

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN WILLIAM BOHARSKI**, on January 5, 1995,  
at 3:00 P.M.

#### **ROLL CALL**

##### **Members Present:**

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

**Members Excused:** None

**Members Absent:** None

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

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

##### **Committee Business Summary:**

Hearing: HB 54; HB 61; HB 79  
Executive Action: NONE

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**CHAIRMAN WILLIAM BOHARSKI** announced for witnesses and visitors to sign in, give their name, whom they are representing and also testimony sheets are provided for witnesses and may be submitted to the secretary. He then reviewed the sequence of the meeting; sponsor opening, proponents, opponents and also technical information may be given.

HEARING ON HB 79Opening Statement by Sponsor:

REP. GARY FELAND, HD 88, Toole and Pondera Counties, presented HB 79. He stated this bill would allow the County commissioners to remove an elected official from office. There is a determination written so a person could not arbitrarily fire somebody. He then reserved the right to close.

Proponents' Testimony:

John Alstad, Sunburst, former chairman the last two years of his term as Toole County Commissioner presented his testimony as a private citizen. He stated last spring he requested through Montana Association of Counties (MACO), something from the resolution committee that would allow county commissioners to remove an elected official from office if it was felt they were not doing their job by showing some type of cause. **EXHIBIT 1**

He then stated why he believes county commissioners and all local governing bodies should be allowed to bring charges, go through a public hearing and remove an elected official from office for not doing their job. He recounted a problem they had with a county treasurer which caused the county great damage and he spoke about the budget being approximately \$12 million a year.

Mr. Alstad said they had three hospital bond issues in their county in different years and the total value was \$1.25 million. They liquidated the bonds and refinanced in 1993. This saved the taxpayers of that county about \$100,000 over the life span of the bonds. This was a great advantage for the hospital. Part of the refinancing on June 30, 1993 in Toole county was to mail out the value of the bonds to investors so that on July 1, 1993, they would have their dollars to reinvest. The clerk and recorder happened to be in the treasurer's office and found a stack of papers of the bonds that had not been mailed out on July 1. The county attorney was immediately called and he advised that to avoid a law suit, the money had to be wired to the people that held the bonds.

In relating another incident to the committee Mr. Alstad said in July and August there was a change in school funding through the Office of Public Instruction, (OPI). OPI had called the treasurer's office and spoke to the incumbent treasurer saying they were going to start wiring the money into an account at the bank in Toole County and Shelby. They asked what account it should come into and the treasurer told them the account to send it to. The treasurer was the only one that was aware of or knew about this separate account. The schools in Toole County ran out of money and the Superintendent of schools started tracking and called OPI inquiring about the money. They said it had been wired to them. They found the \$800,000 in one of the local

banks. It was in a checking account, non-interest bearing. The calculated loss of interest was about \$6,000.

After conferring with the county attorney about these incidences, the advice was not to do anything.

**Mr. Alstad** closed by saying he believes that county commissioners and all local governing bodies should be allowed to charge and go through a hearing in public to remove that elected official from office for not doing the job. He said even though this is controversial, the electors have said they want more responsible government and this bill would then allow this to happen.

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**Allen Underdal, Toole County Commissioner** said he was in favor of HB 79. He referred to Section 1 on the determination of why there could be a vacancy in the county office.

He then referred to Section 2, stating removal of elected or appointed officers. He said to be a good manager and make good management decisions there should be a way to remove an official if they are not doing their job. Removal would be for specific reasons. People that are elected need to be doing the work they are being paid for and it needs to be established who is responsible to step in. **Mr. Underdal** said currently, there is nothing saying you can remove an elected official.

In closing, **Mr. Underdal** said the elected official was removed and they are currently in a court case settlement over it. The law is not very clear regarding this issue and if there is a cause like Toole County had, something needs to be available for the commissioners to remove an official who is not doing their job.

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**Gordon Morris, Director of Association of Counties** said this is not a bill to address the problem in Toole County. He said they have adopted Resolution 94-21 calling for the establishment of HB 79. This was passed by the association last September and was given a high priority by county commissioners all over the state of Montana.

**Mr. Morris** went on to say in his estimation this is good government legislation and more importantly, is modeled after authority in municipal law right now for the removal of a municipal officer by a council. That would include a municipal officer, e.g., a mayor. This is fashioned after the Montana Code Annotated in reference to municipalities and they are looking to establish at a minimum, comparable authority for county commissioners. If a case does arise similar to Toole County this would then be a tool other than the recall route. **Mr. Morris** said as the director of the Association of Counties he would urge

the committee to give this bill favorable consideration and a do pass recommendation.

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**Opponents' Testimony:**

**Bob Gilbert**, lobbyist, representing the **Montana Magistrate Association** said they are in opposition to this bill for technical and constitutional reasons. "There's no standard of proof of removal in this bill. You have three county commissioners making a decision based on what they feel is illegal or an act that they do not like, to remove someone from office. There's no method of appeal for that person to appeal a decision made by the three county commissioners. This is a legal representation problem. The county commissioners would probably be represented at the hearing by the county attorney who also represents the other elected officials in that county and this causes constitutional concerns. You have elected officials removing elected officials, different bodies, separation of power. In this instance it is executive removing judicial, a completely separate branch of government. This also causes real concern in the eyes of the Montana Magistrates."

**Mr. Gilbert** affirmed, "There is a method in place in the state of Montana for the removal of a magistrate who does not perform their duties in office and that is the five member special standards committee which takes complaints. Two are appointed by the governor, two are elected by the district judges, and one is appointed by the Supreme Court with four year terms. They are legally appointed and created by the legislature to deal with these problems. We do not need, in this instance, another body and especially when it becomes the Constitution of the State of Montana that we are violating. There are other methods for people to be removed from office and that is the standard election and also recall election. If there is a problem, the people of the county are allowed to take action. If there is a criminal act involved the methods are in place." **Mr. Gilbert** said for the reasons he has stated, the association opposes this bill and urged a do not pass vote.

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**Kathy McGowan**, representing the **Montana Sheriff and Peace Officers Association (MSPOA)** said they also oppose this bill for many of the same reasons that **Mr. Gilbert** stated. She said "The American people have the constitutional right to be wrong; the voter votes in someone and they also have the right to be involved in the removal of that person. That is a very strong element of their opposition and the voter should not be removed from that process." She reiterated there are good remedies in place right now for removal of an elected official.

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**Robert Throssell**, representing the **Montana Association of Clerks and Recorders** appeared in opposition of HB 79 and agreed with the previous opposition testimony.

**Jerry R. Wing, Clerk of Courts Association**, said his association also strongly opposes this bill because according to the bill, a person could be removed without a process of appeal.

**Joe Roberts, Montana County Attorney Association** said the concept of this bill was discussed in their meeting in December and they adopted a resolution very strongly in opposition to it. He subscribed to several of the points already made and added, "The association sees this bill as a fundamental shift of power to the county commissioners and away from elected office holders on the county level. It's not so much the actual removal from office that may not occur with great frequency but the threat of removal from office is a fundamental shift of power towards the county commissioners and away from elected officials on a county level. They do not agree with that philosophy. The system set up is one of elected office holders. If it needs to be changed it should be changed directly rather than through this kind of legislation."

**Mr. Roberts** continued by saying, "The comparison made to office holders and municipalities typically are office holders that are appointed. It is a general principle that the appointed authority is usually the one that is the removing authority. It may be appropriate for municipalities but it's not a fair comparison to county officials or elected. Since the voters are the appointing authority for those offices, they are the ones who should retain their ability to remove them. This is currently adequately protected in Montana law."

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**Chuck O'Reilly, Sheriff, Lewis & Clark County**, member of the board of directors of the **Montana Sheriff and Peace Officers' Association** agreed with the previous comments and added "We do not have an appointive system, we have a system of elected officials. If the citizens of a county wish to have an appointive system they can elect to do so with a governmental review." He referred to Section 2 saying, "The only ties it has with Section 1 is by proximity." He did not see language that said the removal of office must be because of the previous section. He also noted in the previous section while some of this repetition is from existing statutes there are some major modifications. He referred to Section 1, (5) "The absence of the incumbent from the county continuously for more than 15 days without the consent of the county commissioners." **Sheriff O'Reilly** said in law enforcement they have the FBI National Academy that is approximately three months long and they have worked long and hard to have the current law that establishes the ability to attend this academy beyond fifteen days. They need sixty days and this removes that from part of the law.

He urged the committee to kill this bill and said it is not in the best interest of the citizens of Montana.

**Informational Testimony:** None

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**Questions From Committee Members and Responses:**

REP. ELLEN BERGMAN questioned Mr. Morris about an alternative of rather than trying to remove an elected official why not try to get some of the positions appointed or just have people apply for the job, for instance, of treasurer. REP. BERGMAN said the average voter does not know who is qualified for treasurer when they vote them in and she understands it would have to go through the legislature, but should that come out of the county study commission and they could determine if the position of clerk and recorder or treasurer should not be elected positions. Mr. Morris responded that two things occur to him: 1) "We are currently in a unique process in Montana in the tenure constitutional required review process of local governments and this is a good opportunity for the study review commissioners to actually recommend to put on the ballot in 1996 to eliminate many of the rural officers that are elected today in almost all of the counties in Montana that could be filled by appointees." Mr. Morris said to answer the other question, "Commissioners currently do have the authority to combine auspicious offices and could eliminate at least one, which would be in most cases, two previously elected officials. An example is that across Montana, combinations such as district court and county treasurer are being combined into one elected office."

Mr. Morris continued by saying, "There is an option out there but it doesn't address the problem. The responsibilities by an incumbent elected official who thwarts that authority and the control that the commissioners have in county courthouses are across the state."

REP. BERGMAN asked Mr. Morris if he thought this is a better way to go about it than to get some of these positions out of being elected positions so they can be fired if they are not doing their job. Mr. Morris responded that these are two different and totally unrelated questions. He said just because you remove somebody from office under the provisions of this bill for cause does not mean that you would hold the statutory requirements for appointing someone to what would be a newly appointed vacancy and you would not be able, in terms of declaring the position vacant, to move to combine that during the term of what would be the incumbents elected for the office. Mr. Morris said this is not a removal option in that context. "If you remove an elected official you have to reappoint an elected official to fill out the unexpired portion of the term in his opinion."

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**REP. JOHN BOHLINGER** asked **Mr. Gilbert** to explain his remarks regarding reference to the constitutional issue. **Mr. Gilbert** said the magistrates feel because they are a judicial branch elected by the people and the county commissioners are the executive branch, the constitution requires a separation of powers. He said, "You then have one elected power trying to impose their will on another a separate branch. If this bill were to pass, it would require a majority vote as far as a constitutional amendment by the legislative body."

**REP. JOE TROPILA** asked what authority the county commissioners have over the courthouse. **Mr. Morris** responded "Commissioners have the ultimate authority of the courthouse operation procedures through their day-to-day budget authority. From that standpoint, the budget is a tool the commissioners can use to maintain dependability to the commissioners on authority of other elected officials. He knows of many instances where elected officials say they have a constituency that elected them the same as commissioners do and they don't have to do what the commissioners say whether it's in regard to how they conduct their day-to-day business or whatever it might be." He went on to discuss the difference between elected positions as opposed to appointed.

**REP. TROPILA** noted that the commissioners set the budget for all the offices but the elected officials run their own offices and are statutorily mandated on what they can and can not do.

**Mr. Morris** replied, "That is correct but the questions arise, what do you do as a county commissioner when you make a determination that another elected official is not fulfilling their statutory duties, that is what this bill is intending to address."

**REP. TROPILA** asked if it was true that these things are currently in the statutes and there is recourse to get rid of an elected official through the recall act. **Mr. Morris** replied, "The recall act does exist and it is an available tool yet, the recall act is an option tied to a voted recall of an incumbent and this is just another option."

**REP. TROPILA** referred to Section 216501 and asked if that would cover an elected official. **Bart Campbell, Legislative Council** responded that section is the existing procedure for filling a vacancy. Section 216 Part 6 is the Montana recall act. Both sections would cover elected officials, including county and appointed officials.

**REP. TROPILA** then referred to the new language in "The death of an incumbent." **Mr. Campbell** said this bill is taking language that is similar to the language in 501 and codifying that section to go into Title 7, Chapter 4, which deals with county officials. He noted this is mirroring that language and placing it into Title 7 and changing some parts.

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**REP. DAVID EWER** asked **Mr. Morris** if it was correct in reference to Section 2 regarding county commissioners, by a two-thirds vote, would they have the power under this bill to remove a district judge or county attorney, county auditor or sheriff. **Mr. Morris** stated that was correct and the legislative council did not look at the constitutional aspects of the magistrates in particular. He thought **Mr. Gilbert** had a good point in terms of the whole separate procedure as it would not be suggested to oppose consideration to try and find a way to exclude them from under this particular bill. He then explained it would be appropriate to include each and every one of the other elected officials and district court judges are not included because they are not considered county officials.

**REP. EWER** addressed **John Alstead** saying he was very sympathetic with the frustration that he feels because he has seen this situation in his own county as well and accountability is a real issue. He noted that they are now in the tenth year which requires the voters to vote on whether there is a study commission. He then asked if **Mr. Alstead's** county voted on the study commission and if so, what did they decide to do. **Mr. Alstead** explained their study commission is just getting started. **REP. EWER** said it is his understanding that one of the recommendations they can make is a county council similar to a city council with a professional manager, and if so, could they have most elected officials done away with and the frustration. **Mr. Alstead** said that is true and he, like many opponents, in a sense, believe in the elected system but his concern is that abuses of power can take place. He stated he is here as a former commissioner and is saying the recall is a slow process and \$2 million in a small county can cause a lot of troubles. He agreed that **REP. EWER** was right, that it could go to the managerial form of government and appointed department heads.

**REP. TONI HAGENER** sympathized with the frustration that a commissioner feels in not being able to control deficiencies in offices and asked **Mr. Alstead** other than the delay in the recall procedure, why didn't he go with the recall review. **Mr. Alstead** responded that in his experience recalls end up being time consuming and they were in constant consultation with county attorneys, therefore they did not trust the standards or the recall.

**REP. LINDA MCCULLOCH** asked **Mr. Alstead** if he could outline generally the recall procedure. It is his understanding that they have to garner petitions and wait for an election. **CHAIRMAN BOHARSKI** stated this is in Title 2 of the code books for reference.

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**REP. EWER** recalled an incident that was written in the paper where people tried to recall a public official and the district courts said they could not because they did not have sufficient standing. He then asked **Mr. Alstead** if he could comment on his experience of whether voters have been denied to recall a public official. **Mr. Alstead** responded the recall instance was a situation that arose recently in Sanders County and would very clearly be a good case in point. He recounted the incident by saying there was an effort to recall two county commissioners and one of the two commissioners did choose to contest the recall and did go to district court. The court ruled that the petitioners did not have sufficient ground to circulate a petition to recall and it was thrown out. The other commissioner did not choose the district court route to challenge the recall so it was then put before the voters in November and the commissioner was recalled. The other one is still an elected county commissioner in Sanders County.

**REP. BOB KEENAN** asked **Mr. Morris** if two county commissioners could get rid of the third one. He stated the way the bill is written the answer is very clearly yes. He then referred to Section 2 which would require two-thirds of all the members-elect.

**REP. HAGENER** asked **Mr. McGowan** to clarify his point where he referred to the fact that if this bill were to pass as is, it would have to be referred to under constitutional examination. **Mr. McGowan** responded, "His feeling was because of the separation of powers where it is a constitutional issue where powers of officials are most generally constitutionally guaranteed than the working executive, i.e., this is pairing the executive branch against the judicial branch and this is a constitutional issue, in that event it is the feeling that this could require votes sufficient to make a constitutional amendment or could be challenged in court as a violation of constitutional rights of those people who are removed from office by the county commissioners."

**REP. HAGENER** then asked **Mr. McGowan** if he was saying that if the commissioners ran as a group in order to dismiss an official they would be acting in a judicial capacity. **Mr. McGowan** responded "No, he is saying that if they met as a group to remove a magistrate then it would be the executive branch versus judicial and only in that case."

**CHAIRMAN BOHARSKI** asked **Mr. Gilbert** if when he refers to the magistrates is he referring to the justice of the peace and city judges. **Mr. Gilbert** responded "In the state of Montana, the magistrates are in three courts, the municipal court of which there is one in the city of Missoula, all the justice of the peace courts and city courts of the state of Montana. They are commonly known as the courts of limited jurisdiction or courts of non-record."

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**CHAIRMAN BOHARSKI** asked **Mr. Morris** to explain the position he took regarding the Montana Association of Counties convention and if most of the frustration he feels is with other elected officials or with the appointed officials or is it equal. **Mr. Morris** responded that it is clearly the case that it is directed at other elected officials.

**Closing by Sponsor:**

**REP. FELAND** closed by saying, "This bill would give the citizens a mechanism to get rid of someone that is not doing their job and causing the commissioners problems. This will make a system so the taxpayers and people do not have to go through a bunch of frustration. This is not designed to get rid of some sheriff that's picking on someone's kid. If the magistrates are concerned, an amendment can be done." **REP. FELAND** then referred to Section 1 insofar as the criteria is to fire somebody. He reaffirmed that if the sheriff is worried about going to school more than fifteen days all he needs is the consensus of the county commissioner and he could leave the county for ninety days.

**CHAIRMAN BOHARSKI** announced Executive Action on this bill would be next Tuesday.

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**HEARING ON HB 54**

**Opening Statement by Sponsor:**

**REP. TOM NELSON, HD 11, Billings Heights** distributed his amendment to the committee. **EXHIBIT 2** He then referred any questions on what affect the amendment has on the fiscal note be directed to **Deputy Insurance Commissioner Frank Cody**. **REP. NELSON** then read his introductory statement for **HB 54**. **EXHIBIT 3** **REP. NELSON** announced to committee members that **Gordon Morris**, proponent, was present at this committee meeting and also **Roger McGlenn**, noponent, representing the **Independent Agents Association**. **Mr. Morris** submitted written testimony from **Howard R. Bailey, Workers' Compensation Risk Retention Program, Helena**. **EXHIBIT 4**

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**Proponents' Testimony:**

**Greg Jackson, Marketing Director, Joint Power Insurance Authority Property and Casualty Pool (JPIA)** distributed a handout explaining the structure of JPIA. **EXHIBIT 5** **Mr. Jackson** said, "In 1986 public entities throughout Montana were experiencing two

things as far as insurance coverage and property casualty was concerned: 1) they were given what is called in the insurance industry as a "hard market" whereby, public entities, if they could find coverage especially for law enforcement and errors and omission coverage and general liability coverage to some extent, could not find it; and 2) if they could find it, they were experiencing from ten, twenty, and in some cases a 100% increase in premiums. As a result of that situation, the association of counties looked into the possibility of self-insuring for the property and casualty coverage in counties. As a result of that, in 1986 the property and casualty pool was established in October. Since then and at that time, the program was structured using surplus lines to supply the excess coverage over and above the self insured retention or the amount of money that was collected for the self insurance portion of the program. They have been proceeding with that structure ever since."

**Mr. Jackson** explained the organization chart (**Exhibit 3, page 2**). He went on to page 3 showing how the program is structured. **Mr. Jackson** reviewed the self insurance pool that has a self insured retention, and explained, "The money is collected from the members and put into a loss fund or a self insurance fund and that loss fund pays \$50,000 of each and every claim be it property, general liability, errors and omissions, law enforcement or crime claim." He then explained page 4 saying this is a copy of the brochure for the annual convention and it illustrates an overview of membership; forty counties currently in the property casualty pools and eighteen special districts. They do provide coverage to allow special districts, conservation districts, water and sewer and irrigation districts to be part of the pool. They market those entities as well as the counties to local agencies.

**Mr. Jackson** said one of the primary goals of the program is to retain flexibility in managing their own programs and as amended, HB 54 would retain that flexibility by allowing them to purchase surplus fines coverage as well as looking at admitted coverage and deciding between the two, which would be the best coverage at the lowest price. This is what they want for the members and they want retaining the flexibility to continue.

**Mr. Jackson** pointed out that as the charts indicate, they are a viable pool, a program cost and stabilized. The loss fund has increased in value; they do annual audits every year; they comply with actuarial studies and are very financially stable. With that he asked that HB 54 have favorable consideration and approval by the committee.

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**Norm Grosfield**, **Helena attorney**, representing the **Worker's Compensation Insurance pool** and the **Liability Insurance Pool** for the **Montana Association of Counties** said they believe this bill is a clarification of the law and does not change the law. It is

clarification based on the revised thinking of the insurance commissioner. When the new commissioner was asked to review this issue from 1986 to 1993 they had proceeded with the blessing of the prior insurance commissioner's interpretation regarding the purchasing of excess coverage. **Mr. Grosfield** said they worked out the amendments with the **Independent Insurance Agents Association** to attempt to resolve some of their concerns. The association was concerned that the original language of the bill was too broad, but the amendment has alleviated those concerns. Carriers in Montana can be licensed as admitted carriers or surplus line carriers. It takes more of a process to go through admitted carrier process. They only deal with the top rated companies that are recognized in the United States, including Lloyds of London. They have decided not to go through the admitted process but they are excellent companies. "By going through the surplus lines market, it actually saves the trust and the taxpayers a substantial amount in premium costs as opposed through the admitted market. The taxpayers pay the premium of the trust to let the trust operate." He then encouraged a positive consideration of the bill.

**Gordon Morris, Director, Association of Counties**, and secretary to the trust since it was created in 1986 agreed with previous testimony and said he echoed everything said and asked the committee for favorable consideration. He closed by saying this is a very important issue to the trust and Montana counties.

**Bob Worthington, Programs Administrator for the Montana Municipal Insurance Association (MMIA)** testified that this organization created in 1986 is very similar to MACO, however, they insure cities and towns across the state of Montana. They provide liability insurance coverage to 108 incorporated municipalities across the state out of a total pool of 127. At this point in time, MIIA does not use excess insurance on their liability side. When they were created they were unable to find excess insurance in the market place, therefore they passed a bond issue to capitalize their insurance program and their lost fund. All of their documents do allow them to operate very similar to the county program and allows them the possibility of purchasing excess insurance in the future. On an annual basis, they continue to review the market place to see if excess insurance would be a viable option for them. At this point, it has not been however, they would like to retain the option to do that. This would allow them to continue to provide cost effective insurance as they have been able to do in the past. This would benefit their program also. He urged the committee's favorable consideration of this bill.

**CHAIRMAN BOHARSKI** asked if he would be correct in assuming that all of the proponents have consulted with **REP. NELSON** prior to their speaking in support of the bill with the amendment. This was affirmative.

**Opponents' Testimony:** None

{Tape: 2; Side: A; Approx. Counter: 26.0;}

Informational Testimony:

Roger McGlenn, Executive Director of the Independent Insurance Agents Association (IIAA) and also Executive Director of the Montana Surplus Lions Agents Association thanked CHAIRMAN BOHARSKI for allowing the noponents (technical position). He said under the original language he signed in as an opponent. He affirmed that with the amendment Mr. Nelson has offered, it is a much improved approach to the issue as Mr. Jackson and Mr. Nelson have outlined. He also expressed appreciation to the MACO and Mr. Nelson for allowing IIAA to provide input prior to this hearing on the issue. Mr. McGlenn said this issue deals with the matter of public policy that is up before the legislature to decide. His committee has not taken an official opinion on the amendments but they are pleased with the improved approach to this issue.

Mr. McGlenn then noted the following points for the committee to be aware of prior to taking action on HB 54 by saying, "Make sure the committee understands that over time, political subdivisions, not just talking about MACO and the league of cities and towns, they are talking about a broader range under that definition of political subdivisions which includes water conservation districts, irrigation districts, etc. The other item being Mr. Jackson and Mr. Grosfield have outlined some of the technical information in regard as to what surplus lines insurance is and how it differs from the standard market place for what they are calling the limited market which the statute calls it." Mr. McGlenn said the other area that must be taken into consideration is that the surplus lines companies do not participate in the guarantee fund. He then described the guarantee fund as, "Those companies that are admitted under the western states guarantee fund for property and casualty and in the event of the insolvency of an insurance company; they pool their funds together to try and meet the liabilities of that insolvency. Under the surplus lines, one of the reasons the surplus lines evolved and was established by the state was to insure that the consumer, the taxpayer, was protected by the guarantee fund whenever possible."

Mr. McGlenn asked the committee to be very clear where the exemption stops. He noted some concerns by stating, "There could be a lot of requests forthcoming for further exemptions from this particular law for various reasons and which could ultimately, his associates are concerned, that after political subdivisions for example, if Washington Corporation, Montana Power Company, or a furniture manufacturer on Main Street Montana asks for exemptions, a lot of the protection that was provided under the superficial law and code, would be lost to those who are exempt and choose to go somewhere else." Mr. McGlenn asked that this information be put on record and concluded he supports the amendments but, if the bill is not amended and continues in its

present form, they would strongly oppose and ask for a do not pass recommendation.

{Tape: 2; Side: A; Approx. Counter: 30.1}

**Questions From Committee Members and Responses:**

**REP. BOHLINGER** noted in regard to the added risk that might be involved, in the fiscal note, there was \$129,000 that might be saved with the local, political subdivisions if this bill were put in place. He asked **Mr. McGlenn** if he feels the risk involved is sufficiently small that one might say we can afford the risk because of the gain that is offered and the opportunity to save local government this kind of money if the risk with respect to the reward would be justified. **Mr. McGlenn** directed this question to **Frank Cody, Chief Deputy Insurance Commissioner** and he replied that he disagrees with his understanding which is, "If the sponsor's amendments are accepted, the fiscal note would be negated and also they would continue to pay the tax dollars referred to. The fiscal note is done in projections, not actual dollars paid at this particular point in time but what if a lot of political sub-divisions shifted from the admitted market to the surplus lines market, what would the projected expense be. In regard to "Is the savings to the municipalities in reduced taxes equal to or outweigh the risk that may come from that participating guarantee fund, the taxes on political subdivisions insurance taxes is another issue and he did not want to take a position on whether this is tax or non-tax." "Secondly MACO screens the companies they do business with as far as financial stability. Without protection of the guarantee fund it could far out pace the \$129,000 on that bill to one municipality. If there was an insolvent carrier and claim against that municipality that had reinsured the lower plot, all the insurance in the surplus lines market, MACO has a good track record."

**REP. WYATT** asked **Mr. McGlenn** how the playing field is leveled or equal for those people who have gone through the process of being admitted carriers. **Mr. McGlenn** responded it is very complex, the differences between the admitted market and the non-admitted or surplus lines market. The primary difference is that although they have to be approved by the insurance department or declared eligible to do business in this state, they do not have to file their rates in forms that all admitted markets have to do. The specific reasons are in some cases like a pool of counties, there may not be one company who would write all the counties under their standard "off the shelf insurance policy form" but they may manuscript or draw up a whole new policy for that one business. Therefore, they could not file their rates in form. There are reasons why they are exempted and that is some of the hoops **REP. WYATT** referred to. From a competitive standpoint with the amendments to the bill, the people he represents in the private market could compete equally with the agents or brokers that public entities would use. They could use surplus lines and many of **Mr. McGlenn's** members are involved with the **Montana**

**Association of County** program. If they came to a water conservation district or one of the other political subdivisions, if they tried to buy jointly or separately, they could do the same and approach the same markets."

In conclusion **Mr. McGlenn** said he wants the committee to understand that "If they are exempted, there could be eventual concerns as far as solvency. You would have to look at every individual political subdivision plan to say which ones are well structured with solid companies and are there any structured without checking out the solvency of the company they would approach."

{Tape: 2; Side: A; Approx. Counter: 38.4}

**REP. EWER** asserted he believes, "The legislature has decided that it is in the best public policy, for whatever reason, to exempt local government insurance programs from the purview of the state auditory insurance commissioner and the issue is to force compliance with regulations from your office for surplus insurance and is this ingenious because we've already said you don't have to do self insurance." **REP. EWER** then asked **Frank Cody** to comment on his sense of the public policy. **Mr. Cody** responded that when the original bill was passed it was thought to be exempted some from the purview of the insurance commissioner's office and they recently, in the last two years, have found the problems and when looked at, it was realized that the law didn't specifically exempt them. After discussing with **MACO** and others involved they didn't think that the law allowed to do these things. It's the insurance commissioners job to make sure people comply with the law. They went to the people and told them they would not have to cancel their insurance midterm, they allowed them to keep the insurance they already had in place but when they renewed they would like you to go with what they read the law is or in the meantime, if they would like to get it clarified through the legislature, that would be fine. The law as it currently stands does not allow the ability to do what they have been doing in the past. The previous commissioner ruled differently on that."

**REP. EWER** asked **Mr. Cody** if he believes passing this bill is consistent with what appears to be the public policy of allowing local government to be self insured and not be under the purview of the insurance commissioner. **Mr. Cody** responded, "If that is what the legislature intended, yes, that is consistent. Their problem was they were not sure what they were trying to do."

**Closing by Sponsor:**

**REP. NELSON** reiterated "Surplus line companies that are being used are rated A+ and the purpose of using the surplus line companies are not to pay premium taxes but are to get the insurance coverage at the most advantageous rate and this is an

advantage to the tax payer who is really paying the premium. The bill clarifies the law and doesn't change it."

{Tape: 2; Side: A; Approx. Counter: 44.0;}

#### HEARING ON HB 61

#### Opening Statement by Sponsor:

REP. TOM NELSON, HD 11 explained, "This bill would remove the requirement that settlements entered into by self insurance pools operated by political subdivisions must be approved by a district court. Self insured pools operate like any other insurance carrier and throughout a year, are involved in many settlements of claims. Often, claims involve relatively small amounts and may or may not involve cases pending in a district court. District courts are not in a position to judge whether a settlement is appropriate, they do not have time to take evidence regarding a resolution reached between a self insured pool and claimant and the law creates an additional burden on district court dockets. The current language in the statute is unclear as to whether all settlements must be approved by a district court and only those settlements involving cases that have been filed in a district court. The requirement is a burden to both the insurance pool and the claimant as well as district courts. It is suggested that insurance payments made by political subdivisions be treated like any other insurance payment and let the parties resolve their disputes without delaying the process and payment and burdening district courts in regard to approvals." He urged the committee's approval of the proposed amendment to Section 2-304.

#### Proponents' Testimony:

Norm Grosfield, Attorney, representing the insurance pools that MACO operates stated they are asking that a technical provision be removed from the law that seems to require district court to review possibly all settlements entered into by pools. Insurance pools operated by subdivisions operate the same way as insurance companies or self insured employers in the state. They negotiate settlements, battle with opposing councils, litigate cases in district court and basically operate like any other insurance carriers. They do not know why this was put into the law, it's followed sporadically. If a case is before district court, they do try to get the judge to approve it. Judges do not want to be burdened with this procedure and they are not in the position to make a determination as to what the settlement is reasonable or not. Often times, dealing with small amounts of money, to agree to a settlement and then have a delay of several weeks or months to get it to court for review delays payment to the party involved and to settle the case with larger exposures, re-meeting with opposing counsel protecting their clients, they do not want the delay as well. He asked that this be removed from the law to



remove a stumbling block for claimants, insurance carriers, self insured pools themselves and also the burden district courts have because they do not want and are not in the position to accurately make a determination on."

**Gordon Morris, Director of the Association of Counties** and trust secretary thanked the committee for the good hearing and asked favorable consideration on this bill. He noted the fact that **REP. TONI HAGENER** was county commissioner of Hill County and president of the **Association of Counties** in 1985-86 when the trust insurance program was created.

**Bob Worthington, Program Administrator, Montana Municipal Insurance Authority, (MMIA)** which is the counterpart of the counties and city program stated that **Mr. Grosfield** articulated the problems this has caused and they also face the same problems within their liability program. He requested favorable consideration for this bill.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions From Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. NELSON** closed by saying this is a good bill and thanked the committee.

**CHAIRMAN BOHARSKI** announced that Executive Action may take place on Tuesday. He reminded committee members that if amendments are needed for any of the bills to work through the staff attorney for drafting.

*{Tape: 2; Side: 1; Approx. Counter: 49.1; Comments: Meeting adjourned.}*

ADJOURNMENT

Adjournment: 5:00 P.M.

*Wm E Boharski*

\_\_\_\_\_  
WILLIAM E. BOHARSKI, Chairman

*Evvy Burriss*

\_\_\_\_\_  
EVY BURRIS, Secretary

WEB/eb

# HOUSE OF REPRESENTATIVES

## Local Government

ROLL CALL

DATE 1-5-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Boharski, Chairman	✓		
Rep. Jack Herron, Vice Chairman, Majority	✓		
Rep. David Ewer, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Shiell Anderson	✓		
Rep. Ellen Bergman	✓		
Rep. John Bohlinger	✓		
Rep. Matt Brainard	✓		
Rep. Matt Denny	✓		
Rep. Rose Forbes	✓		
Rep. Toni Hagener	✓		
Rep. Bob Keenan	✓		
Rep. Linda McCulloch	✓		
Rep. Jeanette McKee	✓		
Rep. Norm Mills	✓		
Rep. Debbie Shea	✓		
Rep. Joe Tropila	✓		
Rep. Diana Wyatt	✓		

EXHIBIT 1  
DATE 1-5-95  
HB 79

January 6, 1995

John Alstad  
PO Box 33  
Sunburst, MT 59482

House Local Government Committee  
Montana State Legislature  
Capitol Station  
Helena, MT 59620

Dear House Local Government Committee:

Having had time to reflect on the opponents opposition to House Bill 79 on removal of elected officials from office, I would like to make the following comments in writing to you.

First, I would agree that the magistrates should be exempt from the bill since they already have a process of reviewing and handling their own problems.

Second, while the recall process is available, it is slow, cumbersome, and most times ends up like a messy divorce. In some cases, it would be too slow of a vehicle to use since county government is probably the largest business in many counties. A delay in acting has the potential of financial disaster if not handle expeditiously.

Third, the opposition used the argument that there was no appeal process. The MCA codes would handle this problem since the appeal would be to District Court where the facts could be tried and adjudicated by an independent judge.

Fourth, the opposition alluded to the fact that they are elected to their positions just like county commissioners by the same electorate. This is true, however when an elected official is not performing his or her duty. The official is seldom confronted by a mad taxpayer or voter - but the county commissioners are always confronted. The county commissioners are perceived to be the heads of county government but in actuality they are not. MCA code 7-4-2110 gives commissioners supervisory authority over other elected officials, but there is no vehicle to use as a disciplinary measure if the officials do not perform their duties.

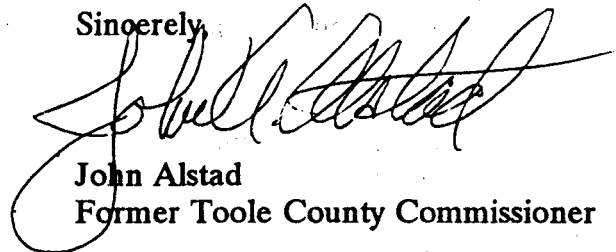
House Local Government Committee

Page 2

January 6, 1995

In closing, HB 79's intent is to effect good county government and make all elected officials more accountable and responsible. The commissioners work with these other elected officials on a daily or weekly basis and are very aware of problems being caused months or possible years before that official comes up for re-election. I believe that the November 8, 1994, election indicated that the electorate not only wants good and efficient government, but demands it! I would urge that this committee gives local government some vehicle to make all elected officials accountable for their actions by passing House Bill 79.

Sincerely,

A handwritten signature in black ink, appearing to read "John Alstad", written over a horizontal line.

John Alstad

Former Toole County Commissioner

Amendments to House Bill No. 54  
First Reading Copy

Requested by Rep. T. Nelson  
For the Committee on Local Government

Prepared by Bart Campbell  
January 3, 1995

1. Title, line 4.

Following: "ESTABLISHED"

Insert: "SEPARATELY OR JOINTLY"

2. Title, lines 5 and 6.

Following: "SUBDIVISIONS" on line 5

Strike: "ARE" through "COVERAGE" on line 6

Insert: "MAY OBTAIN EXCESS INSURANCE WITHOUT PROCEEDING UNDER THE  
PROVISIONS OF SECTION 33-2-302(2) THROUGH (4) OF THE SURPLUS  
LINES INSURANCE LAW"

3. Page 1, line 14.

Following: "insurance"

Insert: "separately or jointly"

4. Page 1, lines 14 through 16.

Following: "section"

Strike: "are" on line 14 through "coverage" on line 16.

Insert: "may obtain excess coverage from a surplus lines insurer  
without proceeding under the provisions of 33-2-302(2)  
through (4) "

INTRODUCTORY STATEMENT  
(HB 54)

The Montana Association of Counties Joint Powers Insurance Authority self-insured property and casualty pool was established in 1986 under the authority provided by Section 2-9-211 of the Montana Codes. Since the inception of the pool, the pool has purchased excess insurance coverage to cover the risk over and above the self-insured retention level established by the pools' Board of Trustees. The excess coverage is currently provided by surplus lines companies eligible to write such insurance in Montana.

The pools' Board of Trustees has proceeded to operate and purchase excess coverage based on previous Insurance Commissioner's interpretations of Sections 2-9-211 and Title 33-1-102 (8) (a) that exempts political subdivision self-insured pools from the provisions of the insurance code.

Recently, the previous interpretation of Section 33-1-102 (8) (a) has been revised regarding the purchase of excess coverage by surplus lines carriers. The revised interpretation requires compliance of the purchase of surplus lines coverage under the insurance code. The result of such an interpretation requires that if an authorized or admitted carrier is available to offer equivalent coverage to the pool, the pool would have to purchase such insurance from the admitted carrier, even though such coverage would have to be purchased at an increased cost to the pool or even reduced coverage for the pool.

HB 54, as amended, clarifies this issue and allows political subdivisions, who are self-insured either separately or jointly, to obtain excess insurance coverage without proceeding under the provisions of the insurance code as a condition precedent to procuring surplus lines insurance. HB 54 would retain subsection (1) whereby the purchase of excess coverage would be procured from a surplus lines company eligible to do business in Montana and subsection 5, whereby the pool would comply with other requirements of the code when procuring excess surplus lines coverage.

Montana Schools Group

WCRRP

Workers' Compensation Risk Retention Program

EXHIBIT- 4

DATE 1-5-95

HB 54

Plan Administrator, Montana School Services Foundation - Howard R. Bailey, Director  
1 South Montana Ave. • P.O. Box 5388 • Helena, Montana 59604  
442-0557 (Administration)

January 4, 1995,

Mr. Greg Jackson  
MACo/JPIA  
2711 Airport Road  
Helena, MT 59601

Re: Suggested legislation in reference 2-9-211

Dear Mr. Jackson:

I am in receipt of the information you sent to me in reference to the proposed bill that would clarify that political subdivisions that elect to procure insurance separately or jointly under the provisions of 2-9-211 are not subject to the surplus lines provisions of Title 33.

Since 2-9-211 clearly gives political subdivisions the authority to procure insurance through the use of a self insurance plan or a deductible plan, not being able to purchase excess or reinsurance under the most favorable conditions is detrimental to political subdivisions plans. As Program Administrator of the WCRRP, I would certainly be in favor of this.

Sincerely,

*Howard R Bailey*

Howard R. Bailey  
Program Administrator

HRB:prt



EXHIBIT 5  
DATE 1-5-94  
HB 54

**HB 54**

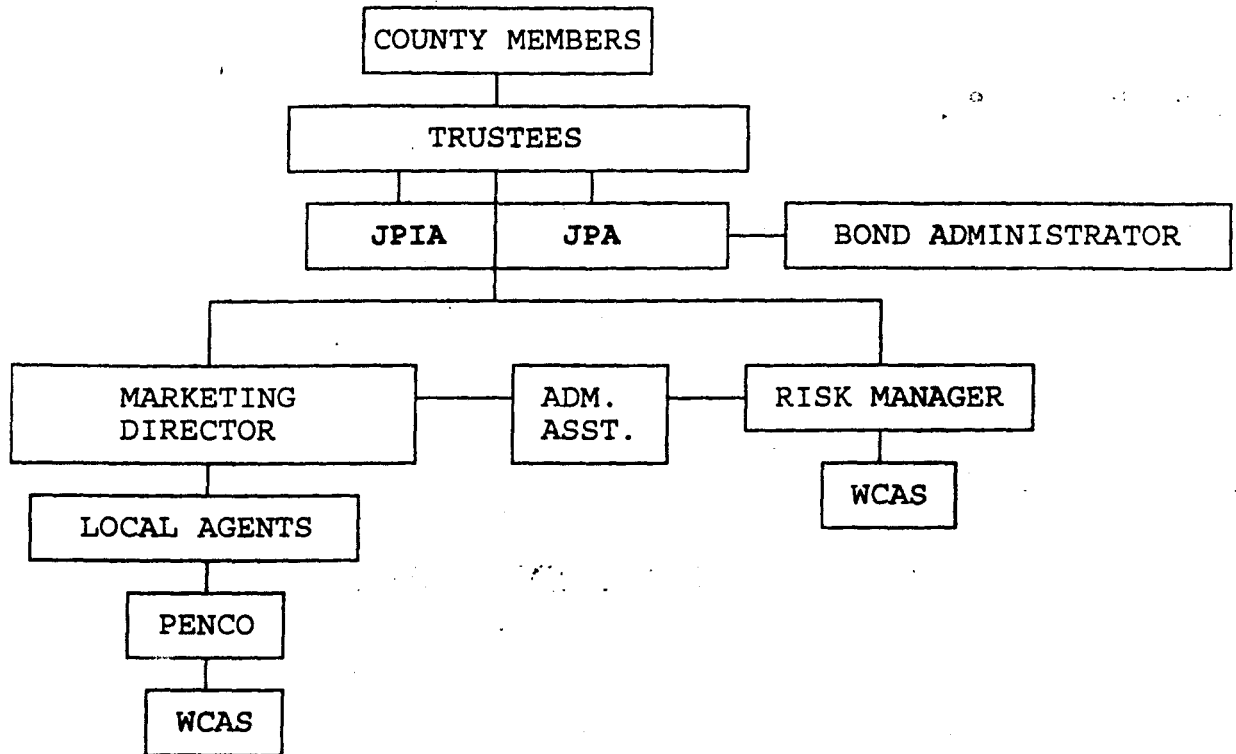
**HOUSE LOCAL GOVERNMENT COMMITTEE**

**JANUARY 5, 1995**

**REPRESENTATIVE TOM NELSON**

**PRESENTED BY GREG JACKSON, JPIA MARKETING DIRECTOR**

**MONTANA ASSOCIATION OF COUNTIES  
INSURANCE TRUSTS' ORGANIZATION CHART**



- JPIA** - Joint Power Insurance Authority - Property and Casualty Pool
- JPA** - Joint Powers Authority - Workers' Compensation Pool
- PENCO** - Public Entity National Company - Broker for the Property and Casualty Pool
- WCAS** - Willis Corroon Administrative Services - Claims administrator both pools

**MACO JPIA**  
***Program Structure***  
**1994 - 95**

**General  
Liability**  
*(incl. Law Enf.)*

	General Liability <i>(incl. Law Enf.)</i>	Automobile Liability	Public Officials E & O Liability
Hartford Fire Insurance Company	St. Paul	St. Paul	St. Paul
\$75,000,000	\$500,000 Occ.	\$500,000 CSL	\$500,000 Occ./Agg.
\$25,000,000 Flood	\$1,000,000 Agg.		Claims Made Form
\$25,000,000 Earthquake	\$500,000 Agg. Prod./Comp. Ops.		\$10,000,000 Total Pool Aggregate
Northfield/Lloyds	Northfield/Lloyds	Northfield/Lloyds	Northfield/Lloyds
\$950,000	\$950,000 Occ. \$2,950,000 Agg. Law \$2,950,000 Agg. All Other	\$950,000 CSL	\$950,000 Occ/Agg.
	\$950,000 Aggregate Products/Completed Operations		CLAIMS-MADE FORM
			Crime Northfield/Lloyds \$450,000
			\$20,000,000 Total Pool Aggregate Limit per Policy Period
	<b>MACO - JPIA Self-insured Retention</b> (per loss) <b>\$50,000</b>		
	Maintenance Deductible (per loss) Paid by Pool Member		

## JPIA Member Counties and

### Affiliate Members

BEAVERHEAD	MEAGHER
BLAINE	MUSSELSHELL
BROADWATER	PARK
CARBON	PETROLEUM
CASCADE	PHILLIPS
CHOUTEAU	POWDER RIVER
DAWSON	POWELL
FERGUS	RAVALLI
GARFIELD	RICHLAND
GLACIER	ROOSEVELT
GOLDEN VALLEY	ROSEBUD
GRANITE	SANDERS
JEFFERSON	STILLWATER
JUDITH BASIN	SWEET GRASS
LAKE	TETON
LEWIS & CLARK	TOOLE
LIBERTY	TREASURE
LINCOLN	VALLEY
MADISON	WHEATLAND
McCONE	WIBAUX

### Conservation Districts

BITTERROOT  
MISSOULA  
POWELL  
RICHLAND

### Water / Sewer Districts

BIG FORK  
MEADOWLAKE  
MELROSE  
SUN PRAIRIE

### Irrigation Districts

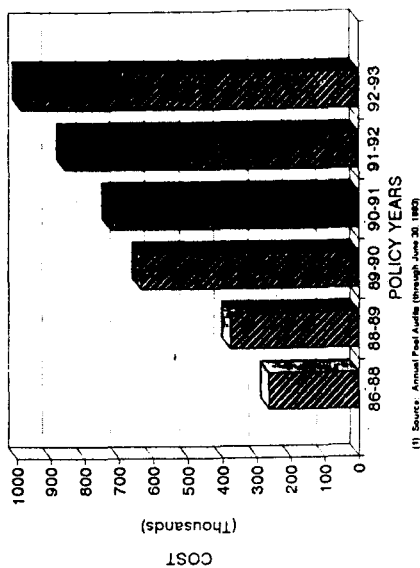
ALFALFA VALLEY  
FORT BELKNAP  
FORT SHAW  
LOWER YELLOWSTONE  
MALTA  
MILL CREEK  
PARADISE VALLEY  
ZURICH

## JPIA Report to Members

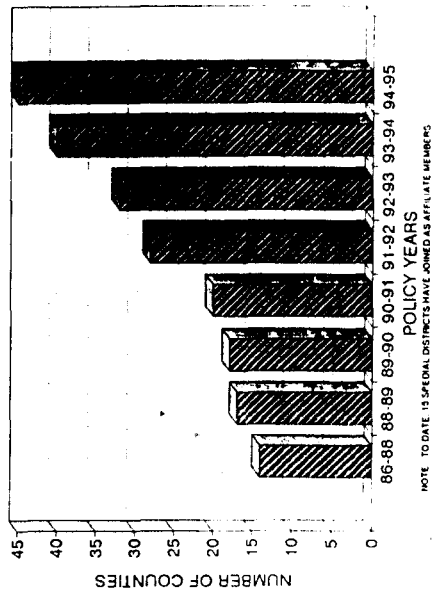
The Montana Association of Counties Joint Powers Insurance Authority has completed 93 months of operation providing property/casualty insurance coverage and services to members in Montana.

The current program continues to provide comprehensive insurance coverages for the pool members. Likewise, the program continues to achieve the goals of the pool: stability in insurance costs, availability of coverages, growth in self-funded equity, flexibility in managing one owns insurance program and the provision of cost/effective services provided by pool administration, risk management services and claims administration. The coverages provided by the pool continue to be expanded and enhanced with increased limits and the addition of weed liability coverage on an optional basis. In 1993 the pool offered coverage to 3 special district groups. The response from the affiliate groups since 1/1/95 has been very positive. Also, this year, the Trust divided back to 20 county members a total of \$249,467; based on the experience in the policy year ending 6/30/91. The MACo/JPIA Board of Trustees, comprised of commissioners from member counties; thank you for your continued participation in the program and look forward to a successful 1994-95 year.

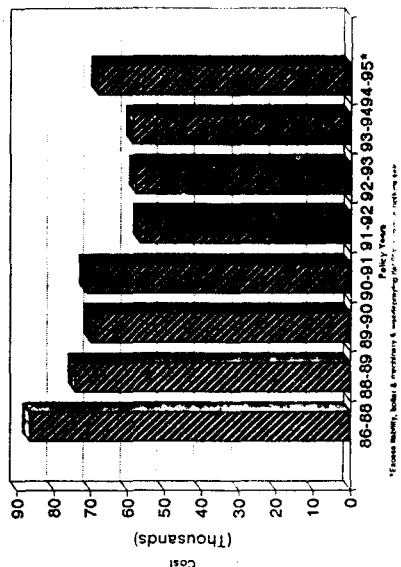
## LOSS FUND EQUITY INVESTMENT (1)



## MEMBER COUNTIES



## Annual Program Costs Average/County



HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Local Government

COMMITTEE

BILL NO. 54; 61; 79

DATE 1-5-95

SPONSOR(S) REP. NELSON; REP. FELAND;  
(HB 54; HB 61) HB 79

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jerry R. Wing	Clerk of Court Madison County		✓ 79
KATHY McGOWAN	MSPOA		✓ 79
Charles R. Brooks	Yellowstone County		
JOHN ALSTED	TOOLE COUNTY	79	
Allan Underdal	Toole County Commissioner	79	
Bob Gilbert	Mt. Magistrates Assoc		✓ 79
Roger McGlen	IIAM		54
ROBERT THROSSSELL	MT Assoc. Clerk Recorder		79
Gert Jackson	MARCHIDA	54 61	
Bob Worthington	MMIA	54	
Gordon Morris	MAA	54 61 79	
Cort Harrington	County Treasurers Ass.		79
JOE ROBERTS	MT. CTY ATTY ASSN.		79

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

LOCAL GOVERNMENT

COMMITTEE

BILL NO. 79-61-54

DATE 1-5-95

SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Norm Grosfield</i>	<i>Montana Assn. of Counties</i>	<i>54 &amp; 61</i>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.