

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **VICE CHAIRMAN JACK HERRON**, on February 7,
1995, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. William E. Boharski, Chairman (R)
Rep. Jack R. Herron, Vice Chairman (Majority) (R)
Rep. David Ewer, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Ellen Bergman (R)
Rep. John C. Bohlinger (R)
Rep. Matt Brainard (R)
Rep. Matt Denny (R)
Rep. Rose Forbes (R)
Rep. Antoinette R. Hagener (D)
Rep. Bob Keenan (R)
Rep. Linda McCulloch (D)
Rep. Jeanette S. McKee (R)
Rep. Norm Mills (R)
Rep. Debbie Shea (D)
Rep. Joe Tropila (D)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Council
Evelyn Burris, Committee Secretary

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

Committee Business Summary:

Hearing:	HB 393; SB 99
Executive Action:	HB 393 DO PASS
	SB 99 BE CONCURRED IN
	HB 101 DO PASS
	HB 129 TABLED
	SB 52 BE CONCURRED IN
	HB 154 DO PASS
	HB 103 NOT RECONSIDERED
	HB 165 DO PASS AS AMENDED
	HB 166 DO PASS AS AMENDED
	HB 220 DO PASS AS AMENDED

{Tape: 1; Side: A; Approx. Counter: 000; Comments: **CHAIRMAN WILLIAM BOHARSKI** attended the meeting via speaker phone.}

HEARING ON HB 393

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, Canyon Creek, stated this is an act allowing county commissioners to assign the supervision of county roads to either a county surveyor or a county road superintendent.

Proponents' Testimony:

Blake Wordal, Lewis & Clark County Commissioner, said this legislation was generated by a resolution which was passed unanimously at the Montana Association of Counties annual meeting last September. **Mr. Wordal** strongly urged this legislation to pass to clarify the powers for managing and maintaining county roads. **EXHIBIT 1**

John J. Schontz, representing **Montana Association Realtors**, said they strongly urge the support of this legislation. **Mr. Schontz** said this is a good management bill.

SEN. GARY FORRESTER, SD 8, Billings, attested that the road issue in Yellowstone County has reached what he calls crisis proportions. He showed a lengthy list of names of constituents in his district who have contacted him regarding road problems during the last two years. In his district, 125 miles of road maintenance has been discontinued. The current county surveyor told him that the county commissioners cannot get together. This bill lays the responsibility solely with the county commissioners and allows them to create the position if they wish. This is a needed tool and he urged a do pass.

Sam Gianenaivcisco, Gallatin County Road Superintendent, Bozeman, and representing the **Montana Association of County Road Supervisors** stated that four years ago Gallatin County had a surveyor who was elected by a write-in vote. The only time they saw him for one entire year was once a month when he picked his paycheck up. Since then, the county has appointed the Clerk and Recorder to be the surveyor. They feel this bill clarifies the ruling of the county commissioners to appoint someone to take care of the roads.

Commissioner Bill Kennedy, Yellowstone County, stated the MACO resolution was passed during their conference this year. During the conference it was found that numerous counties in Montana have problems with the supervision of roads and one way for counties to clarify problems is with consolidation. Last year Yellowstone county went through consolidation hearings, however they did not consolidate any offices, but one of the problems

that came up was road issues. **Mr. Kennedy** said funding has become an issue with all the new subdivisions, new roadways and old roads. Their budget is \$2.3 million and the bridge budget is \$1 million. They also have a surveyor budget. This is a large undertaking for one person to handle and he urged a do pass.

{Tape: 1; Side: A; Approx. Counter: 14.7;}

Mark Watson, City Administrator, Billings, spoke in favor of HB 393 and said they believe this will be better management, more efficient, reduce political impacts and will help in the building department in Billings.

Jim Wysocki, City of Bozeman, said the city is in support of HB 393 which would put all the responsibilities regarding road management in one spot and create a smoother operation.

Gordon Morris, Director, Association of Counties, spoke in favor of HB 393.

Alec Hanson, League of Cities and Towns, said they also support this bill.

Vernon R. Zickefoose, Yellowstone County, spoke in support of HB 393 and said he heads up the list **SEN. FORRESTER** showed to the committee and spoke about. He said all this came about because of the 1979 resolution that the commissioner determined he could no longer provide road grader service to sub-division roads and some certificate of survey roads. The cost of doing one blading in their county is approximately \$20,000. **Mr. Zickefoose** said this amount in a \$2.3 million budget is a small amount.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. NORM MILLS asked **Mr. Kennedy** if Billings has a county surveyor. He responded yes. **REP. MILLS** asked "If they have a county surveyor in charge of maintaining the roads, by virtue of what law or rule or deficiency of budget can he decline to do what needs to be done for the county and is he not responsible to the county?" **Mr. Kennedy** referred to the bill on the duties of the county surveyor and county commissioners. At budget hearing time, they allocate the dollars for the budget. What has happened is it's up to the discretion of the county surveyor to allocate funding for different projects and is given to the surveyor through the statutes. The surveyor is the only elected official that answers to the commissioners, but in a round-about way. The commissioners have the ultimate authority over county roads, but as soon as the budget is approved the surveyor runs all of the county roads and at his discretion, does the prioritizing. Yellowstone County is putting a road policy together. They have a cross section of engineers, surveyors, realtors a planning officer and county attorney that will put a

road policy together. This will make it more efficient. HB 393 would clarify the duties of the surveyor, road superintendent and give the commissioners the opportunity to go ahead and prioritize the needs.

REP. MILLS asked if the county surveyor acts on his own once he gets budget approval. **Mr. Kennedy** responded that is correct.

REP. MILLS asked to clarify what the difference would be in how he handled roads compared to how the county surveyor handles them now. **Mr. Kennedy** responded this would give the discretion to the board of county commissioners to assign these responsibilities. Once they are assigned, the road superintendent will work directly for the board of county commissioners and they are ultimately in charge of prioritizing.

REP. TONI HAGENER asked if there are no longer counties in which the commissioner acts as the road supervisor for his area. **Mr. Morris** said there are ten counties that have surveyors. In rural counties in eastern Montana, state law provides that each county will be divided up into road districts and then a county commissioner is assigned the responsibility for supervising road maintenance and bridges in those districts. That is primarily a small rural county arrangement and the association recommends they get away from that. **Mr. Morris** stated some of the rural county budgets are based upon the commissioner road districts.

REP. MILLS said on the assumption they would go with a county road superintendent, who would do the grading, setting up, establish grades, and plans of specification preparation including the actual survey necessary for road construction. **Mr. Morris** responded under the law, it would still be the case that they would have to contract with a professional engineering service. He said in the case of the superintendent, referring to **Mr. Wordal** statement that all the duties that are identified are almost identical with the superintendent as set forth in the bill relative to the surveyor (see Exhibit 1).

REP. JOHN BOHLINGER referred to the long list of constituents presented by **SEN. FORRESTER** and inquired where one generates such a list and if he responds to each constituent, does it show that he is making a good faith effort to represent those people. **Mr. Kennedy** said the list is people who have called **SEN. FORRESTER** that live in his district and have complaints on roads. He told about the road hearings held in Yellowstone County and said several legislators attended the meetings.

REP. BOHLINGER asked for additional information in reference to the testimony regarding the \$20,000 cost of grading with the \$2.3 million budget. **Mr. Kennedy** said there is an elected surveyor in Yellowstone County that gives the commissioners the opportunity to assign duties to a surveyor. He also gives the commissioners the opportunity to go ahead and vote to decide if the commission would like to hire a road superintendent to handle the road and bridge problems. **Mr. Kennedy** told about the study and some

history of various departments and how they have addressed some of the complaints and problems. He said one person running all of the various departments is not efficient and this bill would streamline and make it more efficient.

REP. MILLS asked **Mr. Kennedy** if he wanted a county superintendent and a county surveyor. **Mr. Kennedy** responded that currently in Yellowstone County, they already have an elected surveyor who is serving a four-year term so they could not take away the elected surveyor in Yellowstone County. He said if the commissioners decided to hire a road superintendent, yes, there would be both the surveyor and road superintendent with the ideal situation of going ahead and assigning the duties to the surveyor that would fit in the surveyors' duties and also to hire a road superintendent to go ahead with the roads and bridges.

REP. MILLS asked if he has any desire to eliminate the elected position of county surveyor and make it a hired position under the county commissioners. **Mr. Kennedy** said that cannot be done at the present time in Yellowstone County. The elected surveyor can only be eliminated through a constitutional amendment. In four years the elected surveyor in Yellowstone County could be a consolidated position.

Closing by Sponsor: The sponsor closed.

VICE CHAIRMAN HERRON announced that at the request of the sponsor, HB 249 has been moved from Local Government to the Highways and Transportation Committee.

EXECUTIVE ACTION ON HB 393

Motion: **REP. MATT BRAINARD** MOVED HB 393 DO PASS.

Discussion:

REP. BOHLINGER said he wanted to reinforce **REP. BRAINARD'S** comment, that from the testimony provided today, it's clear what is being offered in HB 393 is an opportunity to put all the concerns for roads and highways in the county commissioners office. This will streamline government and in time it could be contemplated that it could be a savings to local government and he fully supports this bill.

REP. MILL stated he is in support of what this bill is attempting to do and he looked forward to the day when the county surveyor becomes an appointed position in Yellowstone County instead of an elected position. The county commissioners that have the budget responsibilities should have management responsibilities also.

Vote: Motion carried 18-0.

ANNOUNCEMENTS:

Bart Campbell distributed copies of a letter to the committee from Jim Nugent, City Attorney, Missoula regarding the issue of non-freeholders that may serve on the City-County Planning Board. He said this issue may be determined at a future date.

REP. BILL BOHARSKI announced that SEN. WELDON has a bill that deals with boards and commissions in addition to the zoning bill and it will be put into another bill rather than a committee bill.

EXECUTIVE ACTION ON HB 101

Motion: REP. BOHARSKI MOVED HB 101 DO PASS.

Discussion: REP. BOHARSKI withdrew his motion so SB 99 may be heard at this time.

HEARING ON SB 99**Opening Statement by Sponsor:**

SEN TOM KEATING, Billings, said SB 99 is an act allowing the board of county commissioners to determine the site for the auction sale of real or personal property valued in excess of \$2,500. This bill is at the request of the Montana Association of Counties. This would allow the auction to be held where the equipment and foreclosed property has been impounded allowing the bidders to see the property that is up for sale.

Proponents' Testimony:

Gordon Morris, Director, Association of Counties, stated they support SB 99 and asked for favorable consideration.

Commissioner Bill Kennedy, Billings, said this is a housekeeping bill. They have road equipment, furniture, etc., that they auction off and it is inconvenient to hold this on the steps of the courthouse.

Blake Wordal, Lewis & Clark County Commissioner, stated their support for SB 99.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: The sponsor closed and said REP. ARNOTT will carry this bill.

EXECUTIVE ACTION ON SB 99

Motion/Vote: REP. JOHN BOHLINGER MOVED SB 99 BE CONCURRED IN.
The motion carried unanimously.

EXECUTIVE ACTION ON HB 101

Motion: REP. BOHARSKI MOVED HB 101 DO PASS. REP. DIANA WYATT
MOVED THE AMENDMENTS.

Discussion:

REP. DIANA WYATT explained the amendments. EXHIBIT 2 REP. DAVID
EWER asked for an explanation. REP. WYATT explained that to
change local ordinances takes a majority vote of commissioners.
If the city wishes to make major changes, e.g., changing fire or
police protection, privatizing or having different duties, this
would need to be brought to the attention of the general public.
REP. EWER asked Mr. Campbell to explain this amendment and the
process of charter. Mr. Campbell explained that in a charter
form of government they don't have to wait for ten years to
review, a charter form of government can amend or alter its
charter, but it would be put to the vote of the people. REP.
WYATT said there are two alternatives. One option would be to
re-evaluate the government every ten years, and the other option
is to put it before the voters.

REP. SHIELL ANDERSON spoke against the amendment saying the
people affected that are working their jobs every day need the
flexibility to manage their own affairs.

REP. WYATT explained this is part of the democratic process. She
then relayed the incident that happened in Great Falls regarding
the water/sewer department.

REP. NORM MILLS spoke against the amendment saying they should
have an established form of government for the purpose of letting
local people run their business and take the government out as
far as possible. This amendment will further reduce the power
given to the charter form of government under the constitution.

Vote: The motion to adopt the Wyatt amendments failed 12-6.

Motion/Vote: REP. JOE TROPILA MOVED HB 101 BE TABLED. The
motion failed 10-8.

Discussion:

REP. EWER spoke in opposition to HB 101, citing Section 7-106 for
the construction of self-government powers. He voiced his
concerns and asked if this bill is necessary.

REP. JOHN BOHLINGER spoke in favor of the do pass motion stating that this measure would strengthen and return authority to local government and would provide flexibility. He said this bill does not affect collective bargaining agreements.

Vote: A roll call vote was taken. The motion carried 10-8.

EXECUTIVE ACTION ON HB 129

Motion: REP. ANDERSON MOVED HB 129 DO PASS.

Discussion:

REP. BOHARSKI said he spoke with REP. RANEY and everyone that was previously opposed to HB 129 had changed their mind. REP. BOHARSKI said he is comfortable with this bill. REP. EWER spoke in favor of HB 129 and said the opponents did not understand the bill and he also feels this is a good bill.

REP. TROPILA spoke in opposition saying this is an unpaid committee that does the records and he does not agree with putting more work on them.

REP. BOHLINGER also spoke in opposition of HB 129 and read a note from Ms. Fisher, Clerk of District Court, Yellowstone County who called this a "busy work" bill that is not necessary because they have a records retention schedule and have had for many years.

REP. MILLS said he has also spoke to Ms. Fisher and other clerks and they all feel this is not needed because they already have the authority to make these decisions.

REP. ANDERSON said this bill would develop a list of documents that can be destroyed and this came from the school district. He recalled previous testimony and said he believes HB 129 is a good bill.

REP. HAGENER spoke in opposition recommending that the two groups that are involved in this get together to clear the matter up because it would be foolish to act on something that is not necessary.

REP. ELLEN BERGMAN agreed with REP. HAGENER'S testimony.

REP. ANDERSON said the clerks and recorders are not the only people affected by this bill and they may not see a problem, but the schools do have a problem with getting their records destroyed.

REP. BOHLINGER shared the last paragraph of a letter from Ms. Fisher with the committee that stated she could not stress enough that when they go to Helena to make laws pertaining to something they know nothing about, that they get input from those who know

and who are affected by such legislation. It is frightening for them and those who are trying to do a good job. **REP. BOHLINGER** said he respects what she said in her letter.

Motion/Vote: **REP. NORM MILLS MADE A SUBSTITUTE MOTION TO TABLE HB 129. Motion carried 13-5.**

EXECUTIVE ACTION ON SB 52

Motion: **REP. ANDERSON MOVED THAT SB 52 BE CONCURRED IN.**

Discussion:

REP. EWER said he did not support this bill because it would make a major policy change that he does not agree with. He read the current policy in statute stating resident freeholders, meaning people who own property, have the right to vote. He said this bill would change that to property owners and that would have significant ramifications as was pointed out by the opponents. **REP. EWER** said this came out of a conflict that should be resolved by the courts.

REP. BOHLINGER spoke in support of SB 52 saying this is a property rights issue and through passage it will give all property owners, those that pay taxes, the right to vote on the budget and annexation.

REP. ANDERSON stated he was surprised to learn that people who owned property, but did not live in the area to be annexed, did not have a vote already. He said it is not fair to be annexed involuntarily into a city and have no say.

REP. WYATT spoke in opposition saying she believes people who are out of Montana that own property as a real estate investment and may come for a couple months or not at all, do not have the same ownership as someone who lives in the community, with children in school, that worry about police and fire responses. It is a major policy change and people talk about wanting Montana to stay the same for the people who work and live and contribute to the community.

REP. ANDERSON asked **REP. WYATT** to address the issue of in-state property owners who may live right outside the proposed annexed area. **REP. WYATT** said the people that do live in that area and have some control over what is happening will have a say. If they are a voter and a resident in that area they will do that. She said this is a local dispute that unfortunately, the legislature is getting pulled into. The people that live in that area and contribute in that area are there and should have as much right as those people who do not. **REP. ANDERSON** said there are the people who live in Eureka that have real property in Evergreen and under current law, they have no say about whether or not they are annexed.

REP. HAGENER said this is a violation of an agreement.

REP. BOHARSKI pointed out that the legislature cannot affect what is going on the Flathead Valley. He said they have a constitutional provision that prevents them from impairing any contracts. He said this bill will not in any way affect the agreements that have been signed by people from Flathead Valley, Evergreen and Butte. That is a fight they are going to have to carry out in court. He agreed with **REP. BOHLINGER** that the fact should not be mixed up that this is a local dispute and as **REP. EWER** pointed out, this is a policy decision of should property owners have the right or should resident property owners have the right.

REP. EWER asked **Mr. Campbell** if it could be enforced and binding if property owners outside a municipality agree that upon receiving an extension of municipal water and sewer services, they shall, at the discretion of municipalities, be annexed into the municipalities. He said this question is regarding an amendment he was asked to present. **Mr. Campbell** responded there is a statute now that talks about the extension of sewer services into an area requiring a waiver. This is enforceable because if they take the sewer services they do have to make a waiver, but they do not have to take the services. In his opinion, that is an enforceable provision.

REP. MILL stated he is in opposition to SB 52, because the opponents are asked to have a local problem solved that should have been solved before they got into this situation. This solution may not fit in other places in Montana. He cited the problem of when they attempted annexation which failed one year ago and they gerrymandered this enough to take the "cream of the crop" and leave the rest of the residents out. He said this is ludicrous and should not be here.

REP. BRAINARD attested there will be some overlapping with a bill he will be presenting and he suggested SB 52 be tabled until he presents his bill. He said this is not a motion but simply part of the discussion.

REP. ANDERSON responded to the proposed tabling motion stating that since there are people in attendance today from Kalispell that have invested this amount of time that the committee should dispose of this bill. He said the problem **REP. MILLS** is concerned with is addressed by this bill. He asked if his concern is the "cherry picking" of the big stores, such as K-Mart, without any vote. **REP. MILLS** responded his concern is not whether they are big or little but a lot of people have been left out intentionally in the gerrymandering of the district that is proposed and if annexation is going to happen it should be on a wider base than this and that is not addressed in this bill as he understands it. **REP. ANDERSON** said it is partially addressed. If they were to select the area that is comprised of businesses, those people would have a vote on whether or not to be annexed

because that is the freeholders act. Even though they may not be resident electors, they still own that and have a vote. **REP. MILLS** said there were quite a few residents around the area not included in the annexation proposal up to this point and he believes the group should be considered as a whole and not pick out the high pay and high tax areas. **REP. ANDERSON** responded this bill is not going to preclude them. Currently, they can gerrymander if they want, but the question is are they going to have a vote. **REP. MILLS** said he would prefer to solve the problem that the law can be applied to a lot of areas or not have the law at all. He said they should not be passing laws for individual groups to solve problems that may have to go to court regardless.

REP. ANDERSON asked **REP. BOHARSKI** to respond in terms of going to court over this if they aren't successful in getting Evergreen annexed. **REP. BOHARSKI** said what this bill does is exactly what **REP. MILLS** wants it to do. He explained that under current law a district can be gerrymandered and draw lines and exclude all resident freeholders, pick out all the locations where there are businesses and annex all of them in which case no one has the right to protest because they are not resident freeholders, they are just freeholders. If this bill passes, it would prevent that from happening and it would say "any property owner has the right to protest" not the "resident property owner but "a" property owner. **REP. MILLS** responded this bill does not solve the problem the way it should and therefore, it would not be universally applicable to all the future problems that can be anticipated to come up in the state of Montana on annexation. He said he believes the bill should be doing more than it is doing.

REP. BOHLINGER addressed **REP. MILLS** and stated his understanding if this is legislation that would give the right and protect the non-resident property owner and prevent him from being annexed without a vote. He sees this as a property rights issue and fairness issue.

REP. MILLS said he has not said if he is going to vote against or for the bill.

REP. ELLEN BERGMAN asked if this bill is a matter of giving the out-of-resident property owner a right to say whether he wishes to be annexed. **Mr. Campbell** responded yes, that is all the bill does and the question is the ramifications.

REP. EWER said one of the reasons why he believes property owners are further qualified to be freeholders in this current law is because the legislature's intention is to recognize that they have a phenomenon called urban sprawl where they have several governments trying to address a particular problem, and because of lots of jurisdictions they have lots of problems where people get services and impose costs on the municipalities which are usually the hub of larger geographic areas. He understands the fairness issue, but asked why they want to give municipalities

power over the strip malls that are right outside their boundaries. It is to try and minimize competitive forces that can be greater imposed if they don't have to pay the costs of city services, even though most of the customers may be in the city.

REP. EWER said regarding Kalispell, the deal was Kalispell agreed to increase its water and sewer services to the community of Evergreen and they got sufficient waivers so they could annex a very large part of Evergreen. Those waivers are now being challenged and they have taken the commercial area, but that was not the original intention. He said from what he has gathered, people are trying to stay out of municipalities because they don't want to pick up the freight. People that are out in the valley come to work in Helena and get all the services of the city, but they don't want to pay. He said he believes in paying for city services and he lives two blocks from here and believes they should all pay their fair share. He concluded that this bill will exacerbate the problem and urban sprawl and that is why it should not pass.

Vote: Motion carried 10-8.

EXECUTIVE ACTION ON HB 154

Motion: REP. BOHLINGER MOVED HB 154 DO PASS.

Discussion: REP. BERGMAN asked to have a refresher on the bill and what it does. REP. BOHLINGER said it was his understanding this bill would provide some cost savings to county governments in that it would allow the county commissioners to provide for a school election to piggy-back with the general election.

REP. TROPILA gave a description of the bill.

Motion/Vote: REP. BOB KEENAN MOVED HB 154 BE TABLED. Motion failed 8-10.

Motion: REP. BOHLINGER MOVED HB 154 DO PASS.

Discussion:

REP. MATT DENNY attested this bill allows voters to hold their election in conjunction with another election. They could hold a special election under the current law and cost the county extra money to have that for their own district. REP. ANDERSON asked REP. DENNY about the statute. REP. DENNY referred to and read subsection (2).

Vote: Motion carried 11-7

EXECUTIVE ACTION ON HB 103

Motion: REP. HAGENER MOVED TO RECONSIDER HB 103.

Discussion: REP. HAGENER stated the committee heard some confusing testimony and this bill deserves to be considered.

Vote: The motion failed 7-11.

EXECUTIVE ACTION ON HB 165

Motion: REP. BOHARSKI MOVED HB 165 DO PASS. REP. BOHARSKI MOVED HIS AMENDMENT.

Discussion:

REP. BOHARSKI discussed the point made on the debate on the bill that they wanted to make sure the county commissioners did not exercise too much authority over some of the other elected officials. He said in an effort to address that problem, he drafted some amendments.

Mr. Campbell explained REP. BOHARSKI'S amendment. EXHIBIT 3

REP. BERGMAN referred to the title of the bill and asked who the affected county officer is. REP. BOHARSKI explained the treasurer and the clerk of court had some concern that some county commissioners would on their own shut down an office to four hours a day. They felt the independently elected officers should have some say. The sections of the bill that are affected by that amendment are only those offices that are subjected to another elected official. He said if this was the parks department, that would be done by the commissioners because there is no elected official in that area. But if it's the treasurer's office and there is an elected treasurer, this would require the consent of the elected treasurer. REP. BERGMAN asked if is this along with the commissioners. REP. BOHARSKI responded that is correct, the whole purpose of the bill is to allow the commissioners to do it and requires the commissioners get permission from the elected official.

REP. EWER said he agrees with the intent of the amendment but as it's written there is a problem and it needs to be clarified that if it is the intention that county commissioners cannot take monopoly action over other offices that are governed by elected officials then they should say as much. He suggested changing the wording to "with the consent of the affected office of the elected official" or "affected officials office" or something to that effect. REP. EWER asked if REP. BOHARSKI would concur with his comments. REP. BOHARSKI responded that is exactly what his amendment is intended to do and that is the way Mr. Campbell explained it, where it fits in the bill. This only applies to other elected offices, that they need that consent.

REP. MILLS suggested the wording be "not with their consent, but with their complete concurrence they want to do it." **REP. BOHARSKI** said if they do not have their consent then they cannot do it. **Mr. Campbell** explained that the title is not the problem because there were only seven specific statutes that are being amended and will be the only ones affected by this because these are the only sections that the bill is going into and creating this concept. He suggested to double check with the committee whether every section deals with an elected person. He said he believes it does with the possible exception of the fair board. He said the sections that specifically deal with the elected officials be amended to say that the governing body can not change the hours without resolution.

{Tape: 2; Side: A;}

REP. BOHARSKI said both he and **REP. EWER** have the same intent and they will both review the amendment before it goes to the floor.

REP. EWER said he concurs and will rely on **Mr. Campbell** for further research although this has not gone through the entire review process and everyone understands what the concept is. He will leave it to **Mr. Campbell's** expertise to get it right.

Vote: The motion to adopt the amendments carried unanimously.

Discussion: **REP. BOHLINGER** stated his support of HB 165 as amended.

REP. ANDERSON stated he believes the bill is better with the amendment but he feels the different office holders within a county can say to the county commissioners that they think they can conduct their business between 9:00 - 3:00 p.m. and then have the county superintendent saying he needs an 8:00 - 5:00 p.m. schedule. **REP. ANDERSON** said there is nothing in the bill that relates to their salaries and also, they are still going to be heating the buildings. The public they serve will be expecting to find somebody there between 8:00 - 5:00 p.m.

REP. BERGMAN said the purpose of this bill is to give them that option and it is their option not theirs on how they want to change their hours. If they choose to be open on Saturday that will be their decision for serving the public to readjust their hours.

REP. EWER said his sense about the bill is it targets the smaller, rural communities who want this. The larger counties are staffed enough to be open from 8:00 - 5:00 p.m.

REP. BOHLINGER asked if there isn't a provision in reduction in salary, are they accomplishing something that will be helpful to small population counties. He said he believes the people that manage the affairs of the small population counties are pretty tight-fisted people and run a good shop and he can't imagine

there would not be a commensurate reduction in pay with a reduction in office hours. He feels with the amendment it is a good bill.

REP. BERGMAN asked if they are telling the counties that if the commissioners decide they want to cut hours this bill can do that for them. The answer is yes.

REP. BOHLINGER stated he feels the question will be is this a forty-hour a week job that perhaps can be done in twenty hours. He said they want to have the flexibility not necessarily to accommodate the employee but to accommodate the taxpayer. This bill is a way to streamline government and operate more efficiently.

REP. WYATT said they would have to have both the public hearing and the consent by the elected officer. **Mr. Campbell** responded yes. **REP. WYATT** asked statistically, how many times are they going to have the public agree and the officer refuse to agree, in other words how many times is this bill going to take effect, two times around the state in the next twenty years or two hundred times. **Mr. Campbell** said he could not answer that.

REP. HAGENER pointed out that on the question about cutting hours and cutting pay, most of the elected official salaries are established by law and the county commissioners could not cut them if they wanted to. They don't have the authority to supersede what the legislature has set in the way of salary for the officials. This does apply to isolated areas and as far as the building is concerned they are going to be heating it day and night anyway. She said this bill is providing the possibility of one person, in a one-person office being able to go to lunch or the bathroom or take care of a sick child without having to lock their door and have someone complain about it.

Vote: The motion carried 14-4.

EXECUTIVE ACTION ON HB 166

Motion: **REP. MILLS** MOVED HB 166 DO PASS. **REP. BOHARSKI** MOVED HIS AMENDMENT.

Discussion: **REP. BOHARSKI** said he has an amendment but is not sure it's needed. In the fire service area, are those all required to be authorized by the county commissioners. **REP. EWER** referred to Title 7 Section 7-33-2403, and responded. **REP. BOHARSKI** said elected officials are the ones that are going to be making the decisions. His concern is if the county commissioners create a fire service area and then appoint a board, if then, realistically, are they accountable to the commissioners. He stated his concern that he is worried about them de-sectioning some of the codes without any oversight from any official or the public and that's what he doesn't want to happen. **REP. EWER** said

under current law, they have trustees that are appointed by the commissioners. **EXHIBIT 4**

Mr. Campbell explained the amendment.

REP. EWER suggested the amendment also needs the language stating "provided that", and then go to B.

Mr. Campbell again explained the amendment.

Vote: Motion carried 18-0.

Motion: **REP. BOHLINGER MOVED HB 166 DO PASS AS AMENDED.**

Discussion: **REP. ANDERSON** asked what is the fire code that is being submitted and why would it be different from any other fire area. **Mr. Campbell** responded the fire code is the same as the state fire code. In some jurisdictions a city will offer to enforce the fire code. A county fire service district can opt with the law not to enforce the fire code rather than have the state do it. They submit a plan and get approval from the department.

REP. BOHLINGER said this bill would enhance public safety and expand code enforcement opportunities and help make the community safer.

Vote: Motion carried 18-0.

EXECUTIVE ACTION ON HB 220

Motion: **REP. BOHARSKI MOVED HB 220 DO PASS. REP. BOHARSKI MOVED HIS AMENDMENT.**

Discussion:

REP. BOHARSKI explained the need for his amendment. **Mr. Campbell** detailed further explanation. **EXHIBIT 5**

REP. DENNY asked when the district is set up is it a majority of the owners of the property or the owners of the majority of the property. **Mr. Campbell** explained when there is a desire to set up a lighting district, if they don't receive protests from the owners of the majority of the property then they can set it up.

REP. EWER said in his opinion he is not convinced the amendment is necessary because special improvement districts require resolutions to be set up. They have to say the method of assessment to set them up and the law states if they are going to change, they have to go back.

REP. BOHARSKI responded if that is the case, there is no need for the amendment. **Mr. Campbell** said without the amendment they do

not have it where it would have to be approved by the people or subject to the assessment. The only protest is to the resolution to create the district on the part of the property owners. There is nothing stated for the protest other than creating a district.

REP. EWER stated he would rely on **Mr. Campbell** to determine whether or not the amendment is necessary.

REP. MILLS asked **Mr. Campbell** if after the method of assessment has been established and underway, under law is it possible to change the method of assessment halfway through the payback period. **Mr. Campbell** said he doesn't see anything that forbids that.

Vote: Motion to adopt the amendment carried 18-0.

Vote: Motion to pass HB 220 carried 18-0.

ADJOURNMENT

Adjournment: 7:00 p.m.

Wm E Boharski

REP. WILLIAM BOHARSKI, Chairman

Evvy Burris

EVY BURRIS, Secretary

WB/ev



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 393 (first reading copy -- white) do pass.

Signed: Wm E Boharski
Bill Boharski, Chair

Committee Vote:
Yes 17, No 1.

331416SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that Senate Bill 99 (third reading copy -- blue) be concurred in.

Signed: Wm E Boharski
Bill Boharski, Chair

Carried by: Rep. Arnott

Committee Vote:
Yes 18, No 0.

331417SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 101 (first reading copy -- white) do pass.

Signed: Wm E Boharski
Bill Boharski, Chair

Committee Vote:
Yes 10, No 8.

331405SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that Senate Bill 52 (third reading copy -- blue) be concurred in.

Jack R. Keenan
for
Signed: *Bill Boharski*
Bill Boharski, Chair

Carried by: Rep. Keenan

2/8
mm

Committee Vote:
Yes 10, No 8.

330930SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 154 (first reading copy -- white) do pass.

Signed: Wm E Boharski
Bill Boharski, Chair

Committee Vote:
Yes //, No 7.

331408SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Local Government report that House Bill 165 (first reading copy -- white) do pass as amended.

Wm E Boharski

Signed: _____

Bill Boharski, Chair

And, that such amendments read:

1. Title, line 5.

Following: "OFFICES"

Insert: "BY RESOLUTION AFTER A PUBLIC HEARING AND WITH THE
CONSENT OF ANY AFFECTED ELECTED COUNTY OFFICER"

2. Page 1, line 17.

Following: "body"

Insert: "by resolution after a public hearing and only if
consented to by the presiding officer"

3. Page 1, line 26.

Following: "body"

Insert: "by resolution after a public hearing and only if
consented to by any affected elected county officer"

4. Page 2, line 10.

Following: "body"

Insert: "by resolution after a public hearing and only if
consented to by any affected elected county officer,"

5. Page 3, line 20.

Following: "body"

Insert: "by resolution after a public hearing"

6. Page 4, lines 7 and 25.

Following: "body"

Committee Vote:

Yes 14, No 4.

331409SC.Hbk

Insert: "by resolution after a public hearing"

7. Page 5, line 3.

Following: "body"

Insert: "by resolution after a public hearing and consented to by
the county superintendent,"

-END-



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 166 (first reading copy -- white) do pass as amended.

Signed: Wm E Boharski
Bill Boharski, Chair

And, that such amendments read:

1. Page 1, line 20.

Following: "enforcement."

Insert: "However, an appointed board of trustees of a fire service area shall obtain approval of the county commissioners prior to submitting a fire code and a plan of enforcement to the department of justice."

-END-

Committee Vote:

Yes 18, No 0.

331413SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 220 (first reading copy -- white) do pass as amended.

Signed: Wm E Boharski
Bill Boharski, Chair

And, that such amendments read:

1. Title, line 4.

Following: "THE"

Insert: "PROCEDURE FOR ASSESSMENTS AND THE"

2. Page 2, line 15.

Insert: "(4) The method of assessment adopted in the resolution may not be modified unless approved by the owners of a majority of the property within the district"

3. Page 2, line 29.

Insert: "(3) The method of assessment adopted in the resolution may not be modified unless approved by the owners of a majority of the property within the district"

-END-

Committee Vote:
Yes 18, No 0.

331415SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

Filed

DATE 2-7- BILL NO. 101 NUMBER 1

MOTION: Amendment -
Rep. Wyatt moved Do Pass -

NAME	AYE	NO
Rep. Bill Boharski, Chairman		✓
Rep. Jack Herron, Vice Chairman, Majority		✓
Rep. David Ewer, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Shiell Anderson		✓
Rep. Ellen Bergman	✓	
Rep. John Bohlinger		✓
Rep. Matt Brainard		✓
Rep. Matt Denny		✓
Rep. Rose Forbes		✓
Rep. Toni Hagener	✓	
Rep. Bob Keenan		✓
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee		✓
Rep. Norm Mills		✓
Rep. Debbie Shea	✓	
Rep. Joe Tropila	✓	
Rep. Diana Wyatt	✓	

6

12

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7 BILL NO. 11 NUMBER 2MOTION: Rep. Tropila - Manuel Estable

NAME	AYE	NO
Rep. Bill Boharski, Chairman		✓
Rep. Jack Herron, Vice Chairman, Majority	✓	
Rep. David Ewer, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Shiell Anderson		✓
Rep. Ellen Bergman	✓	
Rep. John Bohlinger		✓
Rep. Matt Brainard		✓
Rep. Matt Denny		✓
Rep. Rose Forbes		✓
Rep. Toni Hagener	✓	
Rep. Bob Keenan		✓
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee		✓
Rep. Norm Mills		✓
Rep. Debbie Shea	✓	
Rep. Joe Tropila	✓	
Rep. Diana Wyatt	✓	

8

10

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

Passed
7/1

DATE _____ BILL NO. 101 Motion NUMBER 3

MOTION: Rep Boharski - R. pass

NAME	AYE	NO
Rep. Bill Boharski, Chairman	✓	
Rep. Jack Herron, Vice Chairman, Majority		✓
Rep. David Ewer, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Shiell Anderson	✓	
Rep. Ellen Bergman		✓
Rep. John Bohlinger	✓	
Rep. Matt Brainard	✓	
Rep. Matt Denny	✓	
Rep. Rose Forbes	✓	
Rep. Toni Hagener		✓
Rep. Bob Keenan	✓	
Rep. Linda McCulloch		✓
Rep. Jeanette McKee	✓	
Rep. Norm Mills	✓	
Rep. Debbie Shea		✓
Rep. Joe Tropila		✓
Rep. Diana Wyatt		✓

10 8

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7 BILL NO 129 NUMBER

MOTION: Rep. Anderson - (To Table)

at m Tropila

NAME	AYE	NO
Rep. Bill Boharski, Chairman		✓
Rep. Jack Herron, Vice Chairman, Majority	✓	
Rep. David Ewer, Vice Chairman, Minority		✓
Rep. Chris Ahner <i>Amor</i>		✓
Rep. Shiell Anderson		✓
Rep. Ellen Bergman	✓	
Rep. John Bohlinger	✓	
Rep. Matt Brainard	✓	
Rep. Matt Denny	✓	
Rep. Rose Forbes	✓	
Rep. Toni Hagener	✓	
Rep. Bob Keenan	✓	
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee	✓	
Rep. Norm Mills	✓	
Rep. Debbie Shea	✓	
Rep. Joe Tropila	✓	
Rep. Diana Wyatt		✓

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5

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE _____ BILL NO. SB. 52 NUMBER _____MOTION: Rep. Ahner - Do P Concurrent -
Question -

NAME	AYE	NO
Rep. Bill Boharski, Chairman	✓	
Rep. Jack Herron, Vice Chairman, Majority		✓
Rep. David Ewer, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Shiell Anderson	✓	
Rep. Ellen Bergman		✓
Rep. John Bohlinger	✓	
Rep. Matt Brainard	✓	
Rep. Matt Denny ,	✓	
Rep. Rose Forbes	✓	
Rep. Toni Hagener		✓
Rep. Bob Keenan	✓	
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee		✓
Rep. Norm Mills	✓	
Rep. Debbie Shea		✓
Rep. Joe Tropila		✓
Rep. Diana Wyatt		✓

10 8

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7-95 BILL NO. 154 NUMBER Table BillMOTION: Rep Bohlinger - Defers -Rep Keenan - Table - no Did not pass

NAME	AYE	NO
Rep. Bill Boharski, Chairman	✓	
Rep. Jack Herron, Vice Chairman, Majority	✓	
Rep. David Ewer, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Shiell Anderson	✓	
Rep. Ellen Bergman	✓	
Rep. John Bohlinger		✓
Rep. Matt Brainard		✓
Rep. Matt Denny		✓
Rep. Rose Forbes		✓
Rep. Toni Hagener		✓
Rep. Bob Keenan	✓	
Rep. Linda McCulloch		✓
Rep. Jeanette McKee		✓
Rep. Norm Mills	✓	
Rep. Debbie Shea		✓
Rep. Joe Tropila		✓
Rep. Diana Wyatt	✓	

Table → 8 10

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7-95 BILL NO. 154 NUMBER _____

MOTION: Rep. Bohlinger No Pass.

NAME	AYE	NO
Rep. Bill Boharski, Chairman		✓
Rep. Jack Herron, Vice Chairman, Majority		✓
Rep. David Ewer, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Shiell Anderson		✓
Rep. Ellen Bergman		✓
Rep. John Bohlinger	✓	
Rep. Matt Brainard	✓	
Rep. Matt Denny	✓	
Rep. Rose Forbes	✓	
Rep. Toni Hagener	✓	
Rep. Bob Keenan		✓
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee	✓	
Rep. Norm Mills	✓	
Rep. Debbie Shea	✓	
Rep. Joe Tropila	✓	
Rep. Diana Wyatt		✓

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE _____ BILL NO. 103 NUMBER _____MOTION: Rep. Heyner - moved to revise bill

NAME	AYE	NO
Rep. Bill Boharski, Chairman		✓
Rep. Jack Herron, Vice Chairman, Majority		✓
Rep. David Ewer, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Shiell Anderson		✓
Rep. Ellen Bergman		✓
Rep. John Bohlinger	✓	
Rep. Matt Brainard		✓
Rep. Matt Denny		✓
Rep. Rose Forbes	✓	
Rep. Toni Hagener	✓	
Rep. Bob Keenan		✓
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee		✓
Rep. Norm Mills		✓
Rep. Debbie Shea	✓	
Rep. Joe Tropila	✓	
Rep. Diana Wyatt		✓

7 11

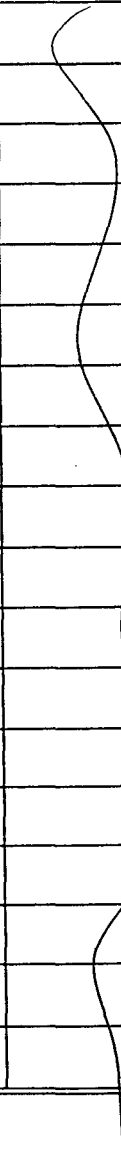
HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7-95 BILL NO. 220 NUMBER _____

MOTION: Rep. Boharski - mail Amendment -
Andrew Dwyer

NAME	AYE	NO
Rep. Bill Boharski, Chairman		
Rep. Jack Herron, Vice Chairman, Majority		
Rep. David Ewer, Vice Chairman, Minority		
Rep. Chris Ahner		
Rep. Shiell Anderson		
Rep. Ellen Bergman		
Rep. John Bohlinger		
Rep. Matt Brainard		
Rep. Matt Denny		
Rep. Rose Forbes		
Rep. Toni Hagener		
Rep. Bob Keenan		
Rep. Linda McCulloch		
Rep. Jeanette McKee		
Rep. Norm Mills		
Rep. Debbie Shea		
Rep. Joe Tropila		
Rep. Diana Wyatt		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7-95 BILL NO. 220 NUMBER _____

MOTION: By Boharski - question -
Rep.


NAME	AYE	NO
Rep. Bill Boharski, Chairman		
Rep. Jack Herron, Vice Chairman, Majority		
Rep. David Ewer, Vice Chairman, Minority		
Rep. Chris Ahner		
Rep. Shiell Anderson		
Rep. Ellen Bergman		
Rep. John Bohlinger		
Rep. Matt Brainard		
Rep. Matt Denny,		
Rep. Rose Forbes		
Rep. Toni Hagener		
Rep. Bob Keenan		
Rep. Linda McCulloch		
Rep. Jeanette McKee		
Rep. Norm Mills		
Rep. Debbie Shea		
Rep. Joe Tropila		
Rep. Diana Wyatt		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7-95 BILL NO. 166 NUMBER BillMOTION: Rep. Bohlinger moved to pass ^{Bill} As Amended.
Question called

NAME	AYE	NO
Rep. Bill Boharski, Chairman		
Rep. Jack Herron, Vice Chairman, Majority		
Rep. David Ewer, Vice Chairman, Minority		
Rep. Chris Ahner		
Rep. Shiell Anderson		
Rep. Ellen Bergman		
Rep. John Bohlinger		
Rep. Matt Brainard		
Rep. Matt Denny,		
Rep. Rose Forbes		
Rep. Toni Hagener		
Rep. Bob Keenan		
Rep. Linda McCulloch		
Rep. Jeanette McKee		
Rep. Norm Mills		
Rep. Debbie Shea		
Rep. Joe Tropila		
Rep. Diana Wyatt		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7-95 BILL NO. 166 NUMBER _____ (DO PASS)
MOTION Rep. Boharski - move (new amendment)
Question - For 19 - Pg 1 -

NAME	AYE	NO
Rep. Bill Boharski, Chairman		
Rep. Jack Herron, Vice Chairman, Majority		
Rep. David Ewer, Vice Chairman, Minority		
Rep. Chris Ahner		
Rep. Shiell Anderson		
Rep. Ellen Bergman		
Rep. John Bohlinger		
Rep. Matt Brainard		
Rep. Matt Denny,		
Rep. Rose Forbes		
Rep. Toni Hagener		
Rep. Bob Keenan		
Rep. Linda McCulloch		
Rep. Jeanette McKee		
Rep. Norm Mills		
Rep. Debbie Shea		
Rep. Joe Tropila		
Rep. Diana Wyatt		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 2-7-95 BILL NO. 165 NUMBER _____

MOTION: Question - Anderson - Do Pass - as amended.

NAME	AYE	NO
Rep. Bill Boharski, Chairman	✓	
Rep. Jack Herron, Vice Chairman, Majority	✓	
Rep. David Ewer, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Shiell Anderson		✓
Rep. Ellen Bergman	✓	
Rep. John Bohlinger	✓	
Rep. Matt Brainard		✓
Rep. Matt Denny	✓	
Rep. Rose Forbes	✓	
Rep. Toni Hagener	✓	
Rep. Bob Keenan	✓	
Rep. Linda McCulloch	✓	
Rep. Jeanette McKee	✓	
Rep. Norm Mills	✓	
Rep. Debbie Shea		✓
Rep. Joe Tropila	✓	
Rep. Diana Wyatt		✓

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4

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Local Government

DATE 5-7-95 BILL NO. 165 NUMBER page 3
MOTION: Rep. Boharski amend Amendment 1.9
Question Called - 0 W

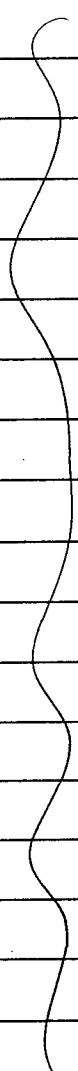
NAME	AYE	NO
Rep. Bill Boharski, Chairman		
Rep. Jack Herron, Vice Chairman, Majority		
Rep. David Ewer, Vice Chairman, Minority		
Rep. Chris Ahner		
Rep. Shiell Anderson		
Rep. Ellen Bergman		
Rep. John Bohlinger		
Rep. Matt Brainard		
Rep. Matt Denny ,		
Rep. Rose Forbes		
Rep. Toni Hagener		
Rep. Bob Keenan		
Rep. Linda McCulloch		
Rep. Jeanette McKee		
Rep. Norm Mills		
Rep. Debbie Shea		
Rep. Joe Tropila		
Rep. Diana Wyatt		

EXHIBIT 1DATE 2-7-95HB 393

LEWIS AND CLARK COUNTY

City County Building
P.O. Box 1724
316 North Park
Helena, Montana 59624
Telephone 406/447-8304

Board of County Commissioners

House Bill 393

For the record, I am Blake Wordal, a Lewis and Clark County Commissioner, and representing Lewis and Clark County here before you today.

This legislation was generated by a Resolution which was passed unanimously at the Montana Association of Counties annual meeting last September.

Sections 7-14-2101 through 7-14-2103, MCA set out the powers and duties of the Boards of County Commissioners. The powers and duties are broad, and include "lay out, maintain, control and manage county roads and bridges within the county". I have attached copies of those sections of the law for your review.

In addition, certain duties and responsibilities are granted to the county surveyor in Sections 7-4-4-2812, MCA. These duties and responsibilities sometimes conflict with one another where there are elected county surveyors. This legislation clarifies that the duties for maintaining, managing, laying out and controlling county roads can be assigned by the Board of County Commissioners to the county surveyor, where county surveyors exist, or to the county road superintendents.

This clarification helps to resolve three distinct problems:

First, most counties do not have elected county surveyors. Only ten counties have elected county surveyors, and of those ten, only five are surveyors which have not been combined with another county elected office. The five remaining counties which have elected county surveyors are: Cascade, Granite, Missoula, Richland and Yellowstone. This legislation will remove the conflicts between the powers and duties of the Board of County Commissioners cited earlier.

Second, five counties have combined the office of county surveyor with another office or the position is appointed. Those counties and positions are: Big Horn (Clerk & Recorder/Surveyor); Fallon (appointed); Gallatin (Clerk & Recorder/Surveyor); Ravalli (Assessor/Surveyor); and Lewis and Clark (Auditor/Surveyor). For these counties, this legislation allows the Board of County Commissioners to assign the duties where appropriate.

Third, most counties (46) do not have elected county surveyors. The requirements to be a county surveyor are more specific than most county offices. According to 7-4-2801, MCA, a county surveyor "shall be a registered professional engineer or registered professional land surveyor who shall have been in active practice of his profession for at least 3 years and who shall have had responsible charge of work as principal or assistant for at least 1 year." Salaries for county

elected officials are simply not competitive enough to find such professionals who are willing to run. This legislation will eliminate any questions or conflicts about how those 46 counties are currently assigning road duties and responsibilities.

The county surveyor is a county officer cited in the Montana Constitution, As I have mentioned, most counties do not have this officer, and even half of those that do have combined it with another elected position. We strongly urge you to pass this legislation to clarify the powers for managing and maintaining county roads.

2) In each case, the authority may establish the terms and conditions and the charges, rentals, or fees that must be reasonable and uniform for the use of the class of privilege or service and that must be established with regard to the property and improvements used and the expenses of operation to the authority.

3) The authority may remit funds available for investment to the state treasurer for investment under the direction of the board of investments as provided in the pooled investment fund.

History: En. Sec. 15, Ch. 333, L. 1993.

7-14-1636. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue bonds for its purposes, including floating bonds, in a form and upon terms as it determines, payable out of the revenue of the authority, including revenue derived from:

- a) a railroad;
- b) taxes levied pursuant to 7-14-1632;
- c) grants or contributions from the federal government; or
- d) other sources.

2) The bonds may be issued by resolution of the authority, without an action and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue is pledged is equal to or exceeds the amount of the revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to use, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in any year at least equal to the amount of principal and interest due in that year.

3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Bonds issued by an authority pursuant to this part shall be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

4) Bonds issued by an authority pursuant to the provisions of this part shall be declared to be issued for an essential public and governmental purpose by a resolution of the authority within the meaning of 15-30-111(2)(a).

5) For the security of the bonds, the authority may by resolution make covenants, conditions, and warranties, or indenture and may exercise any powers authorized to be exercised by a municipality under Title 7, Chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from the revenue referred to in this part, prior to the payment of the costs of operation and maintenance of the facilities.

History: En. Sec. 16, Ch. 333, L. 1993.

7-14-1637. Debt service fund. An authority may create a debt service fund and accumulate in the fund a sum determined by the directors, together with the interest on the sum, for the use, repair, maintenance, and capital expenses of a railroad.

History: En. Sec. 17, Ch. 333, L. 1993.

7-14-1638. Tax exemption. Property in this state acquired by an authority for railroad purposes pursuant to the provisions of this part and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

History: En. Sec. 18, Ch. 333, L. 1993.

7-14-1639. Procedure to enlarge authority. (1) The directors of an authority may by resolution enlarge the boundaries of the authority in accordance with the procedures of notice and hearing in 7-14-1612.

(2) The property within an addition to the authority is subject to the existing indebtedness of the authority.

History: En. Sec. 19, Ch. 333, L. 1993.

Parts 17 through 20 reserved

Part 21

General Provisions Related to County Roads

Part Cross-References

Road improvement districts, Title 7, ch. 14, part 29.

7-14-2101. General powers of county relating to roads and bridges. (1) The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

- (a) (i) lay out, maintain, control, and manage county roads and bridges within the county;
- (ii) levy taxes therefor as provided by law;
- (b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of the counties concerned;
- (ii) levy taxes therefor as provided by law;
- (c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;
- (ii) place such a project in the budget and levy taxes therefor as provided by law.
- (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 this chapter.
- (b) Unless the context requires otherwise, bridge includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

History: (1) En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; and Sec. 12-101, Ch. 197, L. 1965; Sec. 16-1004, R.C.M. 1947; (2) En. Sec. 2-101, Ch. 197, L. 1965;

7-14-2107. Acquisition of right-of-way. (1) Each board of county commissioners shall contract, agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund.

Bart Campbell



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 • FAX: (406) 523-6690

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COUNCIL
95-009

EXHIBIT 2

DATE 2-7-95

HB 101

January 9, 1995

Gregory J. Petesch
Director Legislative Council
P. O. Box 201706
Helena, MT 59620-1706

Re: Non-Freeholders May Serve on City-County Planning Board

Dear Greg:

Last week I had occasion to need to refer to § 76-1-202 MCA pertaining to citizen qualifications for city-county planning board membership and it reminded me that there are constitutional legal problems with the statutory "resident freeholder" qualification requirements for planning board membership. The Fourth Judicial District for Missoula County has declared the "resident freeholder" requirement for qualifications to serve as a citizen member of the City-County planning board to be "unconstitutional and void."

During 1985, Gary S. Marbut went to Missoula County Attorney Robert "Dusty" Deschamps and complained that three City appointees to the City-County Planning Board were serving illegally because they were not resident freeholders as required by § 76-1-202 MCA. County Attorney Deschamps agreed with Gary S. Marbut and ruled that the three City appointees Michael Copeland, Dale Harris and Richard Chapman could not serve on the City-County Planning Board because they were not "resident freeholders" since they did not own the property where they resided.

I disagreed with County Attorney Deschamps and informed him that the "resident freeholder" provision was unconstitutional and that he and Gary S. Marbut were wrong. Further, I argued that he could not suspend City appointees from the City-County Planning Board and informed County Attorney Deschamps that he would have to sue the City to attempt to remove the Planning Board members.

Pursuant to Cause No. 61545, in Robert L. Deschamps III, et al. vs. Michael Copeland, Dale Harris and Richard Chapman, County Attorney Deschamps, Gary Marbut and other citizens sued the three City appointees to the City-County Planning Board who were not "resident freeholders."

Since Michael Copeland, Dale Harris and Richard Chapman were City appointees to the City-County Planning Board, I served as legal counsel for and represented the three City-County Planning Board members who had been sued by County Attorney Deschamps, Gary Marbut and others.

I argued to the District Court that the resident freeholder requirement for City-County Planning Board membership was unconstitutional for constitutional equal protection reasons. Freeholder requirements as statutory qualifications for holding municipal public office or other public office are unconstitutional. District Court Judge Douglas G. Harkin agreed with my legal arguments and declared the statutory "resident freeholder" provisions for City-County Planning Board membership "unconstitutional and void."

Judge Harkin stated at pages 11 and 12 of his Memorandum and Judgment:

Gregory J. Petesch
January 9, 1995
Page 2

XIII. CONCLUSION

There is no rational basis to exclude persons that do not own property from membership on the Missoula Planning Board. The requirement that citizen members be "freeholders" is wholly irrelevant to the purpose and duties of the Missoula Planning Board. Limiting membership on the Missoula Planning Board to "freeholders" is a violation of the equal protection clause of the United States and Montana Constitutions.

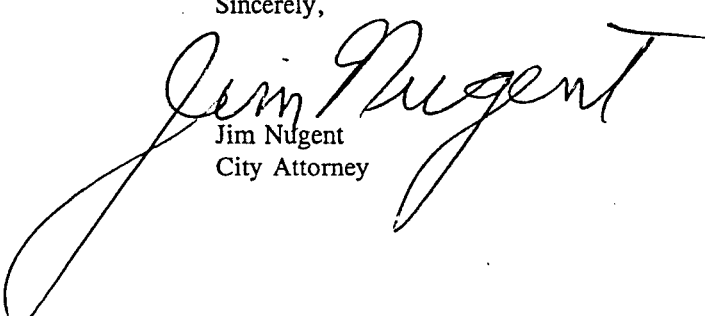
XIV. JUDGMENT

It is the judgment of the Court that the "freeholder" requirements of §§ 76-1-202, 76-1-212, and 76-1-221, MCA, are unconstitutional and void.

The Plaintiffs did not appeal Judge Harkin's judgment so it is now a binding judgment in the Fourth Judicial District even though the Montana statutes have not been amended by the state legislature. I am confident the Montana Supreme Court would agree with Judge Harkin's conclusion and judgment.

I am enclosing a copy of Judge Harkin's complete "Memorandum and Judgment" for your information. I recognize that it might be too late to address this matter at the 1995 Montana State Legislature. However, if at all possible I would urge that §§ 76-1-202, 76-1-212 and 76-1-221 MCA be amended to eliminate the unconstitutional statutory "resident freeholder" qualification for membership on a City-County planning board. Thanks!

Sincerely,


Jim Nugent
City Attorney

JN:kmr
Enclosure

cc: Alec Hansen (w/out enc.)
Legislation file (w/out enc.)
Subdivision file (w/out enc.)
Case file (w/out enc.)

EXHIBIT 2
DATE 2-7-95
HB 101

Amendments to House Bill No. 101
First Reading Copy

Requested by Rep. Wyatt
For the Committee on Local Government

Prepared by Bart Campbell
January 18, 1995

1. Page 1, lines 22 and 23.

Strike: "or" on line 22 through "ordinance" on line 23

Amendments to House Bill No. 165
First Reading Copy

Requested by Rep. Boharski
For the Committee on Local Government

Prepared by Bart Campbell
February 7, 1995

1. Title, line 5.

Following: "OFFICES"

Insert: "BY RESOLUTION AFTER A PUBLIC HEARING AND WITH THE
CONSENT OF THE AFFECTED COUNTY OFFICER"

2. Page 1, lines 17 and 26, page 2, line 10.

Following: "body"

Insert: "by resolution after a public hearing and consented to by
the officer"

3. Page 3, line 20.

Following: "body"

Insert: "by resolution after a public hearing and consented to by
the election administrator"

4. Page 4, lines 7 and 25.

Following: "body"

Insert: "by resolution after a public hearing and consented to by
the board"

5. Page 5, line 3.

Following: "body"

Insert: "by resolution after a public hearing and consented to by
the county superintendent"

EXHIBIT 4
DATE 2-7-95
HB 166

Amendments to House Bill No. 166
First Reading Copy

Requested by Rep. Boharski
For the Committee on Local Government

Prepared by Bart Campbell
February 7, 1995

1. Page 1, line 19.

Following: "may"

Insert: ", after receiving approval from the board of county
commissioners,"

Amendments to House Bill No. 220
First Reading Copy

Requested by Rep. Boharski
For the Committee on Local Government

Prepared by Bart Campbell
February 7, 1995

1. Title, line 4.

Following: "THE"

Insert: "PROCEDURE FOR ASSESSMENTS AND"

2. Page 2, line 14.

Following: "clerk."

Insert: "(4) The method of assessment adopted in the resolution
may not be modified unless approved by the owners of a
majority of the property within the district"

3. Page 2, line 28.

Following: "improvements."

Insert: "(3) The method of assessment adopted in the resolution
may not be modified unless approved by the owners of a
majority of the property within the district"

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

LOCAL GOVERNMENT

COMMITTEE

DATE 2-7-95

BILL NO. HB 249 SPONSOR(S) HB 393

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To		HA 375	
Jim Wysocki	City of Bozeman	249	
Tim Reardon	Dept. Transportation	VAS AND	
Blake Wordal	Lewis & Clark County	HB 393	
Grady Morris	MACO	393	
John Shad	Mt Assoc Realtors	393	
SAM GIANKAUSLO	MARBS GALLATIN CO	393	
Bill Kennedy	Yellowstone Co	393	
Charles R. Brooks	Yellowstone Co	393	
VERNON R. ZICKERFOSSE	11	393	
Jim Wysocki	City of Bozeman	393	
GARY FORRESTER	SD #8	393	

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HR:1993

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Local Government

COMMITTEE

DATE 2-7-95

BILL NO. HB 593-
SB 99

SPONSOR(S)

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bruce Williams	City Kalispell	393	
MARK WATSON	City Billings	393	
Gordon Monni	MACo	SB 99	

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CS-14