

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By VICE-CHAIRPERSON ETHEL HARDING, on January 26, 1995, at 1:00 p.m.

ROLL CALL

Members Present:

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

Members Excused: none

Members Absent: none

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

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

Committee Business Summary:

Hearing: SB 117, SB 121, SB 122, SB 130
Executive Action: SB 87, SB 142, SB 117, SB 122

HEARING ON SB 117

Opening Statement by Sponsor:

SEN. JOHN HERTEL, SD 47 Moore, MT, introduced SB 117. SB 117 is an act allowing county commissioners to set the cost of living increments for salaries at a percentage of the consumer price index (CPI). Presently, the county commissioners can set salary increases based on two options: 1) by law it can be 100% of the previous calendars CPI or 2) 0% which is an actual freeze of salary increases. SB 117 would allow the county commissioners to allow a salary increase somewhere in between 0% and 100%. This would give county commissioners more flexibility.

Proponents' Testimony:

Gordon Morris, Director of the Montana Association of Counties (MACO), presented the committee with the MACO resolution allowing SB 117 (EXHIBIT 1). MACO found this resolution to be of high priority. Mr. Morris pointed out that in tight fiscal times budgeting for elected officials salaries is very difficult. He emphasized that SB 117 would allow a greater flexibility for county commissioners to make salary determinations by possibly allowing some increase rather than none.

Jane Jelinski, Gallatin County Commissioner and President of MACO, supported SB 117. Ms. Jelinski noted that presently there is an all or nothing allowance for elected officials salary increases. In Gallatin county freezes were enacted for two out of four years when a 1% or 2% raise could have been given. She stated that some elected officials may look at this as a way to prevent from giving the 100% cola, but SB 117 allows greater flexibility and opportunity to give an increase in salary.

Vernon Peterson, Fergus County Commissioner, supported the previous testimony on SB 117 and added that in Fergus county when salaries are set for the elected officials the same salary is set for the other employees. In Fergus county four out of seven years there have been freeze when two of those years, partial salaries could have been given.

Opponents' Testimony:

Kathleen Brewer, Clerk of District Court in Missoula and President of Montana Association Clerk's of District Court, opposed SB 117. She testified that in 1991, HB 497 provided a salary increase for all elected officials. There was a raise in the base salary which went from \$18,000 to \$25,000 in a class one county. At that same time a concession was given to go to a 100% cola. In 1991, there was at least a 70% cola increase annually. At a 100% cola, commissioners received the flexibility to set salaries between 80% and 100%. Ms. Brewer urged the committee to oppose SB 117.

Questions From Committee Members and Responses:

SEN. DON HARGROVE asked Gordon Morris to define the CPI. Mr. Morris answered that the CPI is the index of increased costs from January to January which is set by the federal Department of Commerce. SEN. HARGROVE asked what the CPI was for the last year? Mr. Morris noted that it was 3.4.

CHAIRMAN TOM BECK asked if from county to county there could be a discrepancy between what the elected officials are paid? Ms. Brewer stated that this was correct. CHAIRMAN BECK asked Ms. Brewer why she agreed that a partial increase was better than none? Ms. Brewer explained that she agreed some was better than none, however, because an agreement was made with the county

commissioners to have a flex between 80% and 100% for setting base salaries and they would grant 100% of the cola. She also mentioned that a flex in the cola would be fine if it was set somewhere between 70% and 100%.

CHAIRMAN BECK asked if there was any change in the base salary? **Mr. Morris** pointed out that until 1991 commissioners were required to provide at 70% of cola. In 1991, the cola went to 100% and the base salary was increased from \$14,000 to \$25,000 in first through fifth class counties, and \$12,000 to \$18,000 in sixth and seventh class counties.

SEN. DELWYN GAGE asked what business the legislature has setting the county salaries? **Mr. Morris** emphasized that the only reason for this is because commissioners are not given 100% authority to do what is appropriate in each and every county across the state. Also, elected officials would rather come to a committee format to debate their salary rather than the county court house.

SEN. GAGE asked how long the legislature has been setting salary regulations? **Mr. Morris** replied that since 1981 after a legislative salary study in 1980 presented this law.

Closing by Sponsor:

SEN. HERTEL pointed out that SB 117 would give county commissioners flexibility that will help employees in the long run and urged favorable support from the committee.

HEARING ON SB 121

Opening Statement by Sponsor:

SEN. JOHN HERTEL, SD 47 Moore, MT, introduced SB 121. SB 121 is an act eliminating the requirement for publishing the county annual report in a newspaper. Currently, the report must be published in a newspaper so the public has access to it for review. **SEN. HERTEL** said annual reports are quite lengthy as are the summaries allowed to be published. He emphasized that the county reports would be available to the public through the Clerk and Records office, a Library, or through their county commissioner.

Proponents' Testimony:

Vernon Peterson, Fergus County Commissioner, supported SB 121. **Mr. Peterson** showed the committee a copy of a summary report in a newspaper to show how lengthy it was. He mentioned that one year he found an error in the report but no one ever made any notice of the error. He felt that this pointed out that no one has been reading the reports. **Mr. Peterson** would like to publish the report by reference.

Gordon Morris, Director, MACO, stated that SB 121 is in result of a MACO resolution 94-12 adopted in September. He pointed out that what is to be added is a provision that complies with the notification requirements that a note stating the annual report is available on request from the Clerk and Recorder. **Mr. Morris** urged favorable consideration from the committee.

Alec Hanson, League of Cities & Towns (LC&T) and representing Silver Bow and Deer Lodge counties, supported SB 121. He noted that SB 121 would save them money. The issue of publishing reports in the newspaper was presented before with municipal audit reports, and they are now putting notices in the paper. **Mr. Hanson** said he did not know of anyone who has been denied access to the reports and money has been saved.

Robert Throssell, Montana Association of Clerk & Recorders, supported SB 121.

Opponents' Testimony:

Charles Walk, Montana Newspaper Association (MNA), presented his written testimony (EXHIBIT 2) and a newspaper article by Roy Sampson (EXHIBIT 3).

Questions From Committee Members and Responses:

SEN. DON HARGROVE asked about the acceptance of providing the summary of the report as a public service by the newspaper? **Mr. Walk** answered that some newspapers may provide some information in the form of articles, but to publish the report for free would be more than generous.

SEN. HARGROVE asked if there are any requirements for what must be in a summary? **Mr. Walk** replied that there are no requirements and this is something the MNA would be willing to explore.

SEN. DOROTHY ECK stated that there is a need for people to know and understand the county reports and she asked **Mr. Morris** if MACO could put together something to help the people understand? **Mr. Morris** referred the question to **Ms. Jelinski**. **Ms. Jelinski** mentioned that Gallatin county this year put out a informational sheet explaining where their money went. She went on that this was not required by a county and that it is an additional expense.

SEN. ECK asked if agendas for meetings are required by law to be published? **Ms. Jelinski** answered that it is not required by law and in Gallatin county where they do publish their agenda every week, the newspaper refused to give a reduced rate.

SEN. ECK also asked about putting information of agendas and county reports on a bulletin board system like internet? **Ms. Jelinski** pointed out that not all counties are computerized or hooked up to internet but if a county was it would be feasible.

SEN. HARGROVE asked that since it is required that the report be published in only one newspaper, how is the paper decided when a county has several papers? **Ms. Jelinski** answered that in Gallatin county the report will be printed in the newspaper who receives the bid for the legal publishing.

SEN. DELWYN GAGE asked what the range for publishing a county report would be? **Mr. Walk** answered that back when the reports were printed in full the range was \$60 to \$1255. Most however, were in the range of \$150 to \$300.

SEN. GAGE asked if in sub two, line 24, is that the same financial statement as the annual financial statement that is talked about in line 10? **Mr. Morris** explained that the annual financial statement is required by state law and is provided to the Department of Commerce in addition to being published. The financial statement in line 24 is tied directly to that but is in fact the budget. **SEN. GAGE** stated that what he was saying evidently was that the requirement to publish the annual statement by law is in a different section. **Mr. Morris** stated that that was correct.

CHAIRMAN TOM BECK asked **Mr. Walk** to respond to the size of the published statement how large it should be as even though a statement would be in summary form many times the published form comes out larger than expected. **Mr. Walk** noted that it is a matter of negotiation between the county and the newspaper's publisher. He went on to say that this is just another reason there should be a standard form for summaries as it is best if it is presented in an attractive and easy manor.

SEN. GAGE asked if counties are on a calendar year. **SEN. ETHEL HARDING** pointed out that they are on a fiscal year of July 1.

SEN. GAGE went on that since they are on a fiscal year would **SEN. HERTEL** like the effective date to be on passage and approval? **SEN. HERTEL** said that would be fine.

Closing by Sponsor:

SEN. HERTEL emphasized that SB 121 was not to create a hardship on anyone especially the newspaper people as he understands their feelings due to the loss of revenue. However, nothing is being hidden from the public, they are just trying to save some tax dollars. He urged favorable support for SB 121.

HEARING ON SB 122Opening Statement by Sponsor:

SEN. DARYL TOEWS, SD 48 Lustre, MT, presented SB 122 which revises the process of granting right-of-way easements on state lands. SEN. TOEWS told the committee that SB 122 was a result of a problem in North East Montana with power and or electric co-ops. They have had difficulty getting new installations as it has taken anywhere from three to six months to get the installation in. SEN. TOEWS said that although the law is well intended, there are some glitches in SB 122 so he offered some amendments to the bill (EXHIBIT 4). SEN. TOEWS noted that what was really needed was to do something inexpensively and move the process along with out taking so much time and money. He said that the bill changes the need for an ecological survey right away so that it is not required but at the discretion of the State Land Board. Going on through the amendments, page 1 line 19 changes county surveyor to "or surveyor". The fourth amendment allows that if an area is within a filed corner recordation form, a survey would not necessarily have to be drawn. With the fifth amendment if the Department felt there was a problem or potential for heritage properties that area could be handled a different way. SEN. TOEWS said that SB 122 is a forth right bill that tries to take the good intent of the law we have today and simplify it in a manner of some type of workable situation.

Proponents' Testimony:

Gary Wiens, Montana Electric Cooperative Association (MECA), which serves approximately 300,000 rural Montanans supports SB 122. Mr. Wiens stated that it continues to be the intent and practice of the people they serve to abide to carry their fair share of the burden of developing these permits and of complying with environmental laws. He believes that it is unfair to burden farmers and ranchers with the high costs of survey and the time delays involved when they are not always necessary. Missed construction seasons and opportunities to water cattle in stock tanks are two examples Mr. Wiens demonstrated due to the difficulty in getting easements. He reiterated that MECA is seeking an expedited process not a circumvented process. In addition all permits will come before the State Land Board. Mr. Wiens noted that he empathizes with the State Land Board and that they have steered clear of any changes that would over step their authority. Even after meeting with the Governor and the State Land Board problems have still been persisting there for with the amendments to SB 122 Mr. Weis felt progress could be attained.

Jeff Hagener, Administrator of the Land Administration Division of the Department of State Lands, supported SB 122 with the amendments.

Mareen Clary-Schwinden, representing Women in Farm Economics (WIFE) supported SB 122. Many of the WIFE members live in North East Montana and are members of a rural electric cooperative who would benefit from SB 122 with the amendments.

Joan Mandeville, representing the Montana Telephone Association (MTA), mentioned the changes in the telephone industry. She pointed out that many of those changes involve a substantial amount of investment in transportation facilities (fiber-optics) which would require more and more construction. **Ms. Mandeville** noted that they have two environments, one is the push for new services as one fiber connection could not be completed due to the delays in the right-of-way process, and a duelling role with the Public Service Commission that has strict requirements on how long you have to get construction done on new services. Similar to the electric cooperatives MTA has also been struggling with the right-of-way process. **Ms. Mandeville** felt that with the amendments SB 122 would help them out.

John Bloomquist, of the Montana Stockgrowers Association, urged support of the committee for SB 122 with the amendments.

Questions From Committee Members and Responses:

SEN. JEFF WELDON wanted to know what a heritage property was and if it was defined in state law? **Mr. Hagener** answered that it was defined in state law and it covers anything that is would be archeological or cultural as used by the Archeological and State Historic Preservation.

SEN. WELDON asked how the Department of State Lands would go about forming an opinion on whether or not a heritage property would be impacted by the project. **Mr. Hagener** replied that an environmental assessment is done, and if anything is found that appears obvious to be an cultural heritage type property the Department's archeologist is notified. Also, the State Historic Preservation office is asked if there is any know significant historic sites on the area.

SEN. WELDON asked who does the initial environmental impact assessment? **Mr. Hagener** answered that a land use specialist conducts the assessment and they do have training from the Department's archeologist and the State Historic Preservation office.

SEN. WELDON asked **Mr. Hagener** if the Department was comfortable that these people would be able to detect archeological impacts. **Mr. Hagener** replied that they were.

SEN. ECK asked if the Department of State Lands used the section of the State Library that tells what is in a particular section of land. **Mr. Hagener** stated that this is what is used when they talk with the State Historic Preservation office.

SEN. GAGE asked why on page 2, line 11 and 12 were stuck? SEN. TOEWS answered that there was no need to get a deed and buy the property, all that is needed is an easement.

SEN. GAGE asked if this could be construed to mean that you would not even need a right-of-way document of any kind? SEN. TOEWS replied no.

SEN. ECK asked about the technical note #1 and if it had been dealt with. SEN. TOEWS answered that there are no Soil Conservation people left in SB 122.

SEN. WELDON asked if there was a particular reason SEN. TOEWS did not sign the fiscal note? Was because of the problems that will be fixed with the amendments? SEN. TOEWS stated that that was correct.

Closing by Sponsor:

SEN. TOEWS stated that SB 122 will make life simple while protecting our heritage and archeological effects. He urged support of SB 122.

HEARING ON SB 130

Opening Statement by Sponsor:

SEN. DARYL TOEWS, SD 48 Lustre, MT, presented SB 130. SEN. TOEWS said that Nashua, which is in his district, did an assessment of all the lots in the town but after the assessment was done, many mobile homes were moved onto the lots which could not be assessed for the lighting district. What SB 130 would do is add mobile homes to be assessed in a Special Improvement District (SID) tax.

Proponents' Testimony:

Alec Hanson, LC&T, reiterated that the heart of SB 130 is in page 1 line 16 sub b, adding mobile homes. He stated that the need for SB 130 comes from an interpretation by the Department of Revenue (DOR) of this statute in ruling option issued to the town of Nashua that they could not collect the street lighting assessments on mobile homes. Mr. Hanson felt this was an equity issue and people in mobile homes benefit just as much from the lights as people in regular homes. Mr. Hanson emphasized that Nashua being a small town, everyone should pay their fair share. Mr. Hanson told the committee that the mayor of Nashua, Allen Bunk, asked Mr. Hanson to appear before the committee.

John Shontz, representing the Montana Association of Realtors, supported SB 130 and stated that it is a fairness issue.

Questions From Committee Members and Responses:

CHAIRMAN BECK asked if the collection would be a problem as mobile homes obviously can be gone the next day? Further, will the assessment be a set fee or taxable value? **Mr. Hanson** replied that the law provides two methods of collecting assessment costs for lighting districts. The area option in which the cost is the lot divided by the total area to get the percentage which is the most common option. In Nashua, they chose to use the taxable value option which is similar to a property tax. They take the total cost of the electric bill and divide it and each parcel including the improvements the percentage of taxable value is what will be paid. In regards to collection, **Mr. Hanson** stated that when a mobile home moves off and the next one comes in, the new home would start paying the assessment.

SEN. HARDING asked if these lots were rental lots? **SEN. TOEWS** answered that many of the homes were owned and some may be on rental lots. **SEN. TOEWS** emphasized that in Nashua these lots are not huge rental lots and there are only a small amount of these lots.

SEN. HARDING stated that if the parcel is owned it seemed that the SID should go with the parcel. **SEN. TOEWS** responded that at this time it does go with the parcel but if the ownership of the trailer is different than the owner of the lot you can not charge the lot owner for the trailer sitting on his lot. **Mr. Shontz** also responded that on your tax bill you are assessed so many dollars for your real estate and so much for your improvements. With the mobile homes they are only assessed for real estate and the improvements are not part of the tax base so SB 130 will include improvements on the tax base of mobile homes.

SEN. ECK wanted to know if this would be clear on the tax roll? **Mr. Shontz** replied if the mobile home is on a lot or parcel it will show up on a tax bill. There for the municipality would show on the record.

SEN. ECK asked if mobile homes are taxed different whether they are fixed or not fixed? **Mr. Shontz** answered that SB 130 does not change that but since the base information was available to the municipality it will add the assessment against the personal property. **SEN. ECK** questioned if it would be a set assessment and not based on value. **Mr. Shontz** replied that in this case it would be assessed on value.

SEN. GAGE referred to **SEN. TOEWS** statement that this would apply to just a few lots, but wouldn't this also apply to every town in Montana? **SEN. TOEWS** answered that there is an (a) and a (b). SB 130 is only dealing with part (b) which is a funny way of taxing things due to SID's on taxable valuations and there are very few cities who use this type of assessment.

CHAIRMAN BECK asked if it wouldn't be better to just assess the land owner who is going to be there paying forever rather than some trailer that can pick up and go? SEN. TOEWS pointed out that CHAIRMAN BECK'S argument will stand alone as a separate thing, but the problem is that the assessment may be done on taxable valuation.

Closing by Sponsor:

SEN. TOEWS closed.

EXECUTIVE ACTION ON SB 87

Motion/Vote: SEN. GAGE MOVED SB 87 DO PASS. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 142

Discussion:

Susan Fox of the Legislative Council read over the amendments.

Motion/Vote: SEN. ECK MOVED to ADOPT the amendments to SB 142. The MOTION CARRIED UNANIMOUSLY.

Motion: SEN. ECK MOVED SB 142 DO PASS AS AMENDED.

Discussion:

SEN. J.D. LYNCH asked how much the fee was going up? CHAIRMAN. BECK answered it was going up \$200.

SEN. LYNCH wanted to know if SB 142 was depriving a person from having both a used car license and a junk vehicle license? CHAIRMAN BECK answered a person could still have both.

Vote: The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 117

Motion: SEN. LYNCH MOVED SB 117 DO PASS.

Discussion:

SEN. HARDING pointed out that it was the Clerk of Court who opposed the bill and not the representative from the Clerk of Recorders who was present.

CHAIRMAN BECK noted that the local elected officials need some discretion because they have to handle their budgets.

SEN. ECK stated that she intends to vote for SB 117 but she would like to give the commissioners the power to set the salaries.

CHAIRMAN BECK agreed with SEN. ECK and stated that the commissioner have been under the umbrella of 105 for a long time which makes it difficult.

Vote: The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 121

Motion: SEN. LYNCH MOVED to ACCEPT the amendment to SB 121.

Discussion:

SEN. HARGROVE suggested that there is some value in some type of summary and the committee may be tinkering with the law.

CHAIRMAN BECK noted that at the present time a summary is acceptable but SB 121 would allow a notice of availability of the statement.

SEN. ECK pointed out that she would like to see the counties put something out that would help people understand the annual statements but she did not feel this was appropriate to do by state law but should be done by the counties because it is the right thing to do.

SEN. HARDING made the point that very few people are going to look at the statements. She agreed with SEN. ECK that if the commission could publish something that would be understandable to most people it would be nice but she agrees with the bill.

Vote: The MOTION CARRIED UNANIMOUSLY.

Motion: SEN. LYNCH MOVED SB 121 DO PASS AS AMENDED

Discussion:

SEN. WELDON made the statement the SB 122 follows along with the Drake amendment which says the state shall not pass on mandates to the counties with out some funding mechanism to do so. SEN. WELDON noted that SB 122 is a way of recognizing the Drake amendment by backing out the requirement and it makes good sense.

Vote: The MOTION CARRIED UNANIMOUSLY.

Discussion:

CHAIRMAN BECK called for executive action on SB 122.

SEN. WELDON asked that executive action not be taken on SB 122 as he would like to talk to some people in the Historic Preservation field about this situation.

CHAIRMAN BECK asked to at least take action on the amendments.

Motion/Vote: SEN. WELDON MOVED to ADOPT the amendments to SB 122. The MOTION CARRIED UNANIMOUSLY.

SENATE LOCAL GOVERNMENT COMMITTEE

January 26, 1995

Page 13 of 13

ADJOURNMENT

Adjournment: 2:42 p.m.


SEN. TOM BECK, Chairman


ELAINE JOHNSTON, Secretary

TB/ej

ROLL CALL

[illegible]

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 26, 1995

MR. PRESIDENT:

We, your committee on Local Government having had under consideration SB 121 (first reading copy -- white), respectfully report that SB 121 be amended as follows and as so amended do pass.

Signed: _____


Senator Tom Beck, Chair

That such amendments read:

1. Title, line 5.

Strike: "AND"

Following: "MCA"



Insert: "; AND PROVIDING AN EFFECTIVE DATE"

2. Page 1, line 27.

Following: line 26

Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective July 1, 1995."

-END-


Amd. Coord.
 Sec. of Senate


221640SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 26, 1995

MR. PRESIDENT:

We, your committee on Local Government having had under consideration SB 142 (first reading copy -- white), respectfully report that SB 142 be amended as follows and as so amended do pass.

Signed: 

Senator Tom Beck, Chair

That such amendments read:

1. Title, line 5.

Following: "DERBY"

Insert: "OR STOCK CAR"

2. Page 4, line 15.

Following: "derby"

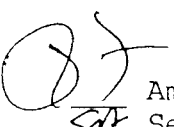
Insert: "or for stock car racing and exhibits obvious damage to
its body components"

3. Page 6, line 16.

Strike: "six"

Insert: "four"

-END-

 Amd. Coord.

ST Sec. of Senate

221642SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 26, 1995

MR. PRESIDENT:

We, your committee on Local Government having had under consideration SB 87 (first reading copy -- white), respectfully report that SB 87 do pass.

Signed: _____


Senator Tom Beck, Chair

SENATE STANDING COMMITTEE REPORT


Page 1 of 1
January 26, 1995

MR. PRESIDENT:

We, your committee on Local Government having had under consideration SB 117 (first reading copy -- white), respectfully report that SB 117 do pass.

Signed: _____


Senator Tom Beck, Chair

 Amd. Coord.
Sec. of Senate

221638SC.SRF

**MONTANA
ASSOCIATION OF
COUNTIES**

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 1-26-95
BILL NO. SB 117
2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

RESOLUTION 94-37

SALARIES FOR CERTAIN COUNTY OFFICES

WHEREAS, certain county officials including the County Attorney receive a cost of living increment annually; and

WHEREAS, the COLA must be applied in its entirety at 100% or salaries must be frozen; and

WHEREAS, COLA at 100% may result in increases in excess of those granted to other county employees;

NOW, THEREFORE BE IT RESOLVED that salaries for certain county officers including the county attorney, by resolution be fixed including an adjustment of up to 100% of the cost of living increment.

SUBMITTED BY: Resolutions Committee

PRIORITY: HIGH

ADOPTED: ANNUAL CONVENTION
SEPTEMBER 21, 1994

Senate Local Government Committee
SB 121 Testimony by Charles W. Walk
January 26, 1995

Mr. Chairman, members of the committee, for the record, my name is Charles Walk. I am executive director of the Montana Newspaper Association, which represents 75 Montana newspapers, including all 11 dailies and 64 weeklies.

I am here today to oppose SB 121.

They've gotten the easy meat off the carcass....now they're starting to pick at the bones that remain.

That's the best way I can describe what proponents of SB 121 are doing to the public notice portion of another sector of Montana law.

Not satisfied with previous efforts which knocked out the requirement that county annual statements be carried in full in their community newspapers, these proponents spent three legislative sessions getting that full disclosure reduced to a disclosure by "summary." That, I might add, was after these same proponents had spent a couple of other sessions getting rid of the complete public notice requirement for regular board proceedings and replaced it with a requirement calling for only "summary form or by reference."

Now, these proponents are back saying even reporting the summary of the single most important county financial document is too much. Now, they are saying they want their disclosure responsibility to end with a printed notice that anyone who wants to see the complete county clerk's annual statement can find it at the courthouse.

Forgive me if I seem more than a bit bothered by this latest attempt by the Montana Association of Counties to reduce our state's public notice advertising requirements to a pile of bones along the road to so-called efficiency and economy.

For six legislative sessions I have sat in these chambers battling to keep the public's right to know a meaningful part of Montana Code. I have watched the unrelenting strip-mining of the public notice publication schedule in this state to a point where it now is among the worst schedules of any state in the Union.

With this strip-mining has come the erosion of the public's right-to-know about public business and the expenditure of public funds.

(Over)

The Montana newspaper industry has tried to halt the onslaught of some people to move the state further and further away from the time-honored concept that the public has a right to know — and government has the obligation to provide — what is going on in the public sector.

In the process of fighting this battle, the newspapers have been called greedy and have been charged with wanting what amounts to a government "subsidy." Nothing could be further from the truth. To call it a subsidy for a government entity to pay for providing the public with a full and unabridged version of what is going on with their money is like saying it is a subsidy for any private sector businesses to receive full and honest payment for products and services they provide government.

But these charges have become the normal smoke screen behind which some officials have hidden the reluctance to let the public know what is going on.

So where are we?

The public is provided very little information through the public notice advertising schedule about regular county commission meetings and the county clerk's annual financial statement. The commissioners can simply use a couple of lines telling county residents that the complete board proceedings are available on request. In the case of the clerk's financial statement, they can simply use a summary of the statement.

But apparently these reduced public notice requirements are still too much for the counties. Now they say that the only thing they want to do with regards to the clerk's annual financial statement is "publish a notice that the annual statement is available upon request from the county clerk."

While we can sympathize with the economic problems of the public sector, we cannot buy the argument of economy in this case. The dollars we are talking about simply do not add up to the sums that bear out the contention that we must sacrifice the public's right-to-know for the sake of this kind of economy.

It seems to us that this is a case more of accountability than accounting.

Are these officials really saying that the obligation of the county commission to inform the public ends with telling the public "when" and "where," but very little, if any, of the "what" of their activities?

(More)

Are they really saying that whatever obligation and responsibility there is for more information than these few sentences rests with the newspapers to provide on their own?

If this is, in fact, what is being said then the proponents of SB 121 and all other legislation of this kind have blatantly shifted the obligation of informing the public about public business from government — where it traditionally and properly belongs — to the electorate and the private media.

There seems to be another presumption here that everyone who really "wants" the information will make sure they get it one way or another and that legislation like SB 121 satisfies the officials' obligation of informing the public.

Again, we reject that presumption as simply not being the case. But, even if it were, is that the way we want to run an open government process in Montana? Do we really want it to be only those people who want to know something about the operation of their county commission who actually get the information? We don't think so.

We believe government has the obligation to provide information to as many people as it possibly can in the most efficient and effective methods. We see the public notice publication process as one of the checks within the entire system of government. The publication of this information puts it on record in the private sector...a feature of the process that is too often overlooked.

The newspapers of Montana — from The Valierian at Valier, circulation 300, to the Billings Gazette, circulation 60,000 — have been the backbone of the state's informational process. It appears some officials do not realize what a drain on the resources many of these newspapers — particularly the smaller papers — undergo in order to maintain this caliber of information provision. They must not realize it because they are asking these newspapers to stretch their resources still further by taking on even more of the responsibility to keep the public informed.

That, I'm afraid, is what is behind legislation such as SB 121 and it is why we urge you to defeat this bill.

Thank you.

Why Publish Public Notices?

By Roy O. Samson

Just why do we have statutes requiring "legal advertising" or "Public Notices?"

I sometimes wonder if the lawyer who drafts a public notice and the editor who publishes it have any better appreciation of the essential function of legal advertising than the unthinkable reader who can't understand why the back pages of his newspaper are cluttered with such stuff.

I will endeavor to outline for you the indispensable part played by legal advertising in the operation of our government and the administration of our laws.

The statutes of the state of Colorado require newspaper publications of certain notices incident to private litigation or the administration of public offices.

Legal advertisements fall into two general classes in accordance with the purposes which they serve. One is the public accounting notice, and the other is the warning notice.

The public accounting notice is the published report of the fiscal transactions of legislative work of governmental bodies, of individuals who are discharging a public trust. This type of notice is the best protection a public official has against any possible charge of concealment. It is his report of his stewardship.

The warning notice, or notice to persons interested, tells these persons that some action is about to be taken or proceedings instituted which will affect their interests. Such notices constitute the best guarantee which the individual citizen has of the security of his constitutional rights.

The value of the public accounting type of legal advertising is usually radically apparent to anyone whose attention is directed to it. Such notices as city council proceedings, county commission actions, school board reports, bank statements, treasurers reports, etc., are included in the public accounting group.

No public official will spend money like a drunken sailor if a list of his expenditures is going to be published at the end of the month for all of his constituents to look over, and no dealer, "on the inside track," is going to sell the county, municipality or school district, a bill of goods at an exorbitant price when every competitor he has will go over the list of expenditures with a fine tooth comb the minute it is published.

I do not mean to say that the published proceedings required by law, relating to public affairs, have completely stamped out incompetency and malfeasance in public office, but **I do say that such legal advertising is the cheapest and most effective insurance the taxpayers can buy on the ability and integrity of their elected officials.**

If there is any fault to be found with legal advertising of this type it is that there are too few of them. Many offices of a public nature, which are not now required to publish reports of their activities, might very well be required to do so. Some of the reports now required might well be required in more detail, with additional benefit to taxpayers.

Condensed reports of public proceedings, in a form shorter than required under the statutes, satisfies neither the law nor the public. When, or if, such unnecessary condensations are made there is always the grave danger that suspicion might be aroused. The public wants itemized reports more than it does lump sum reports.

Some may think that the sole reason for legal advertising is to provide revenue for the newspaper and that no useful purpose is served. But you and I know that that the legislature doesn't pass laws just for the sake of playing Santa Clause for Colorado newspaper editors.

Into the second class, the warning notices, fall many different kinds of advertisements legally provided for in many different kinds of proceedings. Public Trustees Sales, Sheriffs Sales, Estate Matters, Quieting Titles, Divorce Summons, and many others are included in this type of proceedings. I will not attempt to discuss each of the notices in this category here.

However, there is in general a two-fold purpose behind them.

First, to safeguard the defendant in any litigation by requiring the plaintiff to give him notice of the institution of suit, personally if possible, if not, then by publishing a notice in a newspaper of general circulation if the community, provided such a newspaper is a legal newspaper under the laws of Colorado.

Second, to provide for the plaintiff a means of exercising his legal rights against the plaintiff when the latter cannot possibly be served personally.

As a safeguard to the defendant the legal advertisement is indispensable in our law. The individual citizen's inherent right to security in his person and property is universally recognized in civilized society. It is guaranteed in the Fifth and Fourteenth Amendments and in our own state constitution.

But today it is frequently a practical impossibility to find the defendant to give him a personal notice and in such cases the statute requires the plaintiff to do the next best thing, which is to publish the notice as widely as possible in the community where the defendant may hear of it. Surely this next best thing, publication, is vastly better than to permit plaintiff to take the property without any notice whatever to anyone. If the statutes did permit such a taking they would clearly violate the "due process" clause in our fundamental law.

The person who usually "kicks" about the necessity for the "legal advertisements" and its cost is the plaintiff.

Too infrequently does he realize that if it were not for the substituted service of notice which is made available to him by statute, the legal advertisement, his hands would be tied when he came to

prosecute his right of action against a defendant unless he could find the defendant and serve him personally. In many cases this would be impossible - in others very slow and very expensive.

The plaintiff should be most thankful for the statutory provision for service by publication.

I have attempted to show, in a general way, that newspaper advertising performs a very important function in our legal system.

It safeguards the pocketbooks of our taxpayers with an effectiveness that could be accomplished in no other way; it furnishes the only means of fulfilling in a practical way the constitutional guarantee of security to every citizen.

I am sincerely of the opinion that so-called "legal news" is just as important in the effective preservation of our constitutional guarantee of security as the work of the fire department in the preservation of our homes.

I think you have a great opportunity for service to your respective communities by obtaining more adequate protection for our citizens through more widespread use of legal advertising.

Roy O. Samson was a highly respected Colorado editor. This column was first printed in his newspaper in 1940 and has been reprinted many times across the country.

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 4

AMENDMENTS TO SB 122
(Introduced Bill)

DATE 1-26-95

BILL NO. SB 122

1. Title, lines 6 and 7.
Following: "ENGINEER;"
Strike: the remainder of line 6 through "REQUIREMENT FOR"
on line 7
Insert: "PROVIDING THAT"
2. Title, line 7.
Following: "RIGHT-OF-WAY"
Insert: "IS NOT REQUIRED IN CERTAIN INSTANCES"
3. Page 1, line 19.
Following: "engineer"
Insert: "or surveyor"
4. Page 1, line 28.
Following: "right-of-way"
Insert: "that refers to an established monument within a
filed corner recordation form, certificate of survey, or
subdivision plat."
5. Pages 1, line 30.
Following: "required"
Strike: "A cultural survey of the right-of-way is required,
but an"
Insert: "An"
6. Page 2, line 1.
Following: "the opinion of the"
Strike: remainder of line 1
Insert: "department, no heritage properties would be im-
pacted."

-End-

Amendments to Senate Bill No. 142
First Reading Copy

Requested by Senator Beck
For the Committee on Local Government

Prepared by Susan Byorth Fox
January 26, 1995

1. Title, line 5.

Following: "DERBY"

Insert: "OR STOCK CAR"

2. Page 4, line 15.

Following: "derby"

Insert: "or for stock car racing and exhibits obvious damage to
its body components"

3. Page 6, line 16.

Strike: "six"

Insert: "four"

DATE 01-26-95

SENATE COMMITTEE ON Local Government

BILLS BEING HEARD TODAY: SB 117 - SB 121
SB 122 - SB 130 - ~~SB 131~~

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jay Downen	MEGA	122	X	
Chuck WALK	MNTA	121		✓
KATHLEEN D BREWER	MA ^{PO} DC - (Hicks & Dist Ct)	117		✓
Jeff Hager	DSL	122		
Vera Petersen	MA ^{CO}	117 121	✓	
Jane Jelinek	MA ^{CO}	117	✓	
Don MacWill	MTA	122	✓	
Gordon Morris	MTA ^{CO}	117 122	✓	
Larry W. W.	MECA	122	✓	
Joe Olson	Muskegon City	121 117	✓	
Alma h	MLCT		✓	
Robert Throssell	MTA ^{Assoc} CI & Rel	121	✓	
John Blomquist	MT - Sturgis	122	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY