

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN BILL BOHARSKI**, on January 10, 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 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: Rep. Matt Brainard (R)

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 101; HB 103; HB 105
Executive Action: HB 61 DO PASS
HB 54 DO PASS AS AMENDED
HB 79 TABLED

HEARING ON HB 101

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, TOWNSEND said this bill helps her
carry out some campaign promises which was to return some of the
power to the local government. This bill would allow self-

governing local governments establish alternative methods for carrying out their functions and providing services required by the state law. The bill was developed by the Governor's Task Force to Renew Montana Government. It would empower local government and give more options and more creative ideas and ways of accomplishing things required by the state of Montana.

REP. MASOLO said there are approximately 1200 pages of state statutes governing local government. That body of law has been built up over the last 100 years. With technology changing, some of the statutes act as an impediment to local government in their desire to provide the best service at the lowest cost to taxpayers. This bill gives local government officials the tools they need to manage their affairs.

Proponents' Testimony:

Laurie Ekanger, representing the **Governor's Office**, stated the task force reported their recommendations and after reviewing the report, the governor said this is one he has endorsed along with a number of others. The general theme of the recommendations is returning authority and allowing some flexibility for local government. The goal of this recommendation is to get the state out of the business of how local government delivers a product and let them decide. **Ms. Ekanger** concluded by thanking on behalf of the governor's office, the Renew government Task Force for their work and she asked that this bill be passed.

David Ashley, Deputy Director, Department of Administration said he staffed the governor's task force during the last year. **Mr. Ashley** then explained what this bill does. The state's regulation of local government: 1) powers denied, labor laws are at state level and local government cannot reassert those laws; 2) powers requiring delegation, the most notorious would be the local options sales or income tax. The state does not delegate that particular power to a local government; 3) mandatory provisions, the state tells local government they must do certain things. He then referred to and quoted from line 14 to 21, Section 2 of the bill.

Alec Hansen, Montana League of Cities and Towns, expressed support for **HB 101** on general principles. He said the 1972 constitution is intended to give cities the authority to manage their affairs and this has not happened. An enormous amount of time is spent in the legislature on bills that set operating hours, flexibility in submitting reports to elected officials, therefore this bill makes a very positive step in the right direction. Flexibility is needed at the local level to provide services as efficiently, economically and logically as possible and get past a lot of the restrictions that have been written into Title 7 over the years. There are 1,007 pages in that section and most of the provisions, in some way, restrict the authority of local government. He concluded by saying he did not think the intent of this bond service task force was in anyway to

subvert the right of public employees and if that is an issue the committee could address this. "We need to trust in elected local officials to make the right decision for the people they represent and we need to get away from the routine of coming to the legislature every two years with technical corrections in the local government."

Gordon Morris, Director of the Association of Counties, remarked that after reviewing this bill, while he felt the counties are not directly impacted, the bill deserves careful consideration and he urged a do pass recommendation.

Larry Fasbender, representing the **City of Great Falls**, asserted that a lot of what is going on in government today is reflected in what has happened in the last election and people want the government to do more and do it more efficiently. "We have been preventing local governments in Montana from accomplishing a lot of the tasks they carry out by bettering them with legislation at the state level that mandates what and how they are going to do it. What happens locally is people who do that are going to be held responsible. If this legislation is changed to allow them to carry out some of the functions and provide some services and alternative ways, if they don't work, they're going to be held responsible. This is a great opportunity if they do work. There will be things to satisfy the public and restore some faith in government to make people aware of the fact that there are different ways of doing things. Technology has changed the way we live and the way they have to operate. City government ultimately is going to provide services as good or better than they are doing now. This is what this bill is attempting to do, to unchain local government."

Tim Magee, Finance Director, City of Great Falls stated one of his primary duties in the city is the budget and just about every time they get to a department, there is something they are prevented from doing or something they cannot do in a sufficient manner because of the preponderance of statutes, so many of which are contradictory. They have to stop, go a different direction, spend the money on the item, or waste the money on the item because they cannot do anything about it. They are asking for the ability to respond to their community and be able to function in the most efficient way possible. They are under very restricted revenue sources and they need to look for all options possible and responsiveness through this type of legislation.

Bill Verwolf, City Manger of Helena, agreed with previous testimony and said he wanted to go on record as supporting this bill for the following reasons: "This is a way of improving government and the way we operate. In many cases, there are some fairly small changes, because the body of law that governs has been built over so many years and so many details that this would free up local government to respond and clean some of the road blocks out. There is a group of people doing a very serious review of our local governments around the state, the local

governments study commissions. This gives them more flexibility and freedom as they look at what the structure of local government should be. This removes some of the impediments to what they are doing." He then encouraged the committee to support this bill.

Gloria Paladichuck, member of the **Governor's Task Force to Renew Montana Government** and the local government sub-committee, chaired by Great Falls City Manager, **John Laughton**, urged support of HB 101. **Ms. Paladichuck** stated that it allows self-governing local governments to establish alternative methods of providing services. The key word is "self government" and it is up to the local people, if they want to take advantage of such self-governing powers. When the Montana Constitution was re-written, it was the intent to provide vast self-governing powers to local governments but for some reason, the Montana legislature never quite wanted to fully sever the ties and allow full self-governing powers. This bill will help accomplish what was intended in the Montana constitution. It provides the flexibility needed for change. "We are in a rapidly-changing society and local governments need the flexibility to meet the new demands." She again urged a do pass recommendation.

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Opponents' Testimony:

Tim A. Bergstrom, a twenty-year member of the Billings Fire Department submitted his written testimony and also read his concerns to the committee members. **EXHIBIT 1** He pointed out that this bill would allow local self-government entities to privatize certain services if they chose to and many required functions could be accomplished by methods other than those prescribed by current state statute. **Mr. Bergstrom** said he limited his comments to how this proposal might impact municipal fire departments.

Don Judge, **Montana State AFL-CIO** agreed with the testimony offered by **Tim Bergstrom**. "With this change in the Code, it is clear that local government could contract out or privatize local law enforcement services, turning over that ability to someone whose motivation is profit or not necessarily always in the public interest and public good. The concept of allowing local government more flexibility to deal with their problems is a good one but the committee should address and take a much more detailed look at just what services local government are required now to provide by law to the citizens within that local governing unit and determine if in fact there are some services that should continue to be mandated to be provided by the local government service by employees of that local government entity. This bill needs further study and perhaps an amendment in order to give local government some of what they are looking for."

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DEBBIE SHEA asked **David Ashley** exactly what "alternative methods" mean to him. He responded, "The committee has just heard testimony from an employee of the fire department in the city of Billings (Exhibit 1) regarding a disciplinary hearing that ended before the city council could vote on whether the disciplinary action was correct and in state statute.. On the police side of the acquisition, you'll also find in state statute a different procedure involving a three or five member police commission who has the same authority. Both of those are in state statute and rather than presuming at the state level that those are the best ways to handle those particular situations, this bill would give local government the authority to use either one." **Mr. Ashley** said they felt that hiring a hearing officer from the Attorney General's office was more efficient and the fairest way to proceed. It opens up more options for local governments to proceed with things of that nature. **Mr. Ashley** said before the hearing he was looking for things in terms of the police commission and it has a \$10 or \$15 per day per diem allowance for the commissioners on the board. Eventually, inflation will make those fees, which are set in statute, inappropriate. That is what causes local government to bring concerns to this committee for action. He concluded by stating this bill would take local functions and services which are best determined by how they are provided and leave it with the city councilmen and county commissioners.

REP. SHEA asked **Mr. Ashley** what this does for collective bargaining agreements. He responded collective bargaining agreements are one of the things under the powers denied. Collective bargaining is determined at the state level and this bill would not affect that category.

REP. DAVID EWER stated he was underwhelmed by the proponent's lack of specificity as to the value of this bill, and this is a very significant change. He said except for **Mr. Ashley** referring to the volunteer fire fighters he asked **Mr. Alec Hanson** for some examples where this would help local government. **Mr. Hanson** explained there are numerous places and the "general distinction between self-government and general government powers is if you have self-government powers under the constitution you are supposed to be able to do anything that is not expressly prohibited by state law. If you have general government powers you can only do those things that are specifically authorized by state law. The distinction between self-government powers and general government powers is virtually non-existent. Self-government power does not have much meaning in Montana." **Mr. Hanson** continued by saying everyone of the bills brought in here the last two years essentially dealt with this issue because the legislature has written a law at one time or other that says they have to do this. He then cited examples stating five years ago there was a bill to repeal the section of law that said the city finance officer had to have the monthly finance report to the

city council on the first Monday of the month. By doing simple mathematics, one out of every seven Mondays would be the first day of the month and in this instance the first Monday of the month was New Year's Day, which is a holiday. The first Monday of the month this year was also New Year's Day which is a holiday. People were forced to comply with this law or choose to ignore it. This could be avoided if the definition of self-government powers is broadened and this is the purpose of this bill. **Mr. Hanson** said in going through the codes, there are hundreds of examples where if this bill were passed, a self-government empowered city could do some of these things. He then offered to provide the committee with a list of examples before executive action takes place.

REP. DAVID EWER said for the benefit of the committee it might be helpful to know which cities and counties are self-governing and how many incorporated counties there are in Montana, and of those, how many are self governing and who are they. **Mr. Hanson** responded there are 128 cities and towns and 10 to 12 have self-governing powers. He mentioned Great Falls, Helena, Billings, and Sunburst and West Yellowstone are some of the small towns that have them. Some of the larger towns that do not are Missoula and Bozeman. The decision to have self-governing powers is always voted on by the people. After this current round of government review, there will be more cities and towns with self government powers.

REP. EWER encouraged **Mr. Hanson** to provide the examples he spoke of so the committee can better understand this bill. **Mr. Hanson** agreed to do this. **REP. EWER** said there is legitimate interest in what the state has said about key personnel issues on due process for fire fighters and if it is not the intention of the proponents to get into that area, it would be helpful to fix this bill accordingly. **REP. EWER** said he assumes the list of examples will not include this area. **Mr. Hanson** stated an important point to remember is the number of public employees other than police officers and fire fighters that do not have specific statutory protection and they are covered very effectively by the labor laws of the state of Montana, e.g., wrongful discharge, and this bill does nothing at all to affect this. As far as privatization of police and fire service, there has not been an organization that has fought more aggressively against mandates of privatization than the League of Cities with regard to garbage, contracting service, etc. **Mr. Hanson** said this is not the intent and he is not aware of any self-governing city at this time that has any remote intent to privatize the police or fire department.

REP. TONI HAGENER stated that in the 1974-76 local government review period they were required to have an alternative form of government put on the ballot and many opted for self-government powers. **REP. HAGENER** then asked how many of those actually passed. **Mr. Hanson** stated he was not sure he could give an accurate answer and the only one he was sure failed was in Bozeman when they put it on the ballot and it was rejected.

REP. HAGENER stated that specifically, that segment of it failed and there were quite a few others that had self-government powers that were a part of the reason it failed. She asked of those that did have self-government powers in the 1974-76 or in the 1984-86 period of time, how many have disbanded any of their emergency services. **Mr. Hanson** said he was not aware and there may be some small towns that have contracted with the county for law enforcement which is allowable under the law. He was not sure if any of the cities that have done this in the last twenty years have self government powers or not and it would not make any difference because the city, with general government powers, can also contract with the county for law enforcement. He said he is not aware of anyone that has disbanded emergency services. The trend has been the other way, to provide more emergency service. He said two years ago there was talk about the ambulance districts and the ability to provide those services.

REP. LINDA MCCULLOCH asked **Mr. Judge** if he could tell the committee about the amendments to this bill. He responded that he had suggested that the committee may want to look at some amendments to exclude the provision of law enforcement and the provision of fire services and emergency-related services from the ability of local government to contract out those services. **Mr. Judge** said it is already clear that local government has other services they do contract out. There have been some disputes in communities such as Great Falls over the contracting out of garbage collection. There will be other disputes as communities look toward cutting the costs of providing public services. In the constitution and through the laws, there were some clear directions that state government gave local governments in terms of protecting the health and welfare of the citizens. Those are two clear areas where we think that government should be prohibited from contracting to the private sector.

REP. JEANETTE MCKEE asked **Gloria Paladichuck** if the task force committee considered and talked about the concerns **Mr. Judge** has on the possibility of contracting out for police, fire and emergency services. **Ms. Paladichuck** responded yes, that it was discussed as a new way in the future and it is seen nationwide as a possibility, but that was not the intent and purpose of this bill.

REP. MCKEE asked **Ms. Paladichuck** if she would be in support of the amendments that **Mr. Judge** talked about. She responded that it is hard for her to speak to this without seeing how the people that actually did the work and research on this feel and what the effect will be. She concluded by saying she does not want to speak on behalf of the local governments, who are suppose to benefit from this.

Closing by Sponsor:

REP. MASOLO closed by saying, "the local government committee and the governor's task force characterized Title 7 as being on the sides of war and peace and over time, the committee's desire is to reduce the title of the codes. The reason is, local officials are in the best position to manage local affairs. They would still be bound by collective bargaining. "You hear a lot about the state and federal mandates. Whether they are good or bad depends on your views, but at least we ought to give the local government the flexibility in meeting those mandates as cost-effectively as possible and that is what this bill does." **REP. MASOLO** asked for the committee's support and for a do pass vote.

HEARING ON 103**Opening Statement by Sponsor:**

REP. SAM ROSE, HD, Choteau noted **REP'S. HAGENER, TROPILA** and **ANDERSON** have all been active in local government. He stated this bill provides the fines imposed and costs assessed by a district court in criminal cases and paid into the county general fund must be used to fund the operations of the district court; and amending Section 46-18-235, MCA. He said the clerks of the district courts have the expertise and will give some insight into their needs. He then reserved the right to close.

Proponents' Testimony:

Bob Gilbert, appearing on behalf of the Clerks of District Courts Association, said HB 103 is a users' fee concept and currently the money goes into the general fund with the noted exceptions in the bill and the other part goes to the state general fund. It does not affect the fees and the distribution fees that are generated from the courts of limited jurisdiction. It only applies to the district courts in the state of Montana. The problem has been dealt with before in the legislative process and they have not arrived at a total answer, however this is an attempt to address part of the answer.

Lorraine VanAlsdohl, Clerk of District Court, Bozeman, said the purpose of the change in this bill is when they collect money for fines in criminal cases, the actual collecting process of contacting the criminal and seeing that this person does what they are supposed to do always goes through the clerk of district court's office. A lot of time is spent, postage, hours hunting them down to get them to pay the fines. Over the years they have been trying to update the codes to get the courts that do have a district court fund and the counties to get the monies they are working hard to get, be paid back into the district court fund to help fund the courts. **Ms. VanAlsdohl** said it does not amount to a lot of money, \$5,000 so far this year in Gallatin County. The object of bringing this forth is in a lot of courts across the

state because the judges want the money to stay in the district court, and are calling it something else. They are not fining someone, they are assessing them a fee and putting it in the library fund or miscellaneous fund but it stays in the district court fund. They thought they needed to clean up the bill and have the money stay in the district court.

Gordon Morris, Director of Association of Counties, characterized HB 103 as a housekeeping bill and from that prospective, he supports this aspect as they must from the standpoint that there are many times when bills are drafted and when working with legislative council members through sheer oversights, some sections of the codes slip through and this is one of them. The district court used to be funded solely out of the general fund and when they made the switch over by virtue of authorizing the district court levy in 1979, many of the statutes needed to be changed. **Mr. Morris** said he takes responsibility for a major change in 1985 in the language that says "or if the county has a district court fund deposited in that fund". He does not have a problem with this and feels it is appropriate but any suggestion that something other than the money staying with the district court is inappropriate and this would correct this. These are funds that are intended to stay in district court. He then urged a do pass vote.

Opponents' Testimony: None

Informational Testimony: None

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Questions From Committee Members and Responses:

REP. JOHN BOHLINGER asked **Mr. Gilbert** what he sees as a potential for funds that might be available for the courts if this were put into law. **Mr. Gilbert** said they ran quick numbers in two counties and have not had time to really get into it. In Lewis and Clark County last year it was about \$12,000 in FY 94. So far FY 95 it's \$11,000 so there is an increase. FY 94 in Gallatin county was \$14,027, and so far FY 95 is about \$5,900. It will fluctuate, but every little bit helps.

REP. ANDERSON asked **Mr. Gilbert** if this proposal came from the judicial unification finance committee. **Mr. Gilbert** responded that to his knowledge this came from the clerks of district court. **Ms. VanAlsdahl** verified this statement. **Mr. Gilbert** said with the information he has been provided, most of the money goes into the general fund, however some of the judges have taken the liberty of putting the money into different areas and the feeling of the clerks of district court is that the money generated in the district courts has led to additional work for the clerks of the court and their feeling is that money should go back into the court fund rather than the county general fund. This would offset other general fund money.

REP. JEANETTE MCKEE said she is not in disagreement with this philosophy and asked **Mr. Gilbert** if in essence would this enable the county to make a spending cut in their general fund, and cause them to forfeit that money to district court, which is ordinarily spent. **Mr. Gilbert** responded he didn't believe so and in most incidents there is a mill levy in the county and often-times additional county monies that have to come in at the end of the year to finance the district courts. This would eliminate the additional county fee of general fund monies that would have to come in so it would be self-generated.

REP. TONI HAGENER acknowledged that **Ms. VanAlsdohl** wanted to give a point of technical information and she has a question as well and asked her to explain to people that are unfamiliar with court procedures, how a fine is levied and the procedures. **Ms. VanAlsdohl** said when a defendant is found guilty, the court does a sentence in judgment and in that sentence, they can levy a fine for a certain crime or make them pay back the costs or pay public defender fees or any given as part of his punishment and this is the fine that they might levy against someone.

REP. NORM MILLS asked **Ms. VanAlsdohl** if he could characterize this as a shift of revenue from the state to the district court fund thereby reducing the state revenue. **Ms. VanAlsdohl** responded "not state, county general." **REP. MILLS** questioned Line 17. **Ms. VanAlsdohl** explained that line 17 is addressing the offset of money in the reimbursement program they get with the felony cases. If they collect costs from a criminal, those are offset on what the state reimburses on all the felony cases. Every felony case they have in all the counties that costs their county money, and if it qualifies under the state reimbursement program, they get reimbursed for those costs. If, meanwhile, they have contacted the criminal and he has reimbursed some of those costs, that offsets what the state has to reimburse.

REP. MILLS asked if it was a false assumption that if some money is paid to the judge and he puts it into the library fund instead of to the state, "we lose." **Ms. VanAlsdohl** said no, that if it's listed correctly and some of them are not, it should have been listed under a non-tax revenue fund and those funds should have offset the reimbursement that they have been getting and that is the way it's supposed to be.

CHAIRMAN BOHARSKI said during **Ms. VanAlsdohl's** testimony she said that certain judges were depositing into other funds like the library fund and that is specifically prohibited by law. **Ms. VanAlsdohl** said she knows that, but they are not calling it fines, they are assessing money against a defendant but they are leaving the fine title out because if it is called a fine, they can't do that.

CHAIRMAN BOHARSKI said when the county is adopting their budget, do they allocate a certain amount of money that goes into the district court fund and that is the entire fund that the district

court operates, like their own little bank account. **Ms. VanAlsdohl** responded that it depends on the size of the county, there is a certain mill. Gallatin county is 6 mills and that's what they get to run the district court, however, the automobile tax gets on top of the 6 mill. **CHAIRMAN BOHARSKI** asked if the county sometimes supplements that fund with additional county revenues. **Ms. VanAlsdohl** replied yes, they can and sometimes they are ordered to by the judge if there isn't enough money. If they get anything back it is offset by what the state gives them.

REP. MATT BRAINARD asked if the district courts are fully funded by the county to the level of the staff, is there sufficient money allocated for the court to operate on. **Ms. VanAlsdohl** responded that in Gallatin County it is sufficient, but they have been very fortunate. The reimbursement from the state has really helped them out and if they do have any big criminal cases that cost a lot, it does help.

REP. BRAINARD asked what kind of extra costs are incurred, e.g., public defenders, extra personnel. **Ms. VanAlsdohl** responded not extra personnel as such, but extra jury costs, extra witnesses, psychiatric charges, flying witnesses from all over the world is a heavy expense and there are unforeseen costs that do come up.

Closing by Sponsor: Sponsor closed.

HEARING ON HB 165

Opening Statement by Sponsor:

REP. JOHN BOHLINGER, HD 14, Billings, stated he is carrying this bill on behalf of his county commissioners and at the request of the Montana Association of Counties. This bill addresses some problems that exist in current law. He distributed copies to committee members and said his bill will repeal the section of existing law that has become antiquated. **EXHIBIT 2** Under present law, county commissioners cannot make expenditures beyond certain budgetary limits without a vote of the people. For class one, two, three and four counties the dollar amount is \$25,000. For class five and six counties, \$15,000, and class seven counties, \$7,500. These statutory limits were put in place in 1953 and at that time could buy just about anything a county needed to continue its operation in the event of an emergency. Things have changed, cars, trucks, road working equipment and the computer system that had not been invented at that time are out of reach of the 1953 dollars. Another consideration is when this was set in statute in 1953. It was done so with the thought that the legislature was acting prudently by setting some limits. By removing this statutory limitation, they are not doing away with a prudent consideration because under statute, county commissioners can only spend money they had in reserve to pay for unforeseen contingencies. Law requires that the counties must maintain a cash reserve of 25% of their total budget. This will

not give county commissioners appropriation or taxing authority to impose on the people of the county, this gives the authority to spend what is in reserves for emergencies. By the elimination of this statutory limit, they will be showing good judgment and acting prudently. A typical election on average costs \$10,000, and a greater population will pay more.

Proponents' Testimony:

Gordon Morris, Director of the Association of Counties pointed out that if a road grader had to be replaced at the cost of \$100,000, it would have to go to a vote of the people under this provision. This was first enacted in 1929 and the provision specifying the dollar having been amended into it in 1953 makes no sense in 1994.

Charles Brooks, Billings representing the **Yellowstone County Commissioners** emphasized the two points that revision of statutes would not impose new taxes on citizens, it would authorize the commissioners to spend money that is either in reserve or anticipated increase in revenues. **Mr. Brooks** reiterated the costs for elections, etc. and urged a do pass on this bill.

Vicki Hyatt, Commissioner, Stillwater County and Executive Board of the Montana Association of Counties (MACO) spoke in support of this bill and stated there are a number of cases that come up for counties that aren't necessarily in the natural disaster, riot, or epidemic type of categories of needing a bridge or a major criminal trial, psychiatry evaluations and costs not necessarily covered that cannot be budgeted. If something is not budgeted for, it cannot be spent.

Bill Rappold, Chairman, Pondera County Commission echoed what has been said and clarified the statement **Mr. Morris** made by saying "you can't touch a road grader for \$100,000."

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked **Mr. Morris** how many elections have been necessary to address the problems. He responded in his fourteen years of working in Montana county government, he has yet to see an election under this section of law. Any possible emergency that did arise in terms of having to amend the budget "hang over the heads of county commissioners" and other elected officials from the standpoint of the fact they are code and suggested they go around the necessity.

REP. DAVID EWER asked **Mr. Morris** if he was familiar with the limitation for emergency budgets for municipalities. **Mr. Morris** responded he is not but should be in terms of what the

municipalities section looks like compared to theirs but he guessed it was probably very similar. **REP. EWER** stated it is not terribly similar because it does not require a vote. He said one point he would like to make to the committee is in Title 7, there are a lot of parallel statutes as far as mission and yet there is not the same language. The emergency budget was amended and for municipalities, they don't have to go to a vote, but there is a limitation and that's one thing he finds very troubling about Title 7, dealing with counties and municipalities. **REP. EWER** reserved additional comments to executive action.

CHAIRMAN BOHARSKI stated that assuming an amount of money was needed, for example \$100,000, to buy a used road grader, subject to the provisions of **HB 105**, and the money was spent out of the reserve funds and it would now become part of that year's general fund. The following year, when a budget is adopted, would that become part of the base or would that amount again be subject to the budget adopted, assuming they exceeded the provision of **HB 105**. **Mr. Morris** said that the reserve fund reference is probably inappropriate and they would be better off thinking of this not in terms of reserve fund, but the fact that every fund has a budgeted reserve for the general fund. Every year they are authorized to budget up to the maximum of 25% of the total amount to be appropriated by way of expenditures in the general fund, an amount by way of cash reserve. In Yellowstone County with a general fund budget of \$9 million this past fiscal year, they have a reserve in excess of \$750,000 available cash for the unforeseen contingencies and more importantly for cash flow purposes. That money could then be used to fund unforeseen circumstances. The next fiscal year, they would start with less cash available for reappropriation. Over time they would have to try and build back up by virtue of savings within the various expenditure categories. It is a cash reserve in terms of all of the several funds, road, district court, general fund, etc.

Closing by Sponsor:

The sponsor closed by saying he recalled no special elections to accommodate a county in time of emergency or crises and this tells him that counties are resolving the problem in some way other than that which is provided in law. "That is not what we want our counties to do and certainly not what we want state government to do," therefore he urged the committee to vote in favor of this bill.

CHAIRMAN BOHARSKI announced the procedures allowed to discuss a bill and said they need a motion on the bill to do pass or do not pass. He would prefer not to table a bill until people have had a chance to discuss it. Once a motion is made the committee can discuss the bill at that point and amend the bill. Discussion is between members of the committee, technical information can be asked of members of the audience as long as no member of the committee objects.

EXECUTIVE ACTION ON HB 61

Motion/Vote: REP. MILLS MOVED HB 61 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 54

Motion/Vote: REP. ANDERSON MOVED HB 54 DO PASS AS AMENDED. Motion carried 17-1 with REP. WYATT voting no.

EXECUTIVE ACTION ON HB 79

Motion: REP. JOHN BOHLINGER MOVED HB 79 BE TABLED. HE THEN MOVED HB 79 DO NOT PASS.

Discussion: REP. EWER asked REP. BOHLINGER to consider making a do not pass motion so there might be some discussion, since it is not a debatable motion.

REP. ELLEN BERGMAN asked if the only due course a county commissioner would have to get rid of a county treasurer for not showing up for work would be a recall or is there a simpler way of doing it. Bart Campbell responded no and explained that because it's an elected official, the recall is the only recourse at this point in time. REP. BERGMAN said the reason for this bill is to simplify the problem of the county commissioners being left with the problem if another elected official is not doing their job.

REP. MATT BRAINARD said this bill as proposed makes two county commissioners judge, jury and executioner. In talking, this is unpopular in the county commissioner's office and he doesn't think this bill does justice to the problem. "If you have to remove somebody that has been elected by the vote of two people, two out of three is not sufficient. You would need a panel of all the elected members of the county."

REP. NORM MILLS stated he doesn't feel it is appropriate to give one elected official, elected by the same people as the other elected official, the right to remove him or her from office. That should be a function of a third party, appointed by the state or by recall. Since the state does not provide anything else but recall, he believed they should leave it to that. It should not be a prerogative of somebody he elected to an office as a voter to take somebody else he also elected to office as a voter and throw them out.

REP. JEANETTE MCKEE said in response to REP. BERGMAN that occasionally there is a problem but this bill is not the way to solve it as it causes a lot more problems. Perhaps in the future they can look at some other way because the county commissioners totally disagree with the manner of this bill.

REP. BOHLINGER said in reference to his do not pass motion, under present law there are opportunities to deal with incompetencies: the recall process and election process and he shared the same concerns as **REP. MILLS** and **REP. BRAINARD** and urged a do not pass.

CHAIRMAN BOHARSKI stated there are two things covering this bill and it seems strange they are in the bill. He felt there would be a problem with the appointed people, that they would have to go through the recall process because they wouldn't get to vote on them. If someone gets appointed to the parks board, how do they get rid of them. He was inclined to agree with the other's concerns.

REP. HAGENER stated that as a former county commissioner, she sympathized with the concern of not being able to take immediate action against someone that is not performing their duties. She is very uncomfortable with the bill in its present form and it wouldn't solve the problem.

REP. JOE TROPILA stated he realizes that Toole County has a problem but does not think this is the vehicle to settle 55 other counties. He suggested that **Mr. Morris** talk to Toole County and check on the errors of omissions insurance. The treasurer has to be covered.

Motion/Vote: **REP. MILLS** MOVED A SUBSTITUTE MOTION TO TABLE HB 79
Motion carried unanimously.

ADJOURNMENT

Adjournment: The meeting adjourned at 5:00 P.M.

Wm E Boharski

WILLIAM BOHARSKI, Chairman

Evvy Burris

EVY BURRIS, Secretary

WB/eb

HOUSE OF REPRESENTATIVES

Local Government

ROLL CALL

DATE 1-10-95

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	✓		



HOUSE STANDING COMMITTEE REPORT

January 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 61 (first reading copy -- white) do pass.

Signed: Wm E Boharski
Bill Boharski, Chair

Committee Vote:
Yes 18, No 0.

091020SC.Hbk



HOUSE STANDING COMMITTEE REPORT

January 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 54 (first reading copy -- white) do pass as amended.

Signed: Wm E Boharski
Bill Boharski, Chair

And, that such amendments read:

1. Title, line 4.

Following: "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)"

- END -

Committee Vote:

Yes 17, No 1.

Rep. Wyatt

091015SC.Hbk

COMMITTEE PROXY

Date 10/10/95

I request to be excused from the Local Government
 Committee meeting this date because of other commitments. I
 desire to leave my proxy vote with Rep. Hermon.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
601	✓	
54	✓	
Table	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. John Hermon
 (Signature)

MATT -

-VOTE FOR ME ON LOCAL GOV'T

Kill ~~the~~ # 29 - TABLE OR Do NOT PASS

Do PASS ON 54 unless something
Awful comes up

Do PASS ON 61

Matt Benjamin

EXHIBIT 1
DATE 1-10-95
HB 101

House Bill 101

Tim A. Bergstrom
726 Avenue F
Billings, Montana
20 Year member Billings Fire Department

HB 101 would provide flexibility for local self-government units to satisfy state requirements for mandated services.

Local self-government entities could privatize certain services if it chose to, and many required functions could be accomplished by methods other than those prescribed by current state statute.

While this proposal seems like it will establish more autonomy for local self-government units, which may be a popular notion, I think there are other considerations involved that might not be in the best interest of the citizens if HB 101 is enacted.

I will limit my comments to how this proposal might impact municipal fire departments; because that's what I know. I do not profess to be an expert on Title 7, Local Government in its entirety.

Let's assume that this bill is enacted, and a self-government entity elects to privatize its municipal fire department. There are arguments whether privatization results in higher, or lower cost to local government. However, that is not my concern as it relates to HB 101.

Montana's municipal fire fighters and their employers are bound by statute to submit to binding arbitration to avert strikes in cases of collective bargaining disputes that result in impasse. In effect, no matter what the dispute involves, the citizens can rely on the fact that the delivery of emergency services provided by the fire department will remain constant.

If a self-government unit chose to, by adoption of an ordinance, privatize its fire department, the delivery of uninterrupted emergency services could no longer be guaranteed to the citizens. Employees of private industry have the right to organize for purposes of collective bargaining, and also have the right to strike. That right is contained in the National Labor Relations Act. I think this is a very important issue for the committee to consider as it deliberates the merits of HB 101.

You'll notice on lines 21 through 24, on page 1, of the bill that any mandated function that is provided by an employee of the self-government entity may also be accomplished by alternative methods simply by passing an ordinance or modifying the local government charter.

Title 7, Chapter 33, Part 41, M.C.A., mandates that all cities shall have a fire department, and how it shall be organized, managed, and controlled. This is the Municipal Fire Departments section of Montana Codes.

Specific functions by various city employees are found in the Municipal Fire Department statutes; functions that could be provided by alternative methods simply by a self-government unit's adoption of an ordinance. One of these functions impacts the suspension procedure for fire fighters found in 7-33-4124 M.C.A.

The legislature - in recognizing due process rights of workers - adopted a procedure that allows a city manager to suspend a fire fighter, but provides that the city council or commission shall conduct a hearing on the charges against a fire fighter, and by majority vote, either substantiate the charge and recommend temporary or permanent suspension, or find the charges to be without merit and reinstate the fire fighter.

This provision, which is a mandated function of employees of local government, affords due process to fire fighters.

Under the provisions of HB 101, a self-government entity could elect to place the authority to suspend fire fighters in a single person's hands; thereby absolving itself from the requirement that a charged employee be given a hearing before the city council or commission, and the opportunity to present a reasonable explanation for the charges against him.

I thank the committee for the opportunity to address this legislation, and hope that some of the negative impacts of enactment of HB 101 will have on Montanans will be given adequate consideration. Thank you.

the county feeling aggrieved by the order issued pursuant to 7-6-2342(4) ay appeal therefrom to the district court for such county by filing with the ark of the court a verified petition, a copy of which has theretofore been rked upon the county clerk and recorder of the county as the clerk of the ard of county commissioners. The petition shall set forth in detail the ections of the petitioner to the order, giving reasons why the emergency es not exist.

(2) Until final determination of the matter by the court, the service and ing of the petition operates to suspend the emergency order and the uthority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time r hearing the petition, which time shall be at the earliest convenient time. t the hearing the court shall hear the matter de novo and may take such stimony as it considers necessary. The court's proceedings shall be summary d informal, and its determination as to whether an emergency such as is ntemplated within the meaning and provisions of this part exists or not and hether the expenditure authorized by the order is excessive or not is final.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 14, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 11, Ch. 252, L. 1979.

Cross-References Pleadings — generally, M.R.Civ.P. (see

Verification of pleadings, 25-4-203.

Title 25, ch. 20).

7-6-2344. Limitation on amount of emergency expenditures and liabilities — election. (1) Unless the excess above the sums listed in subsections (1)(a), (1)(b), and (1)(c) is first authorized by a majority of the electors of the county, voting at a general or special election, the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies, other than those caused by fire, flood, explosion, earthquake, epidemic, riot, or insurrection, may not exceed:

- (a) \$25,000 in counties of class 1, 2, 3, or 4;
- (b) \$15,000 in counties of class 5 or 6; and
- (c) \$7,500 in counties of class 7.

(2) The question of authorizing the excess expenditures shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of ... County, Montana, be authorized to make additional expenditures and incur additional liabilities in the amount of \$.... over and above the sum of \$.... to meet an emergency caused by

☐ YES

☐ NO

(3) The total of all emergency budgets and appropriations made therein in any one year to be paid from the county poor fund may not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized

by law to be made for such fund, computed against the taxable value of the property subject to such levy as shown by the last completed assessment roll of the county.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 12, Ch. 252, L. 1979; amd. Sec. 387, Ch. 571, L. 1979.

Cross-References

Classification of counties, 7-1-2111.

7-6-2345. Use of emergency warrants. (1) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures. The county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other county warrants.

(2) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the county commissioners shall, in their tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same.

(3) (a) No levy shall be made for any fund in excess of the levy authorized by law to be made therefor.

(b) The board may submit the question of funding such emergency warrants at any election as provided by law, and if at any such election the issuing of such funding bonds be authorized, it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(6), (7).

7-6-2346 and 7-6-2347 reserved.

7-6-2348. Budgets of appointed boards and commissions — exemption for bonds. (1) With respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, except a board of trustees of a public library and an airport authority, appointed by a local government are subject to approval by that local government.

(2) If a board, commission, or other governing entity, other than a port authority created under Title 7, chapter 14, part 11, issues bonds and pledges to the payment of the bonds, taxes, revenue, or fees in accordance with the statutes authorizing the issuance of the bonds, the taxes, revenue, or fees and the levy or appropriation of the taxes, revenue, or fees are not subject to approval by the local government appointing the board, commission, or governing entity.

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if the county feeling aggrieved by the order issued pursuant to 7-6-2342(4) may appeal therefrom to the district court for such county by filing with the clerk of the court a verified petition, a copy of which has theretofore been served upon the county clerk and recorder of the county as the clerk of the board of county commissioners. The petition shall set forth in detail the objections of the petitioner to the order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of the petition operates to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time or hearing the petition, which time shall be at the earliest convenient time. At the hearing the court shall hear the matter de novo and may take such testimony as it considers necessary. The court's proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by the order is excessive or not is final.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 70, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 94, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 11, Ch. 252, L. 1979.

Cross-References

Verification of pleadings, 25-4-203.

Pleadings — generally, M.R.Civ.P. (see Title 25, ch. 20).

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- (a) \$25,000 in counties of class 1, 2, 3, or 4;
- (b) \$15,000 in counties of class 5 or 6; and
- (c) \$7,500 in counties of class 7.

(2) The question of authorizing the excess expenditures shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

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☐ YES

☐ NO

(3) The total of all emergency budgets and appropriations made therein in any one year to be paid from the county poor fund may not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized

by law to be made for such fund, computed against the taxable value of the property subject to such levy as shown by the last completed assessment roll of the county.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 12, Ch. 252, L. 1979; amd. Sec. 387, Ch. 571, L. 1979.

Cross-References

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(2) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the county commissioners shall, in their tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same.

(3) (a) No levy shall be made for any fund in excess of the levy authorized by law to be made therefor.

(b) The board may submit the question of funding such emergency warrants at any election as provided by law, and if at any such election the issuing of such funding bonds be authorized, it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(6), (7).

7-6-2346 and 7-6-2347 reserved.

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(2) If a board, commission, or other governing entity, other than a port authority created under Title 7, chapter 14, part 11, issues bonds and pledges to the payment of the bonds, taxes, revenue, or fees in accordance with the statutes authorizing the issuance of the bonds, the taxes, revenue, or fees and the levy or appropriation of the taxes, revenue, or fees are not subject to approval by the local government appointing the board, commission, or governing entity.

History: En. Sec. 1, Ch. 347, L. 1991; amd. Sec. 1, Ch. 169, L. 1993.

1-10-95

HOUSE OF REPRESENTATIVES

Local Government - COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

HB #103

NAME LORRAINE VAN AUSDEL BUDGET _____

ADDRESS 3073 McILHATTAN Rd - Bozeman DATE 1-10-95

WHOM DO YOU REPRESENT? Clerk's of District Court

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: General Housekeeping to deposit
funds into District Court Fund rather
than General Fund

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Local Government

COMMITTEE

BILL NO. HB 101

DATE 1-10-95

SPONSOR(S) Rep. MASOLO

HB 102
HB 105

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Rep. ROSE
Rep. BOHLINGER

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bob Gilbert	MT. Clerk of Dist. Courts ASSN	103 ✓	
Charles R. Brooks	Yellowstone County	105	
Bill Rappold	Pondera County		
Lauri Plunger	Governors Office	101	
Larry Jasbecker	City of St. Falls	101	
Tom Foley	AFSCME		101
Mona Nuffing	Carbon Co.	101	
Ueki Hight	Stillwater Co	101	
Tim BERGSTROM	BILLINGS FIRE FIGHTERS		101
Gloria Paladichuk	Governor's Task Force	101	
VERN ERICKSON	MT State Fireman's Assoc		101
Gordon Morris	MACo	101 103 105	
Don Wiley	Dept of Admn.	✓	
JOHN MACE	AFSCME		101

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. HB 101

DATE 1-10-95 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tim Magee	City of Great Falls	101	
Alec Hansen	League of Cities	101	
Bill Verwoil	City of Helena	101	
Don Judge	MT STATE AFL-CIO		101
Chris Pascoe	MBIA		

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