MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Senator Kennedy, on March 18, 1993, at 3:00 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
Rosalyn Cooperman, Committee Secretary

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

Committee Business Summary:
Hearing: HB 132, HB 375, HB 479, HB 481, HB 584
Executive Action: None.

HEARING ON HB 479

Opening Statement by Sponsor:

Representative Don Larson, House District 65, spoke from prepared testimony in support of HB 479 (Exhibit #1).

Proponents' Testimony:

Mr. Mike Shea, Butte-Silver Bow, stated his support for HB 479. He said local governments can no longer afford the costs

associated with state mandated regulations. He urged the Committee to support the bill.

Ms. Joe Brunner, Montana Water Resources Association, stated her support for HB 479. She said counties are hard pressed to provide funding for programs on the county level and find it nearly impossible to fund state mandated programs.

Mr. Alec Hansen, Montana League of Cities and Towns, stated his support for HB 479. He said the state is already required to provide local impact fiscal notes to local governments and added that HB 479 would extend this requirement to other governing bodies.

Mr. Joe Menicucci, Belgrade City Manager, stated his support for HB 479.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Rye asked Representative Larson to whom the *Montana Administrative Register* is sent, to which Representative Larson replied all local government agencies are sent a copy.

Senator Rye asked Representative Larson if all city and county local government agencies receive a copy of the *Montana Administrative Register*, to which Representative Larson replied he was unsure. Senator Bartlett stated the clerk and recorder plus the clerks of district court in each county receive a copy of the publication if the county so requests. Mr. Jim Tillotson, Billings City Attorney, stated he receives a copy of the *Register*, but added his office pays the subscription fee.

Senator Waterman asked Representative Larson if schools were included in the definition of "local governing bodies", to which he replied they were.

Senator Waterman asked Representative Larson if HB 479 would apply to accreditation standards, to which he replied it could.

Senator Waterman asked if HB 479 would require the Legislature to identify sources of funding for all state government mandates. Representative Larson replied the rulemaking agencies would be responsible for identifying funding sources.

Senator Waterman asked Representative Larson if HB 479 would authorize agencies to determine funding sources for state mandated programs. Representative Larson replied agencies would be responsible for identifying funding sources once the Legislature had passed the particular bill.

Senator Waterman asked Representative Larson how an agency could identify funding sources for state mandated programs when the Legislature had not first identified the sources. Representative Larson replied he was unsure and added that "Senator Waterman's point was well taken".

Senator Waterman asked Representative Larson if HB 479 would authorize agencies to determine local sources of funding for mandated programs. Representative Larson stated the Drake amendment requires a state agency to prepare an economic statement to identify the cost of a rule or regulation. He said HB 479 would mandate compliance with the Drake amendment.

Senator Waterman asked Representative Larson how rule-making agencies would know what sources of funding to identify. Representative Larson replied he hoped passage of HB 479 would encourage the agencies to testify on the economic impact of proposed legislation.

Senator Eck stated the Drake amendment worked for a while but added that "the Legislature now tells local governments they may raise their levy to fund programs." Representative Larson said the intent of HB 479 is to make the state more accountable for its decisions in mandating local government payment of programs.

Senator Gage asked Representative Larson if HB 479 included the Board of Regents and the Board of Public Education as agencies, to which Representative Larson replied he would include those boards in the definition of an agency.

Senator Weldon asked Representative Larson why the House Committee had decreased the limits under which an impact statement had to be prepared. Representative Larson replied the majority of mandates passed down by the Legislature cost less than $10,000 for local governments to implement.

Senator Weldon asked Representative Larson if HB 479 would pertain to school districts, to which Representative Larson replied school districts were considered to be a local governing body. Senator Weldon stated that, if so, the fiscal note would pose a problem because it states that school districts would not be considered to be local governing bodies for the purpose of this bill. Representative Larson replied that local governing bodies were redefined to include school districts during the current legislative session. Representative Larson added that he did not agree with the assumptions made in the fiscal note.

Senator Gage asked Representative Larson if there was a provision in HB 479 which would preclude an agency from compiling an economic impact statement if the statement would cost more to produce than the cost of program implementation. Representative Larson replied he was not sure exactly what constituted an economic impact statement but added that the local governing body of a rural, unincorporated community like Seeley Lake does not have the funding mechanisms by which it can determine the economic impact of implementing a state mandated program.

Senator Eck stated HB 479 defined a local governing body on page 3, line 19 as, "one of the alternative forms of local government as provided under Title 7, chapter 3".

Senator Eck asked Representative Larson if it would be acceptable for agencies to prepare a fiscal instead of an economic impact statement. Representative Larson replied "not if they are as bad as the fiscal notes we get out of the Office of Budget and Program Planning."

Senator Eck asked Representative Larson why the fiscal note to HB 479 did not include potential impacts on the Departments of Social and Rehabilitational Services (SRS) and Family Services (DFS). Representative Larson replied he assumed the majority of mandated legislation comes from the Department of Health and Environmental Services (DHES) and the Department of Natural Resources (DNRC). Senator Eck stated Representative Larson should reexamine his assumption.

Senator Gage asked Representative Larson if the House Committee had at all discussed sending HB 479 to House Appropriations instead of Local Government. Representative Larson replied it had been discussed but added he did not want HB 479 to be heard in House Appropriations because he did not believe the fiscal note to be accurate.

Senator Waterman asked Ms. Erickson to define "local government" as stated in HB 479. Ms. Erickson replied the definition in HB 479, as pointed out by Senator Eck, refers only to local governments and does not refer to school districts. In her opinion, local governments, as defined in HB 479, would not include school districts.

Senator Waterman asked Ms. Erickson if local governments as defined in HB 479 would include the University System, to which Ms. Erickson replied it would not.

Senator Eck asked Ms. Erickson if local governments as defined in HB 479 would include water, fire or sewer districts.
Ms. Erickson replied it would not because HB 479 specifies that "local governments" would only include those alternative forms of government as specified in Title 7, chapter 3.

Senator Waterman asked Ms. Erickson if local governments as defined in HB 479 would apply to subdivisions. Ms. Erickson replied no, except as they would impact a county or city government.

Closing by Sponsor:

Representative Larson stated the House recently passed a bill which defined water and sewer districts as units of local government.

Connie Erickson replied the bill to which Representative Larson was referring defined water and sewer districts as units of local government in another title separate from the ones mentioned in HB 479. She said the bill to which Representative Larson was referring would not affect HB 479.

Representative Larson stated HB 479 would require legislators to be more careful when sending mandated legislation to local governments.

HEARING ON HB 375

Opening Statement by Sponsor:

Representative Ray Brandewie, House District 49, spoke from prepared testimony in support of HB 375 (Exhibit #2).

Proponents' Testimony:

Mr. Stuart Doggett, Montana Manufactured Housing Association, stated HB 375 was drafted at their request. He said HB 375 would bring about a much needed change in Montana's zoning laws as they relate to manufactured houses. He stated the modern manufactured home is an attractive and viable housing alternative. According to Mr. Doggett, 34 percent of the new privately owned houses in Montana are manufactured homes. He said there is a lingering perception of trailer homes which is no longer consistent with the manufactured homes industry. Mr. Doggett distributed copies of two manufactured homes publications (Exhibits #3 and #4) and testimony from Mr. James Kuehn, President of '93 Homes (Exhibit #5).

Mr. Lance Clark, Montana Association of Realtors, stated his support for HB 375 in its amended form.

Mr. Roger Tippy, Legal Counsel for the Montana Manufactured Housing Association, stated that two years ago the association filed an amicus brief with the Montana Supreme Court regarding a case in Belgrade pertaining to manufactured homes. He said the

brief filed with the court contended "some ordinances were being arbitrary and capricious in defining a modular home." Mr. Tippy stated the Supreme Court reviewed the case but declined to issue a ruling, stating that the issue should be taken up by the legislative body. He added that many communities with more progressive zoning ordinances would not be impacted by the passage of HB 375.

Mr. Andy Skinner, Lifestyle Homes, stated his business is the largest provider of housing in the Helena area. He said the majority of his customers are people on fixed incomes or young couples interested in obtaining affordable housing. He said many of his manufactured homes look identical to site built homes, and added there was no reason to discriminate against manufactured houses. Mr. Skinner said many federal and state agencies, including the Veterans Administration and the Federal Housing Administration, have declared manufactured housing to be the housing of the future. He said HB 375 would distinguish the manufactured home from the mobile home and would protect people's housing values because the house would be required to match the housing in the area.

Ms. Melissa Case, Montana Peoples' Action, stated her organization's support for HB 375. She said HB 375 encourages accessibility and promotes affordable housing.

Opponents' Testimony:

Mr. Kerwin Jensen, Yellowstone County Zoning Coordinator, spoke from prepared testimony in opposition to HB 375 (Exhibit #6). He distributed copies of Yellowstone County's definition of classes of manufactured homes and the areas in which they are permitted (Exhibits #7 and #8).

Mr. Joe Menicucci, Belgrade City Manager, distributed a copy of the lawsuit to which Mr. Tippy had referred (Exhibit #9). He said he interpreted the "legislative body" referred to in the lawsuit to be the Belgrade City Council. Mr. Menicucci said Montana code does not specifically differentiate between manufactured and mobile homes. He concluded that every site built home in Montana is built by Montana labor while manufactured homes are built by out-of-state laborers.

Ms. Nancy Griffin, Montana Building Industry Association, spoke from prepared testimony in opposition to HB 375 (Exhibit #10).

Mr. Jim Tillotson, Billings City Attorney, stated his opposition to HB 375. He said HB 375 would establish a presumption that putting a manufactured house in a housing addition would not adversely affect the site built homes in the area. Mr. Tillotson said he would be unable to issue sound legal advice on this issue because of its lack of clarity. He noted HB 375 requires manufactured homes to meet Housing and Urban Development (HUD)

standards only for the time period from which they were constructed. Mr. Tillotson concluded passage of HB 375 would result in an increase in litigation to determine its intent.

Mr. David Hull, Helena City Attorney, stated his opposition to HB 375. He said it would be more appropriate for local governments to determine the areas in which manufactured homes may be sited. Mr. Hull said passage of HB 375 would adversely affect local zoning ordinances in all communities because the law would be unclear as to its true intent. He added that HB 375 actually discriminates in favor of manufactured housing because their standards are less strict than those of site built homes. Mr. Hull concluded manufactured houses are, on the average, assessed at $6 per square foot less than site built homes because of the lower standards.

Mr. Alec Hansen, Montana League of Cities and Towns, stated his opposition to HB 375. He said these decisions should be left up to local governments.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Gage asked Mr. Jensen to define the difference between "customarily used" and "commonly used" as they pertain to manufactured housing. Mr. Jensen replied he was unsure. Senator Gage noted that the language used in Mr. Jensen's testimony was just as unclear as the language in HB 375.

Senator Bartlett asked Representative Brandewie how much opposition HB 375 had during its House hearing, to which Representative Brandewie replied not much. He said the Realtors Association had requested some friendly amendments pertaining to covenants which met with his approval.

Senator Bartlett asked Representative Brandewie if he supported the suggestion to clarify some of the specifications defined in HB 375 regarding manufactured homes. Representative Brandewie replied those requirements should be left up to the local areas and added that the intent of HB 375 is to prohibit discrimination against housing on the sole basis that it is a manufactured house.
Representative Brandewie stated he did not want to make HB 375 any more complicated.

Senator Eck asked Representative Brandewie if the HUD standards pertained to manufactured homes or mobile homes, to which Representative Brandewie replied the HUD standards applied to both types of homes.

Senator Eck asked Representative Brandewie if HB 375 would allow local governments to require manufactured houses to meet fire and building inspection codes, to which Representative Brandewie replied HUD standards were generally considered to be acceptable in meeting such standards.

Senator Weldon asked Mr. Doggett how much the average manufactured home cost, to which Mr. Doggett replied a 1,000 square feet home would vary in cost from the "upper twenties to the lower thirties" in thousands of dollars. He added that the more expensive manufactured homes range in cost from $45,000 to $55,000.

Senator Rye asked Mr. Doggett to reply to Mr. Menicucci's argument that manufactured homes are not made by Montana labor. Mr. Doggett replied manufactured housing provides an affordable housing alternative for Montana's families.

Closing by Sponsor:

Representative Brandewie stated HB 375 would provide more affordable housing and would prohibit discrimination against homes on the sole basis of method of manufaction.

HEARING ON HB 584

Opening Statement by Sponsor:

Representative Vivian Brooke, House District 56, stated HB 584 would clarify the responsibilities of water quality district boards. She said HB 584 was drafted at the request of a constituent who had experienced a problem with water quality districts in Utah.

Proponents' Testimony:

None.

Opponents' Testimony:

Ms. Vivian Drake, Missoula City-County Health Department, spoke from prepared testimony in opposition to HB 584 (Exhibit #11).

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Weldon asked Ms. Drake how many water quality districts currently exist in Montana, to which Ms. Drake replied two.

Senator Waterman asked Representative Brooke why the time period for protest as stated in HB 584 was different from all other time period protests. Representative Brooke replied the time period stated in HB 584 was requested by the constituent for whom the bill was drafted.

Senator Bartlett asked Representative Brooke why HB 584 specified a March 11th report filing date, to which Representative Brooke replied the filing date was specified by drafters of the bill.

Senator Eck asked if the time period for all protests was changed during the last legislative session to thirty days. Senator Harding replied she thought Senator Eck was correct.

Closing by Sponsor:

Representative Brooke stated she would leave consideration of HB 584 to the discretion of the Committee.

HEARING ON HB 132

Opening Statement by Sponsor:

Representative Diana Wyatt, House District 37, stated HB 132 would exempt the sale or lease of municipal property acquired by tax deed from the requirement that a city or town council must obtain voter approval before authorizing the sale or lease of such property. She said HB 132 would not affect land held in deeds of trust. Representative Wyatt stated it would cost tens of thousands of dollars to hold elections to approve a decision which is already in the best interest of the taxpayers in the community.

Proponents' Testimony:

Mr. Alec Hansen, Montana League of Cities and Towns, stated his support for HB 132.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Weldon asked Connie Erickson if HB 132 was at all similar to any of the other municipal tax property bills previously heard in Committee, to which she replied it was not.

Senator Bartlett asked Representative Wyatt why HB 132 was necessary. Representative Wyatt replied HB 132 pertains to land acquired by trust only. She said it would give local governments another option.

Senator Waterman asked Representative Wyatt why HB 132 was drafted, to which she replied it was requested by the Local Government Policy Council.

Closing by Sponsor:

Representative Wyatt hoped the Committee would give HB 132 a Do Pass.

HEARING ON HB 481

Opening Statement by Sponsor:

Representative Diana Wyatt, House District 37, stated HB 481 would standardize to 15 percent the percentage of signatories needed for local government petitions. She said signatories must have been registered to vote in the last general election to lawfully sign any petition. Representative Wyatt stated this 15 percent requirement was consistent with the percentage required for constitutional initiatives.

Proponents' Testimony:

Mr. Alec Hansen, Montana League of Cities and Towns, stated his support for HB 481. He said the standardization of signature percentages for petitions is important to local governments.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Weldon asked why "registered at the last general election" was inserted in lines 17-18 of page 2. Mr. Hansen replied the language was a safeguard for counties and consolidated forms of government and should be retained.

Senator Gage asked why the percentage for signatures varied from petition to petition, to which Mr. Hansen replied he was unsure.

Senator Weldon asked Mr. Hansen if residents of an area were required to go through an initiative process for incorporation, to which he replied yes.

Closing by Sponsor:

Representative Wyatt stated HB 481 was part of a minimal rewrite of Title 7 codes.

ADJOURNMENT

Adjournment: 5:10 p.m.

SENATOR JOHN "ED" KENNEDY, Jr., Chair

ROSALYN COOPERMAN, Secretary

JEK/rlc

ROLL CALL

SENATE COMMITTEE Local Government DATE 3-18-93

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

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 3-18-93
BILL NO. HB 479

REPRESENTATIVE DON LARSON
HOUSE DISTRICT 65
HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620
PHONE: (406) 444-4800
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SEELEY LAKE, MONTANA 59868
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COMMITTEES:
BUSINESS AND INDUSTRY
HIGHWAYS AND TRANSPORTATION
ARGICULTURE, LIVESTOCK AND IRRIGATION

TESTIMONY

HOUSE BILL 479

Members of the Committee: For the record, my name is Don Larson, House District 65, Seeley Lake.

House Bill 479 is a further attempt to mitigate the impact of state government on local governments. Members, just as we get miffed when the federal government mandates to us at the state level, local government officials get miffed -- to put it mildly -- at us when we mandate rules and regulations to them.

House Bill 479 merely requires state agencies to do something they are suppose to have been doing all along. House Bill 479 requires that state agencies prepare impact statements to identify the cost of implementing state mandates and a potential funding source for the new, mandated program.

Mandate relief legislation is not new. Senator Glenn Drake, several years ago, won passage of Section 1-2-112, MCA, which is in your packets. It is commonly referred to as the Drake Amendment. It is not enforced and is a joke. The Administrative Procedure Act 2-4-405 also requires, at the request of the Administrative Code Committee, that a state agency prepare an economic impact statement

identifying the cost of a rule or regulation. To the knowledge of the Legislative Council, that rule has not been used since 1986.

This bill started as a bill to prohibit the state from drawing rules stricter than federal standards. That draft proposal potentially banged up against the constitutional requirement to protect Montana's environment, so it has undergone several drafts.

Some examples of costs shifted to the local governments: psychological exams, juvenile detention, mental health programs, solid waste management, welfare services, the county assessor's salary, filing fees and environmental protection regulations.

Rep. Bob Gilbert's HB 317, which hast passed the House, establishes negotiated rule-making. This is a process whereby state agencies MAY include the affected entities in the drafting of the rules and regulations. This is timid progress!

We never question if we have gone too far with our state-mandated programs. We simply assume we are the conduit to pass through federal mandates. We assume partial control over the environmental questions and pass part of it to the local districts. We assume partial control over the educational arena, and we pass part of it to the local arena. Why not just let the local arenas decide if they can afford it or not.

What are the costs of clean air and clean water? We all agree we would like to have clean air and water? But, we have not agreed who should pay for it. The FEDS? The State? The local government

body? All Montanans? Or just those who own property or only those who file an income tax return? Or will it be those who use the service? There is no agreement. There is no discussion of this topic.

This bill will reinitiate the discussion by starting to identify the costs.

We cannot keep passing the buck to the local governing bodies without passing the bucks to pay for them.

DON LARSON
Representative, HD 65

DL:vn

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(d), (1)(e).

Cross-References
Publication of poll results, 2-4-306.

2-4-404. Evidentiary value of legislative poll. In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll shall be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find the proposed rule is contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

History: En. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(3).

Cross-References
Poll results to be published with rule, 2-4-306.

2-4-405. Economic impact statement. (1) Upon written request of the administrative code committee based upon the affirmative request of at least five members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. As an alternative, the administrative code committee may, by contract, prepare such an estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data were gathered.

(2) A request to an agency for a statement or a decision to contract for the

2-4-405 has not been used at least since 1986.

agency action on the rule. The statement must be filed with the administrative code committee within 3 months of the committee's request or decision. The committee may withdraw its request or decision for an economic impact statement at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice indicating where a copy of the statement may be obtained must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section.

History: En. Sec. 1, Ch. 480, L. 1979; amd. Sec. 1, Ch. 665, L. 1983; (6)En. Sec. 2, Ch. 665, L. 1983.

Cross-References
Notice and hearing on rules, 2-4-302. Publication, 2-4-306.

2-4-406. Committee objection to violation of authority for rule — effect. (1) If the administrative code committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency which promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt thereof, publish the objection in the Montana Administrative Register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response shall be borne by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the validity of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If the

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Cross-References
Prohibition of ex post facto laws and laws impairing contracts, Art. II, sec. 31, Mont. Const.
Certain retrospective laws prohibited, Art. XIII, sec. 1, Mont. Const.

1-2-110. All statutes subject to repeal. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

1-2-111. Effect of code on special, local, and private statutes. Nothing in this code affects any of the provisions of any special, local, or private statutes; but such statutes are recognized as continuing in force notwithstanding the provisions of this code, except so far as they have been repealed or affected by subsequent laws.

History: En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907; re-en. Sec. 18, R.C.M. 1921; Cal. Pol. C. Sec. 19; re-en. Sec. 18, R.C.M. 1935; R.C.M. 1947, 12-209.

Cross-References
Local and special legislation, Art. V, sec. 12, Mont. Const.
Local government ordinances, resolutions, and initiatives and referendum, Title 7, ch. 5, part 1.

1-2-112. Statutes imposing new local government duties. (1) Any law enacted by the legislature after July 1, 1979, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing authorized mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing authorized mill levies or the all-purpose mill levy is not effective until specific means of financing are provided by the legislature.

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies or the all-purpose mill levy, special mill levies, or remission of money by the state of Montana to local governments; however, an increase in the existing authorized mill levies or the all-purpose mill levy or any special mill levy must provide an amount necessary to finance the additional costs and if financing is provided by remission of funds by the state of Montana, the remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

(4) This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

History: En. 43-517, 43-518 by Secs. 1, 2, Ch. 275, L. 1974; R.C.M. 1947, 43-517, 43-518; amd. Sec. 1, Ch. 217, L. 1979.

Exhibit #1
3-18-93
HB-479

Cross-References
Local government taxes and finances generally, Title 7, ch. 6.

1-2-113. Statutes imposing new duties on a school district to vide means of financing. (1) Any law enacted by the legislature after 1, 1981, except any law implementing a federal law or a court decision, requires a school district to perform an activity or provide a service or fa and that will require the direct expenditure of additional funds shall pro a specific means to finance the activity, service, or facility other than existing property tax mill levy. Any law that fails to provide a specific m to finance such a service or facility is not effective until a specific mea financing meeting the requirements of subsection (2) is provided by legislature.

(2) Financing must be by means of a remission of money by the stat the purpose of funding the activity, service, or facility. Financing must a reasonable relationship to the actual cost of performing the activi providing the service or facility.

(3) No legislation passed and approved after October 1, 1981, super or modifies any provision of this section, except to the extent that legislation expressly does so.

(4) This section does not apply to any law under which the req expenditure of additional funds by the board of trustees is an insubsta amount that can be readily absorbed into the budget of an existing pro

History: En. Sec. 1, Ch. 596, L. 1981.

Cross-References
Rules with substantial financial impact on school districts, 20-2-115.
School finances generally, Title 20, ch. 9.

Part 2

Effect of Legislature's Actions

Part Cross-References
Effect of MCA, 1-11-103.

1-2-201. Statutes — effective date. (1) (a) Except as provided i section (1)(b) or (1)(c), every statute adopted after January 1, 1981, takes on the first day of October following its passage and approval unless a di time is prescribed therein.

(b) Every statute providing for appropriation by the legislature for funds for a public purpose takes effect on the first day of July followi passage and approval unless a different time is prescribed therein.

(c) Every statute providing for taxation or the imposition of a fee on vehicles takes effect on the first day of January following its passa approval unless a different time is prescribed therein.

TANA

Get a filtration plant — or else

State spells out situation with Seeley Lake's water

By JOHN STROMNES
of the Missoulian

SEELEY LAKE — State regulators will not "come in and shut the town down" if voters in the Seeley Lake Water District turn down a $950,000 bond issue in April to build a water-filtration plant, a state official assured community residents at a meeting Monday night.

But if a filtration plant is not ultimately built, the state will take enforcement action, including filing a lawsuit in state District Court if need be, said Jim Melstad, supervisor of the Drinking Water and Subdivision Section of the state Department of Health and Environmental Sciences.

The federal Environmental Protection Agency could also step in and levy fines against the district.

"If you vote the bond issue down, the law won't go away," he warned. Meanwhile, commercial and residential development may be hampered, because lenders may be unwilling to take risks on developments lacking an approved water system, he said. No new subdivisions can be approved, and no extensions to the water district's service area will be permitted.

And, of course, there's the health risk to water-system customers. The Seeley water district board has long contended that its current water supply, taken from the depths of Seeley Lake, is so pure that present chlorination treatment is adequate to meet federal law.

The state contends the risk to public health from giardia and toxic chemicals is too great to allow a chlorination-only system to treat the water. The water district has no control over landowner practices upstream, for example, where some livestock grazing exists and where many resort cabins are located.

And increased chlorination has its own risks of forming chemicals that can cause cancer, Melstad said.

> Only filtration will satisfy the state drinking-water rules. The state rules are mandated by the federal government.

So only filtration will satisfy the state drinking-water rules. The state rules are mandated by the federal government. Melstad noted that the federal government supplied millions and millions of dollars in grants to help communities comply with sewage-treatment standards, but virtually no money for changes mandated by the safe drinking-water law.

In February, the water board reluctantly proposed the bond issue to pay for a filtration plant and expand the system's storage capacity.

At Monday's meeting of about 55 water-district customers and state regulators, water board vice chairman Bud Johnson, reading from a prepared text, said that if the bond issue fails, the "board will continue to look for alternate funding" and will continue to work with the state.

The water district's system will violate state rules on June 29, unless the water district submits a compliance schedule, which assumes the bond issue will pass.

Should the bond issue be approved, the extra cost per month to Seeley Lake property owners will be about $13 per month per hookup, down from a preliminary estimate of $17 per month, because an interest-rate subsidy from the state Department of Natural Resources has now been factored into the total cost of the bonds. But property owners who own several undeveloped lots will be assessed the $13 for each lot, even if they are not hooked up to the water supply.

It will take 60 percent of property owners voting in the election April 6 to pass the bond issue, a high burden for such a controversial and expensive ballot issue.

But Melstad was encouraging. He said that in some communities that needed to build a filtration plant, it took three or four elections before local voters approved financing for a filtration plant.

PROPOSED BILL INTRODUCTION FOR HB 375
SENATE LOCAL GOVERNMENT COMMITTEE 3/18/93
Room 405 -- 3 p.m.
By Representative Ray Brandewie

SENATE LOCAL GOVERNMEN
EXHIBIT NO. 2
DATE 3-18-93
BILL NO. HB 375

Today I bring before you HB 375, a bill that is long overdue in Montana, and a bill that seeks to help end discrimination against "Manufactured Housing" by local and state zoning authorities.

Manufactured housing has changed significantly and the products produced today are federally regulated and must comply with very stringent building standards. Actually there are several forms of factory-built or manufactured homes. This bill concerns itself with the form of factory-built housing known as manufactured homes, or what we used to call mobile homes.

For the purpose of this bill the manufactured home must be at least 1000 square feet in size, have a pitched roof, be located on a permanent foundation, and must meet or exceed the building requirements of the other homes in the local or state zoning area. I would add that this bill does not deny local governments the opportunity to establish zoning regulations. Instead the bill seeks to end discrimination against manufactured housing and establish recognition that manufactured housing is a viable housing alternative.

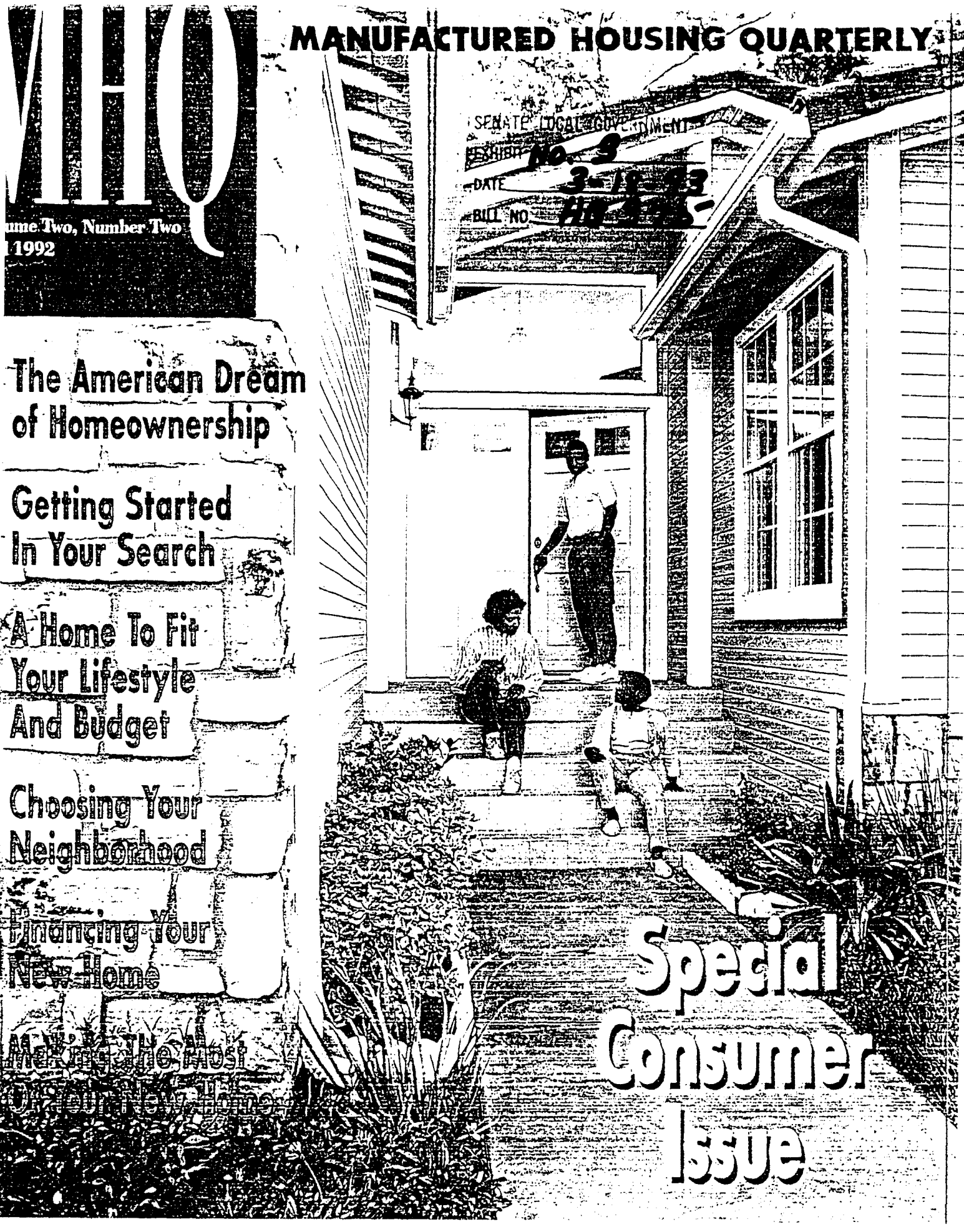
I remind the committee that we live in a state with a housing shortage, and manufactured housing, located on a permanent foundation, offers the chance for many Montanans to own a home. A typical site-built home in Montana cost approximately $65 per square foot to construct. This compares to manufactured housing which cost approximately $28 to $33 per square foot to construct.

For many areas across Montana manufactured housing has been excepted. The purpose of HB 375 is to establish, on a statewide basis, a fair law that all zoning authorities, manufactured housing dealers, consumers and others can understand. I urge you to support this measure.

MHQ

MANUFACTURED HOUSING QUARTERLY

ume Two, Number Two
1992



The American Dream of Homeownership

Getting Started In Your Search

A Home To Fit Your Lifestyle And Budget

Choosing Your Neighborhood

Financing Your New Home

Making the Most Of Your New Home

Special Consumer Issue

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 4
DATE 3-18-93
BILL NO. HB 375

MHQ

The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

A93 homes

4805 Hwy. 93 S.
Missoula, Montana 59801

(406) 251-3555

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 5
DATE 3-18-93
BILL NO. HB 375

Members of the State Senate Local Government Committee:

I urge you to respond to bill HB375 in the same way that the House responded...overwhelming approval.

Homes built by hand on site are no longer affordable for the vast majority of Montana wage earners. With government housing subsidies nearly non-existent, the only viable affordable housing alternative is manufactured housing. Because of assembly-line production efficiencies, manufactured homes can be produced for less than half the per square foot cost of a comparable site built home.

I have included excerpts from the new prospective Missoula Zoning Ordinance. The key is a simple one sentence statement:

> "The ordinance removes any discrimination against housing manufactured off-site."

Once again I urge this committee to be instrumental in re-opening the doors for many Montanans to achieve the American Dream of Homeownership.

James D. Kuehn

James D. Kuehn, President

which the zoning ordinance does not regulate. As a result there does not exist a straight-line arithmetic relationship between *target gross densities* and the lot size and dwelling unit parameters in the zoning ordinance. Except with very large development projects with many house sites designed at once, the actually developed density of a residential area rarely reaches the maximum allowed by the regulations.

In most cases the lot size parameters in each proposed district correspond to a lot size of one or more zoning districts in the present ordinance.

Variety of Residential Building Types

In a low-density residential district where an approved neighborhood plan calls for it, the ordinance allows multiple residences: apartment houses or garden apartment developments. However, the regulations also require a large amount of lot area per dwelling unit, so an apartment building would require a very large lot. These two provisions working in tandem maintain development within the density objectives of the Comprehensive Plan while allowing a variety of residential building types. For example, if a district regulation allows duplex houses, that does not mean that a duplex could be built on every lot in the district. Only a lot substantially larger than the district minimum lot size could have a duplex. E.g., 5,400 square feet for a single housing unit, 7,000 square feet for a duplex.

The ordinance removes any discrimination against housing manufactured off-site.

Zoning Permits Issued Conditionally for Developments Requiring Special Care

The proposed zoning ordinance makes extensive use of conditional Zoning Permits, meaning a Zoning Permit issued only if the proposed development meets certain conditions, as determined by either:

- the Zoning Director, a professional zoning specialist (see page 19) or
- the Zoning Review Board, an appointed board of persons with relevant training and experience (see page 20).

Each district regulation allows certain activities and facilities only under certain specified conditions. The ordinance requires a Zoning Permit approved by the Zoning Director or by the Zoning Review Board for those activities and facilities that can potentially disrupt the functioning of an area, but that provide a desirable addition to the area if designed properly.

For example, the City Center district regulations intend to preserve and enhance continuous pedestrian-oriented retail frontage. In this district a drive-in restaurant, a service station, or repair garage could impair the prosperity of the shopping area as a whole by breaking up prime retail frontage and discouraging pedestrian circulation. The City Center especially needs continuous frontage controls to prevent open parking lots from making a sieve of our downtown core as they have in other cities.

Sign Regulations Based on Modern Concepts

The proposed ordinance bases its regulations of signs on a new model sign ordinance published by the American Planning Association.

Defensible Criteria. The new ordinance provides sign controls in all areas of the City based on considerations of *traffic safety* and *community appearance* in compliance with decisions of the U.S. Supreme Court. The regulations do not focus on the message content of the sign. Instead, they deal with type of sign (based on size and placement), visual attributes (movement, lighting, changing message), location on the site, and number and total area of signs.

County of Yellowstone

ZONING COMMISSION
BOARD OF ADJUSTMENT

4TH FLOOR, LIBRARY BUILDING
510 N. 28TH
BILLINGS, MONTANA 59101
(406) 657-8246

TO: Dave Rye, State Senator
FROM: Yellowstone County Board of Commissioners
BY: Kerwin Jensen, County Zoning Coordinator
DATE: March 16, 1993
RE: House Bill #375

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 6
DATE 3-18-93
BILL NO. HB 375

The Yellowstone County Commissioners are opposed to House Bill #375 based on the following reasons:

1. The definition of "manufactured housing" is too vague in this particular Bill for several reasons:
   a. The proposed language of the Bill states that a manufactured home is at least 1,000 square feet in size. Not only should the overall size of the unit be considered, but the outside dimensions of the unit as well. For example, a unit measuring 14' by 80' would meet the minimum size requirement proposed in this Bill. Long and narrow manufactured homes would seem inappropriate in many residential districts.
   b. The Bill proposes that manufactured homes shall have a pitched roof but does not define a pitched roof. To a certain extent nearly all mobile and/or manufactured homes have at least a slight pitch to allow water to flow from off the top.
   c. The proposed language states that the manufactured home shall be constructed of roofing and siding material that is "customarily" used on site-built homes. Again, this language is very subjective and leaves plenty of room for differences of opinion.

2. More importantly, House Bill #375 is a prime example of state government stepping in on local government zoning issues. The Yellowstone County zoning regulations already address this particular issue in such a way that is suitable for Yellowstone County (see attachment). The Yellowstone County zoning regulations pertaining to manufactured homes may not be appropriate in other counties throughout the state, just as House Bill #375 may not be appropriate for local jurisdictions and each county and/or city should be entitled to draft its own language pertaining to manufactured housing.

In summary, the Board of Yellowstone County Commissioners opposes House Bill #375 and believes that this Bill limits the ability of local governments to establish zoning districts and zoning regulations as referred to in Section 76-2-202 MCA.

MANUFACTURED HOMES

For the purposes of this Section, the following definitions shall be utilized in determining the appropriate classification of manufactured homes, modular homes and travel trailers:

1. MANUFACTURED HOME: A dwelling unit that: (a) is constructed in accordance with the standards set forth in the Uniform Building Code, applicable to site-built homes, and (b) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and (c) exceeds forty (40) feet in length and eight (8) feet in width.
2. MANUFACTURED HOME, CLASS A: A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U. S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies each of the following additional criteria:
    a. The home has a length not exceeding four times its width;
    b. The pitch of the home's roof has a minimum vertical rise of one (1) foot for each five (5) feet of horizontal run, and the roof is finished with a type of shingle that is commonly used in standard residential construction;
    c. The exterior siding consists of wood, hardboard, or aluminum (vinyl covered or painted, but in no case exceeding the reflectivity of gloss white paint) comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;
    d. A continuous, permanent masonry foundation, unpierced except for required ventilation and access, is installed under the home; and
    e. The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.
3. MANUFACTURED HOME, CLASS B: A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U. S. Department of Housing and Urban Development that were in effect at the time of construction but that does not satisfy the criteria necessary to qualify the house as a Class A manufactured home.
4. MANUFACTURED HOME, CLASS C: Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home.
5. MANUFACTURED HOME PARK: A residential use in which more than one manufactured home is located on a single lot.
6. MODULAR HOME: A dwelling unit constructed in accordance with the standards set forth in the Uniform Building Code, applicable to site-built homes, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the Uniform Building Code standards applicable to site-built homes), or a series of panels or room sections transported on a truck and erected or joined together on the site.

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 8
DATE 3-18-93
BILL NO. HB 375

RESIDENTIAL LIST OF USES SR - SPECIAL REVIEW A - ALLOWED	A-1	A-S	R-150	R-96	R-70	R-60	RMF	RMH
Churches, Conventes & Other Places of Worship	SR	SR	SR	SR	SR	SR	SR	SR
Colleges & Universities (See Schools)								
Community Residential Facilities								
a. Adult Foster Family Care Home	A	SR	SR	SR	A	A	A	A
b. Community Group Home	SR	SR	SR	SR	SR	SR	SR	SR
c. Youth Foster Home I	A	SR	SR	SR	A	A	A	A
d. Youth Foster Home II	SR	SR	SR	SR	SR	SR	SR	SR
e. Youth Group Home	SR	SR	SR	SR	SR	SR	SR	SR
Dwellings								
a. Single-Family	A	A	A	A	A	A	A	A
b. Primary Dwelling With Accessory Apartment					A	A	A	A
c. Two-Family					A	A	A	A
d. Multi-Family						A	A	
e. Manufactured Homes								
1. Class A	A	A	A					A
2. Class B	A	SR	SR					A
3. Class C	SR	SR	SR					A
4. Modular	A	A	A	A	A	A	A	A
f. Townhouses						SR	SR	
g. Farm Tenant Houses	A							
Electric Power Lines & Accessory Structures (See Transmission & Distribution Lines)								
Emergency Services, Including Fire Stations & Ambulance Services	SR	SR	SR	SR	SR	SR	SR	SR

MACK T. ANDERSON INSURANCE AGENCY, INC.
Plaintiff and Appellant,
v.
CITY OF BELGRADE, MONTANA, A Municipal Corporation organized under the laws of the State of Montana and Belgrade Board of Adjustment,
Defendants and Respondents.

No. 90-238.
Submitted Oct. 25, 1990.
Decided Dec. 20, 1990.
47 St.Rep. 2287.
___Mont.___.
___P.2d___.

ZONING—JUDGMENT, SUMMARY—MUNICIPALITIES, Appeal from order granting summary judgment in favor of city and dismissing complaint which challenged Belgrade zoning ordinance. The Supreme Court held:

1. The ordinance in question bears a reasonable relationship to the advancement of the public health, safety, morals or general welfare of community and constitutes a valid exercise of the city's police power.

2. The court can, in the exercise of its discretion, determine not to take additional evidence if it shall appear to the court that additional evidence is not necessary to properly dispose of the matter.

Appeal from the District Court of Gallatin County. Eighteenth Judicial District. Honorable Larry W. Moran, Judge presiding.

For Appellant: **McKinley Anderson**, Attorney at Law, Bozeman; **Joseph W. Sabol**, Attorney at Law, Bozeman

For Respondent: **William Schreiber**, City Attorney, Belgrade

For Amicus Curiae: **Leo Ward**; Browning, Kaleczyc, Berry & Hoven, P.C., Helena (Montana League of Cities and Towns); **Roger Tippy**; Tippy & McCue, Helena (Montana Manufactured Housing and Recreational Vehicle Association)

Affirmed.

JUSTICE BARZ delivered the Opinion of the Court.

Plaintiff, Mack T. Anderson Insurance Agency Inc., appeals from an order of the Gallatin County District Court granting summary judgment in favor of defendants City of Belgrade and the Belgrade Board of Adjustment and dismissing plaintiff's complaint which challenged the constitutionality of a Belgrade zoning ordinance. The District Court affirmed the Belgrade Board of Adjustment's decision which upheld the denial of plaintiff's application for a building permit. We affirm.

The issues as framed by this Court are:

1. Is the zoning ordinance prohibiting the individual placement of manufactured homes in an R-4 zoning district a constitutional exercise of the City of Belgrade's police power?

2. Did the District Court abuse its discretion when it granted summary judgment in favor of the defendants without first conducting an evidentiary hearing?

On April 25, 1989, plaintiff applied for a building permit to place a manufactured (mobile) home on Lot 11 of Block 21 of the Armstrong Addition to the City of Belgrade. The manufactured home was to be placed on a permanent concrete foundation. The lot in question is located in an area having an R-4 Zoning designation which is defined under Belgrade City Zoning Ordinance No. 466 as a residential- apartment district. The ordinance was enacted in accordance with a comprehensive zoning plan for the City of Belgrade which was adopted in 1972 and revised in 1979. Modular or site-built homes are treated as conventional housing under the ordinance and are a permitted use within the R-4 district. Individual placement of manufactured homes is not a permitted use within the R-4 district, however, they are permitted in R-2-M and R-S-M districts. Additionally, manufactured homes are permitted in mobile home parks as conditional uses in R-3 and R-4 districts.

Under the City zoning ordinance a manufactured home is defined as:

"A factory built or manufactured transportable residential structure more than thirty-two (32) body feet in length and eight (8) feet or more in width, and built on one or more permanent chassis for towing to the point of use, and designed to be used without a permanent foundation as a dwelling unit when connected to sanitary facilities, and which bears an insignia issued by a state or federal regulatory agency indicating that [the] manufactured home complies with all applicable construction standards of the United States Department of Housing and Urban Development definition of manufactured home. The phrase 'without permanent foundation' indicates that the support system is constructed with the intent that the manufactured home placed thereon can be moved

from time to time at the convenience of the owner. A commercial coach, recreational vehicle, and motor home is not a manufactured home."

A modular home is defined as:

"A factory-fabricated structure designed primarily for human occupancy to be used by itself or to be incorporated with similar units at a building site into a structure on a permanent foundation and which complies with the Montana Building, Plumbing, Electrical, and Mechanical Construction Codes and the rules and regulations for modular housing of the Building Code Division of the Montana Department of Administration. The term is intended to apply to major assemblies and does not include prefabricated panels, trusses, plumbing trees, and prefabricated sub-elements which are to be incorporated into a structure at the site.

"The meter base for incoming wiring is attached to the exterior wall of the modular home; whereas, for a manufactured home, the meter base must be attached to a pole or a support which is isolated from the structure. The units shall be listed and assessed by the County Assessor as real or personal property."

Plaintiff's application was denied on May 4, 1989, by the City planning director on the basis that plaintiff's placement of its manufactured home in the R-4 district would violate the zoning ordinance.

Plaintiff, pursuant to § 76-2-326, MCA, appealed to the Belgrade Board of Adjustment. Plaintiff argued before the board that the ordinance unduly discriminates against manufactured housing in that no substantial difference exists between manufactured housing and modular housing. The board, in its order dated June 26, 1989, found that: (1) there is a difference between a manufactured home and a modular home as those types of housing are defined under the ordinance; (2) a manufactured home is not a permitted use in an R-4 district; (3) an adequate supply of vacant parcels exist in R-S-M and R-2-M districts each in which the individual placement of manufactured homes is a permitted use; and (4) a petition signed by fourteen citizens protested the placement of the manufactured home in the R-4 district. Based on these findings the board concluded that the City planning director properly executed her duties and that the administrative decision to deny the building permit was correct.

On August 2, 1989, plaintiff filed a complaint in the District Court alleging that the action taken by the board in denying the building permit was unreasonable and unconstitutional. On September 21, 1989, an order for writ of certiorari to issue was entered by the District Court pursuant to § 76-2-327, MCA.

The District Court heard oral argument, reviewed the entire record before it, and made an on-site inspection of the geographical area in question. On March 12, 1990, the court granted defendants' motion for summary judgment dismissing plaintiff's complaint and affirming the decision of the board of adjustment. The District Court concluded that the zoning ordinance in question was a legitimate use of the City of Belgrade's police power. The court also concluded that "[a] decision for Plaintiff in this case would have been . . . an unwise move in the direction of judicial zoning, a step the [c]ourt is not prepared to take under the circumstances presented."

From this judgment plaintiff now appeals.

I.

Is the zoning ordinance prohibiting the individual placement of manufactured homes in an R-4 zoning district a constitutional exercise of the City of Belgrade's police power?

Local municipal governments in Montana are empowered to enact zoning ordinances restricting the use of property in their jurisdictional area. Section 76-2-301, MCA, in pertinent part states that:

"For the purpose of promoting health, safety, morals, or the general welfare of the community, [the local legislative body]. . . Is hereby empowered to regulate and restrict . . . the location and use of buildings, structures, and land for trade, industry, residence or other purposes."

A zoning ordinance enacted pursuant to this statutory authority will be found to be a constitutional exercise of police power if it has a substantial bearing upon the public health, safety, morals or general welfare of the community. Freeman v. Board of Adjustment (1934), 97 Mont. 342, 34 P.2d 534; see also, Euclid v. Ambler Realty Co. (1926), 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303.

It is plaintiff's contention that no reasonable basis exists for allowing the placement of modular homes built to Uniform Building Code (UBC) standards within the R-4 district and not allowing the individual placement of manufactured homes built to Housing and Urban Development (HUD) standards since HUD standards are as safe as UBC standards. Plaintiff also argues that the ordinance is unconstitutionally arbitrary because a manufactured home cannot be placed in the R-4 district merely because the home must reach its destination "towed on its own chassis." Plaintiff further argues that there is no rational relationship between the reasons for denying the re-

Exhibit #9
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quested permit and the purposes for which the zoning ordinance was enacted and that the ordinance is restrictive for persons of low and moderate incomes.

In examining the validity of the ordinance we note that the purposes of local government zoning regulation in this state is set forth in § 76-2-304, MCA:

"(1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

"(2) Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality."

The purpose of zoning is not to provide for the highest or best use of *each* particular lot or parcel of land within the zones or community, rather it is to benefit the *community generally* by the sensible planning of land uses taking into consideration the peculiar suitabilities and most appropriate use of land *throughout the community.* Cutone v. Anaconda-Deer Lodge (1980), 187 Mont. 515, 520, 610 P.2d 691, 694.

The City of Belgrade agrees with plaintiff that HUD standards are as safe as UBC standards. However, it asserts that its ordinance prohibiting the individual placement of mobile homes within the R-4 district is based on broader grounds than safety including, but not limited to, a concern for long-term planning, the unique qualities of manufactured homes, and the property values of surrounding residents. It further asserts that it is necessary to consider these factors to be able to reasonably enforce its zoning regulations to promote the public health, safety, morals or general welfare of the community. We agree with the District Courts as it properly stated in this case, that local government police power not only allows but requires consideration of these matters as fundamental factors in zoning decisions. Accordingly, we hold that these factors are legitimate bases for regulation.

Having determined that the bases for the City of Belgrade's zoning ordinance are legitimate, the question then becomes whether the ordinance's prohibition of the individual placement of manufactured homes in the R-4 district bears a reasonable relationship to the advancement of the public health, safety, morals or general welfare of the community. In Freeman v. Board of Adjustment (1934), 97 Mont. 342, 351-52, 34 P.2d 534, 537, this Court stated that:

"The trend of modern decisions, however, is to sustain the validity of such ordinances and the statutes authorizing them . . . Such ordinances have been very generally sustained upon the theory that they constitute a valid exercise of the police power; that is to say, they have a substantial bearing upon the public health, safety, morals and general welfare of a community." (Citations omitted.)

We recognize that manufactured housing has become a major factor in the housing of families and that the rapid increase in the number of manufactured homes presents a complex zoning and planning problem. Just like any other use, manufactured homes must be provided for. However, as stated earlier, any provision must be made by zoning regulations designed to benefit the *community generally. Cutone,* 610 P.2d at 694; see also Duckworth v. City of Bonney Lake (Wash. 1978), 586 P.2d 860; Anderson, 2 *American Law of Zoning,* § 14.01 p. 665 (3d ed. 1986).

Most municipal efforts to totally exclude manufactured homes from a community have been found unconstitutional as an unreasonable exercise of police power. *Duckworth,* 586 P.2d at 866. However, it has been generally held, in recognition of the differing needs of the community, that manufactured or mobile homes

"are residential uses which possess special characteristics which warrant their separate regulation. Thus, they may be confined to mobile home parks, or may be excluded from residential districts . . . . Absent exceptional circumstances, the exclusion of this use from a residential district is not regarded as unreasonable." (Citations omitted.)

City of Lewiston v. Knieriem (Idaho 1984), 685 P.2d 821, 824. See also, *Duckworth,* 586 P.2d at 867. "The indiscriminate placement of mobile homes within a municipality may undermine conservation of property values and stifle the development of a potential residential neighborhood." *City of Lewiston,* 685 P.2d at 825. Promoting the general health and welfare includes providing necessary services such as water and sewerage, schools, and fire protection. Section 76-2-304, MCA. "Cities have found it easier to provide and regulate necessary services by limiting mobile homes to mobile home parks or other designated areas." *City of Lewiston,* 685 P.2d at 825 (citing State v. Larson (Minn. 1972), 195 N.W.2d 180).

In sum, if the municipality provides an adequate area for manufactured home development, manufactured homes may be excluded from conventional residential districts. In Martz v. Butte-Silver Bow

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Government (1982), 196 Mont. 348, 353-54, 641 P.2d 426, 430, this Court recognized that a municipality must ensure a fair share of housing is within reach of persons of low and moderate incomes and intimated that where an ordinance is shown to unduly exclude manufactured housing the ordinance is unconstitutional. In the present case the ordinance provides an adequate area for manufactured home development. Manufactured homes are permitted uses in R-S-M and R-2-M Zoning districts and manufactured home parks are permitted conditional uses in R-3 and R-4 districts. A survey conducted in late 1986 reflects the present existing situation in the community of Belgrade and shows that approximately 16.88% of the available vacant parcels of land in the area are zoned for manufactured housing.

[1] We hold that the ordinance in question bears a reasonable relationship to the advancement of the public health, safety, morals or general welfare of the community of Belgrade and constitutes a valid exercise of the City's police power.

In so holding, we note that this Court in Cutone v. Anaconda-Deer Lodge (1980), 187 Mont. 515, 610 P.2d 691, quoted with approval from Euclid v. Ambler Realty Co. (1926), 272 U.S. 365, 387-88, 47 S.Ct. 114, 118, 71 L.Ed. 303, 310-11, in which the United State Supreme Court stated:

"The ordinance now under review, and all similar laws and regulations, must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation . . . *If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.*" (Emphasis added.)

Cutone, 610 P.2d at 696. In *Cutone* this Court also quoted with approval from Village of Belle Terre v. Boraas (1974), 416 U.S. 1, 8, 94 S.Ct. 1536, 1540, 39 L.Ed.2d 797, 803-04, in which the United States Supreme Court, in upholding an ordinance which restricted land use to one-family dwellings and prevented the occupation of residences by more than two unrelated individuals within the district, stated:

"We deal with the economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be "'reasonable, not arbitrary"' (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989) and bears 'a rational relationship to a [permissible] state objective.' *Reed v. Reed*, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed. 2d 225.

"It is said, however, that if two unmarried people can constitute a 'family,' there is no reason why three or four may not. *But every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial function.*" (Emphasis added.)

Cutone, 610 P.2d at 696.

As plaintiff points out, a number of state legislatures and local government bodies have viewed the recent technological improvements in manufactured homes as sufficient to eliminate rules distinguishing them from modular homes. However, this Court is not willing to sit as a super-legislature or super-zoning board. Kunz v. Butte-Silver Bow (Mont. 1990), 797 P.2d 224, 226, 47 St.Rep. 1615, 1618; *Cutone*, 610 P.2d at 697. If an ordinance is found to promote the public health, safety, morals or general welfare of the community, as found here, the wisdom, necessity and policy of the ordinance are matters more appropriately left to the legislative body.

II.

Did the District Court abuse its discretion when it granted summary judgment in favor of the defendants without first conducting an evidentiary hearing?

In two recent decisions this Court clarified the appropriate standards for judicial review of an administrative ruling. See, Steer, Inc. v. Dep't of Revenue (Mont. December 11, 1990), No. 90-106 [47 St.Rep. 2199]; Dep't of Revenue v. Kaiser Cement Corp. (Mont. December 11, 1990), No. 90-278 [47 St.Rep. 2221]. This Court will continue to use the "clearly erroneous" standard for reviewing findings of fact. However, in reviewing conclusions of law, our standard of review will be merely to determine if the administrative agency's interpretation of the law is correct, instead of applying the inappropriate abuse of discretion standard. In *Steer, Inc.* we stated that this standard of review relating to conclusions of law applies "whether the conclusions are made by an agency, workers' compensation court, or trial court." *Steer, Inc.* (Mont. December 11, 1990), No. 90- 106, slip. op. at 7. We further stated in *Steer, Inc.* that our standard of review relating to conclusions of law is not to be confused with our review of discretionary trial court decisions. In such instances the standard of an abuse of discretion will still be applied. *Steer, Inc.* (Mont. December 11, 1990), No. 90-106, slip. op. at 7. This is the situation we are presented with here.

[2] Plaintiff argues that the District Court erred in that, without an evidentiary hearing, the court had no way of determining if the findings or rulings of the Belgrade Board of Adjustment were supported by the evidence. Section 76-2-327(3), MCA, provides the dis-

Exhibit #
3-18-93
HB-375

trict court with specific authorization to take additional evidence on an appeal from a board of adjustment. However, the court can, in the exercise of its discretion, determine not to take additional evidence if it shall appear to the court that additional evidence is not necessary to properly dispose of the matter.

In the present case the District Court had before it approximately 45 pages of documents and maps which were submitted by the City, along with 22, stipulations of fact and approximately 20 pages of documents submitted by plaintiff. Additionally, the court viewed the entire geographical area, heard oral argument on two separate occasions, plus had the Belgrade Board of Adjustment's written decision and tape recording of the board's meeting in which it upheld the denial of the permit. We hold the District Court did not abuse its discretion.

Affirmed.

CHIEF JUSTICE TURNAGE and JUSTICES HARRISON, SHEEHY, HUNT, WEBER and MCDONOUGH concur.

nebuilders Assoc. of Billings
-7533

/. Montana Home Builders Assoc.
-8181

at Falls Homebuilders Assoc.
-HOME

Montana BUILDING INDUSTRY ASSOCIATION

Flathead Home Builders Assoc.
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

Nancy Lien Griffin, Executive Director
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ATE LOCAL GOVERNMENT
BIT NO. 10
3-18-93
NO. HB 375

HB 375
Prohibit Discrimination for Manufactured Housing

Recommend:
Do Not Pass

Mr. Chairman, Ladies & Gentlemen of the Committee:

I am Nancy Griffin, Executive Officer, of the Montana Building Industry Association, representing 6 local associations with nearly 800 small business members serving the homebuilding industry.

We urge a Do Not Pass for HB 375 for the following reasons.

1. Attempts to Circumvent the Local Government Responsibility for Community Planning.

Montana is a diverse state, and each of our communities has special and unique needs with regard to planning and zoning and housing support needs. This legislation would place limitations upon local planning and zoning organizations to react to their own unique planning needs. Local zoning ordinances are developed with great sensitivity to gathering the greatest amount of input from local citizens and property owners. State law currently sets out those issues which must be addressed within a community's zoning plan--among those are to allow for adequate units of affordable housing. Passage of HB 375 would restrict the ability of local government to plan community growth according to the wishes of local citizens.

I believe this legislation is the result of a recent attempt to overturn a local zoning ordinance and variance procedure in the Town of Belgrade, which was developed according to established procedures for public hearing and citizen response. The court upheld the local ordinance and determined that local government had the responsibility for development of local ordinances and procedures; and that property rights were not violated because property owners were aware of applicable restrictions. This legislation is another example of parties, dissatisfied with court rulings, who then turn to the Legislature to correct what is an isolated or local issue.

2. Definitions in the bill create a confusing standard for courts and local governments to follow.

Our arguments are not aimed at the quality of modular housing, and indeed agree that in many cases these homes may have value similar to a site built home. However we believe that language which exists in HB 375, in particular section 6 on page 3, refers to "compliance with the applicable prevailing standards of the U.S. Department of Housing and Urban Development. These standards have applicability to what is commonly known in the industry as "mobile" homes. Prefabricated "modular" housing is subject to construction standards which meet the Uniform Building Code.

Also, the bill refers to two sections of law which regulate the transportation of prefabricated housing, and it's applicability to definition of specific housing is a stretch of application. Because of these issues which cloud appropriate description of "modular" housing; and the tendency of the industry towards component construction, we believe the issue needs to be a local decision so that each community has appropriate authority to determine the own unique housing and community planning needs.

We believe that in sensitive issues of community planning it is impossible for the state Legislature to adopt definitive prohibitions, such as exist in HB 375, that will be interpreted uniformly in all of Montana's diverse communities. We urge a Do Not Pass for HB 375, an issue best left to local democratic planning processes.

MISSOULA COUNTY
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TE LOCAL GOVERNMENT
IIT NO. 11
3-18-93
NO. HB 584

Testimony of Missoula City-County Health Department
Regarding HB 584
Submitted to Senate Local Government Committee
Prepared by Peter Nielsen, Environmental Health Division Supervisor

The Missoula City-County Health Department urges the Senate Local Government Committee to kill House Bill 584.

This bill would do two things - extend the protest period to protest creation of a local water quality district from 30 to 60 days, and require an annual financial report for local water quality districts. Extending the protest period is a bad idea because it is inconsistent with the procedure established by the legislature for creating all local districts in the state, and inconsistent with the philosophy of the legislature to require a demonstration of sufficient controversy to justify the public expense of conducting a general referendum. The second item is unnecessary because it will be required by administrative rules adopted pursuant to the statute, and because local governments will require budget reports each year without this bill.

Extending the protest period for creation of water quality districts would be poor public policy. The philosophy of the legislature is that the protest period may serve as a litmus test to determine the degree of controversy surrounding the creation of the district. If those who oppose creation of a district can not muster more than 20% protest (that is one out of five) during a thirty day period, there is little reasonable chance that more than 50% of the eligible voters would oppose creation of a district in an election. This is especially true in light of the fact that protesting creation of a district is a relatively simple task that can be performed through the mail while voting in an election requires registration to vote, travelling to a polling place and waiting in line for perhaps a considerable period of time.

If the legislature extends the protest period for creation of water quality districts with this bill, it should be prepared to extend the protest period for every other type of district which may be created at a local level n this state, including fire districts, solid waste districts, etc... The process for protesting creation of a water quality district is currently consistent with the process for other types of districts in the state - What is it about water quality that justifies a different approach?

Opponents of the Missoula Valley Water Quality District managed to muster 7.5% protest during thirty days time. Perhaps if they had 60 days they could have convinced 20% to protest - but that would not have made it any more likely that they could get 51% of the general electorate to oppose the district in a referendum.

Requiring an annual financial report for a water quality district is a good idea, but not a novel concept. The administrative rules implementing the statute concerning water quality districts will contain this requirement. In addition, local government bodies require annual financial reports as part of the budget process. Public hearings are required in this process already. This part of the bill seems well-intentioned, but is clearly unnecessary.

Please kill this ill-conceived and unnecessary bill.

DATE 18 March 1993

SENATE COMMITTEE ON Local Government

BILLS BEING HEARD TODAY: HB 132 - Wyatt; HB 375 - Brandewie; HB 479 - Larson; HB 481 - Wyatt; HB 584 - Brooke

Name	Representing	Bill No.	Check One: Support	Oppose
Kerwin Jensen	Yellowstone Co./City of Billings	375		X
Joe Menicucci	City of Belgrade	375		X
Vivian Drake	Lewis + Clark Cty	584		X
James C. Clark	MT Assn Realtors	375	X	
Jim Tillotson	City of Billings	375		X
ANDY SKINNER	LIFESTYLE HOMES	375	X	
David N Hull	City of Helena	375		X
Nancy Griffin	Mont. Building Industry Assoc	375		X
Wm Egan	MT Coop of Elec Utils	HB479		X
MIKE SHEA	BUTTE-SILVER BOW	HB479	X	
Melissa Case	Montana People's Action	375	X	
JOHN ARRIGO	MT DHES	584		
Alec Hansen	Cities	479	X	
Roger Tippy	Tippy & McCue (for MT Mfg Hsg Assn)	375	X	
Stuart Doggett	MT Manufactured Housing Assoc.	375	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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