

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Senator Kennedy, on January 26, 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. 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: Sen. Ethel Harding

Members Absent: None.

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

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

Committee Business Summary:

Hearing: SB 103, SB 149, SB 189
Executive Action: None.

HEARING ON SB 189

Opening Statement by Sponsor:

Senator Steve Doherty, Senate District 20, stated SB 189 would require current and delinquent taxes be paid before real property may be split or combined and before a division or merger of real property may be recorded. He said SB 189 was drafted at the request of the Montana County Treasurers Association.

Proponents' Testimony:

Mr. Dick Michelotti, Cascade County Treasurer, stated his support for SB 189. He said the Treasurer's officer has experienced problems with combined property that has delinquent taxes. He stated three things can happen at the County Assessor's office when land is combined. First, the assessor may list the combined land under one parcel number, which is the description of the land. Second, the assessor may list the combined land under a non-delinquent parcel number. Mr. Michelotti said when this occurs, the record of the delinquent parcel number is essentially lost in the system. Third, the assessor may list the combined land under a new parcel number which also renders any older, delinquent parcel numbers lost in the system. Mr. Michelotti stated this problem also occurs when property is split. He said when the delinquent taxes are discovered, the landowner tends to argue that payment of those taxes are not solely his or her responsibility. He said it is for these reasons county treasurers want property splits or combinations to occur prior to recording. Mr. Michelotti added, in many instances, a recording does not occur during property splits. He concluded the extra time and money spent trying to locate land parcels with delinquent taxes warrants a change in existing law.

Mr. Cort Harrington, Montana County Treasurers Association, stated SB 189 is necessary for a couple of reasons. Mr. Harrington said he represented a client who had purchased a portion of land from a larger parcel. He said at the time of purchase, the taxes on the land were current, however they went delinquent shortly after the sale. Because the purchased land was listed under a new parcel number, Mr. Harrington's client did not discover for several years that he owed back taxes on the property. Mr. Harrington stated the bank, which had a mortgage on part of the larger parcel of land, tried to foreclose and took an assignment of the delinquent taxes. It was then Mr. Harrington's client discovered he owed taxes on the land he had purchased years ago. Mr. Harrington also stated he was acquainted with an individual who owned a forest service lease in Rimini and had built a house on the property. This individual spoke with the Forest Service about buying the leased land. The Forest Service agreed, but informed the individual he was also obligated to purchase an additional twenty-two acres which adjoined the land and included the leases of four other individuals. Mr. Harrington said the five individuals pooled their money and purchased the remainder of the land, on which taxes had been assessed but not levied. He said three of the land owners had to sue the other two in order to recover property taxes owed for the year. Mr. Harrington doubted the suit would have occurred had SB 189 existed. Mr. Harrington concluded taxpayers would benefit from the passage of SB 189.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Gage asked if the land in question could have special assessments, to which Mr. Michelotti replied the land to be split or combined could have any special assessment designation. Mr. Michelotti said, however, the property taxes paid must be current. Senator Gage then asked if SB 189 should be amended on page 5, subsection 3 to include special assessments since they were previously mentioned on page 2, subsection b, to which Mr. Michelotti agreed and added its omission from page 5 was an oversight.

Senator Gage asked what would happen if an individual split or combined land with delinquent taxes and did not record the deed. Mr. Harrington replied the situation could create problems for the landowner which could result in a lawsuit.

Senator Doherty stated he was given some amendments to SB 189 prepared by the Department of Revenue which they considered to be of a technical nature. Mr. Ken Morrison, Department of Revenue, stated the amendments offered by his Department may go beyond the original intent of SB 189 but added the Department feels there is another section of law which needs to be amended. He asked if the Department could have the opportunity to revisit the suggested amendments and re-offer them to the Committee before it takes executive action on SB 189. Senator Bartlett asked Mr. Morrison what the concern over the amendments regarded, to which Mr. Morrison replied the concern was over 15-8-702 of existing law which requires the Department of Revenue to participate with the treasurer in separating out tax bills in a recorded transaction. He said any language change to SB 189 could potentially affect this portion of law. Mr. Morrison concluded he would work with Senator Doherty to prepare the amendments to SB 189.

Senator Bartlett asked if the County Treasurers Association had discussed the potential impact of mid-year land transfers to SB 189. Mr. Michelotti replied it was the intent of the language to include the current year in the taxes which must be paid before a land split or combination could occur. Senator Bartlett asked if this was required to avoid waiting until the payment was due and then trying to split or combine the land, to which Mr. Michelotti replied yes.

Senator Gage asked if delinquent taxes would attach to the total parcel of land to which they were assessed, even if the land had been split or combined. Mr. Michelotti replied, under current law, the taxes would be assessed to the whole parcel of land which could cause problems for both the former and current landowner.

Closing by Sponsor:

Senator Doherty concluded SB 189 would solve some problems for both landowners and county treasurers.

HEARING ON SB 103

Opening Statement by Sponsor:

Senator Harry Fritz, Senate District 28, stated the short title of SB 103 is misleading since the true purpose of SB 103 is to return the existing law to its original intent. Senator Fritz said the original intent of the law was to render an injured municipal police officer financially whole. He said the intent of the law was to ensure that an injured police officer would not suffer financially while disabled. The law was written, he added, so the officer would not make any less or any more than his/her salary at the time of injury. Senator Fritz stated the law has since been rewritten so it is possible for an injured officer to receive higher compensation than he/she did before the injury. He said the higher costs can be attributed to worker's compensation payments which cost about \$336 a week per officer. Senator Fritz said since the payments are not counted as taxable income, an injured officer could collect in one year an additional \$3,500 above his/her salary. He added the problem with current law is that it requires first and second class cities to pay the difference between the worker's compensation payment and the officer's pay. Senator Fritz said SB 103 would require municipalities to pay only the difference between the disability payment and the officer's take-home pay. He said this would ensure that any injured police officer would not make less than he/she did before the injury, but would not permit him/her to make any more. Senator Fritz noted SB 103 would probably save municipalities some money, but added the purpose of SB 103 is to remove any incentive for an officer to stay injured longer than necessary. Senator Fritz concluded by offering a technical amendment to SB 103. (Exhibit #1)

Proponents' Testimony:

Mr. Alec Hansen, Montana League of Cities and Towns, stated his organization's support for SB 103. He said current law requires municipalities to make up the difference between the weekly

indemnity payment and the officer's full wage. Mr. Hansen noted this costs municipalities about \$192 a week per officer. He added there is no evidence to suggest the current law is being abused by officers, however, the League does not feel it is fair to permit injured officers to earn more than active ones. Mr. Hansen stated SB 103 has three purposes. First, SB 103 would provide full wage protection to injured police officers. Second, SB 103 would save first and second class cities some money. He estimated municipalities spent \$62,000 in the last twenty months paying for indemnity benefits. Third, SB 103 would end the practice which allows injured officers to make more than active ones. Mr. Hansen believes SB 103 is consistent with other efforts in the Legislature to provide more effective cost containment in management of worker's compensation insurance. He concluded SB 103 is consistent with a bill passed last session to do the same for injured firefighters.

Mr. Jim Oberhofer, Missoula Chief of Police and President, Montana Association of Chiefs of Police, stated his organization's support for SB 103. He said he understands both perspectives, however, as an administrator, he cannot afford to have officers inactive for an extended period of time. Mr. Oberhofer did not feel police officers were abusing the current system although the potential was there to do so. He concluded SB 103 would not cause any loss in benefits for injured officers.

Mr. Gene Vulkavich, 1st Vice President, Montana League of Cities and Towns and Anaconda/Deer Lodge City-County Manager stated the current law creates financial problems for cities and towns. He said in 1987 and 1988, one forth of the police force in his area was off on worker's compensation. Mr. Vulkavich stated a review of the city-county's worker's compensation claims during that year showed 95% of claims filed came from the police department. He said the monies paid out to make up the difference between the officers' indemnity payments and full wages could have been used in negotiations with the police union. Mr. Vulkavich said the city-county was forced to lay off injured officers who were unable to perform assigned duties to reduce their worker's compensation payments. He concluded current law gives officers no incentive to return to duty because they can make more injured than they do healthy.

Mr. Tim Swanson, Mayor of Bozeman, stated he agreed with Senator Fritz and the other proponents of SB 103. As a mayor, he said he wants the right incentives for injured officers to get back to work. He concluded he does not feel current law is being abused, but he is concerned of the potential for abuse.

Mr. Jerry Williams, Butte police officer and member, Montana Police Protective Association, stated his Association, excluding those officers represented by unions, endorses SB 103. He said SB 103 would bring more stability to the worker's compensation system and would eliminate the incentive for an injured police officer to stay away from work. Mr. Williams stated officers

want to be assured they will continue to receive a regular monthly compensation when they are injured in the line of duty.

Opponents' Testimony:

Mr. John Maze, Helena AFSCME, stated his organization opposes SB 103. He feels current law is sufficient.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Bartlett asked Mr. Hansen if the municipality makes the contribution to the regular city health insurance coverage for employees on worker's compensation, to which Mr. Hansen replied yes. She asked if that would apply to all second and first class cities, to which Mr. Hansen replied yes. Mr. Al Sampson, City of Missoula, replied worker's compensation individuals still affiliated with the city are covered with the city insurance program.

Senator Vaughn stated smaller counties and cities in Montana feel they are being discriminated against by current law. She said officers in these communities make smaller wages and are not compensated in the same manner when they become injured. Senator Vaughn said most of these cities cannot afford to pay their officers while they receive worker's compensation, but they still feel the situation is unfair.

Senator Rye asked Senator Fritz if he considered SB 103 to be a preventive maintenance measure, to which Senator Fritz replied yes.

Senator Gage asked if SB 103 would apply for a maximum period of one year and only if the police officer has a total disability, to which Mr. Hansen agreed and added SB 103 applies only to first and second class cities.

Closing by Sponsor:

Senator Fritz stated during the last session he introduced a similar bill which pertained to firefighters. He added he thought that bill was more controversial since it imposed a financial burden on the cities. Senator Fritz concluded the amendment offered to SB 103 helps clarify SB 103.

HEARING ON SB 149Opening Statement by Sponsor:

Senator Jack "Doc" Rea, Senate District 38, stated SB 149 was drafted at the request of the Gallatin County Commissioners. He said SB 149 would remove the requirement that a county commission establish and maintain a county road petitioned for by freeholders.

Proponents' Testimony:

Ms. Jane Jelinski, Gallatin County Commissioner, spoke from prepared testimony in support of SB 149. (Exhibit #2)

Mr. Tom Hardin, Teton County Road Supervisor, spoke in favor of SB 149 and offered a series of amendments to SB 149. (Exhibit #3)

Mr. Blake Wordal, Lewis and Clark County Commissioner, stated he supports the intent of SB 149. He said Lewis and Clark County has prioritized maintenance for only collector and arterial roads in the county only because they cannot afford to maintain other roads. Mr. Wordal said the county has encouraged residents to create their own maintenance districts to pay for non-arterial roads in their area since the county fund cannot afford the expense.

Mr. Gordon Morris, Montana Association of Counties (MACo), suggested the Committee adopt two amendments to SB 149, as it was his opinion subsection 2 of SB 149 contradicts 7-14-2605. He suggested the Committee substitute the word "may" for "shall" in subsections 2 and 3 to make SB 149 consistent with existing law so the intent of the bill is discretionary, not mandatory.

Mr. John Bloomquist, Special Assistant, Montana Stockgrowers Association, stated his Association supports the intent of SB 149. He said he was concerned the amendments offered by Mr. Hardin would create problems similar to the ones raised by SB 49 which was heard in Committee a few weeks ago.

Opponents' Testimony:

Mr. Bill Fairhurst, Public Lands Access Association, stated his Association did not support the language in Section 1, paragraph 2 of SB 149. He said the word "shall" should be substituted with the word "may" as suggested by Mr. Morris. Mr. Fairhurst concluded county roads play a key role in public access of lands and added there are sufficient provisions to petition for the abandonment of roads.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Gage asked Mr. Morris if the Committee would be better advised to strike subsection 2 of SB 149 instead of adopting his amendments. Mr. Morris replied striking subsection 2 from SB 149 would not make SB 149 consistent with existing law and again suggested the Committee adopt his amendments to replace the word "shall" with "may" in the pertinent sections.

Senator Gage asked how many petitions for roads were recorded on a statewide basis. Ms. Jelinski stated she was unsure of statewide records, however she said Gallatin County has received thirty to fifty petitions for abandonment and maybe one or two petitions for creation in the past eight years. She said the amendments offered by Mr. Hardin concern her because of the general assumption that anything recorded is a county road. Ms. Jelinski concluded the most important issue for her county is the discretion to maintain county roads. Senator Gage asked Ms. Jelinski of the frequency with which her county abides by abandonment petitions. Ms. Jelinski stated it was county policy not to abandon roads which cut off access to public lands. She said her county notifies the Public Lands Access Association whenever they receive a petition to abandon a road which gives access to public lands. She concluded the county complies with abandonment petitions nearly seventy percent of the time.

Senator Eck asked Ms. Jelinski of her opinion of Mr. Hardin's amendment which stated, "the level of maintenance of all county roads shall be determined by the Board of County Commissioners without penalty or loss of appropriation." Ms. Jelinski replied she strongly supported that particular amendment but added the Committee would need to discuss this matter with the Department of Transportation. She said it was not equitable for a county which does not maintain many roads on their county road system to receive more gas tax money than a county which does maintain most of their roads on their county road system. Senator Eck asked Ms. Jelinski if county roads are maintained in priority as to the frequency with which they are traveled, to which Ms. Jelinski replied yes.

Senator Swift asked Mr. Morris if SB 149 was necessary since commissioners already had discretionary authority regarding the creation or closure of county roads. Mr. Morris replied SB 149, in its current form, contradicts existing law. He added the amendments he offered would clarify SB 149 and make it consistent with current statutes.

Senator Eck asked Mr. Morris if the State would permit the Board of County Commissioners to determine the level of maintenance for

county roads. Mr. Morris replied the minimal requirement of maintenance of county roads for gas-tax purposes is once a year.

Closing by Sponsor:

Senator Rea stated he agreed with Mr. Morris' amendments and felt the amendments submitted by Mr. Hardin move beyond the original intent of SB 149.

ADJOURNMENT

Adjournment: 2:20 p.m.


SENATOR JOHN "ED" KENNEDY, Jr., Chair


ROSALYN COOPERMAN, Secretary

JEK/rlc

ROLL CALL

SENATE COMMITTEE Local Government

DATE 1-26-93

[illegible]

FO8

Attach to each day's minutes

STATE LOCAL GOVERNMENT

EXHIBIT NO. 1

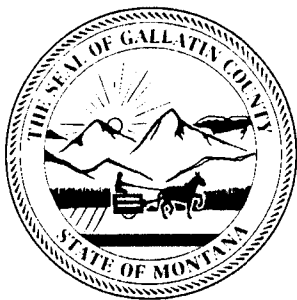
DATE 1-26-93

FILE NO. SB 103

PROPOSED AMENDMENT TO SB 103

PAGE 1, LINE 22 Following salary, insert:

"Following adjustments for income taxes and pension
contributions."



County of Gallatin

County Commission

311 West Main - Room 301
Bozeman, Montana 59715

Telephone (406) 585-1400
Telefax (406) 585-1403

January 25, 1993

Local Government Committee

RE: Senate Bill 149

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 2

DATE 1-26-93

BILL NO. SB 149

Please vote in favor of SB 149 which removes the mandate for counties to maintain all petitioned county roads. This mandate undermines a county's ability to plan, prioritize, and budget for road maintenance and repair in any meaningful way. Instead of following a carefully thought out plan for road maintenance based on safety, traffic, cost effectiveness, and planned development, counties could be required to spend their road monies based on legal challenges without regard to merit. There are numerous county roads which have been petitioned and never built, and there are as many county roads which are built and sustain heavy traffic but were never created by petition.

In Gallatin County we are being challenged to upgrade a petitioned road in preference to previously established priorities because a series of unreviewed twenty acre parcels have been created.

Commissioners need discretion to spend their precious road funds in a reasoned, prudent manner. Passage of SB 149 will accomplish this end.

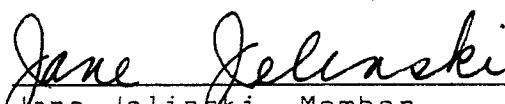
Thank you for your time and consideration.

Sincerely,

GALLATIN COUNTY COMMISSION


A.D. Pruitt, Chairman


Deb Berglund, Member


Jane Jelinski, Member

RESOLUTION NO. _____

WHEREAS, the existing County Road Law, Title 7, Chapter 14, Part 21 is determined to be in need of revision, and

WHEREAS, a longer period of time in which to finance county road projects is needed, and

WHEREAS, the existing law does not adequately provide for what constitutes proof of petitioned county roads, and

WHEREAS, the existing law does not include all types of county roads in the duties of the county commissioners with regard to county roads, and requires unnecessary expenses for guide posts, and

WHEREAS, the existing law does not specifically provide for the non-use and/or non-maintenance of county roads, and

WHEREAS, the existing law is inconsistent in its requirements for the abandonment of county roads,

NOW, THEREFORE, BE IT RESOLVED THAT THE EXISTING COUNTY ROAD LAW BE AMENDED AS FOLLOWS;

Section 7-14-2101. General powers of county relating to roads and bridges.

. . . (1) (b) (i) enter into agreements for adjusted annual contributions over not more than 10 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

. . . (2) (a) unless the context requires otherwise, county road means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with the Chapter, including roads created by petition of

freeholders, common-law dedication, by prescription or in accordance with 43 U.S.C. 932.

(b) (NEW SECTION) In determining whether a road which was petitioned for by freeholders was created as a county road, the county road record, taken as a whole, shall give rise to the presumption that a county road was created if such record shows an intent on the part of the county commissioners to create a county road. For this purpose, "the record" means any of the following: Copies of the petition, road viewers report(s), entries in the county commissioner's minute book of proceedings, entries in the county road book, inclusion of such road on official county road maps, or affidavits of county commissioners. A declaration by the County Commissioners, prior to the effective date of this amendment, that a road is declared opened or is a county road shall be deemed sufficient proof that a petitioned county road was established. Certified copies of any of the road record listed above shall be deemed admissible as evidence of an intent to create a petitioned county road. Further, such records are to be deemed official county road records regardless of their location, as long as they are located in a county courthouse.

Section 7-14-2103. Duties of county commissioners concerning county roads.

(1) Each board of county commissioners has general supervision over the county roads within the county. Each board shall survey, view, layout, record, and open roads that are petitioned by the freeholders, those created by common-law dedication, by prescription, and those created in accordance with 43 U.S.C. 932.

(2) The levels of maintenance of all county road shall be determined by the board of county commissioners without penalty or loss of appropriations, of local, state, or federal funds or refunds.

(3) A county road petitioned by freeholders and opened by the county commissioners shall not lose its identity as a county road

through non-use or non-maintenance by the county or by the public.

(4) In the event the location of the present road has deviated from the original survey, it will still be considered the historical monument and a petitioned county road.

(5) Each board may discontinue or abandon county roads when freeholders properly petition therefore.

TETON COUNTY BOARD OF COMMISSIONERS

C. Albert Carlson

C. Albert Carlson, Chairman

Arnold Gettel

Arnold Gettel, Vice Chairman

Robert Krause

Robert Krause, Member

DATE 1-26-93

SENATE COMMITTEE ON Local Government

BILLS BEING HEARD TODAY: SB 149, 189, 103

Name	Representing	Bill No.	Check One	
			Support	Oppose
WILLIAM A. FAIRHURST	PLAAI	149		X
Dick Michigletti	Cascade County Treasr	189	X	
Tom Hord	Teton Co.	149	X	
C. Albert Carlson	Teton Co.	149	X	
John E. Mage	AFSCME Helena	103		X
Brian J. Widal	Twist Creek Co	149	X	
Gordon Morris	MACO			
Tim Swanson	CITY OF BOZEMAN	103	X	
Alec Hansen	WLC +	103	X	
Al Sampson	City of Helena	103	X	
Joe Jellinski	Gallatin County	149	X	
Tim Oubry	MACOP	103	X	
Paul Williams	Montana Police Protective Assn.	103	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY