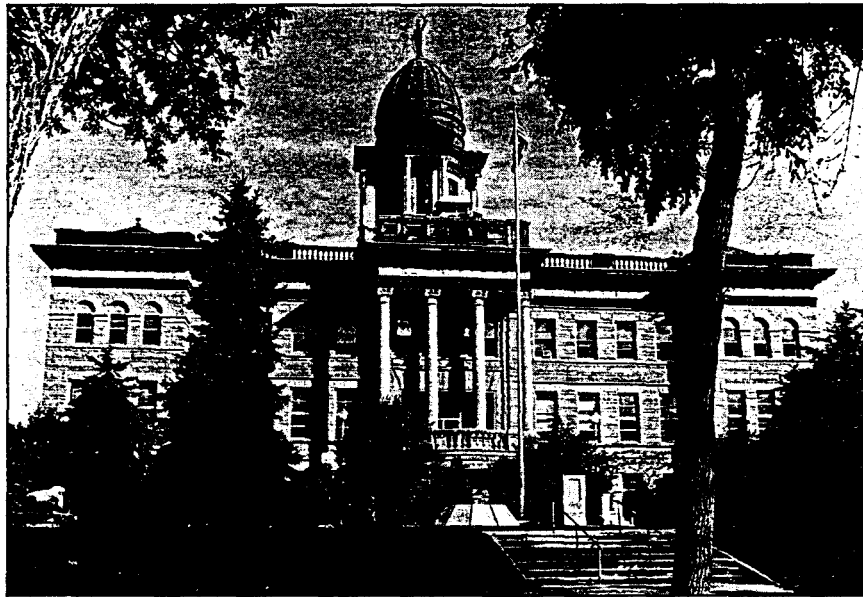
denly large numbers of aggressive, idealistic citizens sought county-government services—particularly schools, bridges, courts and road improvements. And the homesteaders demanded that these services emanate from nearby county seats. What good were county offices that were hundreds of miles away?

The proliferation of rail lines in Montana had contributed directly to the homestead boom. The building of the Milwaukee Road through central Montana (1906-1908) made accessible vast new tracts of homestead lands. Both the Northern Pacific and the Great Northern constructed branch

lines throughout the state, and several short lines also brought transportation and communication to formerly isolated valleys. In league with the state of Montana, these railroads promoted homesteading in Montana with little regard for the immigrant's realistic chance of success. But little matter: The boom was on! Rainfall was up! Crops were good and prices were better! Optimism reigned!

Given the homestead surge, the railroad construction and promotion and the rampant boosterism, all Montana's "county splitting" craze needed was a catalyst. And it found that

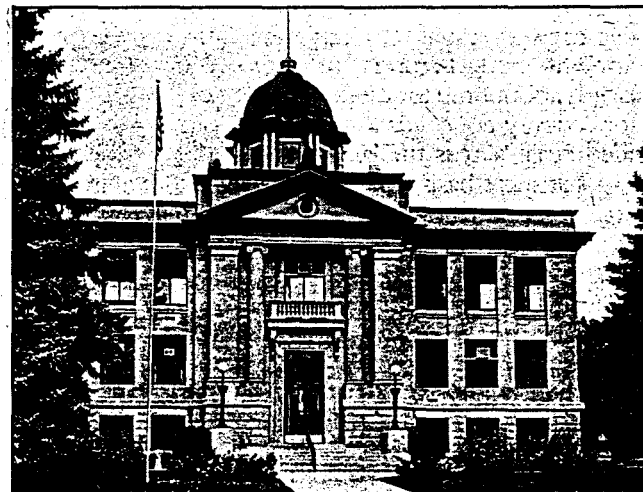
A boon to builders



The Cascade County Courthouse, Great Falls, in a 1979 photo by John Fraser. COURTESY MONTANA STATE HISTORIC PRESERVATION OFFICE, HELENA.



The Big Horn County Courthouse in Hardin. COURTESY MONTANA STATE HISTORIC PRESERVATION OFFICE, HELENA.



The Rosebud County Courthouse in Forsyth, as photographed by Rick Rivard in 1985. COURTESY MONTANA STATE HISTORIC PRESERVATION OFFICE, HELENA.

The average Montana county provides services for only 14,000 people

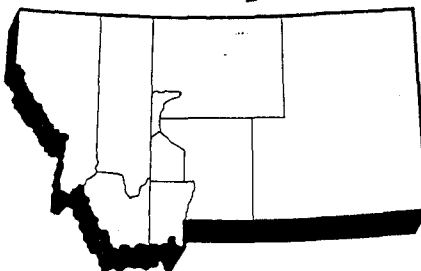
"County splitting" saw 26 counties created from 1910 to 1920!

denly large numbers of aggressive, idealistic citizens sought county-government services—particularly schools, bridges, courts and road improvements. And the homesteaders demanded that these services emanate from nearby county seats. What good were county offices that were hundreds of miles away?

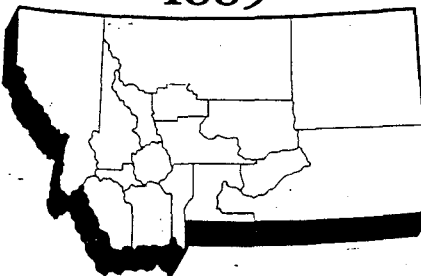
The proliferation of rail lines in Montana had contributed directly to the homestead boom. The building of the Milwaukee Road through central Montana (1906-1908) made accessible vast new tracts of homestead lands. Both the Northern Pacific and the Great Northern constructed branch

The map changed dramatically

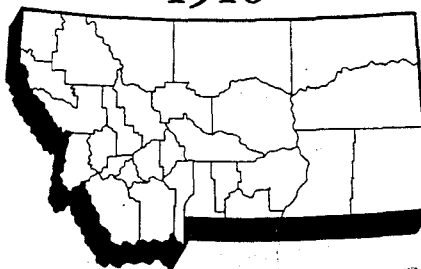
1865



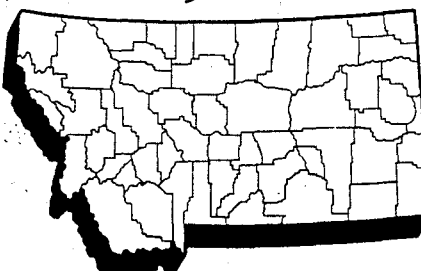
1889



1910



1920



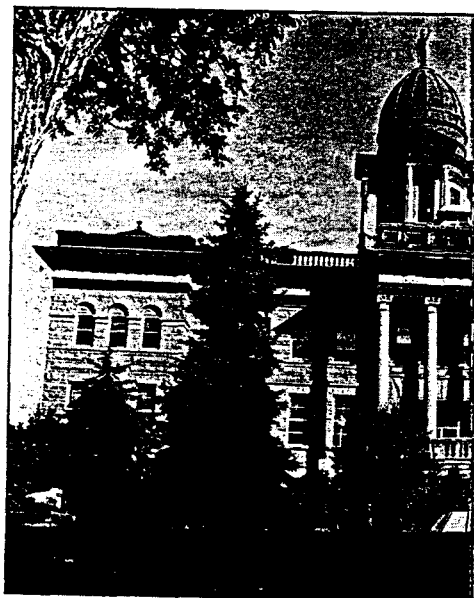
ess. More important, with the exception of Mineral County, all of these new counties were established in homestead-rich Eastern Montana: 1912—Blaine, Hill; 1913—Big Horn, Fallon, Sheridan, Stillwater; 1914—Richland, Toole, Wibaux; 1915—Phillips, Prairie; 1920—Daniels, Golden Valley, Judith Basin, Liberty.

Once the Leighton Act was passed (1911), it also served as an intimidating lever on the Legislature. That body created only Musselshell County in its 1911 session, and no counties at all in its 1913 and 1915 sessions. However, the Legislature's 1915 amendments to the Leighton Act so restricted petition-and-election county creation that the Assembly was forced to father nine counties itself in 1917 and 1919.

From the unbridled optimism of the homestead era also evolved a Montana phenomenon: Dan McKay—Professional County Buster! McKay was a stocky Scot who had arrived in Fort Benton by steamboat in the early 1880s and was one of the early settlers of Great Falls. He became active in Democratic politics and, in 1895, was the Montana Senate's sergeant-at-arms, although he never held elective office. McKay was a brickmaker by trade. In 1908 he relocated in Glasgow and opened a brickyard just east of town. He was responsible for building several commercial and residential structures that still stand in Glasgow.

More than anything, though, Dan McKay was a hobnobber, a promoter, a speechmaker, a booster. And the optimism of the homestead boom was his milieu. Despite his rumpled attire, wild shock of hair, and unschooled speech, local businessmen respected McKay as a shrewd operator. Newly arrived homesteaders saw the personable, unkempt fellow as an experienced Montanan, yet somehow one of them. And everyone listened to Big Dan, even if they did not agree with his heavily Progressive opinions. For he cut a truly impressive figure, riding Valley County atop what was said to be the biggest, blackest horse in the Milk River Valley.

It was the Leighton Act (1911) that permitted this prairie messiah to



The Cascade County Courthouse, Great Falls, in MONTANA STATE HISTORIC PRESERVATION OFFICE, HELENA



The Rosebud County Courthouse, Rick Rivard in 1985. COURTESY MONTANA STATE HISTORIC PRESERVATION OFFICE, HELENA

Creation of Montana Counties

NEW COUNTY	CREATED FROM
1865	
BEAVERHEAD	
BIG HORN (DAWSON- CUSTER)	
CHOUTEAU	
DEER LODGE	
EDGERTON (LEWIS AND CLARK)	
GALLATIN	
JEFFERSON	
MADISON	
MISSOULA	
1866	
MEAGHER	GALLATIN
1869	
DAWSON	BIG HORN
1877	
CUSTER	BIG HORN
1881	
SILVER BOW	DEER LODGE
1883	
YELLOW- STONE	CUSTER GALLATIN
1885	
FERGUS	MEAGHER
1887	
CASCADE	CHOUTEAU; LEWIS AND CLARK; MEAGHER
PARK	GALLATIN
1893	
FLATHEAD	MISSOULA
GRANITE	DEER LODGE
RAVALLI	MISSOULA
TETON	CHOUTEAU
VALLEY	DAWSON
1895	
CARBON	PARK; YELLOW- STONE
SWEET GRASS	MEAGHER; PARK; YELLOW- STONE
1897	
BROAD- WATER	JEFFERSON; MEAGHER
1901	
POWELL	DEER LODGE
ROSEBUD	CUSTER
1905	
SANDERS	MISSOULA
1909	
LINCOLN	FLATHEAD

NEW COUNTY	CREATED FROM
1911	
MUSSEL- SHELL	FERGUS; MEAGHER; YELLOW- STONE
1912	
BLAINE*	CHOUTEAU
HILL*	CHOUTEAU
1913	
BIG HORN*	ROSEBUD; YELLOW- STONE
FALLON*	CUSTER
SHERIDAN*	VALLEY
STILLWATER*	CARBON; SWEET GRASS; YELLOW- STONE
1914	
MINERAL*	MISSOULA
RICHLAND*	DAWSON
TOOLE*	HILL; TETON
WIBAUX*	DAWSON; FALLON; RICHLAND
1915	
PHILLIPS*	BLAINE; VALLEY
PRAIRIE*	CUSTER; DAWSON; FALLON
1917	
CARTER	FALLON
WHEATLAND	MEAGHER; SWEET GRASS
1919	
GARFIELD	DAWSON
GLACIER	TETON
McCONE	DAWSON; RICHLAND
PONDERA	CHOUTEAU; TETON
POWDER RIVER	CUSTER
ROOSEVELT	SHERIDAN
TREASURE	ROSEBUD
1920	
DANIELS*	SHERIDAN; VALLEY
GOLDEN VALLEY*	MUSSELSHELL; SWEET GRASS
JUDITH BASIN*	CASCADE; HILL
1923	
LAKE	FLATHEAD; MISSOULA
1925	
PETROLEUM	FERGUS

LIBERTY

*Counties formed by the petition-
and-election process; all other
counties created by Legislative
action.

answer his calling. In 1912 McKay was managing the Valley County exhibit at a large land-promotion fair in St. Paul, Minnesota, when he was contracted by Havre supporters of the proposed Hill County to direct their petition-and-election campaign. Big Dan became a master of the process and, before he produced his last—*and* Montana's next-to-the-last—county (Lake) in 1923, he was personally responsible for supervising the creation of more than a dozen new counties. Justifiably he earned the title of "Montana's County Splitter."

McKay's program was relatively simple. For a flat fee, plus expenses, he would get the petitions signed and filed, campaign for the new county in schoolhouse meetings, businessmen's gatherings and weekly newspapers, perform the necessary scheming, cajoling and promoting, and turn out the vote for election. Dan did not take on all this work for the money, but for the challenge (*Montana Newspaper Association Inserts*, July 29, 1918):

"County splitting is to me something of a profession, for I have been mixed up in so many county division bees that it has sort of got into my blood. If you have never had the thrill of the hardest kind of a battle that can be fought without artillery, rifles, and machine guns, you ought to get into a county-splitting fight once. It will give you plenty of thrills."

Some of Dan McKay's success was the result of his political acumen and personable approach, but a good deal of his achievement came from his ability to tailor his arguments to his audience. To the established stockmen he spoke of new Legislative seats—filled, of course, by longtime Montanans, not homesteaders. To local businessmen he emphasized the increased trade and the inflated property values that accompanied a new county seat. To townsmen he talked of new jobs in county government. To the several weekly newspaper editors he pointed out the financial security of obtaining the county printing contract. And always he rooted his persuasive arguments in the Progressive concept of placing the governing power close to home, in the hands of the people. And always he posed the spectre of the evil trust, the Anacon-

da/Amalgamated Copper Company, as the potential dictator of Montana's destiny.

Still, it was in his performances before small gatherings of rural homesteaders that the "County Splitter" excelled. Here his unpolished speech and disheveled appearance bought him instant credibility. And to this audience his argument for a new county government was classically Progressive: If government were to be responsive to the people and free of corruption, that government must be closest to the people. On the concept of an *accessible* local government, McKay pinned his argument. He was most fond of quoting Martin Maginnis, the well-known Montana congressman, in this context (*Montana Counties on the Move*, 1974, pp. 2-3):

"Remember, every new county seat is a new center of growth and development *and* a new government. . . I believe in small counties, and I believe their affairs are economically conducted. I believe their officers are closer to the people. . . I believe it is the tendency of large and wealthy counties to create extravagance. . . I think that one ought to be able to travel to his county seat in one day. And it would be better if he could go there and back in one day."

Particularly in an era when most rural Montanans continued to rely on the horse trips to town, the convenience of a nearby county seat was tough to deny. And, as Dan McKay was quick to point out, an accessible government was their right—rooted firmly in Progressive doctrine.

Between 1912 and 1923, the "County Splitter" worked his magic to create these Montana counties, among others: Hill, Blaine, Sheridan, Toole, Richland, Phillips, Liberty, Daniels, Lake. Only as drought ravaged the state (starting in 1917 and extending into the 1920s) and the homestead boom became the homestead bust did the rampant proliferation of Montana counties begin to appear shortsighted. Then, without the veneer of homesteader optimism, the financial realities of running a county government on a shrinking tax base became agonizingly apparent. By this time, though, Big Dan McKay, "Montana's County Buster," had moved on to pro-

moting irrigation projects, and particularly the Fort Peck Dam.

Petroleum County was the last government that the "county splitting" craze produced. Since Petroleum was created in 1925, Montana has operated with a 56-unit county structure and, beginning in the mid-1930s, the antithetical proposition of "county consolidation" has gained strength. In 1935 Roland R. Renne authored a Montana Experimental Station Bulletin (#298) entitled *Montana County Organization, Service, and Cost: A Study of County Government, with Suggestions for Its Improvement*, which recognizes "county consolidation" as a preferred solution.

In the Montana taxpayer, again overburdened in the mid-1980s, Renne's arguments may find a new advocate. For most Montana counties now struggle desperately to balance tax base, county services and population. Based on the 1980 census, 29 Montana counties currently have a lower population than they did in 1920—and three other counties have grown by less than 150 people in that 60-year period. Further, the legislation for "county consolidation" is already on the books: *Montana Codes Annotated*, 7-2-2759.

Yet, regardless of how few people comprise a county and how dire that county's financial situation becomes, will Montana ever experience the abandonment of an existing county? Whenever the issue of "county consolidation" is suggested, all of Big Dan McKay's persuasive, Progressive arguments rise to the challenge. He would be proud.

In 1918, at the height of his reign, "Montana's County Splitter" predicted: "I venture to say that the time will come when Montana will have 300 counties." The state obviously has fallen woefully short of Big Dan's scheduled proliferation. Now, if we could just pare down the number of counties that McKay's "county busting" efforts helped to create. . .

In the next issue: Montana's Counties II: Proposed but Never Created.

Dave Walter, our history columnist, is reference librarian at the Montana Historical Society.

STATE LOCAL GOVERNMENT

EXHIBIT NO. 6
DATE 1-14-93
FILE NO. SB 52

Amendments to Senate Bill No. 52
First Reading Copy

For the Committee on Senate Local Government

Prepared by Connie Erickson
January 13, 1993

1. Title, line 5.

Following: "FUND"

Insert: "OR COUNTY BRIDGE FUND"

2. Title, line 6.

Following: "FUND"

Insert: "OR BRIDGE FUND"

3. Page 1, line 21.

Following: "fund"

Insert: "or county bridge fund"

4. Page 1, line 22.

Following: "fund"

Insert: "or county bridge fund"

SENATE LOCAL GOVERNMENT

AMENDMENT NO. 7

Amendments to Senate Bill No. 49
First Reading Copy

DATE 1-14-93

FILE NO. SB 49

For the Committee on Senate Local Government

Prepared by Connie Erickson
January 13, 1993

1. Page 2, line 11.

Following: "petition"

Insert: "and acceptance by local authorities"

2. Page 2, line 12.

Following: "dedication"

Insert: "and acceptance by local authorities"

3. Page 2, line 13.

Following: "prescription"

Insert: "and assertion of control by local authorities"

4. Page 3, line 8.

Following: "petition"

Insert: "and acceptance by local authorities"

5. Page 3, line 9.

Following: "dedication"

Insert: "and acceptance by local authorities"

6. Page 3, line 10.

Following: "prescription"

Insert: "and assertion of control by local authorities"

Amendments to Senate Bill No. 49
First Reading Copy

SENATE LOCAL GOVERNMENT For the Committee on Senate Local Government

BIT NO. 8
1-14-93

Prepared by Connie Erickson
January 13, 1993

NO. SB 49

1. Page 2, line 13.
Strike: "or"

2. Page 2, line 14.
Following: "repealed"
Insert: "; or (v) by use of the public before the patent of the
land and is shown on the government land office plats"

3. Page 3, line 10.
Strike: "or"

4. Page 3, line 11.
Following: "repealed"
Insert: "; or (v) by use of the public before the patent of the
land and is shown on the government land office plats"

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 9

DATE 1-14-93

BILL NO. SB 50

Amendments to Senate Bill No. 50
First Reading Copy

For the Committee on Senate Local Government

Prepared by Connie Erickson
January 13, 1993

1. Title, line 7.

Following: "PUBLIC"

Insert: "LAND MANAGEMENT"

2. Page 3, line 15.

Following: "road"

Insert: "by formal notification"

3. Page 3, line 17.

Following: "._"

Insert: "If the state or federal agency accepts the road,
management of the road, including maintenance, is under the
jurisdiction of the accepting agency."

STATE LOCAL GOVERNMENT

EXHIBIT NO. 10

FILE 1-14-93

1 NO. SB 50

Amendments to Senate Bill No. 50
First Reading Copy

For the Committee on Senate Local Government

Prepared by Connie Erickson
January 13, 1993

1. Page 3, line 17.

Following: "._"

Insert: "A state or federal agency that accepts a road is not
required to maintain that road."

DATE 14 January 1993

SENATE COMMITTEE ON Local Government

BILLS BEING HEARD TODAY: SB 10 (Towe); SB 63 (Weldon)
SB 5 (Gage)

Name	Representing	Bill No.	Check One Support Oppose	
Bill Chiesa	Metra Park	SB 10	✓	
Bennie Harrington	Metra Park	SB 10	✓	
Chuck Stearns	City of Missoula	SB 63	✓	
Don Waldron	Mt Rural Ed Assn.	SJ 5		
Nike Pichette	Montana Power	SB 63	✓	
Douglas B. Olson	self.	SJR 5	✓	
Gloria Hermanson	Mt Cret. Assoc.	SB 10	✓	
Riley Johnson	NFIB	SJ 5	✓	
Ken Heikes	Yellowstone Co	SB 10	✓	
Gordon Morris	MACo	SJR 5 SB 10/63	✓	
Ed Hall	MBCC	SJ 5	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY