

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN TOM BECK, on February 14, 1995, at
12:30 p.m.

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck, Chairman (R)
Sen. Ethel M. Harding, Vice Chairman (R)
Sen. Sharon Estrada (R)
Sen. Delwyn Gage (R)
Sen. Don Hargrove (R)
Sen. Dorothy Eck (D)
Sen. John "J.D." Lynch (D)
Sen. Jeff Weldon (D)

Members Excused: none

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Elaine Johnston, Committee Secretary

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

Committee Business Summary:

Hearing: SB 277, SB 282, SB 309, SB 296
Executive Action: SB 41, SB 227, SB 254, SB 230, SB 258,
SB 262, SB 277

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

EXECUTIVE ACTION ON SB 41

Discussion:

SEN. JEFF WELDON gave the committee a brief refresher on what the bill did. He stated the East Missoula sewer district wanted to assess the cost of the feasibility study by hookup rather than value of property. He also pointed out there was concern that bond obligations did not belong in the SB 41. He also talked about the proposed amendment.

Motion: SEN. WELDON MOVED TO ADOPT THE PROPOSED AMENDMENTS.

Discussion:

CHAIRMAN TOM BECK asked if it was going to be a fixed cost for the hookup of a sewer system on a sewer district?

SEN. WELDON said that was correct and would be assessed specifically for a feasibility study in the case of East Missoula. He also pointed out that if a house was on two lots but only had one hookup, it would only be charged for one hookup.

CHAIRMAN BECK asked if the assessments to each individual would decrease as more hookups go on the system?

SEN. WELDON said in the future the district could use a different assessment method. He also proposed a minor change to his amendment.

CHAIRMAN BECK explained that the amendment would move the bill from one part of the codes to another.

SEN. DELWYN GAGE pointed out a clerical error that needed to be fixed.

SEN. DON HARGROVE asked what was mandatory and what was not? He asked it if a feasibility study was needed on any connection?

SEN. WELDON said the feasibility study in the East Missoula case would be for a new system and that study was not mandatory.

SEN. HARGROVE asked if the recommendation of the feasibility study had to be accepted?

SEN. WELDON said it did not.

Anna Miller, Department of Natural Resources, stated that many systems in Montana were in need of repair or a new system but with no money available, they could not go in and study the problems and talk to engineers. SB 41 would allow the districts to make an assessment based on a hookup charge to be able to study the problem which would probably be a one time charge.

SEN. GAGE asked if 7-12-2151 included sewer hookup as a method and that was why 7-13-2303 was not needed?

SEN. WELDON said 7-12-2151 included several different methods and one was a hookup.

SEN. GAGE asked what was enumerated in 7-13-2302 as to what money could be raised for?

SEN. WELDON read 2302.

SEN. GAGE felt they were expanding the purpose of bill considerably unless the new section covered raising money for engineering costs or services.

SEN. WELDON said his purpose was to provide additional method of assessment and he hoped they were accomplishing that only through a different section as was originally attempted.

CHAIRMAN BECK asked SEN. GAGE to explain where he was coming from?

SEN. GAGE said that unless 7-13-2302 included money required for engineering and feasibility studies, the new section was including what 7-13-2302 included in the original bill.

SEN. WELDON said his understanding was the reason they opened 2303 was because it was a method of assessment for 2302. He continued that 2302 included any amount of money required for the district for any other purpose set forth in the section and that would go back to 2301, establishment of charges.

CHAIRMAN BECK asked Susan Fox, Legislative Council, if she concurred with SEN. WELDON'S statement.

Ms. Fox stated that she did agree according to the information she had received from Mae Nan Ellingson.

SEN. WELDON stated that Ms. Miller was available to answer any concerns.

SEN. GAGE said that he did not have a problem as long as the sections allowed for the money to be raised.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WELDON MOVED SB 41 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 227

Motion: SEN. WELDON MOVED TO ADOPT THE AMENDMENTS.

Discussion:

SEN. WELDON explained the amendments.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WELDON MOVED SB 227 DO PASS AS AMENDED. THE MOTION CARRIED WITH SEN. ESTRADA AND SEN. ECK VOTING "NO".

EXECUTIVE ACTION ON SB 254

Discussion:

Ms. Fox explained the amendments to the committee.

Motion/Vote: SEN. LYNCH MOVED TO ADOPT THE AMENDMENTS. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. LYNCH MOVED SB 254 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 230

Motion: SEN. LYNCH MOVED SB 230 BE TABLED.

Discussion:

SEN. LYNCH stated that SB 230 was an absolute slap in the face to the last election. To call the major cities in Montana resorts he felt was foolish. He pointed out that people go to Billings and Missoula for medical reasons also. He felt it was a misuse of the use of a resort tax as a sales tax.

SEN. HARGROVE stated that SB 230 was a local option tax which had also been rejected by the people.

SEN. ECK said she would consider favoring the bill but agreed that incorporated municipalities should come under the designation of the Department of Commerce. She thought there could legitimately be resort areas.

Vote: THE MOTION CARRIED WITH SEN. WELDON AND SEN. ECK VOTING "NO".

EXECUTIVE ACTION ON SB 258

Motion: SEN. ECK VOTED SB 258 DO PASS

Discussion:

SEN. WELDON asked if anything in SB 258 was done already in the committee with a bill heard earlier in the session?

Ms. Fox confirmed SEN. WELDON'S remark.

CHAIRMAN BECK questioned that if a county got a piece of tax deed property, they had to satisfy it for the amount of taxes owed against the property. He was concerned that a piece of property that had lost its value that they could get the full amount of taxes?

Gordon Morris, Montana Association of Counties, pointed out that the language was current law and under the law the situation he suggested, they would be looking at the same terms for the land as any other. He felt that commissioners would probably be able to forgo the statutes and take appropriate action.

CHAIRMAN BECK said that they wanted 70% of the taxes owed.

Mr. Morris said once again that was existing language.

Vote: THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 262

Motion: SEN. LYNCH MOVED SB 262 BE TABLED

Discussion:

SEN. LYNCH felt that the bill went completely backwards as far as trying to get some order in developments. He pointed out there was little support for the bill and should sit on the table.

Vote: THE MOTION PASSED UNANIMOUSLY.

HEARING ON SB 277

Opening Statement by Sponsor:

SEN. LINDA NELSON, SD 49, Medicine Lake, presented an amendment which brought the bill into what they wanted as when it was drafted it did not come out the way they wanted. SB 277 would allow a farm mutual insurance company to insure property in towns and small cities of under 15,000 people. SB 277 further clarified that an insurer was grandfathered in a town when the population grows beyond 15,000 people.

Proponents' Testimony:

Harold Neilsen, President of the Farmers Mutual Fire Insurance Co., Plentywood, presented his written testimony (EXHIBIT 1).

Mary Stoican, Farm Mutual, Lewistown, stated mutual companies were formed for rural areas because large companies would not take the risk. She pointed out that larger companies were either pulling out of Montana or raising their premiums to unreal amounts. The problem arose that rural Montana had been shrinking and the mutuals were losing ground and they needed to expand into larger towns and cities. She urged the committee's support of SB 277.

Herb Pasha, Cascade Farmers Mutual Insurance Co., Great Falls, supported SB 277 and urged its passage.

Sid Kamps, Mutual Rural Insurance of Gallatin County, told a story and supported SB 277.

Gary Knutson, Tri-County Mutual Insurance, Malta, supported SB 277. He said their mutual was trying to be progressive and SB 277 would be of help.

Roger McGlenn, Director, Independent Insurance Agents Assoc., supported SB 277. He pointed out that farm mutual carriers have increased and serve a valuable purpose. Under farm mutual insurance, people were not subject to the premium tax or subject to license producers. He felt that if the mutual carriers were going to continue to expand their authority and ability to write insurance, they should become insurance companies under the insurance code.

Mark O'Keefe, State Auditor, supported SB 277 and stated it was a very good bill not only for farm mutuals but also rural residents. His office researched how SB 277 would work in Montana and in other states. They talked to North Dakota who had a similar bill in their codes and it worked very well for them to keep costs down in rural communities. He supported the amendments proposed and stated SB 277 was a progressive idea.

Opponents' Testimony: none

Questions From Committee Members and Responses:

SEN. LYNCH asked why only 15,000 and not 50,000 people? **Mr. Nielsen,** said one of the reasons was they still considered themselves rural insurance companies. If they went higher, they would have lost their identity.

SEN. LYNCH said that in other states 50,000 would be considered rural and he wanted to know why 15,000 was picked? He felt this was too low. **Mr. Nielsen** said that 15,000 took in just about the majority of the cities they were serving.

SEN. LYNCH asked if the mutual carriers were covered by the ridiculous continuing education laws? **Mr. McGlenn** said the persons licensed under Montana Insurance Law did fall under those requirements.

SEN. GAGE asked how much of their ability to keep premiums down was tied to the tax difference and how much was due to other factors? **Mr. O'Keefe** said the premium tax they did not pay amounted to 2.75% of premium. One of the reasons they rank at a lower premium rate was they were not insurance companies and their risks were spread out.

SEN. GAGE asked if there were mutuals writing in urban areas? **Mr. O'Keefe** said his understanding was they were allowed to write within the small rural areas if the policy owners majority of insurance was on rural area improvements. If a person sold their farm and moved to Bozeman, they would not be able to get mutual insurance but under SB 277 they would be able to continue their insurance.

SEN. GAGE asked if there were other types of mutuals writing in urban areas that did not have a premium tax? **Mr. O'Keefe** said he did not think so.

SEN. ECK recalled discussion that rural mutual insurance companies should be getting into the health care field and she asked if that discussion had gone anywhere? **Mr. O'Keefe** recalled some conversations being more along the lines of rural electrical co-op folks and setting up rural co-ops for medical care and coverage. He did not know if the farm mutuals had done anything in terms of health coverage.

CHAIRMAN BECK asked **Mr. McGlenn** to expand on his statement of issues that the mutuals should be taxed equally to other insurance companies and how much of an advantage did the rate difference give the mutuals? **Mr. McGlenn** said he was not encouraging the committee to amend the bill to tax the mutuals. In regards to the premium tax, on fire insurance it was 5.25% premium tax. He stated what he meant to imply was if the scope of authority continued on farm mutuals, they should comply with the regulations of Montana.

CHAIRMAN BECK asked if the bill was to get amended to 50,000 people if **Mr. McGlenn** would then have a problem? **Mr. McGlenn** said that a member of the mutual would have to have rural property and it would not change his feelings on the bill if it were to be changed.

Closing by Sponsor:

SEN. NELSON stated that SB 277 would help small companies survive as more and more of rural Montana becomes urban. She said that competition was good. She also pointed out that farm mutuals were able to contract with other insurance companies to have group health insurance. She urged favorable support of Sb 277.

HEARING ON SB 282

Opening Statement by Sponsor:

SEN. JIM BURNETT, SD 12, Luther, presented SB 282 which arose from the landowners of Stillwater County. He pointed out they have had a problem in that when the Highway Department made surveys through their land, they received general descriptions. They requested that whatever description the Highway Department had must be of a legal determination whey they acquire land right

of ways or make a change. The cost of the proposal would be close to two million dollars. The reason was that up the Rosebud valley, the highway split off pieces of property and they need an accurate survey in determining how much land the highway took. He said the intent was that the survey the Highway Department uses should be determined as accurately as can be used in land transfer.

Proponents' Testimony: none

Opponents' Testimony:

Gary Gilmore, Operations Engineer, Department of Transportation, presented his written testimony (EXHIBIT 2).

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Jim Kembel, City of Billings, testified their Public Works Department reviewed SB 282 and felt it impacted the cities also. It would require a survey on every right of way being dealt with. He said the right of way acquisition cost would increase significantly on all projects. With the recordable titles and documents already required, they did not feel the process would give any further protection for the owners.

Questions From Committee Members and Responses:

SEN. GAGE asked how a person describes his property when he would get ready to sell, would they use a prior description subject to right of ways the Highway Department would have? Mr. Gilmore said the deed would be amended to take the Highway Departments portion of the land out.

SEN. GAGE asked if what was filed would show a specific amount of property subject to right of ways? Mr. Gilmore said that was correct.

SEN. HARDING commented that she understood the Department's dilemma but she also understood that what they maintained to be difficult, the general public dealt with all the time when they try to make property exchanges.

Closing by Sponsor:

SEN. BURNETT said SEN. HARDING hit the point of what the people he was representing feel to be the problem. When the Highway Department takes out a piece of land, what they do not realize is what they do to the land owners. Many times a piece of land may not fit into a persons operation and to sell the land to the neighbor, the person must go out and get an accurate survey. If the Department in their surveys would determine how much land was left on each side of the highway, it would take care of the problem.

EXECUTIVE ACTION ON SB 277

Motion/Vote: SEN. LYNCH MOVED TO ADOPT THE AMENDMENTS. THE MOTION CARRIED UNANIMOUSLY.

Motion: SEN. LYNCH MOVED SB 277 DO PASS AS AMENDED.

Discussion:

SEN. GAGE asked if the committee would be interested in a passage and approval date.

CHAIRMAN BECK said since it was not on there they could put it on in the House.

Motion: THE MOTION CARRIED UNANIMOUSLY.

HEARING ON SB 309

Opening Statement by Sponsor:

SEN. GARY FORRESTER, SD 8, Billings, presented SB 309 which ruled out concerns of people in his district. In the last two years, they discontinued about 125 miles of road maintenance. SB 309 was an attempt to clarify county roads so county commissioners could spend tax dollars maintaining roads. It allowed for the creation of an RID and individuals in an affected area to petition the commissioners to assess a fee on the property owners. The fee would be used exclusively for repair or maintenance of the roads. SB 309 clarifies language and places all the road language in one area of the codes. He said he had some amendments to the bill that created an agreement with various groups that would make the bill work. He said the amendment eliminated a lot of the roads the bill would cover.

Proponents' Testimony:

Paul Stahl, Deputy Lewis & Clark County Attorney, stated he was also speaking for the Missoula County Commissioners and the Missoula County Surveyor who also support SB 309. He pointed out Colleen Dowdell helped draft SB 309 who was the recognized road expert in Montana. Mr. Stahl went through the bill section by section and told the committee what the section dealt with. He noted that SB 309 did not deal with public access in any way but gave county commissioners more authority to handle problems at a local level.

Dennis Packsines, Yellowstone County Attorney, stated that the counties in the state expanding, there area many questions as to authority over new roads. He said that in his research, county commissioners had very little authority over county roads. SB

309 would help county commissioners the authority to recognize roads, and have authority over the roads. He urged the passage of SB 309.

Bill Kennedy, Yellowstone County Commissioner, stated larger counties were experiencing growth and many subdivisions. He said there was a great deal of confusion over many roads. He noted that SB 309 was their first step to clarify roads and give county commissioners the opportunity to work on the roads. He urged the passage of SB 309.

Gordon Morris, Montana Association of Counties (MACO), presented a MACO resolution (**EXHIBIT 3**). He felt that the bill with the amendments was much better than the original draft. He passed out a letter which represented an example of the comments he had been receiving from county commissioners across the state (**EXHIBIT 4**). He pointed out that Sb 309 was a combination of work over eight months. **Mr. Morris** commented that commissioners were alarmed at the language of the introduced version of the bill in that commissioners would be taking in every road that in anyone's eyes could be public. The amendment took care of that concern of the commissioners. He said they had not changed any status of any roads but they did have a cleaner process of how those roads would be added in way of public additions to the county road system. He was not sure if the counties across the state would support SB 309 as amended but he did send a fax alert out to the counties (**EXHIBIT 5**). He said he was comfortable with the bill and hoped he could lobby his members.

Vernon Peterson, Fergus County Commissioner, stated that before the amendments were worked out he felt SB 309 should be dead. He said without the intent being established, there may be a mistake down the road. He stated there were four questions if answered that would establish their intent. Those questions were; 1) Does SB 309 in any way change the status of present legally established county roads? 2) Does SB 309 require any further action on the part of the commissioners on those already legally established county roads? 3) Does SB 309 with its resolution process apply to a proposed new road or just to the present public roads? 4) On page 3 line 9, does the new language saying "when safety requires discontinuance or abandonment" do the commissioners need to advertise and hold a public hearing for this case?

Blake Wordal, Lewis and Clark County Commissioner, stated he supported SB 309.

Loria Paladichuk, representing Richland Development of Richland County, stressed the need of an amendment on section six. She felt that any road change accepted by the commissioners needed to be by resolution.

Lorna Frank, Montana Farm Bureau, stated they met with **SEN. FORRESTER** to work on the amendments to SB 309. They felt the definition of county road was too broad but the amendment satisfied their concerns. She stated they urged the passage of SB 309 with the amendments.

Bill Raphold, Chairman, Pondera County Board of Commissioner, stated that the amendments made the bill much easier to live with and he did want an answer to the four questions asked previously. He urged the committee's support and submitted some letters from Blaine and Teton Counties (**EXHIBIT 6 & 7**).

Ken Engellant, Choteau County Commissioner, stated he supported the bill with the proposed amendments.

Maureen Cleary-Schwinden, representing Women Involved in Farm Economics, stated they supported SB 309.

John Bloomquist, Montana Stockgrowers Association, stated they had problems with the introduced bill and appreciated the efforts to clarify all the designations. He noted he did have a problem with the definition of public road on page 5 line 30 that stated "adapted and fitted for a public vehicle to travel". He stated that definition came from another part of the statute but he wanted some clarification.

Opponents' Testimony:

Lloyd Jackson, Madison County Commissioner, stated they were concerned with SB 309 even with the amendments. They were concerned with the definition of public roads, that a takings could be possible, and abandonment went too far.

Larry Brown, Agriculture Preservation Association (APA), thanked the input of the many people who worked on the bill and stated they had a good idea but there were still some problems. He felt the bill did not go far enough and there was too much reference to eminent domain. There was also concern of the possible taking of private property. SB 309 would give county commissioners more jurisdiction without land owners permission. He also mentioned that the laws that have been ignored needed to be looked at. He also questioned on page 1 line 25, if the land owner would have to pay for the public to benefit and use the road. In the bills current form they were opposed.

Dave Wood, Lewis & Clark County resident, stated SB 309 was an assault on property owners and a new approach to a new tax authority. He stated it would allow for a taking of property without due process. He felt that SB 309 was taking power away from the people. He opposed SB 309 as it was not in the best interest of the public and presented the committee with handout of problems he had been subjected to in Lewis & Clark County (**EXHIBIT 8**).

Ray Myers, Gallatin County, member APA, stated that SB 309 would take away easements roads and was just another step to take away property rights. He stated SB 309 was a bad bill.

Questions From Committee Members and Responses:

SEN. GAGE asked if the amendment language was not included would there be a possibility that there would be roads in no mans land that would have no responsibility or jurisdiction? **Mr. Morris** said that was exactly the reason for the language dealing with the definition of county roads.

SEN. GAGE asked what happened to roads when the county does not want them but the public does? **Mr. Morris** said that was the issue in that there were roads out there that the county does not assume to have responsibility for regardless of how they came into existence. Lawsuits have shown that the liability of a road lies with the county.

SEN. WELDON asked what caused **Mr. Brown's** concern of expanded power to take property in SB 309? **Mr. Brown** said his concern came from not what was in the bill but what was not in the bill.

{Tape: 2; Side: A; Approx. Counter: ; Comments: .}

He referenced page 3 line 6, item number 2 which implied that there would be some type of work done with the right of way easement or the adjacent property. He also pointed out there was reference to eminent domain in the bill. He mentioned page 5, line 16 and 17, regarding a private road it added on "and not used by other persons".

SEN. WELDON stated that he read page 5 line 16 and 17 as other persons, not the land owner or those who had expressed or implied permission from the owner. He felt that area was clearly defined.

SEN. HARDING asked if in the title they eliminate voter improvement districts and create a rural improvement district, what would happen to the voter improvement districts in statute and the amount of money levied? **Mr. Stahl** replied that the RID funds would be in a separate category. He pointed out that many times when RID's were formed was because there was no type of county maintenance.

CHAIRMAN BECK stated he wanted to have the four questions in testimony answered along with some other questions he had.

Closing by Sponsor:

SEN. FORRESTER thanked the people who worked on the amendments and stated he felt it was a bill they could live with. He said the concerns of eminent domain were current statute. He emphasized that SB 309 was not an access bill but allowed county

commissioners only to create a rural improvement district if people ask for one. He felt that if they talked the bill through it could work for every county in the state. He offered to work on the bill further to help out the counties.

HEARING ON SB 296

Opening Statement by Sponsor:

SEN. ETHEL HARDING, SD 37, Polson, presented SB 296 which dealt with farmers markets. She presented some letters to the committee from proponents who were unable to attend due to bad roads (**EXHIBIT 9**). She said that breads, jams, and pickles were eliminated by a law in 1993. Many of these people were senior citizens and selling their goods at farmers markets helped to supplement their fixed incomes. She said she did receive an objection to potentially hazardous foods which was currently in the statutes from her county sanitarian. **SEN. HARDING** mentioned that she would work with the Legislative Council on removing that language and amending the bill to satisfy the farmers markets and the sanitation departments. She pointed out the changes in SB 296. She said that the people who wanted SB 296 wanted to be able to furnish baked, canned, and preserved foods to sell at farmers markets. **SEN. HARDING** hoped they could work so that farmers market people would not have to have things prepared in commercial kitchens that costs them a lot of money. She noted that the Gallatin Sanitation Department wanted the farmers market to be in charge and be opted out from the regulation.

Proponents' Testimony:

Maureen Cleary-Schwinden, representing the Wolf Point Annual Farmers Market, stated she was the developer and market manager of that farmers market. She pointed out that 90% of her sellers were senior citizens and these markets are important functions for them to supplement their incomes along with being a good community event. In regards to the potentially hazardous food argument, she noted it was her responsibility as the market manager that those potentially hazardous foods were checked. She said she did not have a problem with the language but it was a red flag to the market managers to be sure foods would not sold off the ground and eggs were kept cool. She did point out the technical notes showed an inconsistency between the references concerning whether the food must be prepared at the location and consumed at the location. Even though there may be a reduction in revenues from the Department of Health but more importantly, SB 296 would allow a greater increase in income to the rural citizens of Montana. She said that SB 296 was a good idea and the right thing to do.

Opponents' Testimony:

Mary Lou Gilman, Coordinator, Food Protection Program, Missoula City County Health Department, presented her written testimony against SB 296 (EXHIBIT 10). She also presented a seven sets of written testimony from various counties (EXHIBIT 11 THROUGH 17).

Bob Stevenson, City County Health Department, Great Falls, was not sure he was a proponent or opponent. He did provide a redrafted version of the bill to the committee (EXHIBIT 18). He noted that they have a short term food functions policy in Great Falls and presented that to the committee (EXHIBIT 19). He stated that since they started the permits, they have issued around 2,000 to 3,000 with no ill effects. He felt that his version of SB 296 would do five things; 1) provide a no cost permit for individuals as well as clubs and groups issued by local health departments, 2) provide a mechanism for fruit preserve permits as long as they meet certain requirements, 3) provide an instrument for selling potentially hazardous foods to the public in a way that would minimize risk, 4) it would allow homemade baked items to be sold, and 5) the bill would include individuals as well as non profit organizations while extending past farmers markets because it would include a wide variety of food related activities.

Dale Taleafero, Administrator, Health Services Division, Department of Health, stated he thought he was an opponent but his testimony was similar to that in the introduction. He said the Department does not want to regulate things that do not need regulated. He said they examined the recommendations from Flathead County and agreed with them. They did however have some concern with the definition of preserves that would allow all sorts of canned goods. He said he and Dr. Todd Damrour would be available for questions.

Questions From Committee Members and Responses: none

CHAIRMAN BECK said that there would be questions during the executive session on Thursday and he asked that those present attend so that the committee would be able to ask questions.

Closing by Sponsor:

SEN. HARDING stated she would like to work with the Department and the Sanitation Offices to make a bill suitable for all concerned.

ADJOURNMENT

Adjournment: 2:55 p.m.



SEN. TOM BECK, Chairman



ELAINE JOHNSTON, Secretary

TB/ej

MONTANA SENATE
1995 LEGISLATURE
LOCAL GOVERNMENT COMMITTEE

ROLL CALL

DATE

2-14-95

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SENATE STANDING COMMITTEE REPORT

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February 15, 1995

MR. PRESIDENT:

We, your committee on Local Government having had under consideration SB 227 (first reading copy -- white), respectfully report that SB 227 be amended as follows and as so amended do pass.

Signed: 
Senator Tom Beck, Chair

That such amendments read:

1. Title, line 8.

Strike: first "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
APPLICABILITY DATE"

2. Page 2, lines 22 and 23.

Following: "the" on line 22

Insert: "jurisdiction of the"

Following: "supersedes" on line 23

Insert: "and replaces the jurisdiction of"

Following: "municipal code"

Insert: "in all areas outside the municipality's corporate
limits"


3. Page 3, line 17.

Following: line 16

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

NEW SECTION. Section 4. Applicability. [This act] applies
to applications submitted or permits granted as provided in 50-
60-106 on or after [the effective date of this act]."

-END-


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Amd. Coord.

Sec. of Senate

391319SC.SRF

SENATE STANDING COMMITTEE REPORT

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February 15, 1995

MR. PRESIDENT:

We, your committee on Local Government having had under consideration SB 254 (first reading copy -- white), respectfully report that SB 254 be amended as follows and as so amended do pass.

Signed: 
Senator Tom Beck, Chair

That such amendments read:

1. Title, line 4.

Following: "BODY"

Insert: "OR THE DISTRICT COURT"


2. Page 1, line 13.

Page 1, line 15

Following: "body"

Insert: "or the district court, as provided in 7-5-2502,"

-END-


Sr

Amd. Coord.

Sec. of Senate

391335SC.SRF

SENATE STANDING COMMITTEE REPORT

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MR. PRESIDENT:

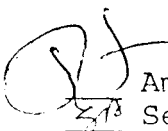
We, your committee on Local Government having had under consideration SB 277 (first reading copy -- white), respectfully report that SB 277 be amended as follows and as so amended do pass.

Signed: 
Senator Tom Beck, Chair

That such amendments read:

1. Page 1, line 22.
Following: "population of"
Strike: "less"
Insert: "more"

-END-


Amd. Coord.
Sec. of Senate

391358SC.SRF

SENATE STANDING COMMITTEE REPORT

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MR. PRESIDENT:

We, your committee on Local Government having had under consideration SB,258 (first reading copy -- white), respectfully report that SB 258 do pass.

Signed: _____


Senator Tom Beck, Chair



Amd. Coord.
Sec. of Senate

391339SC.SRf

EXHIBIT NO. 1DATE 2-14-95BILL NO. SB 277

MEMBERS OF THE LEGISLATIVE COMMITTEE:

I am Harold Nielsen from Dagmar, Montana. I am currently president of the Farmers Mutual Fire Insurance Co. in Plentywood, MT. I am also representing the MONTANA ASSOCIATION OF MUTUAL INSURANCE COMPANIES, sponsors of Senate Bill # 277.

Our State Association consists of 10 member companies covering the entire state. They have been providing the rural areas with property insurance, in some cases, for the last 85 years. The purpose of this bill, is to allow the Farm Mutuals to insure property within an incorporated town or city with a population of less than fifteen thousand and to allow coverage to continue even if the population of the incorporated city or town meets or exceeds fifteen thousand.

For many years, we were basically the only companies that were interested in providing property insurance in the rural areas. Lots of the property was low in value, fire fighting equipment was not available, thus making the property a risky and low profit venture. When the economy took an upswing in the late 1940's and the 1950's, and with the coming of rural electricity, the farmsteads started to upgrade, new houses and outbuildings were erected with greatly increased values.

It was at this point in time that we started to experience our first real competition from the line companies as they became aware of a better market in rural areas. This became even more evident as rural fire fighting equipment became available and the local towns were able to provide good fire fighting equipment. To stay competitive, the farm mutuals had to start offering broader coverages which included extended coverage, theft and vandalism and finally after a lot of years of preparation, we were finally able to offer liability coverage, too.

One thing farm mutuals are not permitted to do is sell vehicle insurance. Some companies often package this with other coverages to make it more attractive and convenient to market which is another area we have to compete in.

As is true of all businesses, you have to look into the future of your company to see what has to be done to maintain your level of business. What we are seeing is the consolidation of a lot of farms, and in many cases the farmsteads are abandoned. So with the shrinking rural communities we are experiencing a loss of insurable property in the rural areas.

Because of the reduction of insurable rural property, the rural mutual insurance companies are asking to be allowed to insure property on a non commercial basis within an incorporated city or town with a population of fifteen thousand or less. At the present time the farm mutuals are allowed to insure dwellings and related buildings designed for occupancy by not over two families, together with the usual contents, situated in an incorporated city or town with the population of fifteen thousand or more, but only if the property is owned by a member of the insurer or by the member's spouse and the member has other insurance of rural property with the insurer.

The Farm Mutuals are not setting a precedent in requesting this favor. There are other states that are allowing their Farm Mutuals access to this market. Because of the changing times, the fact that other states are allowing their farm mutuals access to this market so we would become another source of insurance to the cities and towns.

The Farm Mutuals have had an excellent track record of providing reliable and affordable insurance coverage for the rural areas for many years, making it available in the early years when rural insurance was not that accessible and at a cost affordable to the early settlers.

However, the time has come when we will need this additional latitude to provide us with the insurance base to continue our operations in the future. We recommend passage of Senate Bill # 277.

GARY GILMORE DDT

SB 282

Intro

On the effective date of the legislation the dept is delayed from letting any contracts upon which new R/W is required for up to as much as 18 months. This would likely result in the inability of the Dept to spend our portion of the Federal Aid Highway Funds, something that has never happened.

Currently we tie our center line to section corners and our R/W taking is tied to our center line. This bill requires the department to resurvey all parcels as a subdivision of that parcel and survey the remainder of the parcel.

The Dept does not have the professional land surveyors on staff to accomplish this work. The selection of consultants to do the work can take 3 months. Add to that the time it takes the consultant to do the work, plat preparation, additional landowner contacts, subdivision reviews, and the time adds up. One protested parcel either by a landowner or during subdivision review can stop the project.

The fiscal note indicates a financial impact in excess of \$2.0 million annually. This is money that would normally be used for highway construction.

The current process for a new construction project takes from 4 -6 years under normal circumstances. We don't need

additional burdens to extend this process by 25 to 40%. Our highways are in need of upgrades and refurbishing new. We don't need further delays and monetary restrictions to impede us from accomplishing these goals.

I will be available to answer any questions.

**MONTANA
ASSOCIATION OF
COUNTIES**

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 3

DATE 2-14-95

BILL NO. SB 309

2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

RESOLUTION 94-24

**CLARIFYING THE COUNTY ROLE
REGARDING PUBLIC ROADS**

WHEREAS, current Montana statutes are not clear on the questions of authority, responsibility and liability associated with "public" roads that are clearly not federal, state or city roads; and

WHEREAS, Montana law is generally clear on county commission responsibilities and duties on "county" roads; and

WHEREAS, "public" roads that are not determined to be federal, state or city responsibilities may often-times be presumed to be included within the jurisdiction of county commissioners; and

WHEREAS, much ambiguity exists for county commissions regarding their authority, responsibility and liability for "public" roads; and

WHEREAS, this ambiguity has resulted in time-consuming and costly litigation for county governments and frustration for users of public roads.

NOW, THEREFORE BE IT RESOLVED that the Montana Association of Counties develop and promote legislation that clarifies county responsibility, authority and liability relative to "public" roads that are not otherwise federal, state or city roads.

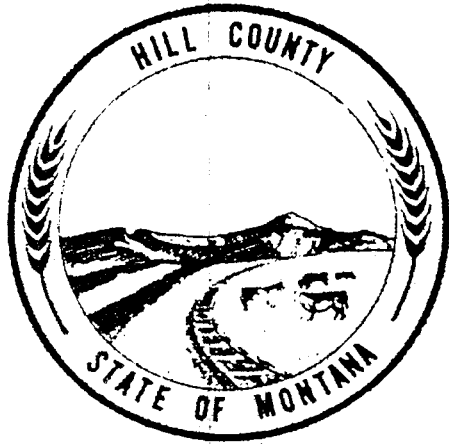
SUBMITTED BY: Resolutions Committee

PRIORITY: HIGH

ADOPTED: ANNUAL CONVENTION
SEPTEMBER 21, 1994

COUNTY OF HILL

STATE OF MONTANA
Havre, Montana 59501



Lloyd Wolery, Chairman

Nora Nelson, Commissioner

Kathy Bessette, Commissioner

[406]265-5481 Ext. 27

February 13, 1995

TO: Members of the Local Government Committee

RE: Senate Bill 309

We are writing in opposition to SB-309. The language of this bill could be devastating to counties who are strapped for funding at this time.

We find particularly offensive language in Section 6, Lines 22 and 23. "All public roads not under the jurisdiction of the United States, the State or a municipality, are under the jurisdiction of the county.

We feel legislation of this type may be necessary for the protection of counties, but a much better, realistic proposal could be made in the future if more research be done and time spent on the contents.

We will not support SB-309 with the present language, therefore, we vehemently urge you to kill the bill before it progresses further.

Sincerely,

Lloyd Wolery
Lloyd Wolery, Chairman

Nora Nelson
Nora Nelson, Commissioner

Kathy Bessette
Kathy Bessette, Commissioner

MONTANA
ASSOCIATION OF
COUNTIES

SENATE HOUSE GOVT. COMM.
EXHIBIT NO. 5
DATE 2-14-95
BILL NO. SB 309
2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

FAX ALERT

TO: Board of County Commissioners
FROM: Gordon Morris, Executive Director
DATE: February 14, 1995

MACo PHONE 442-5209 MACo FAX 442-5238

LEGISLATIVE FAX NUMBERS: 1-900-225-1600 (\$2 1st min.)
TELEPHONE MESSAGES FOR LEGISLATORS 444-4800
HEARINGS OR STATUS OF BILLS 444-4800

MACo and other interested persons are continuing to work on SB 309 (Sen. Gary Forrester), defining county roads, to make it into acceptable legislation. The hearing is scheduled today, and Sen. Forrester is offering amendments suggested by various county commissioners (via phone calls here to the MACo office), which we hope will alleviate the concerns of those commissioners.

A "county road" will be defined as a public road where jurisdiction has been accepted by resolution of the board of county commissioners, and that is not classified as a federal-aid highway, a state highway, or a city street. (See page 4 of the introduced bill, line 8.)

1 p. 6 line 23

There will be opportunity next week during the Midwinter Meeting to discuss this bill further. The hope is to move the bill over to the House, where we can further amend it if more fine-tuning is necessary (or kill it if people still are uncomfortable.) We will schedule a thorough discussion of the bill on Friday, Feb. 24 at the conclusion of the morning agenda (approximately 12 noon in the Executive Room.)

MACo

EXHIBIT NO. LeDATE 2-14-95BILL NO. SB 309JOHN C. MC KEON
District JudgeKAY O'BRIEN JOHNSON
Clerk of Court District #17MARK HARSHMAN
County AttorneyJOHN W. HARRINGTON
Sheriff and Public AdministratorCAROL L. ELLIOT
Superintendent of SchoolsMARVIN A. EDWARDS
CoronerB.W. MC GUIRE
Justice of PeaceCURTIS C. MOXLEY
CommissionerARTHUR KLEINJAN
CommissionerKEITH BENSON
CommissionerSANDRA L. BOARDMAN
Clerk and Recorder/AssessorSHIRLEY GRUBB
TreasurerPERRY W. MILLER
Justice of Peace

BLAINE COUNTY

Chinook, Montana 59523

TO: Senator Beck and Members of the Local Government Committee

Blaine County would like to oppose SB 309 or at least table it until the next session so that some of the bugs can be worked out such as:

- 1) we oppose the changes in Section 3, part 2 removing the freeholders right to petition for a road, also giving the Board the power of building a road without a petition.
- 2) Section 5, part 8 "the definition of "county roads"

We have many oil and gas field roads that are public roads that we do not want to be county roads; we have BLM roads that are public roads that we do not want to be county roads and we have many private roads that are public roads that we do not want to be responsible for.

Therefore, we urge you to vote no or once again consider a table vote.

Thank you.

Keith L. Benson
Keith L. Benson, Chairman

Curtis C. Moxley
Curtis C. Moxley, Commissioner

Arthur Kleinjan
Arthur Kleinjan, Commissioner

BOARD OF COUNTY COMMISSIONERS

TETON COUNTY
STATE OF MONTANADISTRICT #one, FAIRFIELD
ROBERT P. KRAUSEDISTRICT #two, CHOTEAU
C. ALBERT CARLSON
P.O. BOX 610

CHOTEAU, MONTANA 59422

466-2101 OFFICE LINE 466-2138 FAX LINE

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 7DATE 2-14-95DISTRIBUTION #three, DUTTON
ADAM F. DAHLMAN

February 13, 1995

TO: MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

We, the Teton County Board of Commissioners, hereby give our consent for John W. Rappald, Pondera County Commissioners to read into the record our opposition to Senate Bill 309.

What we understand is Senate Bill 309 is divided into two different sections.

The first part of Senate Bill 309 deals with creating a rural improvement district for building, maintaining or repairing county roads. It is recognized there has been problems in the past on how our roads should be built or maintained that serves land owners under rural improvement districts and who should bear the costs of such improvements. We would not oppose a bill concerning these issues if county roads were defined under present road law M.C.A. 7-14-2103 and M.C.A. 60-1-201.

The second part of Senate Bill 309 deals with revising certain definitions of county roads, removing authority of County commissioners under Title 7, Chapter 14 M.C.A., and removing the process of the freeholders's right to petition for a county road under M.C.A. 7-14-2103.

We have a concern about adding roads to our county road system when present funding cannot fund and take care of the roads we now have!

A further concern we have is with the definitions and changes in M.C.A. 60-1-201 "Classification - highways and roads".

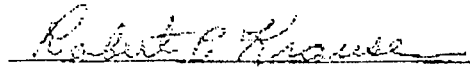
In the past years there have been attempts to establish public roads and trails across private land as county roads without proper or legal documents, merely calling these roads and trails public roads.

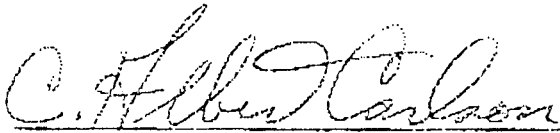
The abandonment of old state highways has been an issue. The


Montana Highway Commission has the authority to abandon highways and discontinue maintenance but does not presently have the authority to transfer these roads to the county. These roads are called "Orphan Roads" as no one assumes the responsibility for maintenance. Beginning with line 19 on page 6 (Senate Bill 309) the present law M.C.A. 60-1-201 paragraph (2) states those roads not maintained by the department are county roads. Line 21 paragraph (3) page 6 under present law M.C.A. 60-1-201 and M.C.A. 7-14-2103 gives the county commission the authority to accept or reject these roads. As you will notice in Senate Bill 309, line 21, paragraph (3) the present law is removed and the following language has been inserted, ALL PUBLIC ROADS NOT UNDER THE JURISDICTION OF THE UNITED STATES, THE STATE, OR A MUNICIPALITY ARE UNDER THE JURISDICTION OF THE COUNTY.

We, the board of County Commission, Teton County feel Senate Bill 309 is too open ended, takes away local county control and was written poorly. We therefore oppose the passage of Senate Bill 309.

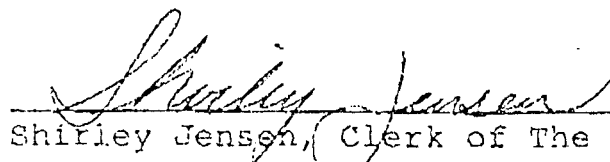
TETON COUNTY COMMISSIONERS


Robert P. Krause, Chairman


C. Albert Carlson, Vice-Chairman


Adam F. Dahlman, Member

ATTEST:


Shirley Jensen, Clerk of The Board

29 June 1994

To: Lewis and Clark County Commissioners
City-County Building
Helena, Montana 59601

RE: Notice of Public Hearing and Resolution of Intent to create the Eagle Ridge Rural Improvement District - Resolution of Intention No. 1994-84.

We, the undersigned property owners, owning property on which the proposed maintenance will be imposed, hereby protest the creation of Rural Improvement District No. 94-2.

Before setting out the primary grounds of our protest, we attach to our protest letters written on our behalf by Attorney Brian J. Tierney, one letter being addressed primarily to the County Commissioners, and the other letter being addressed primarily to the County Attorney. Neither the Commissioners nor the County Attorney gave the courtesy of a reply to Mr. Tierney.

We attach these letters because this proceeding appears to be nothing more than a continuation of the efforts of the Lewis and Clark County Commissioners to impose a rural improvement district on property owners without having a legal basis to do so. We note in this respect that the notice of public hearing contains the following language in reference to the former proceeding, which it appears the Commissioners have now abandoned:

This proposal is intended to replace the Road Improvement District No. 93-4 previously established by the Board.

If the County Commissioners create a rural improvement district based on the proceedings here, we, as property owners, will be compelled to file an action in district court to invalidate the proceedings. In doing so, just to be sure, we will seek an order invalidating the proceedings taken with relation to the Resolution passed as Road Improvement District No. 93-4.

We now proceed to inform the Commissioners why they are proceeding illegally and why this case will ultimately end up in district court if the Commissioners approve the Rural Improvement District involved in these proceedings.

First, the statutes under which you are proceeding, sections 7-12-2101 thru 7-21-2196 MCA, have no application to roads if they are not already county

roads. In the situation that exists here, Eagle Ridge Road is not a county road. Therefore, the statutes under which you are proceeding, have no application. There has been no road dedication or acceptance, and therefore the Eagle Ridge Road is not a county road.

Second, the Commissioners are seeking to create a rural improvement district for an impermissible purpose. The express purpose of the Commissioners in creating the district is "for the purpose of funding road maintenance of Eagle Ridge Road."

More specifically, the Commissioners declare that "The proposed maintenance would consist of snow removal, weed control, surface maintenance and drainage maintenance to aid in snow removal and weed control as required on sections of the roadway". . . .

Nowhere do the statutes allow maintenance of a road to be a permissible use of these statutes. The purpose for which these statutes can be used, is specifically set out in section 7-12-2102 (1) MCA, and is limited to:

"...the purpose of building, construction, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, or for the benefit of the special improvement district."

The road maintenance contemplated by the Commissioners here, does not fall within the ambit of this statutory authorization. Here the County will not be building anything, and the County will not be purchasing anything that falls within the meaning of the statute.

Third, the Commissioners are proceeding in violation of the United States and Montana Constitutions because they are attempting to deprive the protestors of their property without due process of law, and without payment of fair compensation.

The property owners here own the land on which the Commissioners seek to impose a special improvement district. In fact, the property owners not only own the land, they have been and still are paying taxes on that very land on which the Commissioners seek to impose the special improvement district. This land, as it now exists, is subject only to a right of easement on ingress and egress for those who live on land that cannot be reached without going onto the land of the protestors. The easement rights are declared in the deeds to the property involved.

But now the Commissioners seek to take this property from the protestors and impose a rural improvement district upon it. This in the circumstances of this case, cannot be done unless the Commissioners, through proper

29 June 1994

To: Lewis and Clark County Commissioners
City-County Building
Helena, Montana 59601

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J. BRIAN TIERNEY
ATTORNEY AT LAW

1117 WEST BROADWAY
BUTTE, MONTANA 59701
(406) 782-6771
FAX: (406) 782-2207

March 25, 1994

Mr. Mike McGrath
Lewis & Clark County Attorney
County Courthouse
Helena, Montana 59601

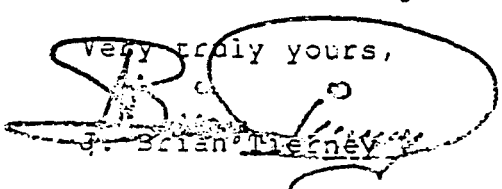
Re: County Commissioners' resolution creating
the Eagle Ridge Road Improvement District

Dear Mr. McGrath:

As indicated in the enclosed letter to the Lewis & Clark County Commissioners, I represent the Woods and the Greaves, who protested the creation of the Eagle Ridge RID. As I pointed out in some detail in my letter to the Commissioners, the proceedings are flawed from start to finish, and the Resolution, therefore, is invalid. I am confident that a district judge would overturn the Resolution and issue an order compelling the Commissioners to dissolve the Resolution. Of course, we want to avoid litigation if possible.

April 14, 1994 seems sufficient time for you to review the situation and the proceedings surrounding the creation of the RID. So that we will know what the intentions of the County are, we would appreciate hearing from the County by this date.

Very truly yours,


J. Brian Tierney

Enclosure: Letter to Lewis & Clark County Commissioners

COPY

EXHIBIT 8
DATE 2-14-95
SB 309

J. BRIAN TIERNEY
ATTORNEY AT LAW

1117 WEST BROADWAY
BUTTE, MONTANA 59701
(406) 782-6771
FAX: (406) 782-2207

March 25, 1994

Lewis & Clark County Commissioners
City-County Building
316 North Park P.O. Box 1724
Helena, Montana 59624

Re: Eagle Ridge Petition to create Road Improvement
District, and following proceedings.

Dear County Commissioners:

I represent David F. Wood and his wife, Patricia A. Wood, and Russell Greaves and his wife, Linda Greaves, all of whom protested the creation of the Eagle Ridge Improvement District. Because the Commissioners failed to follow mandatory provisions of the law, the resolution is invalid. A district judge would declare it to be invalid.

I hope we can avoid a lawsuit, and it can be done if you rescind your resolution creating the Eagle Ridge RID. For all concerned, this will save time, money and effort. If the Commissioners fail to rescind and dissolve the resolution creating the RID, we will be compelled to file a lawsuit in which the appropriate remedy is a writ of mandamus directed to the Commissioners compelling them to rescind and dissolve the resolution creating the RID. The successful petitioners will also be entitled to recover court costs and attorney fees. Depending on how protracted the litigation may become, this could amount to at least several thousand dollars. I would hope that the Commissioners will choose not to gamble with the taxpayers' money.

I assume that Mike McGrath, the Lewis & Clark County Attorney, is your advisor in this matter and he will be giving you advice as to how you will proceed. Therefore, I am sending him a copy of this letter. I feel confident that he will conclude that it is in the best interests of Lewis & Clark County for the Commissioners to rescind or dissolve their resolution creating the Eagle Ridge RID.

COPY

I will not detail here all grounds of a lawsuit if we must file one, but I will spell out our primary contentions that the Eagle Ridge RID was formed in violation of the mandatory statutory requirements of Part 29 (sections 7-14-2901 through 7-14-2908). The Eagle Ridge Petitioners relied on these statutes in seeking to establish the RID and the Commissioners were bound to follow the mandates of the statutes.

A fundamental, jurisdictional failure, was the failure of the Commissioners to make a preliminary decision as to whether the petitioners were entitled to use Part 29 as the means of creating the RID. Before notices are sent to property owners and a hearing on the petition, Section 7-14-2901(2) mandates that:

...The county surveyor must determine that it would be physically impractical to improve the road to standard county specifications. (Emphasis added)

Here the petitioners did not request the county to make this mandated determination, nor did the Commissioners appoint a qualified surveyor to make this required preliminary determination. Rather, the petitioners and the Commissioners ignored this statute.

Because Lewis & Clark County does not have a county surveyor, the proper course was for the Commissioners to appoint a surveyor for the limited purpose of examining the proposed road and its location, and then to determine whether it was "physically impractical to improve the road to standard county specifications." If it was "physically impractical", then the petitioners could proceed with their petition by invoking the statutes in Part 29. But if it was NOT "physically impractical", then the petitioners could not use the statutes contained in Part 29. This fundamental preliminary requirement was not fulfilled in this case.

The legislative history of these statutes (Part 29) is sparse. But it is clear that these statutes were not designed to be an easy means of creating a road improvement district that also relieves the county from the duty of maintaining the road. Nor were the statutes intended as an easy means for petitioning landowners to create an RID that does not comply with "standard county specifications." Rather, the statutes are intended for special and limited use, a use that does not exist in this case. But more important here: the statute requiring a finding of physical impracticality as a preliminary jurisdictional foundation, was entirely ignored. The Commissioners cannot deny this fundamental fact.

Therefore, in choosing to proceed by ignoring the statute, the Commissioners did so at their own peril and at the peril of placing county taxpayer dollars on the line--not only to defend a lawsuit, but also to pay costs and attorney fees to the parties challenging the actions of the Commissioners. We hope this will not be necessary.

At least one jurisdictional defect exists in the petition itself. The petition fails to place a time limit on the number of years the RID is to be in effect, and therefore it is in violation of section 7-14-2902(1)(d). Section 7-14-2902(1) specifies what a petition "must" contain. Applied here, section 7-14-2902(1)(d) says that the petition "must":

(d) if the improvement is a service such as snowplowing, estimate the length of time the service is to be provided.

The Eagle Road RID petition provides for snowplowing and other services such as maintenance, but it fails to "estimate the length of time the service is to be provided." Rather, it is open-ended, in effect providing that the services will continue forever. The petition declares only an annual cost of \$1,381.00 for the snowplowing and other maintenance, but it fails to place an estimated time limit as to how long it will continue. This statute is clearly intended to protect against the imposition of a road improvement district and forced collection of assessments that have no stated time limits. Property owners are entitled to know how long they are being compelled to contribute to a road improvement district through a system that is governmentally compelled and enforced.

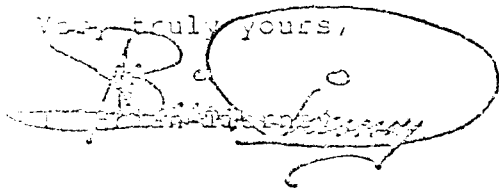
The estimated duration requirement of section 7-14-2902(1)(d), must be read in conjunction with section 7-14-2903. Section 7-14-2903, provides for a simplified method of petition, notice, and hearing if there is a protest. This statute is the mechanism by which a road improvement district can be continued after the expiration of the first time period. It is the means by which there can be another time period imposed for the enforced collection of assessments. But the petition ignores and the Commissioners ignored the application of this statute by effectively compelling the property owners to pay into a road maintenance fund for a future without end. On this ground alone, I believe a district judge would declare the petition to be invalid. Here the Commissioners failed to perform their statutory function of determining the legal sufficiency of the petition.

Another fatal flaw exists although it does not appear on the face of the record. The Commissioners failed to first determine the nature of the property interests involved on which passes the road commonly referred to as Eagle Ridge Road. The Woods' property and the Greaves' property is subject to an access easement for properties that are above their own. However, subject to this easement, the Woods and the Greaves own all of the property as indicated by the fact that they have always paid taxes on all of this land of which the easement is part. This being so, the Commissioners had no right to impose an RID on this land without the required allegations in the petition, and supporting evidence that the property had, before the filing of the petition, been converted into a public easement. No such facts and proceedings are on record in this case.

I have set out in some detail three major points on which a district court would invalidate the Eagle Ridge RID. Two of them consist of failures of the Commissioners to comply with mandatory statutory requirements. The third consists of the failure of the Commissioners to determine the nature of the property interests involved over which the road passes. In addition, I will raise other issues if we are compelled to take the case to district court. However, we want to resolve this case simply by an act of the Commissioners rescinding or dissolving its resolution creating the Eagle Ridge RID.

Please let me know your intentions by Monday, April 14, 1994. This should give you sufficient time to confer with Mr. McGrath the County Attorney, and to make your decision. If we have not heard from you in writing by this date we will assume your decision is no, which will compel us to file an action in district court for a writ of mandamus and other proper relief.

Very truly yours,



Enclosure: Letter to Lewis & Clark County Attorney

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 9DATE 2-14-95BILL NO. SB 294

February 14, 1995

Ethel Harding
Senate local government committee
Capitol Station
Helena MT 59620

Ethel,

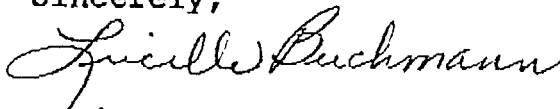
I tried all day yesterday to get a message to you - all I got was a recording which put me on hold and then I was cut off without ever speaking to anyone. The weather and road forecasts this morning are not good.

Paddy Trusler has said that if the phrase "potentially hazardous food" is not removed from the bill, it will be killed by the combined health services departments of the Counties involved.

Therefore, I would support an amendment to remove the words "potentially hazardous" and have the original bill (senate bill #296) read "to sell food prepared and consumed-" and "to sell food prepared and consumed" without using the words "potentially hazardous" I would gladly work with the local health services department in the types of baked and preserved foods allowable for sale. I do not want it established that farmers market vendors be exempted from having to be licensed and that there be allowable foods from their family kitchens.

Thank you so much for all your hard work in our behalf. I am sorry the weather has not been more cooperative. Thanks again.

Sincerely,



Lucille Buchman
164 Finley Point Road
Polson MT 598603

8926 Buffalo Bridge Road
Polson MT 59860
February 13, 1995

Senator Ethel Harding
State Capitol
Helena MT 59620

Dear Ethel

Thank you for sponsoring Senate Bill 296 relating to food sales.

At one time I worked as a home economist; classroom study of food safety was a prerequisite. Applying that learning today, I cannot improve upon my neighbor's words, "What is the danger in homemade bread?"

I have sold at Polson Farmers' Market and consider their 1992 rules about food to be appropriate:

"There can be no products sold that are prone to food poison, for example: no cream pies, no home canned meats, no homemade cheese, no wild mushrooms, no canned, low acid vegetables, etc.

Any product such as jams, jellies, pickles, or canned fruit sold at the Market must be sealed with the lid and ring system; that is no paraffin (wax)."

To be extra careful they could have also excluded unpasteurized honey, which can carry a rare form of botulism affecting infants only. I would not fear any remaining risks involved by food meeting the above regulations. They protect against the deadly botulism, which occurs only in low-acid canned foods. They practically eliminate possibility of the other food illnesses (which have symptoms resembling stomach flu). To eliminate all risk we would stop eating! If the term "potentially hazardous foods" is still used in the bill I wish it could be reworded to, say, "reasonably safe" foods.

The farmers' markets in Montana have provided a supplementary income for mothers who do the baking in their own homes, have given some teenagers good business experience, and are appreciated by tourists and others desiring home-baked foods. Economically they give very little competition to commercial food sales. We hope at least cookies, breads, rolls and fruit pies can be again sold at Farmers' Market. The typical Farmers Market sells twice a week in summer months; regulations should allow for this.

We appreciate your work on this and other bills. Let me know if I can be of help or get you more information.

Sincerely yours

Donna Day
Donna Day
Phone 883-2968

EXHIBIT 9DATE 2-14-95SB 296

February 2, 1995

Dear Mrs. Harding,

Senate 296

We are writing to you to express our support of (bill #2) which allows the sale of home made baked goods at farmers markets.

During the summer of 1991 and 1992 we had the wonderful opportunity to become vendors at the Lake County Farmers Market in Polson, Montana. While there, we sold home made bread, cookies and other assorted baked goods.

Our hope was that we would earn a little extra cash, but the people we came to know and the camaraderie with our fellow vendors became more important than the money. This was not unique to our market either. We visited several others and realized that as well as being unmatched in the sheer kindness of the vendors, they all shared the same goal of bringing together local people and tourists alike. When we were told we could no longer be vendors at the farmers market, because we didn't have a licensed kitchen, we were saddened, insulted and angry. Saddened because we were losing something that we truly enjoyed doing. Insulted that anyone would think that our home kitchen was any less clean than a commercial kitchen. If anything, it is cleaner. As are the kitchens of anyone else choosing to sell a home baked product to the public. We can say this because what the lawmakers fail to realize is that when we bake, we don't just bake for the public, but also for our own families. We can not believe that anyone would want to make their own families sick, let alone the public. Furthermore when we are selling to people on a day to day basis, word of mouth will either bring us more customers or bar us from selling anything. Lastly, we were angry that we were judged with no chance to defend ourselves. No one offered to come and see our kitchen. No one even asked.

We are not suggesting that there be no regulation. If the problem is really concern over the cleanliness of home kitchens, ours is open. As I am sure are the kitchens of anyone baking and selling to the public. If this is not the problem, we are owed an explanation. "Because it is the law" will not do.

Sincerely,

Eva L. McKay

Eva L. McKay

Kristine R. McKay

Kristine R. McKay

14 FEBRUARY 1995

TO: LOCAL GOVERNMENT COMMITTEE:

CONCERNING SENATE BILL 296, INTRODUCED BY ETHEL HARDING AND ~~MR.~~ ^{Rp} FISHER. I AS A MEMBER OF THE LAKE COUNTY FARMERS' MARKET; ALSO KNOWN AS POLSON'S FARMERS' MARKET, I WOULD LIKE TO BE SHOWN AS BEING IN FAVOR OF THIS BILL. THERE SEEMS TO BE A PROBLEM WITH THE WORDING CONCERNING "POTENTIALLY HAZARDOUS FOODS". I UNDERSTAND THAT THIS COULD PRESENT A PROBLEM FOR OTHER FARMERS' MARKETS IF THEY HAVEN'T HAD IN PLACE RULES AGAINST FOODS THAT ARE KNOWN "BACTERIA FREINDLY" FOODS. I HAVE A COPY OF THE RULES THAT HAS ALWAYS BEEN IN EFFECT FOR OUR MARKET.

I, FOR MANY YEARS BAKED BREADS IN OF SEVERAL VARITIES. I USED ONLY INGREDIENTS FOUND IN SUPERMARKETS (OR A STORE OF THE LIKE). IT IS TRUE THAT THERE WERE NO PRESERVATIVES ADDED TO MY BREADS BECAUSE I HAD NO WAY OF ACQUIRING THE PRESERVATIVES TO ADD. I DO NOT FEEL THAT BREAD BAKED FOR 20 TO 25 MINUTES AT 375 DEGREES WOULD BE PARTICULARLY HOSPITABLE TO LIFE THREATENING BACTERIA. NOR DO I FEEL THAT CAKES, COOKIES, OR FRUIT FILLED PIES WOULD HARBOR THEM EITHER.

I AM HOPING THAT YOU WILL SEE, THAT NOT ONLY IS IT UNFAIR FOR FARMERS' MARKETS TO BE TARGETED FOR CERTAIN FOOD BANS BUT THAT THIS BAN MAYBE IS STOPPING A CERTAIN AMOUNT OF FREE ENTERPRISE. NOT ONLY THAT, BUT WHY IS IT NECESSARY FOR EVERYONE TO BE SO PROTECTED AND REALEASED FROM THE RESPONSIBILITY OF HAVING TO MAKE THEIR OWN CHOICES AND TAKE RESPONSIBLITY FOR THOSE CHOICES?

THANK YOU.


JOAN M. BENNETT, POLSON.

Lake Co or Polson's

EXHIBIT

9

DATE

2-14-95FARMERS' MARKET RULES

1

SB 296

Anyone is welcome at the Farmers' Market as long as they abide by the rules set down by the Market's committee. They are as follows:

- 1) Any product sold at the Farmers' Market is not to be a resale, example: you can not buy "T-shirts" wholesale and sell them as is. You can, however, sell them if you have added your own decoration.
 - 2) There can be no products sold that are prone to food poison, for example: no cream pies, no home canned meats, no homemade cheese, no wild mushrooms, no canned, low acid vegetables, etc.
 - 3) Any product such as jams, jellies, pickles, or canned fruit sold at the Market must be sealed with the lid and ring system; that is no parafin (wax).
 - 4) There will be no live animals to give away or sell, but signs can be posted. Any animal that is your companion must be confined to the owner's vehicle, so as not to pose a "threat" to the public.
 - 5) The starting time for both Tuesday and Friday is at 10:00 a.m. If you are set up before that time you are not to sell to the public but you can sell to another vendor, as they may not have time to buy after the Market starts. Also, you will be allowed to have a customer pick up an order that has been previously ordered before the 10:00 opening.
 - 6) The Market collects 5% of what you take in for the day you are there. That is, if you sell \$1.00 we ask for \$.05; if you sell nothing you pay nothing.
 - 7) It is requested that each vendor police his or her area so as not to leave a messy location, we want to be allowed back.
 - 8) If the need arises such vendors that can, will remove their car or truck from the Market area so that more room can be had for others.
 - 9) Farmers' Market will open at 10:00 a.m. every Tuesday and Friday and will remain open until 1:00 p.m. It will begin as soon as weather permits in the spring and will run until weather demands closure in the fall.
-

Amendment: As of 1993 no processed foods are allowed, i.e. jam, jelly, canned goods, bread, pies, cakes, cookies, etc. unless you can produce a valid county license.



MISSOULA CITY-COUNTY HEALTH DEPARTMENT

301 WEST ALDER ST
MISSOULA MT 59802-4123

(406) 523-4755

SENATE LOCAL GOVT. CONTR.

EXHIBIT 10

DATE 2-14-95

BILL NO. SB 296

February 14, 1995

Good afternoon, Senator Beck and Committee members:

I'm Mary Lou Gilman, coordinator of the Food Protection Program for the Missoula City-County Health Department. I'm here today to offer several points in opposition to Senate Bill 296.

Missoula has many special events with vendors serving food to the public. Our department has written safe foodhandling guidelines for temporary events and non-profit groups which are given out during the registration process. No fee is charged. With registration we can keep track of events and get necessary vendor information in case of a foodborne illness outbreak. Registration and education protect both the non-profit organization and the public. SB 296 would remove this important safeguard.

If health departments are prohibited from requiring that food for the public be prepared in approved facilities, the public is left unprotected. People might argue that baked goods and preserves are generally safe foods and that it is appropriate to exempt them from health department scrutiny. I disagree. One of the largest outbreaks I investigated involved 23 people who were very ill after eating cake contaminated by a virus. If any of these people had been very young, very old or otherwise health impaired, the results might have been disastrous.

Another serious foodborne illnesses is botulism which is caused by bacteria that thrive in conditions found in home-canned foods. This kind of bacteria has been known to survive for two hours in boiling water. Botulism poisoning causes dizziness, difficulty swallowing, blurred vision and other symptoms of paralysis which may result in death. Some victims suffer the effects of botulism poisoning for years. How would occasional vendors handle the liability which may result from such an incident? Would they be insured to cover medical costs and lawsuits?

At a time when foodborne illness is on the rise, and we have seen deaths attributed to food, it does not make sense to weaken food rules. Please help local health departments fulfill their duty to protect public health by protecting existing food regulations and voting against SB 296.

Thank you,

Mary Lou Gilman, M.S., R.S.

**Environmental Health Services**

723 Fifth Avenue East, Kallispell, MT 59901

(406) 758-5760 Fax: 758-5859

February 13, 1995

Senator Beck, Chairman
Senate Local Government Committee
Capital Station
Helena, MT 59601

Re: Senate Bill 296

Dear Senator Beck:

The Flathead City-County Health Department would like to offer the following testimony relating to the above referenced bill. The Department does not support the legislation as written and offers the following comments and revisions:

We request the definition of baked goods be amended to read "Baked goods' means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods by definition." There are baked goods with high water activities such as custard and meringue containing foods which could support the rapid growth of microorganisms which cause foodborne illness. Proper food protection guideline/controls established by health departments can greatly reduce the risk associated with potentially hazardous foods.

We request the definition of "potentially hazardous foods" be modified to exclude shell eggs. (16)(b) should read "The term does not include foods that have a pH level of 4.6 or below or a water activity (aW) value of 0.85 or less." An August 1990 Code Interpretation by the U.S. Food and Drug Administration (FDA) modified the definition to exclude shell eggs based on the increasing number of foodborne illness cases associated with this food.

We request that Section 2 (Section 50-50-103 (2)(a)) be modified to read:

- (i) No changes necessary. Reason: This does not conflict with established law.

(ii) baked goods by nonprofit organizations. Reason: Incorrectly processed foods carry a considerable foodborne illness outbreak risk.

(iii) Remove entirely. Reason: Potentially hazardous foods are associated with a high risk of foodborne illness. Allowing "any person" to purvey potentially hazardous foods without some measure of control does not provide persons of this state an expectation of wholesome and safe food. It will also be very difficult to track activities of "occasional sales".


We request that Section 3 (Section 50-50-202) be modified as follows:

(2)(b) A nonprofit organization may purvey food without obtaining a license but must register with the local health officer or sanitarian.
Reason: Most nonprofit organization's facilities have kitchens that comply with basic public health standards. The process of food preparation is a very important aspect of reducing the risk associated with serving potentially hazardous foods. The notification process would allow the local health departments the ability of providing safe food handling guidelines to responsible persons within organizations.

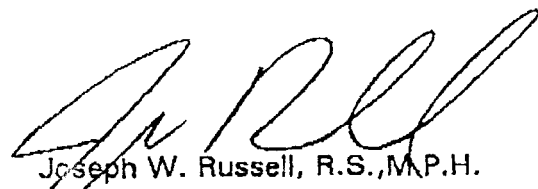
(4) Remove entirely. Reason: Please refer to the paragraph labeled (iii) above for comments.

Please enter this document as testimony of the Flathead City-County Health Department.

Respectfully Submitted:



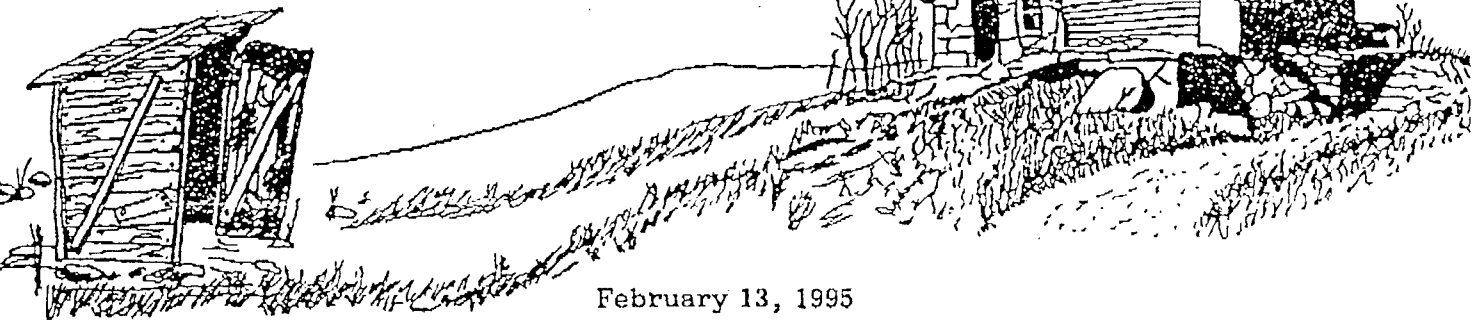
Dennis J. Klukan, M.S.E.P.H.
Public Health Officer



Joseph W. Russell, R.S., M.P.H.
Environmental Health Director

Tri-County Sanitarian

Dawson — Prairie — Wibaux
207 West Bell
Glendive, Montana 59330
Phone 365-5772



February 13, 1995

Senator Ethel Harding
Local Government Committee
Capital Station
Helena, MT 69620

Dear Senator Harding:

I hope it's not too late to comment on SB 296; "an act allowing nonprofit organizations to sell potentially hazardous food that is prepared and consumed at the same facility or location and to sell baked goods and preserves, . . . etc".

The first part of the bill should turn on a red light itself; "to sell **POTENTIALLY HAZARDOUS FOOD**". There is no shortage of data that tells us that products such as milk, eggs, meat and fish (this includes food items with any of these products as ingredients) have been the source of food borne illness outbreaks. To allow the sale of such "potentially hazards" foods without oversight by health departments would be a step back 50 years when these battles were debated and a course set. Can you imagine the fallout from an outbreak of E.Coli in raw milk or cream sold at a farmers market!

I could concede not licensing non-profit organizations and/or farmers markets and to allow them to sell non-hazardous food; but to allow the sale of dangerous foods to the unsuspecting public would be a disservice to the health minded public in this state.

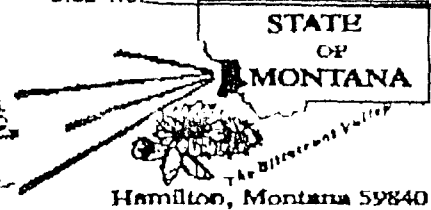
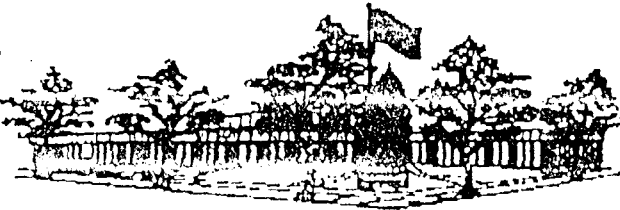
I feel a compromise would be in the best interest of all Montanans and the many thousands of tourists that buy food at farmers markets and roadside stands with the understanding the "someone" is "checking" to make sure the product is safe.

I strongly urge your close review and serious consideration of this bill. If I could answer any questions you may call me at 365-5772.

Yours for a cleaner environment,

Dennis J. Snow, R.S.
District Sanitarian

COUNTY OF RAVALLI



Hamilton, Montana 59840

February 13, 1995

MEMORANDUM FOR THE RECORD FROM THE DIRECTOR, RAVALLI COUNTY SANITARIAN /
DISASTER AND EMERGENCY SERVICES COORDINATOR, RONALD D. CURLEY

SUBJ: SENATE BILL #248 AND SENATE BILL 296

1. SENATE BILL #248 -- GENERALLY, THE RAVALLI COUNTY SANITARIAN IS NOT IN FAVOR OF THIS BILL FOR THE FOLLOWING REASONS: FUNDING, LOCAL PERSONNEL AND TIME ARE NOT ADEQUATE TO PROVIDE THE LOCAL SUPPORT THAT WILL BE NECESSARY TO POLICE THE PEOPLE THAT ARE INVOLVED IN THIS ACTIVITY. THIS BILL APPEARS ON THE SURFACE TO BE ANOTHER UNFUNDED MANDATE. IT WOULD TAKE A DESIGNATED SANITARIAN TO KEEP TRACK OF WHAT WAS TAKING PLACE IN SEPTIC DUMPING. NEW EPA REGULATIONS HAVE COMPLICATED THE ISSUES DRAMATICALLY. THE LOCAL SANITARIAN DOES NOT HAVE THE POWER TO CREATE ENOUGH PEOPLE TO DO THE ADDITIONAL TASKS THAT COME WITH EVERY PROGRAM THAT IS PASSED TO THE LOCAL JURISDICTION. WE OPERATE ON A VERY LIMITED BUDGET, WITH LIMITED MANPOWER, WITH LIMITED CEO COMMITMENT TO EVERY PROGRAM THAT COMES DOWN FROM ON HIGH. FRANKLY, I WOULD LIKE TO SEE THINGS REMAIN AS THEY ARE FOR THIS PARTICULAR PROGRAM UNTIL IT IS CLEAR WHAT THE EXTENT OF EPA INVOLVEMENT WILL BE IN THESE MATTERS. I SENSE A LOT OF KARMA COMING DOWN FROM THE EPA, I.E., THE FEDERAL GOVERNMENT WILL BE TAKING A MORE ACTIVE INTEREST IN THESE MATTERS AND I DO NOT WISH TO SEE LOCAL JURISDICTIONS TAKEN TO TASK OVER MATTERS WE HAVE NEITHER THE STAFF, FUNDING, NOR TIME TO PAY AS CLOSE ATTENTION TO AS THE STATE OR FEDERAL GOVERNMENT MAY BE ABLE TO DO. IN SHORT, I DO NOT SUPPORT THIS BILL, UNLESS THE FUNDS MAY SOMEHOW BE "FENCED" TO REQUIRE ANOTHER PART-TIME MANDATED CONTRACTED LOCAL SANITARIAN THE ABILITY TO FUNCTION LOCALLY UNDER MY DIRECTION TO ASSESS AND TRACK THE ACTIVITIES OF THE SEPTIC PUMPERS AND DUMPERS IN MY COUNTY. WITHOUT FENCED ASSETS, WE RUN THE RISK OF NOT BEING ABLE TO ADEQUATELY TRACT THE ACTIVITIES OF THE SUBJECT PEOPLE, THEREBY, WE START ASSUMING ADDITIONAL LIABILITY FOR WHAT MAY BECOME UNMET REQUIREMENTS.

2. SENATE BILL #296 -- I DO NOT SUPPORT THIS BILL; WE DO NOT WANT NON-PROFIT GROUPS DOING SOMETHING WITHOUT OUR KNOWLEDGE WHEN IT COMES TO COMMUNITY-BASED FOOD SERVICE OPERATIONS. FOOD ARE ITEMS THAT MAY QUICKLY ADVERSELY AFFECT THE COMMUNITY. THIS IS AN EXAMPLE OF UNDER-REGULATION. WE HAVE SOMETHING THAT WORKS NOW. IT IS NOT BROKEN AND DOES NOT NEED TO BE FIXED.

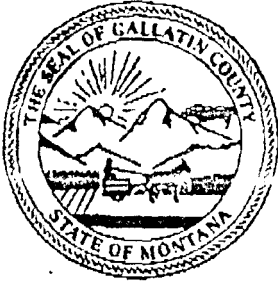

R.D. CURLEY, R.S., M.S., DIRECTOR

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 14

DATE 2-14-95

BILL NO. SB 296



Gallatin City-County Health Department

County of Gallatin

311 W. Main, Courthouse • Bozeman, Montana 59715

Community Health Services
(406) 582-3100
FAX (406) 582-3112

Environmental Health Services
(406) 582-3120
FAX (406) 582-3135

13 February, 1995

TO: Senate Local Government Committee

FROM: Gallatin City-County Health Department

RE: SENATE BILL 296

Senate Bill 296:

This bill would allow non-profit organizations to sell foods that are prepared & consumed at the same facility. Also exempts farmers, gardeners, etc. who sell farm products at farmers markets and do-it-yourselfers who sell less than 4 times per calendar year from licensing requirements.

It is the consensus of our staff this bill would greatly simplify enforcement of Department of Health & Environmental Services Food & Consumer Safety regulations. At present many organizations are not aware a temporary license is required for various events, and many mostly negative comments/complaints are received yearly concerning present farmer's market regulations.

It does have the potential to increase the numbers of food borne illness complaints, however we are not aware of studies supporting this position.

We also have concerns with more organized farm cooperatives using this as a wedge to begin sales of poultry or other more potentially hazardous farm products.

Our opinion is strongly supportive of this bill.

a:\misc\senbills.mcm 13 Feb. 1995

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To	Mitzi Schwab	From
Co.	FCSB	Co.
Dept.		Phone #
Fax #	444-2606	Fax #
		582-3120
		582-3135

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 15DATE 2-14-95BILL NO. SB 296

TO: Senator Tom Esch, Chairman
Senate Local Government Committee
FROM: Karen Boumans, Toole County Sanitarian
SUBJECT: SB 296

Dear Sir:

The non-profit groups must be held to the same standards as licensed facilities with regards to time/temperature control, sanitization, and notification of the health department.

To allow unsupervised preparation of potentially hazardous foods by the uneducated public can only result in increased food borne illness outbreaks which could result in death.

The use of potentially hazardous food and home canned products by individuals not aware of proper food handling will put a large segment of the already compromised public (the elderly and very young) at an even greater risk. Food preparation in the home is totally uncontrolled by the health field.

I have spent the last two years making my constituents aware of the need to notify. This gives me an opportunity to assist those not skilled in food prep with the basics - hot/cold and clean. For example I am working with a group of men who plan to host a banquet for 200 people and serve fish. None of these gentlemen have any large scale food preparation experience.

I do not want to require licensure if serving under 4 times yearly but I feel it is imperative to know who is serving what, where and when in order to circumvent an outbreak.

We are already giving non-profit groups a perk by not licensing them. I feel that it is unfair to those licensed establishments if we do not at least require the same standards of care in handling and require the need to notify.

DEPARTMENT OF ENVIRONMENTAL HEALTH

LINCOLN COUNTY

418 Mineral Avenue
Libby, Montana 59923

Fax: (406) 293-5640
Phone: (406) 293-7781

Ronald L. Anderson, R.S.
Director

Kendra J. Lind, R.S.

John W. Peterson, R.S.
Assistant

TO: Senate Local Government Committee

FROM: Lincoln County Department of Environmental Health

DATE: 13 February, 1995

RE: SB-296

CC: DHES Food & Consumer Safety Bureau

This correspondence is to apprise the members of the Senate Local Government Committee of our opposition to SB-296, scheduled for hearing by your committee at 01:00 P.M. on 14 February, 1995.

The broad spectrum of exemptions from requirements for licensure, regulation and compliance with safe food handling rules for non-commercial food purveyors incorporated in this bill is in diametrical opposition to the purposes of Title 50, Chapter 50, MCA, "FOOD ESTABLISHMENTS", Section 50-50-101 --- "to prevent and eliminate conditions and practices which endanger public health".

The current exemptions under Section 50-50-202 allow for public "food sales" by non-profit organizations up to 13 days in any calendar year with authorization from the local health authority. This exemption has been successfully utilized in Lincoln County for many years. Registration of proposed events by the organization, followed by review of menu items and event site, approval for the event, provision of detailed information on safe food handling practices for event participants and on-site Department visits to events whenever practical have provided our various non-profit organizations ample opportunities to organize and conduct "food events" for fund raising while minimizing the risks of food-borne illness or disease outbreaks.

No exemption should be allowed for engaging in "for-profit" manufacture or sale of food and food products without regulation or licensure. Abolishment of state and/or local authority to regulate the manner in which products produced or sold for human consumption are handled could result in widespread, uncontrollable incidence of food-borne illness or disease. Additionally, an exempted "for-profit" operations would exercise an unfair advantage (both financial and regulatory) over the licensed commercial establishments with which they would be in direct competition.

Thank you for your consideration of our concerns in your evaluation and hearing of SB-296.

James E. Gannon, Ph.D.
Associate Professor of Applied Microbiology
P.O. Box 905
Bonner, MT 59823

54th Montana State Legislature
Helena, Montana

February 13, 1995

Re: Deposition against Senate Bill 296

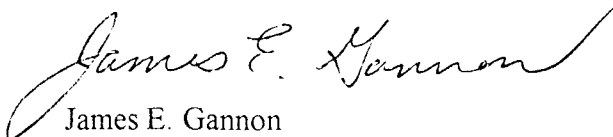
Dear Sir or Madam:

As currently written, it is my opinion that Senate Bill 296 will constitute an unnecessary public health risk to the citizens of Montana. I have taught Food Microbiology and served as a consultant for the Food and Beverage Industry for the past 10 years. My specific concerns are as follows:

1. "Preserves" includes foods prepared by canning. Even though the term does not include meat, poultry, or fish, CDC data indicates that approximately 54% of botulism outbreaks are from vegetables and 70% of these outbreaks occur in home processed foods. Due to the severity of this foodborne illness, it does not seem prudent to exempt these type of foods from licensure under food establishment laws.
2. "Allowing persons to sell potentially hazardous foods prepared and consumed at the same facility or location". Without licensure under food establishment laws, these vendors may not be fully aware of the precautions necessary to safely prepare "larger" quantities of food. For example illness with *Clostridium perfringens* or *Bacillus cereus* is a result of a sequence of events. The food is contaminated by the organism and during cooking, the vegetative cells are killed but the heat resistant spores survive and are even activated. If the food is held at a temperature allowing growth (10-50°C), the organism grows very rapidly. Populations of the organism can double every 10-15 minutes. Again, licensure is necessary to educate food vendors and to protect the general public.

I hope my comments are useful in your consideration of SB 296. If the bill was limited to "baked goods" and/or "raw and unprocessed farm products", it would not constitute a public health problem.

Sincerely,



James E. Gannon
Associate Professor of Microbiology

SENATE BILL NO. 296

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PRIVATE INDIVIDUALS AND NONPROFIT ORGANIZATIONS TO SELL BAKED GOODS AND PRESERVES; EXEMPTING GARDENERS, FARM OWNERS, AND FARM OPERATORS WHO SELL RAW AND UNPROCESSED FARM PRODUCTS AT A FARMER'S MARKET FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; ALLOWING PERSONS TO SELL BAKED GOODS AND PRESERVES AT FARMER'S MARKETS, BAZAARS, CRAFT SALES AND PUBLIC FUNCTIONS AFTER BEING ISSUED A SHORT TERM FOOD PERMIT FROM THE LOCAL HEALTH DEPARTMENT AT NO CHARGE.

ALLOWING PERSONS TO SELL POTENTIALLY HAZARDOUS FOOD PREPARED AT THE A LOCATION OPEN TO THE PUBLIC, NOT INCLUDING HOME KITCHENS, FOUR TIMES PER CALENDAR YEAR AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS, BUT REQUIRING THEM TO OBTAIN A SHORT TERM FOOD PERMIT FROM THE LOCAL HEALTH DEPARTMENT AT NO CHARGE. AMENDING SECTIONS 50-50-102, 50-50-103, AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that do not contain any meat, poultry, or fish.

(1)(2) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2)(3) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

(3)(4) "Department" means the department of health and environmental sciences, provided for in

1 Title 2, chapter 15, part 21.

2 ~~(4)~~(5) "Establishment" means a food manufacturing establishment, meat market, food service
3 establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

4 (6) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer,
5 or an organized market authorized by the appropriate municipal or count authority.

6 ~~(5)~~(7) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for
7 sale for human consumption.

8 ~~(6)~~(8) "Food manufacturing establishment" means a commercial establishment and buildings or
9 structures in connection with it used to manufacture or prepare food for sale or human consumption, but
10 does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants,
11 slaughterhouses, or meat packing plants.

12 ~~(7)~~(9) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,
13 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or
14 beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding
15 establishment, catering kitchen, commissary, private organization routinely serving the public, or similar
16 place where food or drink is prepared, served, or provided to the public with or without charge.

17 (b) The term does not include establishments, vendors, or vending machines ~~which~~ that sell or
18 serve only packaged, nonperishable foods in their unbroken, original containers or a private organization
19 serving food only to its members.

20 ~~(8)~~(10) "Food warehouse" means a commercial establishment and buildings or structures in
21 connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not
22 include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

23 ~~(9)~~(11) "Frozen food plant" means a place used to freeze, process, or store food, including facilities
24 used in conjunction with the frozen food plant, and a place where individual compartments are offered to
25 the public on a rental or other basis.

26 ~~(10)~~(12) "Meat market" means a commercial establishment and buildings or structures in
27 connection with it used to process, store, or display meat or meat products for sale to the public or for
28 human consumption.

29 ~~(11)~~(13) "Nonprofit organization" means any organization qualifying as a tax-exempt organization
30 under 26 U.S.C. 501.

~~(12)~~(14) "Perishable food dealer" means a person or commercial establishment ~~which~~ that is in the business of purchasing and selling perishable food to the public.

~~(13)~~(15) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(16) (a) "Potentially hazardous food" means any perishable food that consists in whole or in part of milk and milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(b) The term does not include clean, whole, uncracked, odor-free shell eggs or foods that have a pH level of 4.6 or below or a water activity (aW) value of 0.85 or less.

(17) (a) "Preserves" means fruit prepared by an approved canning method.

(b) The term does not include meat, poultry, or fish.

(18) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying; or

(d) combined with other food products."

(19) **Short Term Food Permit: A permit issued by a local health department to individuals, clubs and groups for the preparing, selling, or gifting food items on a short term basis at no charge.**

Section 2. Section 50-50-103, MCA, is amended to read:

"50-50-103. Department authorized to adopt rules. (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

"50-50-202. Establishments, farmer's market sellers, and occasional sales exempt from license requirement. (1) Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) (a) ~~No~~ A license is not required to operate an establishment if it is operated by a nonprofit

organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection must:

(a)(i) be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(b)(ii) prior to each operation, register with the local health officer or sanitarian on forms provided by the department.

(iii) Individuals or groups are required to obtain a Short Term Food Permit from the local health department whenever they wish to sell or gift food to the public. This permit can be issued four times per calendar year. Individuals or groups are not permitted to sell or dispense home-canned products with the exception of fruit preserves provided that the seller or vendor of such products can provide documentation that such products are high acid low risk foods which have been produced by approved canning methods and have a pH of 4.6 or less as verified by a method approved by the local health authority.

(iv) No short term permits are required for raw agricultural products.

(v) Potentially hazardous foods may be prepared at the point of sale or gift if the item does not require extensive preparation. Such foods may also be prepared in commercial kitchens or equivalent; such as lodge, school, fire hall and church kitchens provided that the food is served the same day as it is prepared and follows local health department requirements.

(vi) Short term food permits may be denied whenever community health needs or communicable disease patterns threaten the health and safety of the jurisdiction.

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

[illegible]

CITY-COUNTY HEALTH DEPARTMENT



BOARD OF HEALTH
County Commissioner
City Representative
County Representative
Superintendent of City Schools
Representative - Medical Society
Representative - Dental Society

1130 17th Avenue South
Great Falls, Montana 59405
(406) 761-1190

FAX #(406) 761-1192



SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 19

DATE 2-14-95

BILL NO. SB 296

SHORT TERM FOOD FUNCTIONS POLICY

For use when temporary SDHES Food Service License (\$60.00) is not issued.

1. No charge for certificate - education provided on food preparation.
2. May be issued routinely for bake sales, bazaars, summer markets, fund-raising activities, and holiday promotions.
3. Menu generally limited for homemade products to baked cakes, fruit pies, cookies, and candy. No home canned foods of any kind (i.e., no jams, jellies).
4. No potentially hazardous foods (meats, milk, eggs, etc. -- high protein) will be prepared at home. If potentially hazardous foods are prepared, they will be prepared in a commercial kitchen or equivalent the same day as the food is served. Some types of potentially hazardous foods may be prepared on site provided they do not involve extensive preparation (i.e., hot dogs, hamburgers, heating commercially prepared foods).
5. If potentially hazardous foods are served, then all requirements on the certificate must be met.
6. All food vendors are required to obtain a certificate from the Health Department prior to the event.

CCHD 5/92

CITY-COUNTY HEALTH DEPARTMENT



1130 17TH AVENUE SOUTH
GREAT FALLS, MONTANA 59405-4597
(406) 454-6950 FAX: (406) 454-6959

WIC PROGRAM: (406) 454-6953

BETTER BEGINNINGS: (406) 454-6954



Spring 1994

FARMER'S MARKET GUIDELINES FOR FOOD VENDORS

16.10.236 - TEMPORARY FOOD SERVICE ESTABLISHMENTS

"(1) A temporary food service establishment shall comply with the requirements of this subchapter, except as otherwise provided in this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and, when no health hazard will result, may waive or modify requirements of this subchapter."

TYPE 1 - Raw Produce - No Permit Required by Health Department (corn, carrots, potatoes, apples, etc.). Also includes herbs (unprocessed).

TYPE 2 - Foods Approved - Health Department Permit Required:

- A. Baked goods (breads, fruit pies, cakes, cookies, etc.).
- B. Inspected meat and dairy products if properly refrigerated.
- C. Hot dogs/hamburgers or other potentially hazardous foods where preparation is limited.
- D. Raw comb honey.
- E. Dried herbs (not in solution or oils); bagged.

TYPE 3 - Foods **Not Approved** - Permit Will Not Be Issued:

- A. Home canned foods (including jams and jellies).
- B. Home processed foods (salads, coleslaw, sauerkraut, cheese, fruit leather, etc.).
- C. Home processed potentially hazardous foods:

"Potentially hazardous food" means any perishable food that consists in whole or in part of milk and milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.

PLEASE NOTE: At any time when community health concerns (i.e., epidemics, uncontrolled communicable disease trends) exist, all food permits may be denied.

DATE 2-14-95

SENATE COMMITTEE ON LOCAL GOVERNMENT

BILLS BEING HEARD TODAY: SB 277 SB 282
SB 309 SB 296

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Ron A Anderson	Glacier/Ponderosa Co Health	SB 296		X
W. James Kembel	City of Billings	SB 282		X
Robert K Stevenson	City CO HEALTH - G.F.	SB 296		X
Bill Rappaport	Ponderosa County	SB 309		
Hub Packer	Cascade Farmers Mutual Ins	SB 277	X	
Harold C. Hansen	Mutual Western ^{mutual} and ^{and} Co	SB 277	X	
GARY GILMORE	MDT	SB 282	X	X
Mark O'Keefe	State Auctioneer	277	X	
Lid Rappaport	Mutual Rural Ins of Gallatin County	277	X	
Lorna Frank	MT. Farm Bureau	309	X	
Samuel M. Rasmussen	Montana ^{MT}			
MARY STOICAN	FARM MUTUAL LEWISTOWN	277	X	
GARY E. KNUDSEN	Tri-County Mutual - MATH	277	X	
Todd Damron	MDHE S	296		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-14-95SENATE COMMITTEE ON LOCAL GOVT

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Paul Stahl	Lewis & Clark County	SB 309	✓	
Charles R. Brooks	Yellowstone County	SB 309	✓	
Dan Wood		SB 309		X
Leon Stalcup	Mt Rest. Assoc	SB 296		X
Larry Brown	Ag. Pres Assoc	SB 309		X
Sam ROGER McGLENN	INDEPENDENT INS. AGENTS ASSOC. OF MT	SB 277	X	
Roy Andes	DSL	309	neither	
Blake Wordal	Lewis & Clark Co	309	X	
Chris Imhoff	League of Women Voters of MT	309	X	
Ken Engelland	Choateau Co.	309	X	
Bill Kennedy	Yellowstone Co	309	X	
Gordon Morris	MA Co	309	X	
Vernor Peterson	Perjus Co.	309	X	
Fred Rickard	Board Co			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/14/95
 SENATE COMMITTEE ON Local Govt
 BILLS BEING HEARD TODAY: 309

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Randy Myeres	APA	309		X
WARD JACKSON	MADISON CO. COMM.	309		X
I.M. NELSON				
Grace Nelson				
Tons Schinner	Skyline Sports	309	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY