

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN WILLIAM BOHARSKI**, on March 9, 1995,
at 4:00 p.m.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent:

Rep. David Ewer, Vice Chairman (Minority) (D)
Rep. Norm Mills (R)
Rep. Debbie Shea (D)

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: SB 127; SB 135; SB 222; SB 263
Executive Action: None

*{Tape: 1; Side: A; Approx. Counter: 000; Comments: This meeting was recorded
on the slow speed (2.4) on a Sony recorder on one 60-minute cassette tape.}*

HEARING ON SB 263Opening Statement by Sponsor:

SEN. ARNIE MOHL, SD 39, Kalispell, said this bill was brought to him by the Clerk and Recorders. It is an act to allow county departments within funds to work within their total appropriations. SEN. MOHL explained the language change in the last sentence regarding the line item budget.

Proponents' Testimony:

Sue Haverfield, Flathead County Clerk and Recorder, and Legislative Chair, Montana Association of Clerks and Recorders (MACR), spoke in support of SB 263 saying this bill came out of their convention and is basically clean-up so they don't have to do year-end budget adjustments to cover an overdraft of \$.05 or \$500. She explained that a budget is strictly an estimate on expenditures and various things that happen during the fiscal year can cause line items to be overdrawn.

Opponents' Testimony:

Cheryl Beatty, Anaconda, Deer Lodge County, previous clerk recorder and current Chief Executive Officer in Deer Lodge County, told about the problem Deer Lodge County experienced over departments not following the budgetary law. They then took control over the budget by adopting a strict purchase order policy not allowing the department heads to overspend by line item. This allowed control of the budget and this bill would unravel what they have been trying to get the departments to do over the years to control spending. They are concerned this bill would allow negative spending in any line item and she requested to go on record as opposed to SB 263.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. MATT BRAINARD questioned where this bill would interfere with a line item. Ms. Beatty answered it is only referring to bottom line and the budget authority for the department head will only be concerned with the bottom line, not the budget.

REP. BRAINARD asked if this will stop a department head from exercising their authority within the department to control expenses. Ms. Beatty responded this would allow them negative line items and gives a department head too much flexibility to spend where they wish. They have a very strict purchase order policy that never allows an over expenditure of any line items.

REP. BRAINARD asked SEN. MOHL to address the same question. He referred this question to Ms. Haverfield. She explained that when they review the accounting board budgeting the ledgers are

broken down into categories such as personal services, which are salaries and fringe benefits, supply services and capital outlay. Each major category is broken down into objects of expenditure or line items. Previously the statute stated they could not transfer between the major categories, however these restrictions were amended out several years ago so now categories can be crossed; however, budgeting statutes still apply. When a department head submits a budget they must break it down to the line item areas and capital outlay. If they wish to change the items, they need permission from the county commissioners to do so.

REP. BRAINARD questioned if **Ms. Haverfield** interprets that this bill takes the line item away from the county commissioners. **Ms. Haverfield** responded that it does not take away the line item; the budget is still approved on the line item basis. She explained the importance of expenditures being charged to the correct line item.

REP. JOHN BOHLINGER questioned if the conflict is on the limitation of county commissioner's ability to transfer funds as necessary. **Ms. Haverfield** said no, and explained the concepts of unforeseen expenditures occurring. The main goal is the year end clean-up to give a true picture.

REP. BOHLINGER asked for clarification on the comments made by **Ms. Beatty** that department heads can overspend budgets and still remain within the total budget established.

Ms. Haverfield said with this bill they would be allowed to spend over line items but not the total bottom line and the other budgeting laws applies.

REP. JOE TROPILA asked **Ms. Beatty** to explain further her approach to the problem. **Ms. Beatty** reiterated her previous testimony and explained that exceeding the line items in the fund within the general fund budget is not allowable in the county and under this bill it would be allowed. The commissioners have strongly stated that they do not want the department heads to be allowed to overspend per line item.

REP. TROPILA stated everything in the county budget is approved by county commissioners and they cannot overspend their budget even their line items. They have to do this by resolution with the county commissioners. At the end of the year, the bills come in and if they are \$5 or \$10 over, the legislative auditor and the state requires the budgets be balanced down to zero.

REP. TROPILA said **Ms. Beatty** and **Ms. Haverfield** are coming from the same idea, but are both taking a different approach.

Ms. Beatty said the approach they are taking is that they do not want to see allowance of any negative line items at all.

CHAIRMAN BOHARSKI discussed the scenario of departments being able to transfer monies not spent to a different department. **Ms. Beatty** said that transferring money can be done by request through a resolution to the commissioners. The idea is they would be able to negative line item spend as long as their bottom line is okay.

CHAIRMAN BOHARSKI questioned **Mr. Morris, Director of Association of Counties (MACO)** on their position. **Mr. Morris** clarified that a transfer is required any time a department head is at the point where they are going to exhaust and overspend a line item. This bill would move it to the next level. Currently, under law, if a department head has an over expenditure of a line item, they are liable for doing so and overspending the departmental total makes one liable.

CHAIRMAN BOHARSKI questioned if the commissioners would have the authority by resolution to put this back in place in their specific county. **Mr. Morris** said in his opinion the answer would be no. The assumption of authority would be challenged by each elected official.

Closing by Sponsor:

The sponsor closed by saying this bill will give a clear picture of per item spending and urged a do pass.

HEARING ON SB 127

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, Billings, explained that SB 127 is an act to make post-conviction relief court expenses reimbursable by the state. The post-conviction relief proceeding is principally for appeals for sentencing, transcript, witness fees, examinations, etc. There are sufficient monies in the fund to take care of these expenses. The counties make application for monies left in the fund and they are used in the district court funds.

Proponents' Testimony:

Gordon Morris, MACO, gave some background on district court reimbursements and said they are funded out of 7% of the money, approximately \$3 million a year, that is collected at the local level on the 2% vehicle registration fee. This bill proposes to add eligibility for reimbursement for post-conviction relief which would be in the range of \$15,000. He urged support of SB 127.

Gary Spaeth, State Bar of Montana, attested they have taken the position of supporting SB 127 because they feel they are legitimate expenses that the fund should pay and will assist counties that have catastrophic events.

Charles Brooks, representing the **Board of County Commissioners, Yellowstone County** said they too go on record in support of SB 127.

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Betsy Griffing, Attorney General's Office, testified their office handles most of the post-conviction cases that are filed with the Montana Supreme Court and they provide support to the county attorneys. **Ms. Griffing** said the original purpose of the criminal court reimbursement fund was to help small counties and share the burden of great expenses in large criminal cases; e.g., McKenzie and the Kills On Top cases.

Ms. Griffing explained how the program is designed and state post-conviction proceedings. After a trial and appeal, a convicted defendant may still petition the state district court or the Montana Supreme Court for issues that he could not have raised on appeal. Typically, these are issues involving effective assistance of counsel. The defendant goes through the trial and appeal and can then file a petition for post-conviction release by saying the counsel was ineffective.

After a convicted defendant may have lost in the state post-conviction proceeding, he then still has the opportunity to challenge the constitutionality of his conviction in federal habeas corpus proceedings in federal court. He will again be appointed counsel and the state incurs some costs.

At this point, counties are still bearing this burden. This bill will put the state and counties in the position to aggressively and adequately defend the capital convictions as well as other criminal convictions and will help defray the costs to counties. **Ms. Griffing** explained the fiscal note and said this bill is designed to cover the costs that are currently not being covered.

Opponents' Testimony: None

Informational Testimony:

CHAIRMAN BOHARSKI pointed out to the sponsor that another bill, SB 127, conflicts with SB 83 and they need to be worked on together.

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked if all counties have the 2% option tax. **Mr. Morris** said the 2% is statewide in all 56 counties.

REP. ANDERSON questioned that this bill is brought from Billings and wondered if there are certain counties being hit harder than other counties by the post-conviction proceedings. **Mr. Morris** said this bill was an 18-month interim study that was conducted

by and brought from the Judicial Unification and Finance Commission.

{Tape: 1; Side: A; Approx. Counter: 45.8}

CHAIRMAN BOHARSKI asked what happens if the money runs out in this fund. **Mr. Morris** explained there is an appropriation made and is sitting in the fund to be administered through the Supreme Court administrator. He explained how the reimbursements are paid and requests are made.

Closing by Sponsor:

The sponsor closed reiterating this is not a Billings bill and discussed the district court reimbursement program. **SEN. BISHOP** urged a Do Pass.

HEARING ON SB 222

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, Forsyth, said he was requested to carry SB 222 primarily by the people in his county. SB 222 is an act to require some sheriff fees be deposited in the general fund or the public safety fund. When monies come in, it is put into the sheriff's account. He referred to page 1, lines 16 and 17, and said instead of the money being deposited in the sheriff's budget, it will be deposited in the general fund of the county unless the county has instituted a public service levy. In this case, the fees may be deposited into an account established for it.

Proponents' Testimony:

Sue Haverfield, MACR, voiced their support of SB 222 and reiterated the intent of the bill and asked the committee to support it.

Gordon Morris, MACO, spoke in favor of SB 222 and said it is a clarification and puts into law what is clearly the understanding of everyone.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOHLINGER questioned if the sheriff's department does a drug bust are they operating under the "finders keepers" principle. **Ms. Haverfield** said that is not the issue here. That goes into a fund that is used to purchase equipment. This bill is about fees

for serving of papers, etc., and this is basically an anticipated revenue item for the sheriff's budget.

{Tape: 1; Side: A; Approx. Counter: 57.1; Comments: .}

CHAIRMAN BOHARSKI questioned why they wish to switch it out of the sheriff's budget and put the money into a different fund that does the same thing. He asked why they wish to create a new fund with the safety levy, in which to deposit funds before the county general fund. **Mr. Morris** explained about the law that was changed to give authority to actually levy for public safety purposes. He referred to Page 2, lines 14 and 15, and explained how this language speaks to the situation.

CHAIRMAN BOHARSKI recounted the other bill that was killed in this committee with **Mr. Morris**.

Closing by Sponsor: The sponsor closed and said **REP. ELLEN BERGMAN** would carry this to the house floor.

HEARING ON SB 135

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, Forsyth, presented SB 135 which is an act to clarify a requirement that mandates local governments to be fully funded.

{Tape: 1; Side: B; Approximate Counter: 000}

SEN. COLE distributed the amendments and explained the language giving an overview of how they identify the remedies that need to be taken care of.

Proponents' Testimony:

Leo Giacometto, Governor's Office, stated they are in full support of SB 135. He explained that everyone needs to know what the legislature and state government is doing and this is a way to show the local communities that they are being sincere. Washington D.C. area is listening to the debate on mandates, and they are also being heard on the local and state level.

Gordon Morris, MACO, stated their strong support of SB 135 and their pleasure that it is being supported by the governor. They are also pleased that so much attention has been given to the mandate issue by this legislative session. **Mr. Morris** explained the significant importance of mandates being issues for counties. This bill would identify the mandates by way of what is insufficient or inconsequential and give a mechanism to address them and gives a recourse if the law is not followed by either a state agency or by someone requesting a bill draft.

Charles Brooks, Board of County Commissioners, Yellowstone County, stated his concern of the costs local government are bearing on behalf of the state. He gave two examples of what is happening in Yellowstone County and said they cannot recover the capital cost in their prison for incarcerating state prisoners. The cost is over \$60,000 a year for incarcerating state prisoners and they are required to do so.

Ms. Brooks said since 1987, the estimated cost for the new jail in Billings has cost over \$500,000 to incarcerate state prisoners. Because Billings is a regional center, they are having to handle the commitment of mental patients and the expense is mostly borne by the taxpayers of Yellowstone County and should be borne by the state.

Mr. Brooks spoke about HB 519 which deals with the mental commitment costs and his concern that it will not pass. The fiscal note on the bill is over \$1 million. It is time that the cost shifts be recognized and come back where they legitimately should be.

Alec Hanson, League of Cities and Towns, stated their support of SB 135 and reiterated the problems with mandates. This increase is desperately needed.

Jim Kembel, City of Billings, wished to go on record in support of SB 135.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN BOHARSKI stated that every day in the Judiciary Committee they deal with issues in Title 45. He said perhaps the answer lies on page 2, line 6 and 7. If certain parts of the criminal code in Montana is expanded, county attorneys are responsible for prosecuting and local sheriffs are responsible for arresting, local jails are responsible for detaining while they are awaiting court costs, in which case the courts are responsible for prosecuting. He asked **Mr. Morris** if under this bill he envisions all of those bills, although none of the fiscal notes reference what the cost of local government is going to be so in those cases, do they look to see what the costs are going to be.

Mr. Morris responded this is the heart of what forever will be the problem in the mandate debate. They can cry mandate, but there are situations that don't necessarily fit in terms of the whole mandate scenario.

CHAIRMAN BOHARSKI discussed the scenario of a law being passed where the state decides to pick up funding for a program that is

currently being funded by local government. If the opposite was done, and they absorbed the costs of the programs that are currently being funded by local government, it sounds good and there is a message to the legislature that it is a good idea, but there will be cases where this will get very interesting.

Mr. Morris agreed and gave the example of when the state obligated itself to undertake the responsibilities of providing welfare to 12 counties, They assumed to do this and the 12 counties did this at considerable savings to their property taxpayers and the state found out at the tremendous expense to the state general fund.

REP. ANDERSON questioned if the budget office has any problem with making the estimates and the impact. **SEN. COLE** responded no, they did not have a major problem. He explained this is being done by checking out the fiscal note.

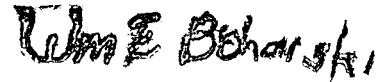
Mr. Hanson clarified that the budget office currently does fiscal notes on local impacts.

Closing by Sponsor: The sponsor closed and urged the committee to support SB 135.

{Tape: 1; Side: B; Approx. Counter: 20.0; Comments: Meeting adjourned.}

ADJOURNMENT

Adjournment: 4:50 P.M.



WILLIAM BOHARSKI, Chairman



EVY BURRIS, Secretary

WB/ev

HOUSE OF REPRESENTATIVES

Local Government

ROLL CALL

DATE 3-9-95

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 OF REPRESENTATIVES

VISITOR'S REGISTER

Local Government

COMMITTEE

BILL NO.

DATE 3-9-95 SPONSOR(S)

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
W James Kumbel	City of Billings	SB135		✓
Lue Haverfield	Flathead Co. / MACR	SB222 SB263	SB	✓
Betsy Griffing	Attorney General's Office	SB127		✓
Cheryl Belling	Anaconda-Deer Lodge	SB263	X	
Gordon Morris	MACo	SB 127		✓
Charles R. Brooks	Yellowstone Ct.	SB127		✓
Gary Speeth	State Bar	SB127		✓
Alec Hansen	MLCT	SB135		✓
Gordon Morris	MACo	SB 122 135		✓

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