MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN WILLIAM BOHARSKI, on March 14, 1995, at 3:20 PM.

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. Shiell Anderson (R)

Rep. Ellen Bergman (R)

Rep. John C. Bohlinger (R)

Rep. Matt Brainard (R)

Rep. Matt Denny (R)

Rep. Rose Forbes (R)

Rep. Antoinette R. Hagener (D)

Rep. Bob Keenan (R)

Rep. Linda McCulloch (D)

Rep. Jeanette S. McKee (R)

Rep. Norm Mills (R)

Rep. Debbie Shea (D)

Rep. Joe Tropila (D)

Members Excused: None

Members Absent:

Rep. Chris Ahner (R)

Rep. Diana E. Wyatt (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 227, SB 182, SB 323

Executive Action: None

HEARING ON SB 227

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Missoula, said this bill is an act to reduce to 1/8 mile outside the city limit area where the city can

enforce its building code. This bill concerns part of Title 50 which is a health and safety title and building and construction standards.

SEN. WELDON addressed the law of the power and duties of municipalities as it relates to building inspection functions. He discussed the current law defining municipal jurisdiction areas explaining a city can exercise its building inspection jurisdiction within its exterior boundaries of the municipality, but upon certification from the state, it can also exercise that authority within a 4.5 mile span around the city. He noted the different cities that have taken their jurisdiction to 4.5 miles and one mile.

SEN. WELDON said the question is what jurisdiction should be exercised in this function and of what governmental entity should do this. He said it is the state's responsibility outside the 4.5 miles and the city's responsibility inside the 4.5 miles.

SEN. WELDON explained the fiscal note.

Proponents' Testimony:

SEN. CASEY EMERSON, SD 14, Bozeman, said he was responsible for the amendment to read 1/8 mile within the city limits. He explained the reason for this is that they have a tremendous number of people living outside the city in the 4.5 band and the one mile. They do not get to vote in city elections nor do they have any representation on the city council. It is an American right to vote for representation. The "battle cry" is taxation without representation. On the planning and zoning question, the state has regulations and the counties are getting more regulations. SEN. EMERSON urged a do pass.

Ramon S. White, Bozeman, said he is a fourth generation rancher in the Gallatin Valley and a former Gallatin County Commissioner and Assessor with 22 years of past elected service and also a member of the County Planning and Zoning Commission for 17 years and the Bozeman City-County Planning Board for 12 years, and is currently a Board member of the Agriculture Preservation Association of Gallatin County (APA). Mr. White presented written testimony and agreed with the APA's stand on this bill. He strongly supported SB 227. EXHIBIT 1

{Tape: 1; Side: A; Approx. Counter: 22.2; Comments: .}

James Loftus, Montana Fire District Association, reiterated the testimony and said they stand in support of SB 227.

Paul Stanton, Mill Town West Riverside Area, Missoula, said they have their own community, fire district, churches, school, cafe and other businesses. Another jurisdiction in another community is charging fees and imposing regulations on them. Mr. Stanton said he believes the reason city officials are so adamantly

opposing SB 227 is that the building code program has proven to be fairly lucrative for them.

Mr. Stanton submitted a newspaper clipping from the <u>Missoulian</u> from July 1994 that stated the city of Missoula building code program brought in \$316,000 over the last three fiscal years in excess of the cost of running the department. He pointed out that this only affects building codes and not planning, zoning, sewer, annexation, or any other form of government regulation.

Mr. Stanton submitted another clipping from the <u>Missoulian</u> quoting Mayor Daniel Kemmis at a meeting of Missoula's Growth Management Task Force stating that the city of Missoula will not likely grow past its eastern border in Hellgate Canyon, nor as far as Lolo or Frenchtown and yet they are running inspections past Mill Town and beyond. **EXHIBITS 2 and 3** The building codes program is taxation without representation.

Mr. Stanton supported SB 227 as originally proposed and the idea of future annexation in some places is more valid within the one mile zones, 4.5 miles is excessive and reaches into other communities. Mr. Stanton said an important point is that SB 227 also tells counties that when and if they get their own building code programs, they have the right to run those programs in the areas outside the cities, currently being regulated by the cities. There is a concern that the areas that are growing fastest that would generate fees to keep the department going and pay for the trip to Seeley Lake that have been grabbed up by the city of Missoula and under current department commerce rules the county cannot take those counties back over. In "perpetuity" the city of Missoula would maintain inspection of these areas. He urged the committee in the name of representative of democracy and tax fairness to support SB 227.

Steve White, Bozeman Rancher, distributed his written responses to points that were raised in the Senate hearing by opponents on SB 227 He also gave his testimony and explained the photos showing the jurisdictional areas. EXHIBIT 4

<u>Informational Testimony</u>:

Jim Brown, Building Code Bureau, Montana Department of Commerce, said whether this bill reduces the jurisdictional area to one mile outside the incorporated municipality or 1/8 mile will have a considerable impact on their ability to provide inspection services. It will add approximately 800 additional electrical permits that will have to be inspected each year and between 200 and 260 additional building permits. Their feeling is as the fiscal note will show, they will need an additional two inspectors to provide this service. Whether it is one mile or 1/8 mile, they will need an additional electrical and building inspector to handle the work.

Mr. Brown clarified that when this bill was heard in the Senate committee, the department wrote in opposition because the fiscal

note indicated that they could absorb the additional work and they did not feel that was accurate. They did not communicate their needs adequately enough.

Mr. Brown also pointed out that there are certain buildings that are exempt from the states jurisdiction for the purposes of building code and mechanical code enforcement which are single family dwellings and fourplexes and less.

CHAIRMAN BOHARSKI asked Mr. Brown if he was authorized to speak on behalf of the executive branch or the department. Mr. Brown answered, the department.

Opponents' Testimony:

Alec Hanson, Montana League of Cities and Towns, spoke in opposition of SB 227 stating his concerns of public health, safety and consumer protection. He also stated his rejection of the proponents' arguments and said if this bill passes, the state inspection program would not be adequate to meet the needs. Mr. Hanson offered his file for committee members to read containing letters from architects and builders stating their concern about safety, inspection, quality of construction, and all the things that are important in their business. Mr. Hanson submitted a letter from Jim Nugent addressed to the Senate Local Government committee on February 7, 1993, opposing SB 227. EXHIBIT 5

Jim Nugent, City Attorney, Missoula, said the City Council and Mayor of Missoula requested that he appear in opposition to SB 227. He presented his written testimony. EXHIBIT 6

Ken Hay, Director Public Works, Billings, said in his position he has supervised the building divisions for more than ten years. He spoke in opposition of SB 227 because it is commonly known in the construction industry that "you basically get what is inspected, not what is expected." He reiterated the problems this bill would create for the city of Billings. He spoke about residential structures within the city and the problems as they relate to structural condition and code compliance. Mr. Hay said with passage of this bill those would not be picked up and corrected.

Mr. Hay submitted an editorial from the <u>Billings Gazette</u> that focused on building inspections needed around growing cites and stated SB 227 would virtually eliminate the ability of cities to ensure that new construction near the city limits would meet building codes. **EXHIBIT 7**

Chris Racicot, Executive Director, Montana Building Industry Association (MBIA), said this is an organization of 1,000 building trade businesses. MBIA is the leading home builder organization encouraging professional business practices planning and building standards. Mr. Racicot said for this reason they stand in opposition to SB 227. He agreed with previous testimony

and believed in this instance city governments need the 4.5 mile building code mechanism to insure proper planning in future growth with annexations and service extensions. Mr. Racicot asked that the committee table SB 227. EXHIBIT 8

Paul Gerber, Fire Marshall, Billings, said most fire departments and building departments in Montana municipalities coordinate their enforcement of the fire and building codes and they are designed to complement each other. Should SB 227 be enacted and a municipality jurisdiction be reduced to 1/8 mile, the safety of the public and responding fire fighters could be jeopardized because of the possible elimination of building safe guards designed to reduce the occurrence of fire or the spread of fire.

Mr. Gerber said it is a statistical fact that rural areas experience a larger per capita loss of life because of fires in urban areas and this is due in part to longer fire department response times. Residential structures in areas where longer response times are inevitable, need to be protected by more preventive, up-front code enforcement, not fewer smoke detectors, escape windows, fireproof sheet rock, solid core doors between homes, and attached garages and separate dwelling units, duplexes, triplexes, and fourplexes, for example, as well as properly installed natural gas lines and furnaces.

Mr. Gerber concluded by saying SB 227 is not in the best interest of Montanans to provide high quality fire prevention services and he asked that the committee kill SB 227.

Andy Epple, Planning Director, Bozeman City County Planning Board, presented his written testimony and spoke in opposition to SB 227 along with written testimony from Paul J. Luwe, City Attorney, Bozeman. EXHIBITS 9 and 10

Craig Kerzman, Kalispell, submitted a map of building department boundaries of Kalispell and reiterated previous testimony on building codes and inspections. EXHIBITS 11, 12 and 13

{Tape: 1; Side: B}

Kim Palmieri, Montana Chapter of ICBO, Billings, spoke in opposition to SB 227 and submitted a circular on building code effectiveness grading services and a listing of code items which will note be inspected. EXHIBITS 14 and 15

Dave Cogley, Montana Building Industry Association, agreed with previous testimony and asked for the committee's opposition to SB 227.

Larry Gallager, City of Kalispell, asked the committee to consider the costs when codes are not enforced. Since 1979 the city has invested \$3.2 million in public funds to rehabilitate homes that have no foundation, no structural integrity and faulty

heating systems. Rehabilitation and the need for safe and sanitary housing is an essential element.

Bruce Williams, City Manager, Kalispell, distributed his written testimony and spoke in opposition to SB 227. EXHIBIT 16

Roger Hopkins, City Manager, Columbia Falls, spoke in opposition to SB 227 and distributed pictures for the committee to review of a dwelling inside the city limits of Columbia Falls for which a building permit was never issued for remodeling. The dwelling was condemned and torn down.

Chris Imhoff, League of Women Voters of Montana, submitted written testimony in opposition to SB 227. EXHIBIT 17

Tom McNab, Montana Technical Council, spoke in opposition to SB 227.

Kathy Macefield, Planning Director, City of Helena, stated their opposition to SB 227.

Letters in opposition to SB 227 were sent by the following people:

John M. Jenkins, Grizzly Mechanical. EXHIBIT 18

Paul Filicetti, Missoula Society of Architects. EXHIBIT 19

Dale Horton, Architect. EXHIBIT 20

Larry Alan Palmer, Palmer Electrical Contracting Inc. EXHIBIT 21

Wallace Roberts, Architect, Missoula. EXHIBIT 22

Kirk Flynn, Missoula Electric Coop., Missoula. EXHIBIT 23

Terre Meinershagen, AIA, Rocking M. Design, Missoula. EXHIBIT 24

Rita J. Hagler, Westmark Group. EXHIBIT 25

Brian Roat, Mayor, Red Lodge. EXHIBIT 26

James R. Syth, Bridger Builders. EXHIBIT 27

James E. Wysocki, City Manager, Bozeman. EXHIBIT 28

Ron Brey, Assistant City Manager, Bozeman. EXHIBIT 29

Marilyn Cregg, Council V.P., Missoula. EXHIBIT 30

Michael T. Fussell, P.E., Missoula. EXHIBIT 31

James E. Gordon, P.E. Missoula. EXHIBIT 32

Ronald L. Klaphake, President/CEO, Missoula Area Economic Development Corporation. EXHIBIT 33

Richard L. Larsen, Mayor, Billings. EXHIBIT 34

{Tape: 1; Side: B; Approx. Counter: 8.4}

Questions From Committee Members and Responses:

- REP. MATT BRAINARD questioned Mr. Nugent on who has been doing the inspection in the Florence, Stevensville and Highway 93 area. Mr. Nugent referred this question to Mr. Brown. Mr. Brown responded that commercial and industrial properties deal with the state department on anything in a fiveplex or greater, a fourplex or less has nothing because the city of Missoula jurisdiction district area goes to Lolo. Fourteen years ago the state legislature took away the authority of the state building officials to inspect anything smaller than a fiveplex.
- REP. SHIELL ANDERSON questioned SEN. WELDON on if there had been discussion on the counties allowing inspections being contracted with the city or state. SEN. WELDON said it may have been mentioned. If the county had assumed this jurisdiction, then the county would also assume the jurisdiction within the area of discussion.
- **REP. NORM MILLS** asked **Mr. Hopkins** why it's up to the city to offer protection. **Mr. Hopkins** responded they would have to request authorization from the state to work in that jurisdiction.
- **REP. MILLS** asked if he would go along with letting the county assume the responsibility. **Mr. Hopkins** responded he would agree if the county would, but in their situation it's not going to happen.
- REP. DAVID EWER said under the law, state government is not authorized to inspect buildings that are five dwelling units or less, but the code empowers municipalities and counties to adopt by ordinance the inspection to see if they comply. Mr. Brown responded that is correct.
- REP. EWER questioned how many counties currently have a building inspection program. Mr. Brown responded they now have three counties that have inspection programs; Richland, Butte-Silverbow, and Anaconda-Deer Lodge. Flathead County was certified and the voters of the county decertified last August.
- REP. EWER questioned what will happen in the interim if SB 227 is adopted when the mileage goes from 4.5 to 1/8 mile and the counties have no plans and the state is legally not authorized to inspect residential homes. Mr. Brown explained if it is in the state's jurisdiction area and the county does not become certified, the single family dwelling to fourplexes will likely

never be inspected for building code compliance and mechanical code compliance unless the legislature eliminates the exemption from the states program. Mr. Brown discussed the effective date of forcing compliance.

- REP. EWER asked Mr. Brown if, for the record, he would agree with the statute that state government is the entity that sets the building codes and if the codes are to be changed, the Department of Commerce must do them by all the due process afforded with rule changes. Mr. Brown responded that is correct.
- REP. BOB KEENAN asked Craig Kerzman what he meant by "relevant" in his written testimony. Mr. Kerzman responded the state needs a circuit system for doing inspections and look at the stage of progress the construction is in. The city responds at the specific times given by the building code for footings, foundations, framing, insulation, sheet rocking. The state may look at the building after it is sheet rocked but would not have a clue what is in the footing, foundation or the framing, whereas they can and that is what he meant by the term "relevant."
- REP. KEENAN asked what he meant by his statement that the government has to pick up the check for losses. Mr. Kerzman answered that whenever there is a national or natural catastrophe, taxpayers end up underwriting the losses through higher insurance premiums (for example, when State Farm lost \$70 million in Florida due to hurricane damage), or taxes subsidize the rebuilding of a disaster area (for example, when flooding created massive destruction in the midwest United States).
- REP. KEENAN said he lives outside of Bigfork and wondered what process he should go through if he's buying a home and has not been under any jurisdiction of any codes and what is his protection. Mr. Kerzman responded if he was outside a jurisdiction he has the opportunity to hire a private home inspector or an architect or engineer of his choosing or to check himself within his limits of confidence to judge the quality of construction.
- REP. MILLS questioned if they can do this outside the 4.5 limit and if this bill is passed, could they do it up to the limit this bill said. Mr. Kerzman said people have the option of doing that now within the jurisdictions or outside the jurisdiction limits.
- REP. BOHLINGER questioned the arguments offered by the opponents addressing the issues of public safety and the costs the homeowner would bear in relation to insurance premiums and the ability to pass on to the future owner of the property a safe and healthful environment. SEN. WELDON responded they are legitimate concerns and he is not arguing that the state of Montana should not require those functions to occur. It comes down to the question of who performs those functions and that is the origin of genius of this bill.

REP. ANDERSON questioned the average cost per square foot of building inspection that the city is doing. **Mr. Kerzman** responded for a single family home the building permit runs approximately \$500.

REP. TROPILA questioned what the national jurisdictional average was in miles around municipalities. Jerry Winseit responded Whitefish has only three municipalities that have the 4.5 mile jurisdiction and twelve that are in the one mile category and the rest operate strictly within their own city limits.

REP. TROPILA explained he is talking about the national average, not Montana. Alec Hanson said he would get that information for him.

REP. MILLS questioned how much of the fee charged by the city for the inspection is for the building permit and how much for the inspection. Mr. Kerzman responded a \$520 building permit fee in Kalispell is based on the cost per square foot which results in the calculated value and the permit fee comes from the uniform building code.

{Tape: 1; Side: B; Approx. Counter: 28.5.}

Closing by Sponsor:

The sponsor closed saying this bill does not concern the function of building inspections and it is important that single family dwellings be inspected and then the entire state should be affected and they need to make sure state agencies have the resources and the ability to meet this goal and function. SEN WELDON stated his concern about the ability of the Department of Commerce to carry out this function. He said the 4.5 miles is not necessarily the area they want to look at and one mile is a more reasonable zone in which cities can grow. SEN. WELDON reiterated all the things this bill would do with passage.

HEARING ON SB 182

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Arlee, presented SB 182 which is an act to allow local government to adopt ordinances regulating outdoor advertising. SEN. WELDON reviewed and explained sections of language in the bill and explained the amendment.

Proponents' Testimony:

Rose Magnuson, Citizens For Scenic Lake County, submitted material outlining what they proceed the problem to be and how SB 182 solves it. EXHIBIT 35

Fern Hart, Missoula County Commissioner, submitted written testimony and commented that as a city, Missoula has a sign ordinance that has worked well and since Montana is becoming more tourist-oriented, the scenic views must be protected because people are coming to Montana to appreciate what is most unique to Montana. EXHIBIT 36

Dana Broussard, Arlee, spoke in favor of SB 182 opposing Section 3, Subsection 2(c) of the amendment saying by attaching this part of the amendment, local government would be held hostage by the industry's arbitrary definitions and make it prohibitive for taxpayers to engage in a buy-out situation. This bill will give control power to the local governments to make decisions for the needs and desires of the citizens.

Daphne Jones spoke in favor of SB 182 without the just compensation clause. Ms. Jones distributed billboard pictures and requested they be returned to her after the committee members viewed them.

Joanne Rubie, Save America's Visual Environment (SAVE), distributed surveys showing what motorists traveling Montana highways want to see. EXHIBIT 37

Sara Busey, SAVE, distributed a copy of the traffic safety studies focusing on one aspect of safety of billboard signs and studies which concluded that billboards are a traffic hazard.

Ms. Busey distributed a copy of the rationale, stating why the amendment should be deleted and she urged a do pass without the amendment. EXHIBITS 38 and 39

John Steward, SAVE, distributed a statement from Pamela Sourbeer, Missoula, supporting SB 182 without the amendment. EXHIBIT 40

Chris Imhoff, League of Women Voters of Montana, presented written testimony and stated SB 182 is a local option bill which gives local governments the flexibility to adjust state outdoor advertising regulations to fit their particular needs and preferences. The League also opposed the amendment added to the bill by the Senate Local Government Committee - Section 3, Subsection 2(c). EXHIBIT 41

Don Spivey, Whitefish, commenting on following the federal and state standards on outdoor advertising. He read and distributed copies of a statement from Stephen F. Herbaly, Planning Director, Flathead Regional Development Office, supporting SB 182 without the amendments. EXHIBIT 42

Michael Lare spoke on behalf of Frontier Outdoor Advertising and explained what happened in the Senate and why the amendments were added. They supported SB 182 with the amendments. EXHIBIT 43

{Tape: 2; Side: A;}

Harriett Meloy, Helena, representing herself as a former member of the Helena/Lewis and Clark County planning board spoke in favor of SB 182 without the amendment. EXHIBIT 44

Tom Harrison said he was appearing on behalf of Myhre Advertising. Mr. Harrison distributed a copy of the Montana constitution and referred to Section 29, Article 2. He explained it is eminent domain and that property cannot be taken without just compensation. He referred to the highlighted portions showing the purposes of assessing compensation based upon fair market value. Mr. Harrison said he is in favor of the bill as amended. EXHIBIT 45

{Tape: 2; Side: A; Approx. Counter: 12.8; Comments: n/a.}

Gordon Morris, Director, Montana Association of Counties (MACO), stated their support of SB 182 without the amendment.

Additional testimony supporting SB 182 without the amendment was submitted from:

Allan Mathews, Historian, Alberton. EXHIBIT 46

Roger S. Munro, Missoula, EXHIBIT 47

Opponents' Testimony:

John Wagner, Owner of a billboard company, Billings, spoke in opposition saying he bought his company with the anticipation he would be able to continue to operate and pass the business on to his children. Mr. Wagner said he was on the Governor's task force for outdoor advertising and this was not one of the issues addressed. They agreed to the size and height limitations. He said state regulations and the market control the billboard industry. Mr. Wagner explained the reasons he opposed SB 182 and urged the committee to not pass the bill. However, if it does pass, to include "just compensation."

Informational Testimony: None

Questions From Committee Members and Responses:

REP. LINDA MCCULLOCH asked Nick Rowdery, Staff Council Department of Transportation, to comment on the Section 3, 2(c). Mr. Rowdery said the Department of Transportation would go on record that they would prefer that the terminology in the amendment be taken out. He explained his rationale from a legal standpoint.

REP. MCCULLOCH asked Mr. Rowdery to comment on fees and permits. Mr. Rowdery explained the department's permitting process for outdoor advertising on signs and said the controls are limited to the interstate and it is not an expensive process at this time and has nothing to do with the value of the sign. Outdoor advertising signs are personal property.

REP. JOHN BOHLINGER said Mr. Wagner's sign company purchase price was based on income the business had generated and Mr. Harrison provided photocopies of the Montana Constitution and referenced under eminent domain the need for using current fair market value as a way of determining values. He asked if the amendment provided removing that language, would it not be contrary to what the constitution provides for. Mr. Rowdery disagreed and suggested that if the committee does strike the amendment there is still the constitutional provision on taking private property and they must pay just compensation. He explained how that would be determined.

REP. BOHLINGER questioned why a fair determination of value should not be used for calculation. Mr. Rowdery explained how the condemnation cases on appraising signs functions. By leaving the amendment, it would handicap local government's purchase of signs.

CHAIRMAN BOHARSKI asked Mr. Harrison's view on the state's ability to take or can the legislative body at any time pursue in the innominate domain provision of the constitution, choose to take any land for any public purpose so long as just compensation is provided. Mr. Harrison explained that in his opinion, the technical answer would be yes, but could be challenged if there was a basis in the statute for taking it.

CHAIRMAN BOHARSKI questioned what the difference was between the language in the bill and the current fair market value definition in Title 7. Mr. Harrison said as he indicated in his presentation, he didn't think there was any difference and he explained the violation of just compensation for an owner of a billboard company.

CHAIRMAN BOHARSKI asked if the bill were to reflect Title 7, Chapter 30, would he still support the bill. Mr. Harrison replied yes, he supported the bill with or without 3(c).

CHAIRMAN BOHARSKI noted this bill did not address the property owner where the sign is placed and questioned what is the taking provision he is compensated. Mr. Harrison responded the property owner has a lessee's interest and is entitled to fair market value of his interest.

{Tape: 2; Side: A; Approx. Counter: 33.9}

REP. MILLS stated his concern on not paying fair market value and questioned Mr. Harrison on how this is determined. Mr. Harrison explained the appraiser's basic approach.

REP. MILLS asked if it is true that the value of property is determined for tax purposes by taking current sales which establishes fair market value. Mr. Harrison thought so, but he explained taxation is not his expertise.

- REP. MILLS wondered about this precedent being set by law.
- REP. MATT BRAINARD questioned Mr. Wagner on if he financed the purchase of his company through a lending institution and if the valuation was placed on the business. Mr. Wagner responded yes, and the valuation was based on the past performance and the expected probability of that continuing for a number of years.
- REP. BRAINARD asked SEN. WELDON if this would give counties power to set standards that are more stringent on interstate signs. SEN. WELDON referred to Page 1, line 14, and explained the language and said the local ordinances can be more restrictive than the state laws.
- REP. BRAINARD questioned the grandfather provisions. SEN. WELDON referred to Page 1, line 17, and explained the language that the Department of Transportation shall retain control over all signs located within the right of state highways.
- **REP. BRAINARD** asked if the county decided that a sign is too big, could they restrict the size. **SEN. WELDON** responded that the sign and its size was permitted by the state and would have to continue to be permitted by the state.
- REP. BRAINARD questioned if this bill was introduced in conjunction with SB 181, and with the county or local jurisdiction, would be able to restrict the size that has been permitted by the Department of Transportation on the existing sign and also going from county-to-county changing various sign limitations and restrictions particularly on state highways and interstates. Mr. Rich Munger, Coordinator, State Outdoor Advertising Control Program, responded yes, that in his opinion, in the event they entered into an agreement with, for example, the Montana Department of Transportation and Missoula County, that as long as they stay as restrictive as current state law, they could establish an ordinance that could require the reduction in the size of the sign. On the issue of removal of the sign, the issue of providing just compensation would come up.
- CHAIRMAN BOHARSKI asked if SB 181 only pertains to size within the right-of-way. Mr. Munger responded no and explained that SB 181 pertains to size that can be seen from the primary interstate highway and the signs are not on the right-of-way, they are on private land adjacent to the right-of-way.
- REP. MILLS referred to Section 1 stating that the Department of Transportation shall retain control over all signs located within the right-of-way of state highways and counties in incorporated cities and towns that have adopted ordinances. He said if an ordinance is adopted, the Department of Transportation shall still have control within the right-of-way. SB 181 says the state has control with 660 feet measured perpendicular to the center line of the highway. REP. MILLS said he sees a conflict.

Mr. Munger clarified that the Department of Transportation has control of any off-premise sign located along an interstate or primary highway that is visible with normal vision.

CHAIRMAN BOHARSKI questioned how far off the center line of the highway are 99% of the signs. Mr. Harrison responded he was informed by sign people approximately 50 feet.

Closing by Sponsor:

The sponsor closed and explained that for clarification on the "just compensation" issue, in its present form the bill provides and requires just compensation. He explained defining fair market values by industry standards and submitted his argument why this should not be put into law.

CHAIRMAN BOHARSKI relinquished the chair to VICE CHAIRMAN JACK HERRON.

HEARING ON SB 323

Opening Statement by Sponsor:

SEN. TOM BECK, SD 28, Deer Lodge, presented SB 323 which is an act requiring local governments to hold a public meeting before adopting interim zoning regulations; increasing the public notice requirements for creating interim zoning districts; providing a definition of emergency for purposes of interim zoning. He stated this is a true constituent bill. He told about the hearing in Helena that was attended by 700 people and 90% were opposed to the process that was taking place without hearings and using an emergency zoning statute. He explained the emergency zoning provision and what it dealt with and said this bill will define the word "emergency" and how emergency zoning can be used.

Proponents' Testimony:

Chris Racicot, Executive Director, Montana Building Industry Association (MBIA), representing 1,000 building trade businesses from the state of Montana presented his written testimony in support of SB 323. EXHIBIT 48

Blake Wordal, Lewis and Clark County Commissioner, spoke in support of SB 323 and presented his written testimony addressing each of the amendments. EXHIBIT 49

{Tape: 2; Side: B;}

Jerry Hamlin, Helena Property Owners Association, urged passage of SB 323 in its present form without any amendments and explained it is necessary in order to define what constitutes an emergency and sets forth the procedures county commissioners are to follow when adapting emergency zoning regulations.

William M. Spilker, Real Estate Broker, Montana Association of Realtors, presented his written testimony and urged the committee to support SB 323 as written. **EXHIBIT 50**

Dave Cogley, Montana Building Industry, spoke in support of SB 323 without the amendments proposed. He said this bill provides the criteria that counties and citizens need to determine whether or not they have an emergency that justifies zoning.

Dave Stahly, Local Consulting Engineer, and resident since 1968, spoke in favor of SB 323 as it presently stands.

Kathy Macefield, Planning Director, City of Helena, submitted written testimony in support of SB 323. Ms. Macefield discussed the several times that situations arose that needed to be quickly addressed. She explained why some amendments are needed for SB 323. EXHIBIT 51

Opponents' Testimony:

Kelly Flaherty, Rancher, Canyon Creek, and Member of the Lewis and Clark Consolidated County Planning Commission and the Helena Zoning Board, stated she favors the emergency zoning law as it exists. Ms. Flaherty discussed the mine site in the Lincoln area and the impact of over 600 employees that will be hired during the construction of the mine and said over 395 will stay during the operation of the mine. Highway 279 services this area and will see the increase in traffic.

Ms. Flaherty said SB 323 as written will no longer afford the guarantee that the culture and beauty of Montana will the same ten years from now. "The law regarding the emergency zoning is not broke so don't fix it."

Jim Richard, Montana Wildlife Federation and the Montana Association of Planners, presented his written testimony in opposition to SB 323. EXHIBIT 52

Ann Hedges, Montana Environmental Information Center, agreed with the part of the bill on the public hearing process which is standard procedure whether its required or not that counties and local government hold public hearings before they enact interim zoning. Ms. Hedges suggested it would be good public policy to define emergency in such a way as it is usable, because in its current form it is not usable. She discussed the problems Lewis and Clark County had with their proposed zoning.

Ms. Hedges also stated their support of the Wildlife Federation amendments.

Janet Ellis, Montana Audubon Legislative Fund, echoed previous opponents' comments and spoke in opposition to SB 323. Ms. Ellis explained that the interim is up to a maximum of two years. A zoning ordinance is passed for one year and it can be extended

for one year. They would support amendments that would make the statute workable.

Ted Lange, Northern Plains Resource Council (NPRC), stated they think public notice and public hearing provisions in the bill are good and reiterated previous testimony in opposition to SB 323.

Informational Testimony: None

{Tape: 2; Side: B; Approx. Counter: 27.7; Comments: n/a.}

Questions From Committee Members and Responses:

- REP. KEENAN asked Kathy Macefield to explain and editorialize on the "three-part test" in the bill. Mr. Macefield referred to Page 2, Section 2, and explained.
- REP. KEENAN asked Ann Hedges to also editorialize on the "three-part test" on page 4, lines 4 through 11. Ms. Hedges explained the language.
- REP. MCCULLOCH referred to page 4, line 7, and asked what constitutes a majority of persons and what methods are used. SEN. BECK responded it would be a majority of the people involved and depends on whether it's lands or if it happens to be nude dancing it would be the people involved.
- REP. ELLEN BERGMAN asked SEN. BECK if he had any problem with the amendments being proposed. SEN. BECK explained the county portion of the bill and said words have to be very specific and he will review the amendments carefully.

Closing by Sponsor:

The sponsor closed and reiterated the intent of the bill.

HOUSE LOCAL GOVERNMENT COMMITTEE March 14, 1995 Page 17 of 17

ADJOURNMENT

Adjournment: 7:10 PM.

WILLIAM BOHARSKI, Chairman

For EVY BURRIS, Secretary

WB/ev

HOUSE OF REPRESENTATIVES

Local Government

ROLL CALL

DATE 3-14-95

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	<u></u>		
Rep. Jeanette McKee	<u> </u>		
Rep. Norm Mills	\ \rangle		
Rep. Debbie Shea			
Rep. Joe Tropila	·/		·
Rep. Diana Wyatt			

EXHIB	IT /
DATE-	3-14-95
	921

March 13, 1995

Representative Norm Mills Local Government Committee Montana House of Representative State Capitol Helena, MT 59620

Dear Representative Mills:

This letter is to give strong support to Senate Bill #227.

I, along with my family, own and operate a ranch that is within the 4 1/2 mile jurisdictional area of Bozeman, as referred to in 50-60-101 MCA. My children are the fourth generation on this ranch which my grandfather acquired after locating in the Gallatin valley 130 years ago.

I am a former Gallatin County Commissioner and Assessor with 22 years of past elected service. I was a member of the County Planning and Zoning Commission for 17 years and the Bozeman City-County Planning Board for 12 years.

During the many years I was in county government I received constant complaints from rural people concerning city jurisdiction over their property and all I could tell them was that County Commissioner authority had been excluded from this area by state law.

Senate Bill #227 does not prohibit the issuance of building permits or inspections, it only moves the authority on rural property building codes back to our elected county governing bodies. Our present building code laws, which

Senate Bill #227 would amend, allow incorporated cities to adopt and enforce city building codes up to 4 1/2 miles in all directions outside their corporate limits. The extension of these municipal laws by the cities has infringed on our constitutional rights as we in the rural community have no voice in city government. This is not right.

If I decide to build a building in the present 4 1/2 mile area outside the city, I must pay the city a building permit fee, which is a hidden form of taxation. If a building department determines that a property owner has not complied with their city code to an extent that judicial review is necessary, a court action would be filed in City Municipal Court, even though the property was located 4 1/2 miles from their city limits.

City Courts are administered by judges that are elected by city residents. If a jury is required they must be city residents. You could conclude that this rural area has been annexed to the city for building regulation ordinances and enforcement, without allowing property owners a voice in the process. Our state law regarding annexation procedures, among other things, prohibits annexation of agricultural lands, requires public hearings, requires property owners to receive written notice of intent, and disallows annexation if a majority protests.

The present law places our rural property under the control of a non-representative government and allows us no petitioning or protest protection. The opponents to Senate Bill #227 could argue that the purpose of the present law is to insure that future annexations to their cities could offer a guarantee of safer and better sited structures. However, my observations over the past many years have shown that the vast majority of annexed lands have been undeveloped and vacant. Furthermore, state law does not mandate cities

Page 3

to annex properties. If an annexation request of property contains sub-standard

structures, annexation can be denied.

I suspect that the main reason for government opposition to Senate Bill #227 is

the additional revenues that are being generated that are over and above their

operational needs.

If my elected County Commissioners concluded after a study and public

hearings that there was a need for building code adoption in the rural areas of

Gallatin County, that would be acceptable to me, because it would be my elected

representatives making the decisions. Unless Senate Bill #227 becomes law,

the County Commissioners will not even have the opportunity to consider the

issue.

I urge you to support Senate Bill #227.

Respectfully,

Ramon S. White

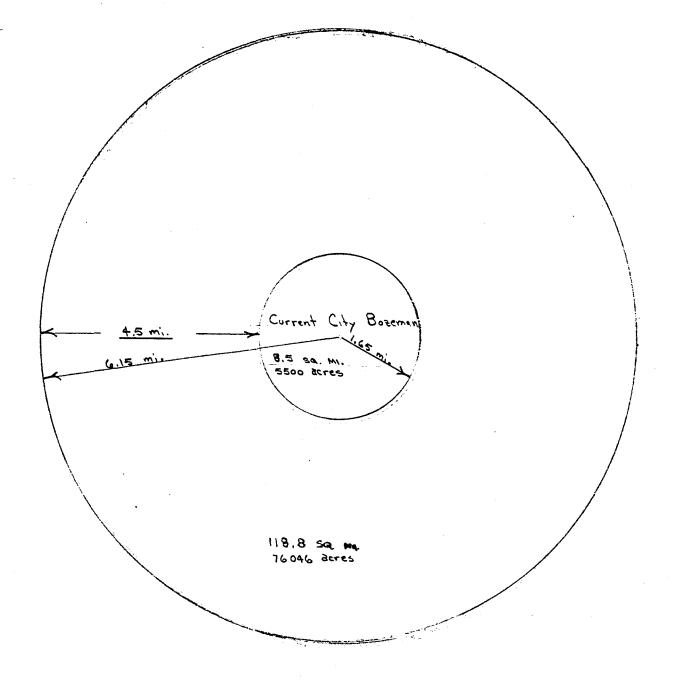
4224 Blackwood Road

Ray White

Bozeman, MT 59715

587-3683

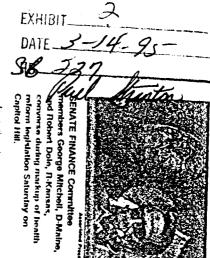
Attachment



Current 4.5 mi. adds 110.3 square miles/70546 acres to Bozeman i.e. 13 times its size.

One mile adds 13.6 square miles/8620 acres to Bozeman i.e. 1.6 times its size.

1/8 mile adds 1.4 square miles/896 acres to Bozeman i.e. 16% increase.



The basic provisions were largely the work product of about a half-doven masterates of both parties, And in the end, the committee's chairman, Sen. Daniel Patrick Moyniban of New York, and White House allies were forced to accept them to get the bill out of committee In voting last work, the committee stripped out Chiton's plan to require en-players to purchase insurance for their workers, even as a backup if other measures fail to assign an analysis of the measures The basic provisions were I

Three Republicant voted in favor.
The other six, including GOP leader
Rah Dole of Kansas, favor a less compreintervention. Dole signaled a battle to come

one has said or threatened to

City building permit fees rake in \$316,000 surplus

By PATRICIA SULLIVAN

Missoula city government for the past three years collected about \$316,000 more than it expected in building permit feet, surpassing the exist of running the building in spection department and enabling the city that the collection of the past of the city that the cit

to build up year end supplies.
The fees, which are paid by anyone who builds or renowaies a structure in the city, are required by state has to be reasonately

"Freight who buy building permits are "Freight who buy building permits are paying for a service," said James I. Brown, the building code bureau cher for the state Department of Commerce. "It's supposed to be used only to suppose them accurate." tion activities.

Last fiscal year, which ended Thursday building permits alone (not counting electrical, plumbing, moving or mechanical permits) brought in about \$309,000 floor, than city oldivials expected. S9,000 more than city oldivials expected Just mother \$200,000 for that momey was spent in the building inspection department itself; the rest of it went to the oldies, of the Gity Count, the movor, the cury deal and finance, the city altorates, the concentral discision, the first department and The same economic boom that has brought Missoula more traffic, longer grocery store lines and higger crowds at out thou events has also brought an increase in construction and the related building permit

from departmental uses. If there's any left over, it bewees the city's year-end each behance, which is used to pay city bills until taxes are paid in Nowember, and to pay for one time projects, such as contributing to the construction of the new fire station

dol

restinate was \$191,220 In fical year 1993, the budget underesti-mated the budding period revenue by almost \$63,000. The year before, the unde-

1995, which began Friday, building permit revenues, estimated at \$185,000, would be distributed this way: the building inspection of the partition of the state o

When we take in more than we bud peted in revenue, that pees into increasing the year end easily believe the said City Crek and I mance Officer Clinck Stearts, "If we doubled more in revenue than we'd directly expend on the building dispartment, we allocate a certain amount of it around."

Missoulian 7-3-94

FROM PAGE A-1

o'

State official Brown said he's investigated other municipalities; but not Missoula, for violation of the law which requires the fees to be used for building inspection-related work.

city over its use of the permit fees. The last pern to raise the issue was the former director of the
issoula Chamber of Commerce. Ourselt chamber
frector Meshel Inwerthy said the business organterion has no position on the issue right now be-

city at complicated and big as Missoula, uid be able to answer this without looking was spent for," said Brown. "It may be a gittmate reason. On the other hand, it ould be they aren't using the funds proposal of the control of the said specific they aren't using the funds proposal of the said specific they aren't using the funds proposal of the said specific they aren't using the funds prop-

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771

to litigation. My understanding y is that cities have prevailed when scome up." among departments. "We basically use just a rough allocation... We don't track (expenses) that close. "Until we have a lawsuit, I probably won't."

Most of the depattments that get the money do provide services to the building inspection department, Steams said, and indirect costs are allowed to be counted under state law. Firefighters review plans for fire code compliance, the engineering department supervises the building department's work, the attorneys handle legal questions, finance provides payroll services and billings, and the non-department budget covers liability lagurance. The mayor gets a lot of phone calls on building permits, 'Steam's said. 'The phone calls on building permits,' Steam's said. 'The City Council gets phone complaints and they review (

budget's unalizented fund is normal procedure for other cities around the state, Steams said. "To my understanding, they all put it in their general fund."

Missou an Sunday, July 3, 1894 - Ad

Building permit fees are the most widely distrib-uted special revenues in the city's budget.

In the early 1986, when construction activity was slow, the building inspection office ran a deficit. Steams said, As permit tees rose, Steams used the money to "pay back" other parts of city government for their work during those years. The first surplus money: was also used to pay off the special money: was also used to pay off the special

The fees that Missoula charges are set by the feoiral Uniform Building Code. A \$10,000 addition to a house costs \$117 in building permit fees the fee for the construction of a \$100,000 house is \$639.50.

B-2 - Missoulian, Saturday, July 20, 199.

DATE 3-14-55

Paul Starton

ROUNDUP

Mayor draws lines for city

MISSOULA — The city of Missoula will not likely grow past its eastern border in Hellgate Canyon, nor as far as Lolo or Frenchtown, Mayor Daniel Kemmis said Friday at a meeting of Missoula's growth management task force.

The meeting of community, business and political-leaders led to discussions of drawing lines to define areas that are growing.

The group has met for months trying to help Missoula manage its growth.

The city-county planning staff is to draw a map of a proposed urban area for use by the growth management task force. That will allow the task force to begin addressing growth problems in that area, and allow the county to then work with more rural areas on their own growth management separate from the work done in the urban area.

The task force also decided to take a list of themes to their consituencies for adoption. The themes encourage Missoula city and county to grow in ways that reflect the environmental, economic, aesthetic and social values of Missoula County residents.

Michael Downs, Missoulian .

Wan denies burning girlfriend

BILLINGS — A man accused of setting his girlfriend on fire earlier this month has pleaded innocent to two felony counts in state District Court here.

Bobby Joe Price entered the pleas Thursday before District Judge Maurice Colberg Jr.

Price's girlfriend, Desirea Kringen, remained in serious but stable condition at the burn center of the University of Utah Health Sciences Center. She is being treated for second- and third-

EXHIBIT 4

DATE 3-14-95

SB 227

TESTIMONY OF R. STEPHEN WHITE IN SUPPORT OF SB 227

March 14, 1995

Mr. Chairman and members of the committee my name is R. Stephen White. I reside on family ranch 3 miles West of Bozeman. I am testifying in favor of SB 227.

This bill is not an anti-building permit bill. This bill restores the rights of the rural residents that are located within 4.5 miles outside the city limits.

In the Senate hearing, the opponents of this legislation (all of which were cities who have adopted this jurisdictional area), presented various objections. Below are responses to their opposition:

OPPONENTS: Cities need this statute for planning growth.

RESPONSE: The city of Bozeman, one of the fastest growing cities in Montana, has moved it's city limits barely a mile in the last 45 years. In fact there are sections of the city limit boundary that have not moved at all in that period of time. A major adjustment of the city limits occurred when Montana State University requested annexation to obtain city services.

OPPONENTS: Buildings need inspections to prevent poor construction in future city additions.

RESPONSE: Property owners must petition the city to be included within the city's limit. The city exercises a thorough review to determine the area to annex. Through a complete review process the city determines whether to include the proposed area/buildings.

OPPONENTS: The current statute requiring building permits is needed to prevent unsuspecting home buyers from purchasing improperly built homes.

RESPONSE: Last year I sold our home that was originally built in 1905. The sale was contingent on passing an independent home inspection. Before we closed on the sale, our home was fully inspected by a home inspector, radon inspector, electrical

inspector, chimney inspector and had an encroachment survey. This is now common practice in many home sales.

OPPONENTS: There is a possibility that the state would need additional FTEs to perform inspections.

RESPONSE: Section 50-60-104 requires that the state assess and collect fees which would pay for all inspections. In the case of plumbing, Section 50-60-508 requires the same. In the case of electrical, Section 50-60-604 requires the same. In theory, if the number of inspections increased 10 fold, the amount collected as fees would also increase 10 fold. Therefore, any additional FTEs would be paid for with the increased revenue from permit fees.

Please support this legislation

The current law is a hardship on the rural community in the Bozeman area, as well as in other communities. For farms and ranches that are located within the 4.5 mile jurisdictional area, building permits are required on structures that are simple outbuildings for cattle. At the same time, we do not receive any city services, and are not permitted to vote or participate in the decisions of the city. Many of their decisions have adversely affected farm and ranch operations.

Attached are pictures which illustrate the effected area West of Bozeman. Presently the city's jurisdiction extends 3 miles, but Bozeman has applied for the entire 4.5 miles. The lower picture portrays the amount of farm land, as well as distance involved with a 4.5 mile boundary.

In Summary

Please support SB 227. This law change is needed. It is unfair for any government to impose its regulations and bureaucracy on citizens who have no voice in it's decisions.



MISSOULA

DATE_

OFFICE OF THE CITY ATTORNEY AND

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 FAX: (406) 728-66

95-050

FEB 81995 Februar

February 7, 1995

Senate Local Government

Re: Opposition to SB-227 reducing the area in which a municipality

may enforce state building code from 41/2 miles to 1 mile

Honorable Senate Local Government Committee Members:

The purpose of this letter is to oppose SB-227 for public health, safety and general welfare reasons. SB-227 proposes to reduce the area in which a municipality may enforce state building codes from 4½ miles to 1 mile.

Pursuant to § 50-60-102, MCA, the state building codes do not apply to "residential buildings containing less than five dwelling units or their attached-to structures" except that currently a municipality is authorized to enforce state adopted building codes to protect the public from hazardous, suspect and shoddy residential construction practices in an area within 4½ miles of a municipality.

If SB-227 is adopted as written, there will be no one enforcing building codes on any residential structures which are less than a five-plex in a substantial portion of the Missoula community's urban area. Four-plexes or less will be allowed to be built without having to comply with state adopted building codes.

SB-227 removes a degree of safety that is currently being provided to Montana citizens in the area from 1 to 4½ miles outside a municipal city limits. The State of Montana Building Division is currently so understaffed that practically speaking it cannot timely and adequately enforce state building codes for industrial commercial buildings and residential apartment units of five-plex or greater size.

State building code enforcement to the State of Montana currently is in some respects a disservice to many Montana citizens. Fatal construction problems as a result of uninspected construction will potentially increase. For example, City of Missoula Building Official Pete Mion informs me that a single family house fire outside of Helena that killed four people last year was within the state's enforcement area; but the state legislature has prohibited the State Building Code Division from enforcing state building codes in residences less than a five-plex. A water heater located under an unprotected exit stair trapped the victims on the upper floor.

EXHIBIT 6

DATE 3-14-95
CB 22 7



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 FAX: (406) 728-6690

95-115

March 14, 1995

House Local Government Committee Members

Re: Opposition to SB-227 reducing the area in which a municipality may enforce state building code from 4½ miles to 1/8 mile

Honorable House Local Government Committee Members:

City of Missoula officials strongly oppose SB-227 for public health, safety and general welfare reasons as well as concern for the potential impacts that could be experienced by contractors, professional architects, lending institutions, purchasers, etc. SB-227 proposes to reduce the area in which a municipality may enforce state building codes from 4½ miles to 1/8 mile. City of Missoula officials oppose any reduction in municipal building official jurisdiction.

Pursuant to § 50-60-102, MCA, the state building codes do not apply to "residential buildings containing less than five dwelling units or their attached-to structures" except that currently a municipality is authorized to enforce state adopted building codes in areas within 4½ miles of a municipality. State building officials are currently prohibited from enforcing residential building codes for buildings containing less than five dwelling units. Further, the State of Montana Building Division is currently so understaffed that practically speaking it cannot timely and adequately enforce state building codes for industrial or commercial buildings and residential apartment units of five-plex or greater size.

If SB-227 is adopted as written, there will not be anyone enforcing building codes on any residential structures which are less than a five-plex in a substantial portion of the Missoula community's rapidly growing urban area. Four-plexes or less will be allowed to be built without having to comply with state adopted building codes and hazardous, suspect and shoddy residential construction practices could become more of a problem. SB-227 removes an important degree of safety that is currently being provided to Montana citizens in the area from 1/8 to 4½ miles outside a municipal city limits.

Currently, State of Montana building code enforcement is in some respects a disservice to many Montana citizens. Pursuant to SB-227, construction building code violations in uninspected construction will potentially increase fatalities attributable to building code violations. For example, City of Missoula Building Official Pete Mion informs me that a 1994 single family residence house fire outside of Helena that killed four people was within the state's enforcement area; but the state legislature has prohibited the State Building Code Division from

■ GAZETTE OPINION

Code -builds future

Building inspections needed around arowing cities

THE MONTANA SENATE has voted 27-23 for a bill that would virtually eliminate the ability of cities to ensure that new construction near the city limits meets building code.

SB227 would shrink the area that a city can enforce its building code from 41/2 miles beyond the city limits to oneeighth of a mile. That's about two blocks.

The state and city building codes are similar. The difference is that some cities actually inspect construction that wouldn't be inspected by the state. The state Building Codes Bureau in Helena has only enough staff to inspect residential construction with five or more units. Without city inspection, nobody will inspect smaller units or single-family houses.

The 41/2-mile statute has been on the books for a decade and is being used by the cities of Billings, Bozeman, Missoula and Kalispell.

The current law makes sense. Cities are dynamic, and urban areas don't end at the city limits. In the 1980s, annexation petitions rolled into the Billings City Council, and eventually extended city limits miles in some areas. Montana is again in a period of rapid growth and development, making planning more important than ever.

So why curtail the city building inspections? According to one senator, the 41/2-mile limit was too much, and the bill's original 1-mile limit was amended to oneeighth of a mile as a backlash against the perceived arrogance of building inspec-

Now a reaction by senators who are miffed at inspectors is on the path to be-

■ MORE VERY USEFUL ADVICE AT TAX TIME

The 'S' in IRS stands for ... ser

Keep meticulous records no matter what or make them up

NCOME TAX FILING time: For Person A, it's a nightmare; yet for Person B, it's no big deal. What's the difference?

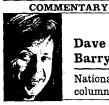
Simple: Person B died in 1993. This is the kind of sound tax planning that can prevent numerous headaches down the road.

Unfortunately, those of you who foolishly elected to continue living are going to have to file tax returns this year. That is the bad news. The good news is that the IRS is working hard to make its tax forms more "user-friendly." For example, I have here the old and new versions of Form 5213, sent to me by alert taxpayer Katie Tibbits. The two forms are identical except for the titles. The old version is titled:

Election To Postpone Determination As To Whether The Presumption That An Activity Is Engaged In For Profit Applies.

What a bunch of gobbledygook! Fortunately, the folks who work at today's IRS (motto: "We're Human Beings Just Like You, Except We Breathe Via Gills") no longer tolerate this kind of confusing prose. They have thoughtfully revised Form 5213, now titled:

Election To Postpone Determinati on As To Whether The Presumption Applies That An Activity Is Engaged In For Profit.



Dave Barry

National columnist

That certainly clears THAT up! I think all of us taxpayers should express our gratitude by filing Form 5213 this year as many times as is humanly

Tibbits also sent me Form 8328, which was named by the IRS's state-of-the-art Random Noun Generator: It's called "Carryforward Election Of Unused Private Activity Bond Volume Cap." instructions do not give any clear indication as to what this form is for, except that it has something to do with docks and wharves. My advice to you is, if you have had anything whatsoever to do with a dock or wharf in 1994, including simply walking on one, you should flee to the Amazon rain forest immediately, because trust me, you do not want to mess with Form 8328. My eyeballs are bleeding just from looking at it.

Most taxpayers, however, are mainly concerned with Form 1040. The average time required to complete and file this form is about 11 hours. according to an IRS study of average taxpayers on the Planet Zeembo. You will probably need more



letter on page 3 of the form 1040 instruction package, wherein she states that the IRS has been recognized as "a leader among government agencies in customer service.

Q. What is that comparable to?

A. That is comparable to stating that "cement is a leader among construction materials for use as a dessert topping."

Q. Does Margaret make any other comical statements in her letter?

A. Yes. She states: "I want you to know that the 'S' in IRS represents a commitment to serve you."

Q. What does the "R" represent?

A. It represents "a tiny room with a hard chair where we grill randomly selected taxpayers until they break down and tell us about their wharves.

Q. How will the O.J. Simpson case affect my

A. You're going to have to chip in a little extra to help offset the estimated \$147 million business

Times concerning a fasci A. Yes. The story be 40,000 pounds of frozen

dog food in France wreci Thursday." There's also Thursday. There's also "A worker kicks some o lungs that spilled from th

Q. You are making t

Q. Why did the worl cow lungs?

A. Perhaps he did n

Q. Is there a specific A. Of course. It is F required to file this form year, you, or anyone you owned a dog. In following the tax

please bear two things i 1. I am NOT a Cert am the U.S. Treasury so



9	
EXHIBIT 8	Marine Commence
DATE 3-14-92	
88 227	

Christopher J. Racicot

Executive Director Scale 4D, Power Block Imparts Montana 59601 (406) 442 4479 (406) 442 4483 Fax 1994-1995 Officers President

Stan Heigeson Billings First Vice President Bob Ross Jr. Kalishell Second Vice President Sam Gates Missoula Trecisurer Mark Merk, melena Past President Eugene Gruff Bozoman Builder Dieser Mark und hiz Heligha National Exponentiative The Dear Buzzarian Associate Director Frank Arminecht Bazeman Build PAC Director

amiCaros Massola

March 14, 1995

House Local Government Committee Montana State Legislature Helena, Montana

Re:

Senate Bill 227

Dear Representative Bill Boharski and Committee Members:

The Montana Building Industry Association is an organization of nearly 1,000 building trade businesses from the around the state of Montana. The MBIA is the home-building leader in encouraging professional business, planning and building standards.

It is for this reason that the MBIA must stand in opposition to SB 227. The MBIA has been a long standing proponent to encouraging sound planning and building practices. Proper planning and code enforcement is essential to protecting both the consumer and the industry.

It is not very often that you will find the MBIA advocating more or even a continuation of government, yet in this instance city governments need the 4.5 mile building code mechanism to ensure proper planning for future growth through annexations and service extensions.

The consumers of Montana also need the protections that result from this authority. For homeowners, code enforcements directly translate to safer homes and cheaper insurance rates. Additionally, future requirements from lending institutions may necessitate code inspections, this again, is a protection for all concerned parties.

Please table Senate Bill 227, leniency in regard to public safety and welfare in the building industry is not prudent.

Sincerely,

Chris Racicot

Executive Director, MBIA



THE CITY OF BOZEMAN

DATE 3-14-95 P.O. BOX 6/18 221

35 NO. BOZEMAN AVE.

CARNEGIE BUILDING

BOZEMAN, MONTANA 59771-0640

BUILDING INSPECTION PHONE/TDD (406) 582-2375 ENGINEERING DEPARTMENT PHONE/TDD (406) 582-2380

March 14, 1995

HOUSE LOCAL GOVERNMENT COMMITTEE Representative Bill Boharski, Chairman Room 104, State Capitol Capitol Station Helena, MT 59620

RE: OPPOSITION TO SB 227

Dear Representative Boharski and Members of the House Local Government Committee:

The City of Bozeman and the Bozeman City-County Planning Board wish to go on record in strong opposition to Senate Bill 227 which, as amended in the Senate, would reduce a City's authority to implement building codes from 4 1/2 miles beyond city limits to 1/8 mile.

passes, many of this state's fastest growing residential areas will suddenly find themselves without basic building code enforcement. Thousands of single and multi-family residences will be constructed or modified with no assurance whatsoever that basic life safety standards are met -- standards regarding such issues as fire separation, emergency exiting, ventilation of combustible air, and stairway design, to name a few.

Families purchasing these new and modified homes will no longer have the assurance that minimum building codes have been met. Mortgage lenders, insurance underwriters, fire fighters, and the families themselves will all be at increased risk if SB 227 passes.

legislation would be ill-advised at any time, but seems especially wrong-minded when Montana communities are experiencing healthy growth and increasing populations. New contractors without proven track records are now working in the taking advantage of strong market conditions. They should be required to comply with basic building codes that long-time builders live by. It is for this reason that representatives of the Southwest Montana Building Industry Association have gone on record in opposition to SB 227.

Please don't allow this to become a political issue. Building codes are minimum technical construction standards, accepted

HOUSE LOCAL GOVERNMENT COMMITTEE March 14, 1995 page 2 of 2

nationwide, to ensure basic life health and safety issues. They are not and should not be subject to political whims.

Neither should this be considered a monetary issue, at least not for the City of Bozeman. At stake here is basic life safety. If there are concerns about the amount of fees collected, or how they are spent, deal with that issue separately. But don't throw the baby out with the bath water.

For these reasons the City of Bozeman and the Bozeman City-County Planning Board urge you to vote no on Senate Bill 227.

Sincerely,

Andrew C. Epple, AICP
Planning Directory

Planning Director



THE CITY OF BOZEMAN

411 E. MAIN ST. P.O. BOX 640 PHONE (406) 586-3321 BOZEMAN, MONTANA 59771-0640

March 13, 1995

DATE 3-14-95 Andre Eple-

House Local Government Committee Representative Bill Boharski, Chairman Room 104, State Capitol Capitol Station Helena, MT 59620

RE: SB 227

Dear Representative Boharski and House Local Government Committee Members:

This letter is written to express opposition to SB 227. This bill reduces the area in which a municipality may enforce its building and other technical codes. You will be receiving, and probably have already received, letters and testimony in opposition to this bill. I would like to draw your attention to the liability issue associated with administering building codes.

Recently, there has been a resurgence of claims and law suits concerning administration of building codes. This is a growing area of litigation. Passage of SB 227 would reduce the exposure of Cities and Towns. However, Cities and Towns that have exercised this extraterritorial building jurisdiction, believe that the construction of safe and well-built buildings outweighs the benefit of a reduced liability exposure. The citizens which live in this 4 and onehalf mile area of a city are the future residents of the City. They expect and are entitled to a safe home built to minimum standards.

For this reason and the other reasons being submitted to you, please reject SB 227 and retain the existing 4 and one-half mile radius for municipal building codes enforcement.

Very truly yours,

CITY ATTORNEY'S OFFICE

Paul J. Luwe City Attorney

James E. Wysocki, City Manager

Alex N. Hansen,

CC:

Mt League of Cities & Towns

BUILDING DEPARTMENT BOUNDARIES ON E 3-14-95

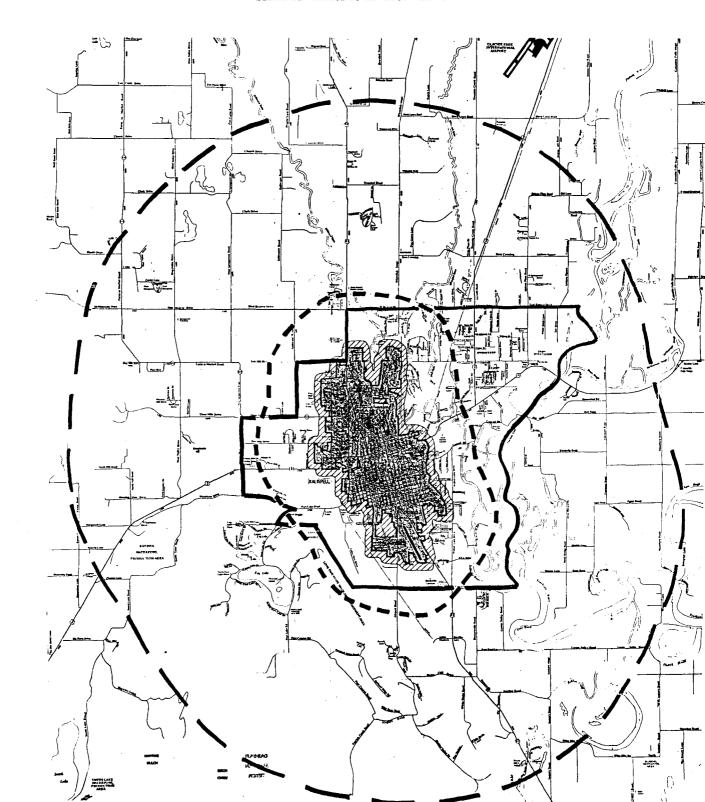
1 GEND

4 1/2 MILES BEYOND CITY LIMITS

1 MILE BEYOND CITY LIMITS

CURRENT JURISDICTION

SHADED AREA IS KALISPELL CITY LIMITS



The City of Kalispell

Incorporated 1892

Building Department

Craig A. Kerzman PUTUP MAP Building Official MSI OUT MAP-

413

Telephone (406) 758-7730 248 3rd Avenue East PO Box 1997

Zip 59903 TWO DIFFERENT STANDARDS Fax (406) 758-7739

ONE IN AND ONE OUT.

March 13, 1995

Re: Senate Bill 227

GOOD AFTERNOON MR CHAIRMAN. COMMITTEE MEMBERS MY NAME IS CRAIG KERTMAN. I AM THE BUILDING

TO Whom It May Concern: OPFICIAL FOR KALISPELL MO NTAN'A AND A LONG

TIME RESIDENT OF EVERGREEN.

HERE I am writing to you to state my opposition to Senate Bill 227, and to ask you to vote against it. By now I hope you've read my synopsis and will consider its mente

My opposition is not based on boundaries (present or future), revenue or job security. It is based on my belief in government's role in providing for public safety in the buildings people occupy as well as the water they drink and the roads they travel. Building safety affects every citizen in Montana. Preventing loss of buildings or lives, whether due to natural events such as floods and earthquakes or shoddy workmanship, should be a goal of every level of government.

If SB227 passes in it's present form and becomes law, residential structures from single family dwellings up through four-plex multifamily dwellings will not be inspected and may not be built to any code. Except for electrical wiring, these structures will drop out of the inspection system. The state does not inspect single family through fourplex structures and because of limited resources it is unable to provide the same level of inspection services for commercial construction that local governments provide.

Recent experience was gained and very expensive lessons were learned from Hurricane Andrew in Florida and Iniki in Hawaii, flooding in the Midwest and earthquakes in California. While none of these singular catastrophes has recently befallen Montana's buildings or residents, we are vulnerable. to any of them.

Kalispell is in a seismic zone 3 and has a 70 mile per hour design wind speed.(On Friday, February 17th, the weather forecast for Helena was for winds gusting to 80 miles per hour). The snow load in Kalispell is 46 pounds per square foot.

I will tell you that many builders, whether homeowner/homebuilder or contractor, do not fully appreciate the stresses placed on buildings due to natural forces and they do not build the buildings to withstand significant earthquakes, high winds or heavy snows. Constructing buildings that are safe and durable is as important as building highways that are safe and durable.

Single family home buyers, who know little of construction or codes, make their single largest investment in their home. They often see only shingles, painted siding, walls and ceilings, and floor coverings. Most of the construction is concealed. Defects such as undersize headers, overspanned rafters, trusses or joists, or shallow foundations may not lead to catastrophic failure but will cause premature deterioration of the building with it's resultant loss of desirability and value. Flaws may not be evident and may not manifest themselves until a critical event such as an earthquake, fire, heavy snow or high wind occurs.

To whom do the people turn when disaster happens? All too frequently they demand the government solve their problem; the same government they want off their backs. If anything has been learned over the years about nature and buildings it is that prevention is better than the cure.

The argument that, "It's my home, I'll be the only one damaged.", is not true anymore. Decades ago it was more common for succeeding family generations to live in the same house. Today, rather than one house lasting through several generations of a family, a single family generation now moves through several houses. One need look no further than a real estate sales magazine to see that houses, within the city limits as well as those way beyond, change owners frequently, on an average of every 7 years.

Manufactured homes, which can be purchased from sales lots much like automobiles, are built to a <u>national code</u> in a controlled assembly line environment and are inspected. Why should'nt the government provide an equal level of protection to those who decide to build or buy site built housing, particularly when the investment is generally greater and the life expectancy longer in a site built home.

People benefit from government regulation in many ways. Nearly all goods and services involve some form of governmental regulation. Food and water, banks and bars, barbers and hairdressers, gaming, pharmaceuticals, fuel, paint, aviation, automobiles, highways, health care, engineering, legal and accounting to name but a few. Why exclude buildings? They are just as important to our daily and long term well being as are any of the regulated goods and services listed. We live, work, shop, eat, worship and assemble in buildings.

It seems ironic to me that people will pay more for annual premiums for collision insurance to protect their short term investment in a motor vehicle, which depreciates in value, than they will pay for a one time only building permit which will help protect a much larger and potentially appreciating long term investment. Building insurers, like auto insurers, have undertaken a program to reward codes and enforcement with premium reductions.

Buildings are comprised of interrelated structural, architectural, electrical, plumbing and mechanical systems. All are important and all should be built to a minimum standard and inspected. Each area is just as important and should be regulated to the same degree as the electrical wiring. While the state insists on permitting and inspecting the wiring, I believe all aspects of construction should be checked.

Building permitting is also the process that many other regulatory functions depend upon for compliance with applicable laws. Floodplain regulations, zoning regulations, energy standards and other health (lead free solder, potable water, sanitary sewer disposal) and safety regulations are complied with because of the building permitting process. Without this safety check no one knows there's a problem until there is a complaint, damage, injury or fatality.

I don't think a solution that will jeopardize the safety of thousands of homes and Montana citizens that live more than an eighth of a mile beyond the city limits of Montana's cities is necessary or wise. Further, the State already sets the boundaries of extraterritorial areas and receives public input before setting the limits. People have representation and a reasonable system of checks and balances is already in place.

If Senate Bill 227 becomes law, the level of safety and sanitation, as well as compliance with zoning, floodplain and other regulations for residential construction will decrease or disappear. The people who are least able to afford architects, engineers or private inspectors to protect their interests and who rely on their government for help and protection will be the losers, not developers and speculative home builders. Also hurt would be young families attempting to afford a home but who have little realization they may be placing their family in harms way.

Page 4 Senate Bill 227

In my opinion, building safety is similar to and as important as highway safety (standards, licensed drivers, speed limits, stop signs, etc.). Reasonable standards, fairly enforced are appropriate and insure a safer environment and help prevent loss of life and property. It is in the best interests of the citizens of Montana to guarantee minimum standards for residential and commercial construction. It is the right thing to do. Vote against Senate Bill 227.

Sincerely,

Craig A. Kerzman Kalispell Building Official

CAK/ak

The City of Kalispell

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Incorporated 1892

Building Department

Craig A. Kerzman Building Official

March 13, 1995

Telephone (406) 758-7730 248 3rd Avenue East PO Box 1997 Zip 59903 Fax (406) 758-7739

Honorable Representative Norm Mills Local Government Committee Capital Station Helena, MT 59620

Dear Representative Milis:

I am opposed to Senate Bill 227 and ask you to consider the following:

- * Building safety affects all Montana citizens. We live, work, shop, worship, assemble and recreate in buildings.
- * Many buildings would drop out of the system since the State does not permit or inspect single family through four-plex dwellings.
- * Local building departments are able to provide more timely and relevant service than is the State who will assume responsibility for commercial construction.
- * Building department is safety check for other regulations. For example, floodplains, energy, lead free solder, sewage disposal and zoning.
- * Homes are resold on average every 7 years. Building 'to code 'enhances longevity, safety, resale value and protects major investment.
- * Manufactured housing is built to a standard and inspected. Site built housing should be afforded equal protection. Construction must be inspected during process if it is to be of any value.
- * Insurance industry is seeking to lower losses by offering financial incentives for better code enforcement. Lack of building inspection will cost Montanans higher premiums.
- * Government will be asked to pick up the check for losses. Size of check can be reduced with good planning and enforcement of minimum standards.

Requiring minimum standards of construction allows builders, buyers, realtors, sellers and anyone connected with the building industry to work toward a common known goal. Like the center striping and other traffic control signs on our highways, building codes give us direction, enhance our safety and help reduce loss of property and life.

Vote no on Senate Bill 227.

Sincerely,

Craig A. Kerzman

CITCULAR

CITCULAR

DATE 3/14/95

Win Palmieri

February 24, 1995

BUILDING CODE EFFECTIVENESS GRADING SERVICE TO BE INTRODUCED

Dwelling Program DP-95-22 Homeowners HO-95-39 (Rules)

ADVANCE PLANNING This circular is intended exclusively for ISO participating insurers for their information and advance planning.

BACKGROUND

Recent catastrophes have underscored the importance of having superior building codes, and their being well enforced, in reducing losses from natural hazards. ISO Commercial Risk Services, Inc. (CRS) — in cooperation with the Insurance Institute for Property Loss Reduction — has developed a community grading service insurers may use to evaluate a community's building code and enforcement capability.

The Building Code Effectiveness Grading Schedule (BCEGS) is designed to review a community's public code enforcement capabilities and performance and develop a relative Building Code Effectiveness Classification of 1 to 10 for insurance rating and underwriting purposes. The schedule measures the quality and effectiveness of the resources applied to building code enforcement, with special emphasis on loss mitigation of natural hazards common to the area. BCEGS is similar in concept to ISO's Public Protection Classification system in use for many years.

A copy of the BCEGS schedule is attached.

BOARDS OF DIRECTORS' ACTION At their December 1994 meetings, the ISO and CRS Boards of Directors authorized the implementation of the Building Code Effectiveness Grading Schedule.



Page 2

STAFF ACTION We have filed and received approval of the Building Code Effectiveness Grading Schedule in Personal Lines for Florida and South Carolina, the first states where BCEGS will be implemented.

We have also begun field survey work and grading activity in those states and will distribute the gradings with CRS' Public Protection Classifica - tions, as they are developed.

IMPLEMENTATION PLAN

BCEGS will be implemented in phases over five years, beginning as follows:

Phase 1 - 1995 Florida and South Carolina.

Phase 2 - 1996 Alabama, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, and Rhode Island.

These first two phases focus on those states with the most significant wind loss exposure. The next phase will focus on states with seismic loss exposures. Implementation in the remaining states is planned for annual phases, with countrywide implementation completed by the year 2000. Implementation schedules for the remaining states will be announced later.

Once the grading work has begun in a state, we plan to complete grading the entire state within two years. Thereafter, communities will be regraded every five years or when we have been advised of significant code enforcement changes within the jurisdiction.

FUTURE ISO ACTION

Later this year, we will file advisory rating programs reflecting the relativities for the BCEGS classifications for the personal property lines in Florida and South Carolina. These will be implemented in 1996 in coordination with the normally scheduled experience level reviews for these states. Advisory rating programs for the remaining states will follow, in sequence, the implementation schedule for the Grading Schedule itself, as outlined above.

As referenced in Chief Executive Circular CE-95-2, we will be filing the rating program for the BCEGS for commercial lines in North Carolina. We are recommending to the North Carolina Rate Bureau that they file the Program for the personal property lines in North Carolina.

MAJOR ELEMENTS OF THE BCEGS PROGRAM The Building Code Effectiveness Grading Schedule evaluates three major areas: 1) the administration of the building code and supporting ordinances and the qualifications of those enforcing the codes; 2) the building plan review function; and 3) the field inspection function. A grading of from 1 to 10 is developed for each community and applied to individual properties according to the following:

- . The BCEGS classification will apply only to those buildings that were completed during and after the year of the applicable community grading. The effective date of the BCEGS classification will be based on the CRS survey date.
- . Rating credits expressed as relativities will be developed for the various BCEGS classifications. Because of the prospective nature of this program, there will be no impact on currently published loss costs.
- Once a BCEGS classification has been developed, all buildings built in the year of the effective date, and thereafter, will be assigned to that classification. If the community classification is later revised, the revised classification will apply to buildings constructed during and after the year of the revised classification.
- When a building is altered or expanded, the original year of construction will continue to apply for classification purposes, unless the addition or alteration is so extensive that the original building is subject to compliance with the latest building code.
- In both graded and ungraded communities, individual properties will be eligible for the best grade (Grade 1) based on an on-site inspection by a registered or licensed design professional and certification that the property meets natural hazard criteria of an acceptable building code.

In conjunction with gathering required information to develop the BCEGS classification, CRS will gather and make available to insurers additional information, such as: a) the age profile of existing buildings, b) law and ordinance provisions, c) mandatory retrofitting provisions and d) history of building code adoption.

Page 4

In conjunction with gathering required information to develop the BCEGS classification, CRS will gather and make available to insurers additional information, such as: a) the age profile of existing buildings, b) law and ordinance provisions, c) mandatory retrofitting provisions and d) history of building code adoption.

STATISTICAL IMPLICATIONS

Statistical coding and reporting requirements are being established and will be the subject of a future statistical circular.

FUNDING

The cost of the BCEGS classification program has been incorporated into the Public Protection Classification participation fee on a countrywide basis.

COMPANY ACTION

Companies that are currently participating with CRS for Public Protection Classification information will automatically receive the Building Code Effectiveness Gradings.

REFERENCE

. CE-95-2 (2/3/95) -- "Building Code Effectiveness Grading Service To Be Introduced"

ATTACHMENTS

- . Building Code Effectiveness Grading Schedule
- . Sample rules (without factors)

NOTE: We are sending the attachments only to those recipients who asked to be put on the mailing list for attachments. If you need the attachments for this circular, contact your company's circular coordinator.

Michael Podoshen, CPCU Assistant Vice President Personal Lines Division

DATE 3/14/95

WA 227

Kim Palmisai

Montana Chapter of ICBO

510 North Broadway, Fourth Floor Billings, Montana 59101 (406) 657-8273

SENATE BILL -

S.B. 227

CODE ITEMS WHICH WILL NOT BE INSPECTED:

Foundations

Frost depth and reinforcement

Anchor bolts

Frame

Size of beams, headers, joists, rafters

Notching and cutting of same Wall bracing - roof truss clips

Insulation

Egress Windows

Stairs Handrails Guardrails

Mechanical Systems

Gas lines including propane

Exhaust vents Combustion air

Fire Separations

Between house and garage

Between living units

Incorporated 1892

Telephone (406) 758-7700 FAX (406) 758-7758 Post Office Box 1997 Zip 59903-1997

March 6, 1995

Representative Bill Boharski, Chairman Members of the House Local Government Committee State Capitol Post Office Box 201701 Helena, MT 59620-1701

Dear Chairman Boharski and Members of the House Local Government Committee:

The intent of this letter is to share with the committee a nine year revenue and expenditure recap of the City of Kalispell's building code enforcement program. As you will note, the department operated five of the nine years in the red for fiscal years 86', 87, 88, 89, and 93. Four of the nine years the department's revenue exceeded expenditures for fiscal year '90, 91, 92 and 94. For the nine year period, cumulative revenue exceeded expenditures by only \$8,185.

This data should dispel the rumor that the only reason city governments provide building code enforcement is for its money generating capacity, the excess of which we have been accused of using to balance our general fund budgets. In our case, any excess revenue generated by building permits is kept and used to fund building code enforcement services when revenue shortfalls occur due to slow building activity.

In closing, the City of Kalispell is opposed to the restriction imposed by SB-227 on our authority to inspect construction within the 4-1/2 mile jurisdiction. Our primary concern relates to the hundreds of single family dwellings that will be constructed over the next few years possibly without any life safety code inspection.

Sincerely,

Bruce Williams City Manager

BW/ksk

Douglas Rauthe Mayor

Bruce Williams City Manager

City Council Members:

Gary W. Nystul Ward I

Cliff Collins Ward I

Barbara Moses Ward II

Dale Haarr Ward II

Jim Atkinson Ward III

Lauren Granmo Ward III

Pamela B. Kennedy Ward IV

M. Duane Larson Ward IV

City of Kalispell History of the Revenue & Expenditures of the Building Department

Revenue Sources:	1994	1993	1992	1991	1990	1989	1988	1987	1986
Building Permits Plumbing Mechanical Plan Reading Total Revenue	\$197,692 \$23,730 \$29,542 \$75,480 \$326,444	\$139,274 \$17,361 \$21,260 \$34,593 \$212,488	\$115,946 \$17,362 \$19,489 \$33,954 \$186,751	\$95,967 \$15,420 \$18,003 \$38,840 \$168,230	\$66,932 \$10,998 \$7,115 \$29,662 \$114,707	\$38,655 \$5,746 \$3,336 \$14,468 \$62,205	\$46,392 \$7,659 \$3,012 \$14,946 \$72,009	\$60,634 \$8,979 \$4,836 \$27,655 \$102,104	\$81,580 \$7,712 \$1,407 \$33,612 \$124,311
Expenditures:									٠.
General Fund/Health/Retirement Administration cost w.c. & liability insurance Total Expenditures	\$200,715 \$25,000 \$13,737 \$239,452	\$187,988 \$152,792 \$23,896 \$15,000 \$12,982 \$7,500 \$224,866 \$175,292	\$152,792 \$15,000 \$7,500 \$175,292	\$119,477 \$15,000 \$7,500 \$141,977	\$90,278 \$15,000 \$7,500 \$112,778	\$81,069 \$15,000 \$7,500 \$103,569	\$88,632 \$15,000 \$7,500 \$111,132	\$99,686 \$15,000 \$7,500 \$122,186	\$107,312 \$15,000 \$7,500 \$129,812
cumulative cash available for reserve \$8,185	\$86,992	(\$12,378) \$11,459	\$11,459	\$26,253	\$1,929	(\$41,364)	(\$41,364) (\$39,123)	(\$20,082)	(\$5,501)

League of Women Voters of Montana



EXHIBIT 17

DATE 3/14/95

118 227

WRITTEN TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

House Local Government Committee 3:00 p.m., Tuesday, March 14, 1995 Senate Bill 227 by Weldon

The League of Women Voters of Montana has long been a proponent of orderly and safe community growth. Under current law cities have the authority to extend their building codes up to 4½ miles beyond the city limits with state approval. The city must propose to do this to the state and the state must approve the city's codes and proposed application. The city does not have to extend codes the full 4½ miles under existing law. The League rises in opposition to SB 227 because it promotes the opposite of orderly and safe community growth.

Areas close to cities are likely to become parts of the city, particularly in fast-growing areas. If the city's building codes are not met in these areas, the city will .. eventually be forced to extend city services — fire protection, water and sewer, etc. to substandard structures. Because of increased potential dangers from substandard structures, costs to the city will rise. Furthermore, substandard structures can be a hazard to public health and safety. The state does not perform structural inspections for buildings smaller than four-plexes, thus factors such as inadequate ingress and egress, emergency exits, load-carrying capacity of walls, beams etc, can pose dangers to the inhabitants of smaller uninspected buildings, as well as to neighbors, firefighters, or other emergency personnel. Another negative factor to be considered is the effect this bill will ultimately have on insurance rates. Insurance rates are higher for people in areas unprotected by building codes.

Issuing building permits is an excellent way for cities to moritor growth; without this information, it is much more difficult to anticipate where schools, road improvements, and extensions of water and sewer and other municipal services will be needed.

As amended on the Senate floor, SB 227 would allow for cities to extend their building codes only 1/8 mile beyond the city limits. A 1/8 mile extension is ludicrous. One eighth of a mile is 215 yards, just over two football fields in length. The administrative hassel involved in determining exactly where the 1/8 mile boundary falls would not be worth the effort.

The League of Women Voters of Montana opposes SB 227 and urges a <u>do not</u> pass recommendation by the committee. Thankyou.

Chris Imhoff Legislative Chair, LWVMT

EXHIBIT 18 DATE 3/14/95 SB 227

GRIZZLY MECHANICAL BOX 773 LOLO, MT 59847 273-GRIZ (4749)

DATE: 02/24/95

TO: JEFF WELDON STATE SENATE HELENA, MT

RE: CITY OF MISSOULA INSPECTION DISTRICT

IN RESPONSE TO SENATE BILL #227:

THE CITY OF MISSOULA INSPECTION DEPARTMENT HAS DEVELOPED A REPUTATION FOR RIGOROUSLY ENFORCING THE VARIOUS BUILDING CODES. THIS REPUTATION HAS FRUSTRATED AND ANGERED MANY BUILDERS AND CONTRACTORS OF ALL TRADES. SO, I SUPPOSE THIS BILL HAS BEEN PRESENTED TO, OR GENERATED BY, THE STATE SENATE IN RESPONSE TO THIS FRUSTRATION AND ANGER.

A FEW OBSERVATIONS FROM THE OTHER SIDE OF THE FENCE:

THE EFFECT OF THE ENFORCEMENT OF CODE BY THE CITY OF MISSOULA HAS BEEN AN ACROSS THE BOARD ELEVATION OF BUILDING STANDARDS IN THE MISSOULA AREA -- RULE OF THUMB NO LONGER HOLDS AND CONTRACTORS ARE BEING HELD TO TASK. HOMES AND COMMERCIAL STRUCTURES ARE BEING BUILT ALONG MORE UNIFORM LINES, WITH GREATER QUALITY CONTROL, WHICH, IN MY THINKING, BENEFITS EVERYONE INVOLVED.

FOR INSTANCE: THE CONSUMER IS GETTING WHAT HE OR SHE DESERVES TO BE GETTING IN TERMS OF QUALITY; PRESUMABLY, THESE STRUCTURES WILL HOLD UP BETTER OVER THE YEARS IN TERMS OF BOTH REQUIRED MAINTENANCE AND PROPERTY VALUES; HEALTH AND SAFETY ISSUES HAVE BEEN PROPERLY ADDRESSED (WHICH IS PARTICULARLY IMPORTANT WITH MECHANICAL SYSTEMS, I.E. COMBUSTION CLEARANCES, PROPER VENTING OF APPLIANCES, ETC.); AND, ULTIMATELY, EVERY BUILDER AND CONTRACTOR IS BENEFITING IN MANY WAYS. THERE NOW EXISTS, FOR EXAMPLE, MORE OF A PARITY IN THE BIDDING PROCESS BECAUSE GUIDELINES EXIST — WE'RE SEEING APPLES FOR APPLES. AND, WE ARE ALL LEARNING. WE ARE LEARNING HOW TO PERFORM OUR JOBS BETTER, WE ARE LEARNING HOW TO RESEARCH CODE, AND WE ARE LEARNING FROM OUR MISTAKES.

EXHIBIT.	19
DATE	3/14/95
SB_ 22	7

MISSOULA SOCIETY OF ARCHITECTS

10 March, 1995

Mr. Bill Boharski, Chairman Capital Station Helena, Montana 59620

Mr. Boharski,

The Missoula Society of Architects with the assistance of the our local building officials and The Montana Tech Council has been tracking SB-227, introduced by Senator Weldon.

It is our opinion SB-227 would limit the communication of Architects and building officials in regard to the following:

- -general building code questions, interpretations and clarifications
- -the code appeal process

Other of our concerns are the increased burden placed on state building officials concerning plan review and building inspection resulting in the following:

- -increased review time of plan documents within the proposed jurisdictions due to increase volume of projects
- -fewer building site inspections due to increase volume of projects
- -decreased enforcement of building code issues in regard to limited site inspections

We believe that this will result in a decrease in the quality of building life safety.

It is the opinion of the Missoula Society of Architects that the senate bill introduced is not in the interest of or enforcement of building codes. As a group of professionals from the Missoula and Bitterroot valleys we wish to go on record as opposing the introduction of any

D A L E

EXHIBIT 20

DATE 3-14-95

SE 227

HORTON

A R C H I T E C T

March 3, 1995

Senator Bill Boharski Chairman, House Local Government Committee Capital Station Helena, MT 59620

Dear Senator Boharski,

Senate Bill 227 which will reduce city building code jurisdiction boundaries to within 1 mile of city limits <u>is not</u> in the best interests of Montana. The existing 4 1/2 mile enforcement distance works just fine. With the growth of the urban areas surrounding cities and the lack of funding for the State Building Code Bureau, this bill is irresponsible. I urge you and your committee to vote down Senate Bill 227. Thank you.

Sincerely,

Dale Horton Architect

cc: Pete Meon, Missoula Building Department

Jeff Welden, State Representative

MAR - 7 1995



EXHIBIT 23 DATE 3-14-95 SB 387

MISSOULA ELECTRIC COOPERATIVE, INC.

1700 W. Broadway, Missoula, MT 59802-2099 Phone: (406) 721-4433 FAX No.: (406) 549-3155

March 3, 1995

Representative Bill Boharski Chairman, Local Government Committee Capital Station Helena, MT 59620

Subject:

Senate Bill 277

Dear Mr. Boharski:

We'd like to express our views in opposition to Senate Bill (SB) 277, regarding limiting the jurisdiction of local government building code inspections from 4 miles to 1/8 mile from the city limits.

We both were born and raised in Montana and appreciate the newly elected legislative majorities work in trying to reduce big government. However, this is one instance where we feel it will do more harm to the majority of citizens and benefit only a few. With housing costs rising and the market for affordable housing diminishing SB277 would put more people out of the market when lending institutions and FHA stop financing houses that are not built to the Uniform Building Code (UBC).

Many cities and towns in Montana are growing at alarming rates and in order to accommodate that growth there are a lot of new and out-of-state contractors coming to capitalize on the building boom. A fair share of the new construction is in rural areas surrounding cities and towns. This is all the more reason to keep the four mile building code enforcement as it is.

I'm sure you will say that any good contractor builds to the UBC and the state inspectors can handle the rural areas. With competition increasing and prices rising consumers are shopping for the best deal and that usually means the lowest bid will get the job. Good contractors don't have to worry their reputation will get them work, but a builder without the track record can only compete by lowering their bids and cutting corners.

Our concern about these changes is also related to our experience that poorly constructed homes are energy wasters. Only with proper inspections can this be changed. We don't feel that the present state staff can pick up this additional work. Montana homeowners will be the ones who suffer from this change.

Thank you for taking time out of your busy schedule to review our letter in opposition to SB 277.

Sincerely,

Kirk Flynn

Manager Member Services

Jim Magnder

Member Services Assistant

cc. Missoula Building Department

MAR - 6 1995

DATE 3-14



2280 DUNCAN DR., MISSOULA, MT 59802 (406) 543-8647

March 7, 1995

Mr. Bill Boharski, Chairman House Local Government Committee Capital Station Helena, Montana 59620-1706

Dear Mr. Boharski,

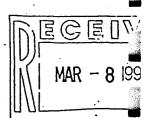
I am writing you in regards to SB-227, which I understand has been passed by the senate and transmitted to your committee for consideration. I would like to say from the outset that I oppose passage of this bill. By reducing the area in which municipalities enforce their building codes, this bill would substantially reduce the overall effort to safeguard life, health, property and public welfare within the State of Montana. It is not an issue of whether the code adopted by a municipality or county is more or less strict, but an issue of enforceability. The medium and larger size municipalities that this bill will effect typically have the staff and resources to administer and enforce the codes, while this is often not the case in the counties. The results are typically that very little inspection during construction or other methods of insuring compliance with codes take place. While this may not present as much of a hazard to life or property when considering a residence in a remote location, it will have a serious, negative impact on those areas close to the city limits, which are currently experiencing rapid growth. These areas need to remain within a jurisdiction that has the proven capability and capacity to provide the public services required.

Thank you for your consideration.

Sincerely,

Terre Meinershagen, AIA ROCKING M DESIGN

cc Building Department, City of Missoula Montana Technical Council





February 28, 1995

EXHIBIT 24

DATE 3/14/95

SB 227

Senator Jim Burnett Representative Alvin Ellis, Jr.

RE: SB227, affecting the area outside a municipality, enforcement of building codes.

Before a municipality may enforce its adopted building codes outside the corporate limits, the municipality must have adopted a developmental plan and related codes. Establishing a planning district is a method of including areas outside the corporate limits where it is felt planning in that area will eventually be a benefit to the municipality that probably will have the area within its jurisdiction through annexation. This means provides those affected the opportunity to be heard in the early stages of such planned development.

Municipalities must have the ability to enforce building codes within the established planning district for two basic reasons:

- 1. Inferior and improper construction will become a problem for municipalities once the area is annexed unless there is a means to regulate such construction when it is being done.
- 2. The State does not review or inspect construction of anything less than a fourplex in its jurisdiction, which is every thing outside municipal jurisdiction. Thus, there is NO control over smaller structures in their area of jurisdiction.

SB 227 is regressive and will be of no benefit to municipalities or to those who will be affected in the outlying areas who buy a product that has been poorly done.

Thank you.

Brian Roat, Mayor

FOOM: City of Bozeman PHONE NO.: 914064429

PHONE NO. : 9140644292310200 MAR. 7,1995 4:12PM PHONE NO. : 406 582 2323

Bridger Builders EXHIBIT 27

DATE 1/14/95

SB 227

Bridger Builders / 115 Wost Kagy / Bozeman, Montana 59715 / (406) 587-8544

March 7, 1995

Senate Review Committee,

As you can see from my letterhead, I am a builder in the Bozeman area and am writing to you regarding Senate Bill #227. As a custom home contractor, I am against reducing the radius around the city that the building dept. can oversee. Gallatin County has no building permit system in place thus all of the homes built outside this 1/8 mile radius will have no building inspections required. With growth at the rate we are experiencing in this state I see this as a step backwards as we don't even have any real Contractor licensing in place at this time. I also see this as a problem to anyone who is making a significant investment in their home, because if this goes through, someone can take 10 years to build their home, pulling down property values in the area as well as having families living in unsafe, unfinished homes. Thank you for your consideration.

Respectfully,

dames R. Syth, Owner

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CO.M.C.Q.X.T.	COC ity of Bich
Dept. 5 5 7 27	Phone # - 5 8 2 - 2 3 0 3
12.56-445-4521	1406.588.2323

City of Dozaman

EXHIBIT_28

DATE_7/14/95

SB_227

March 7, 1995

Representative Bill Boharski, Chairman House Local Government Committee Montana State Legislature Helena, Montana 59620

Dear Committee Members,

Please realize that the State has the responsibility to enforce the Uniform Building Code in areas that local governments do not. My understanding is that currently two inspectors cover all the areas outside jurisdictional areas to protect the welfare and safety of the public....except that they only inspect projects that are larger than 4-plexes and commercial.

If this is the case, I would say that about 85% of the construction activity outside a city's jurisdiction is NOT BEING INSPECTED! Duplexes, four plexes, etc cannot readily be built without a central sewer system, therefore, aren't being built "out there", but are in the jurisdictional areas or cities. The exception is where lagoon systems have been installed by districts.

This being true, NO SINGLE FAMILY HOMES ARE BEING INSPECTED, except for electrical, unless the owner specifically hires an inspector to oversee the job. To me, the safety of subsequent family owners who are not aware of the codes could buy that home. Financial institutions should have a concern that the house it is mortgaging for up to 30 years is safe and going to last that long.

I sincerely hope the legislature does not sacrifice the safety of the public by reducing the jurisdictional area where typically most of the suburban single family homes are built. But if the determination is to reduce the jurisdictional area, I feel it is necessary to add enough personnel to provide inspection services in the areas not covered by local governments, including single family homes. Please entertain an AMENDMENT TO INSPECT ALL CONSTRUCTION, except out buildings in agricultural operations.

Thank you.

is a constitution of the

Yours Truly,

James E. Wysocki City Manager



THE CITY OF BOZEMAN

411 E. MAIN ST. P.O. BOX 640 PHONE (406) 586-3321 BOZEMAN, MONTANA 59715-0640 EXHIBIT 19
DATE 3/14/95
SB 227

March 13, 1995

House Local Government Committee Representative Bill Boharski, Chairman Room 104, State Capitol Capitol Station Helena, MT 59620

Dear Representative Boharski and Members of the House Local Government Committee,

I am writing in opposition to SB 227 which reduces the area in which a municipality may enforce its building code. The bill removes the requirements for basic safety and health assurances concerning the integrity of new home construction provided to individuals living just outside a municipality. This is reason enough to oppose the bill and I am certain that the Committee will be provided with ample testimony in this regard. I would like to draw your attention to an effect of this bill that is not life threatening, but certainly is problematic.

Bozeman, like other western Montana communities is growing rapidly. New construction adjacent to the city will likely be incorporated into the city at some point in time, usually when annexation is requested by the property owner in order to receive municipal water and sewer service. As these residences are annexed they would become subject to building code requirements. When service connections, remodeling projects or additions tie into structures which do not comply with code, considerable problems and expense can be added to an otherwise simple project.

The Uniform Building Code states in its purpose section." The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein." (Emphasis added)

The areas adjacent to municipalities are often as densely developed as areas inside the city. Removal of these minimum standards places many potential home buyers at risk, raises many problems when the properties are later annexed into the jurisdictional area, and provides a very unwise basis for competitive pricing in new construction.

Please retain the existing 4 1/2 mile radius for municipal building code enforcement. I believe this boundary releases those

EXHIBIT_	3	Ø.	
DATE	7/14	35	
SB_:22	7	•	•



CITY COUNCIL

435 RYMAN ST. • MISSOULA, MT 59802-4297 • (406) 523-4654

March 8, 1995

Representative Bill Boharski, Chairperson Local Government Committee Capital Station Helena, MT 59620

Subject: Senate Bill 227

MAR 13 1995

Dear Mr. Boharski,

The Missoula City Council is in strong opposition to Senate Bill (SB) 227 which limits the jurisdiction of local government building code inspections from 4 1/2 miles to 1/8 mile from the city limits.

We are concerned about the possibility of construction practices that do not comply with the Uniform Building Code, therefore posing a public hazard, Representatives of the City Government have contacted representatives of the Missoula County Government and have learned that Missoula County does not plan to initiate building code inspections, should this law be enacted. The State of Montana Building Division is currently understaffed and would not be able to assume responsibility for these inspections. The result of this legislation would be that no building code inspection would occur outside the Missoula City limits.

Lack of building code inspection poses particular risks in rapidly growing urban fringe areas such as Missoula, Bozeman and Kalispell. Due to high demand, growth communities are exposed to speculative construction and inexperienced contractors. Very little undeveloped property is available within the city limits, which results in most construction occurring beyond the city limits. Some of these areas are likely to be included in the municipal boundaries in the future. Municipalities must then assume responsibility for health and safety services such as fire protection. In these cases, municipalities have an interest in assuring that construction complies with the Uniform Building Code. Not all of these areas will become part of the city, however, building code inspection beyond the city limits is an example of good government serving the larger community. Those of us within the city limits have friends and family living and working on the outskirts of town. We want them to live and work in safe facilities. Building code compliance is critical to public safety and local government is the logical entity to provide the service.

City officials have also heard concerns expressed from the banking community and contractors about SB-227. Financial institutions have expressed reluctance to finance new construction projects or home purchases that are not subject to building code inspection. Contractors



EXHIBIT 71 DATE 71,4 95 SB 227

March 14, 1995

RE: Senate Bill 227

To Whom it May Concern

I was informed that the above bill will reduce the area of responsibility for city building code officials from the existing 4 + miles to almost the city boundary.

I would oppose such a change for a variety of reasons. The State is unable to properly inspect construction in their area of responsibility now. Adding more territory would not improve the quality of inspection at all.

I am a conservative by nature and do not believe in activist government. One purpose of government is to protect individuals from other individuals. Therefore building code inspections are critical to insuring that buildings are properly constructed. Most building code changes result from accident reports, so proper building code inspection reduces accidents. Proper inspection helps protect a future buyer or occupier of the property from unknown deficiencies.

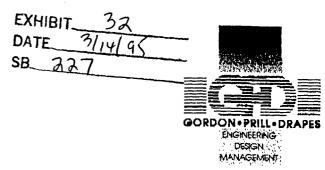
I have observed many types of contractors and building Owners in my many years of engineering practice. There are a few types of both where first cost dictates all of their decisions. Besides, if they are going to sell the building in the near future, what difference does a few code violations make? It is only strong building code enforcement that forces these types of contractors and building Owners to adhere to proper building code standards.

I sincerely hope that this bill will be defeated.

TiFund

Sincerely,

Michael T. Fussell, P.E.



March 14, 1995

P.O. DRAWER 5567 269 W. FRONT STREET MISSOULA. MT 59806 (406) 721-5936 FAX (406) 721-8716

Senator Bill Bohaski State Capitol Building Helena, MT 59601

RE:

SB 227

Dear Sir:

I would like to express some thoughts and concerns regarding Senate Bill 227.

If this bill is implemented, and the State takes over jurisdiction for construction permitting and inspection to within 1/8 mile of city limits, that is going to increase the work load of State inspectors tremendously in the Missoula area.

Does this mean longer waits for plan reviews and answers to code questions since we would not deal locally but have to deal with Helena?

Does this also mean that we as professional consultants are going to have to spend more time on construction inspection, which we will have a difficult time getting paid for, or will the State hire more employees and increase State government in size, which I am totally against?

Sincerely,

James E. Gordon, P.E.

Gordon-Prill-Drapes, Inc.

amer & Gordon

Missoula, Montana





DATE 3. 44. 85

March 14, 1995

Members, Local Government Committee House of Representatives Capital Station Helena, MT 59620

RE: SENATE BILL 227

Dear Chairman & Committee Members:

The Missoula Area Economic Development Corporation (MAEDC) Board of Directors believes that Senate Bill 227, although co-sponsored by several Missoula area legislators, is a bad bill and will be detrimental to the orderly development of the Missoula community. In varying degrees, areas adjacent to rapidly-growing municipalities in Montana are experiencing stress. Some of that stress and frustration, naturally, focuses on governmental regulation—especially when it appears to come from the "urban" city nearby.

Reducing or eliminating the enforcement of the Uniform Building Code in these growing "suburban" areas will not remove the stress, but only add to the difficulties of planning for orderly growth and development. Indeed, the lack of UBC enforcement will likely reduce the availability of financing for homes outside of the 1/8 mile municipal enforcement area, thereby reducing affordable housing options.

To restrict building code enforcement is truly a step backwards in society's efforts to improve the quality and safety of our living environment. If anything that is needed, it is a licensing-bonding requirement for contractors and builders, not a disregarding of the minimum standards of the Uniform Building Code. The UBC was created as a response to the loss of life caused by a lack of standards for construction. When losses occur, citizens are the first to cast blame on those who have allowed poor and unsafe conditions to exist. Do you want that blame in the future? Supporting SB-227 will be sending the wrong message, one which you may regret in the future.

Sincerely

Ronald L. Klaphake

President/CEO



CITY OF BIL

DATE 3-4-85

RICHARD L. LARSEN MAYOR P.O. BOX 1178 BILLINGS, MT 59103 PHONE (406) 657-8296 FAX (406) 657-8390



March 1, 1995

Bill Boharski, Chairperson House Local Government Committee State Capitol Helena, Montana 59620

Dear Mr. Boharski:

I wish to express the City of Billings' opposition to Senate Bill 227 that proposes to reduce from 4-1/2 miles to 1/8 mile a municipality's ability to enforce building codes.

The effect this bill would have would be to take the present 4-1/2 miles immediately surrounding the city of Billings and place it under the jurisdiction of the State of Montana. The City of Billings' Building Division presently governs this area which is populated by several thousand residents. In 1994 alone, 146 new single family homes were constructed in this area. This also includes many highly populated areas presently outside the City limits and adjacent to residential areas located within the City limits. As mentioned earlier, passage of this bill would place this segment of the community into the hands of the State, and the State only performs electrical inspections on 1- to 4-family dwellings. In other words, the building construction (including the structural aspects) and mechanical installations, will go uninspected if this legislation passes.

Allowing individuals and contractors to construct single-family homes and small multi-family apartments without inspection is unfair in several ways. First, hundreds of Billings area citizens have expended the time, money and effort to comply with the building codes. It is therefore grossly inequitable to allow surrounding structures to be built without the same scrutiny.

Second, this will truly create a "buyer beware" market. Many individuals have little knowledge of construction practices. As a result, when a new home is purchased, or an apartment rented, the individual(s) often assumes that certain minimum standards and proper safety practices have been met. The local inspection agency currently provides some assurance that this is the case. In fact, our experience has shown that as many as one in three house plans show deficiencies that are corrected during plan review or construction inspection.



S.B.182 Local Sign Control Option Bill gase magueson

What is the problem?

- 1. Many local governments lack clear authority in unzoned areas.
- 2. Local governments lack specific power to take over regulation of signs on interstate and primary roads within their jurisdiction.

Clear and specific outdoor advertising local control authority has not been given in Montana law. Current laws deal only with control through zoning regulations and emergency powers in unzoned areas, and delegates powers only to certain types of governments. Yet much of Montana chooses not to be zoned or have charter or self government powers. Those areas are penalized in not being able to determine their own community's character nor determine what is best regarding signage for their economic future.

This problem was identified when an invasion of new, huge billboards occurred, and citizens found the only way to stop this in unzoned areas was through emergency zoning power.

How does S.B.182 solve the problem? It:

- 1. Gives counties and towns clear power to control outdoor advertising in zoned and unzoned areas within their jurisdiction either by zoning regulation or ordinance.
- 2. Allows counties and towns (who choose) to take over regulation of outdoor advertising from the state on interstate and primary roads within their jurisdiction as long as local regulations are as restrictive as state standards and maintenance requirements are insured through an agreement with the state.

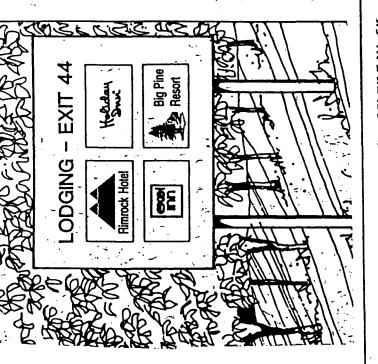
Is local control consistent with other law? Yes.

The Federal 1978 Surface Transportation Act and MCA 75-15-104 both allow local control. Montana law allows more restrictive lawful ordinances, regulations and resolutions, but does not specify what is lawful or who has authority to enact them.

The U.S. Supreme Court has upheld the protection of the public safety and welfare as well as aesthetic interest in community appearance as a legitimate basis for billboard regulation. [Metromedia v. San Diego, 453 U.S. 490 (1981) and City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984)]

identification and directional information for essential motorist services (Gas, Food, Lodging, Camping). The signs may be used on any class of highway and are intended for use primarily in areas Specific Service (LOGO) signs provide travelers with business rural in character.

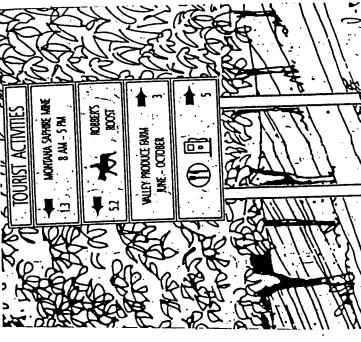
Eleven operate their program through franchisees contracting with One Forty States are now implementing or beginning to implement LOGO Jo their Department's of Transportation or other State agencies. State is currently developing their program, and is not sure programs. Twenty-eight states operate their program through the State DOT or working in partnership with the State DOT. the direction to be taken.



TODS Program

They are intended for use only on rural conventional roads and shall derived during the normal business season from motorists not activities the major portion of whose income or visitors are residing in the immediate area of the business or activity. (including seasonal agricultural products), services, and Tourist oriented directional signs provide the business identification and directional information for business not be used at interchanges on expressways or freeways.

Two States plan to have programs in the near future and two States are studying Sixteen States have TODS programs at this time. the feasibility of implementing a TODS program.





BOARD OF COUNTY COMMISSIONERS 200 W BROADWAY ST MISSOULA MT 59802-4292

(406) 721-5700

EXHIBIT 34 DATE 3-14-95

Representative Bill Boharski, Chairman
House Local Government Committee
Montana State Legislature
Helena, MT 597620

Dear Chairman Boharski and Committee Members:

- I am Fern Hart, Missoula County Commissioner. Thank you for this opportunity to comment on Senate Bill 182. In 1993, during my first year in office, a delegation from the Evaro-Arlee area came in to talk with us about the proliferation of huge billboards along the highway between Evaro and Missoula. We were very clear about the limitations of County government; however we did commit to working with them to research the issue of zoning. Currently, we have an emergency zoning resolution to allow us two years to work through the issues. That resolution expires in August of this year.
- One of our conditions when we work with a particular neighborhood or community is that the people in the area be involved and willing to work to solve their own problems. We have found that local government works best when the citizens initiate a request for change. This proposal has come from a citizens' effort. They have circulated petitions, held public meetings and researched the statues to determine the best solution.
 - We are pleased to support this legislation. It will allow us to be able to respond more effectively. I presented a similar resolution to MACo last fall at our annual convention and received their support. We are asking that Counties be allowed to enact regulations regarding billboards. You will notice that there are important safeguards for the billboard industry and that we <u>must</u> have an agreement with the Montana Department of Highways before we adopt more specific regulations.
 - One final comment. Missoula as a City has a sign ordinance and it has worked well. The billboard companies have been able to comply and the local businesses are very cooperative. Since we are becoming more tourist oriented, we feel we must protect our scenic views because folks are coming to Montana to appreciate what is most unique to us. One final, final comment: This legislation does not require Counties to adopt a regulation; it only allows the authority if a County or Counties wish to use it.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Barbara Evans, Chairman

Fern Hart, Commissioner

Michael Kennedy, Commissioner

DATE 3-14, 85

Economic and Scenic Resources in Montana

excerpts from: Montana Business Annual March/April 1994

"A viable economy comes from maintaining an environment we can live in. Our greatest resource, next to our people, is our land. We are tied to the land."-Matthew Cohn, director of Travel Montana,
Montana Department of Commerce, Helena

"Montanans understand the state's economy and its relationship to their personal circumstances with greater clarity than they are often given credit for. Their expectations of the economy are both modest and reasonable....Montanans seem reluctant to accept change that is not compatible with those values that they deem most important to their way of live--the good will of their neighbors, the integrity of their communities and the abiding beauty of their natural surroundings."'--

Statewide study by the Liz Claiborne and Art Ortenberg Foundation

"Deterioration of the quality of life could kill economic development."-Mike Owen
Acting Dean of the School of Business, MSU

"I think the limitations and constraints on access to our natural resources will create a better business people and better products in Montana."

Larry Gianchetta
Dean of the School of Business, U.of M.

"Tourism is now Montana's second-largest and fastest-growing industry. It pumps approx. \$1 billion a year directly into the state's economy....Montana is now one of the top five travel destinations in the country."

Winter Tourists: "The top reasons winter visitors gave for coming to Montana were business, vacation, and visiting family and friends. If they came on vacation, most chose Montana for skiing, snowmobiling, and scenery....aspects of their trip visitors most and least enjoyed (scenery and crowds, respectively.)"--

1993 survey

Institute for Tourism and Recreation Research, U.M.

PROPOSED AMENDMENT TO S.B. 182 DATE 3-21-85

SB 122

CAMIDAL

We find that part of an amendment attached by Frontier Outdoor Advertising to S.B.182 in the Senate must be deleted:

Section 3 (2) (C) FOR PURPOSES OF (SECTION 2) AND THIS SECTION, THE FAIR MARKET VALUE OF OUTDOOR ADVERTISING MUST BE BASED ON OUTDOOR ADVERTISING INDUSTRY STANDARDS AND METHODS FOR VALUATION AND WITHOUT REGARD TO ANY CONDEMNATION PROCEEDINGS.

Rational:

- 1. Federal law requires that **only** relocation expenses be paid for billboards which need to be moved for highway construction projects if a state considers signs as personal property under state law. (FHWA memo "Guidance on the Valuation of Billboards)
- 2. Billboards are treated as <u>personal property for tax purposes</u> under Montana law, yet in eminent domain cases the <u>Dept. of Transportation treats</u> them as real property. MDOT pays just compensation based on cost replacement of sign materials and installation costs (\$7000). The sign company has first right of refusal to buy back the sign at salvage costs (\$700), then moves it across the fence or down the road to continue earning income.
- 3 The cost replacement valuation standard is used by most states and has been upheld by almost all courts nationwide as the fairest method of just compensation. This amendment drastically changes the definition of "just compensation" in Montana. It could be extended to all other property in eminent domain cases, letting industry--sign, real estate, mining, etc.--dictate the standard for compensation. It is not a neutral method.
- 4. Industry standards vary (at least 4 kinds), but all involve some sort of future earnings. A sign acquired now costing \$3000, could, using the gross income multiplier method, cost the taxpayers \$17,500, a 483% increase.
- 5. This is an excessive unfunded mandate by state government on local government.
- 6. This signage valuation method established for local governments will become applicable to the state and double the cost to taxpayers for sign acquisition in state right of way expansion projects.
- 7. It prohibits any recourse to the courts by local governments in situations where value is disputed. Under the current system the billboard industry can appeal to a Value Finding Commission and then the courts if they dispute the compensation the state has offered for a sign.

EXHIBIT__

39 INS

DATE_____

Wilmer A. Rusch

Highway accident rates as related to roadside business and advertising (1947)

Found that there were 411 accidents per mile along the highway where 90% of the billboards were located as compared to 1.6 and 2.52 on the sections of the road where there were no billboards or at least relatively few.

Madigan - Hyland

Relationship between accidents and the presence of advertising devices (1963)

Found that there were 1.7 accidents per mile due to driver inattention of the portions of the thru way mainline where advertising devices were visible, and only 0.5 of an accident per mile for the cause on the streets where advertising devices were not visible.

The relative number of accidents per mile in areas with advertising devices, therefore, was three times greater.

Minnesota Department of Highways,

"Rural truck highway accident access point and advertising sign study. (1951)

Study concluded that there was a positive relationship between sign frequency and accident rates with the highest accident rates occurring where frequency of sign per mile was greatest.

Four hundred and twenty miles of all types of roads were analyzed. The study found that no matter what road terrain was under observation there was a strong positive relation between billboards and accidents.

D. Jackson Faustman

A study of the relationship between advertising signs and traffic accidents on U.S. 40 between Vallejo and Davis (1961)

Billboards cause drivers to take their eye off the road for varying lengths of time depending upon the sign message. At high driving speed many things can happen on the roadway in this short time while the motorist is looking at he sign. Present operating conditions on our highways are to complex for average drivers. Ultimate success in culminating accidents will occur only through the provisions of facilities which require few critical decisions and upon which critical acts are practically impossible.

The significant finding which corroborates this is that the average accident rate is 0.988 in the sections with billboards (40.9 % higher than without billboards) as compared to the 0.701 in the sections without billboards.

EXHIBIT_	40
DATE	7/14/95
SB 182	

Proponent of 8.B 182 Pamela Sourbeer 1028 Grizzly Mountain Road Missoula, MT 59802

Presented to Local Government Committee Honorable Bill Boharski, Chair March 21, 1995

I am here to testify in support of S.B. 182.

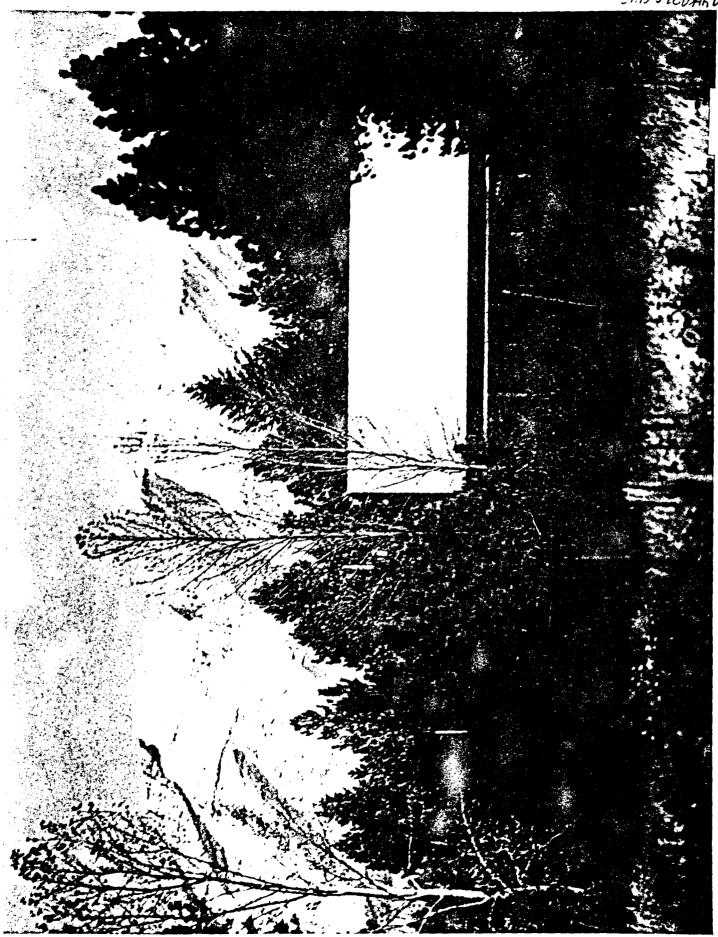
I own a home in Evaro, one mile west of Highway 93, in Missoula County. This section of Highway 93 is endowed with spectacular natural beauty and is the gateway to Flathead Lake and Glacier National Park. Yet this community has felt almost helpless to prevent the area from being destroyed by the proliferation of "drive-in-movie-size" billboards along this picturesque corridor. Ravalli, Missoula, and Flathead counties need the authority to manage outdoor advertising as part of their long range land use plans to protect and preserve the scenic beauty of this region.

Communities must have the freedom to promote and to guide development consistent with the character of the area. Open space increases the attractiveness of a community and its desirability as a place to live, to work, to visit, and to invest. Mammoth sized turquoise colored billboards with big red glitter-lips contribute to the degradation of this region. Communities should be given the authority to participate in choosing the appropriate location for this type of advertising within their community.

I ask you to support S.B. 182 <u>without</u> just compensation based on the industry's standards. Give counties, cities, and towns the power to pass sign ordinances and zoning regulations so as to manage the erection and maintenance of signs in all areas within their jurisdiction.

Thank you for the opportunity to present this testimony.

DATE 1114 GS T PHOTELA SOURBEER SB. 182 Shin Stevard



TO EXHIBIT.
DATE 3 LOOKING WEST GIALD MONT.

League of Women Voters of Montana



DATE 3-14-95

SEL 182

WRITTEN TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

House Local Government Committee 3:00 p.m., Tuesday, March 14, 1995 Senate Bill 182 by Weldon

The League of Women Voters of Montana has long supported the efforts to empower local governments. The 1972 Constitution included much of the League's State-Local Government Relations position including provisions to relax state government control over local governments. The League played an active and informed role in both writing and the adoption of our Constitution.

Senate Bill 182 is a local option bill which gives local governments the flexibility to adjust state outdoor advertising regulations to fit their particular needs and preferences. The bill offers local governments a latitude for innovation whereby they can build upon state standards, yet tailor regulations to suit local conditions and tastes.

The League opposes an amendment added to the bill by the Senate Local Government Committee - Section 3, Subsection 2(C). This amendment mandates that those cities and counties pay just compensation when they acquire signs, based on standards set forth by the billboard industry. While the League applauds efforts to protect the property rights of outdoor advertising owners in the bill through just compensation options, we believe this ammendment dictates that localities use a different standard than the one the state uses to acquire signs, one based on the cost of sign materials, installation costs and the remaining value of the land lease. There are at least 4 widely different standards set forth by the billboard industry which makes it difficult to pinpoint of what this just compensation mandated by the amendment will consist. The League supports adherence to the state standard in this matter.

We encourage the state to pass through Federal funds it would normally spend to control outdoor advertising on interstate and primary highways within a local jurisdiction, to that jurisdiction, once the local jurisdiction has signed an agreement with the state to regulate outdoor advertising. The pass through of such Federal funds would have the mutually beneficial affect of providing a source of revenue to local governments for carrying out regulation functions and simultaneously relieving the state of the 20% match for these Federal monies.

The League of Women Voters of Montana Supports Senate Bill 182 with the removal of Section 3, subsection 2(C), and urges a <u>do pass</u> recommendation by the committee. Thankyou.

Chris Imhoff Legislative Chair, LWVMT Flathead Regional Development Office Se

723 5th Avenue East - Room 414 Kalispell, Montana 59901

Dow Spivey

Phone: (406) 758-5980

Fax: (406) 758-5781

March 14, 1995

House Local Government Committee Bill Boharski, Chair House of Representatives Capitol Station Helena, MT 59620

Re: Senate Bill #182

Dear Honorable Chairman Boharski and Committee Members:

divertising industry standards. This amendment would create a windfall for the billboard industry or, more likely, create a huge tax burden to the public to the point that removal would impossible.

you to delete the amendment for compensation at industry standards and replace is a "just compensation" clause. This would effectively balance the economic interests investments of the sign company with the interests of the public to control costs and proteappearance of their community.

Thank you for your consideration of this bill and support.

Sincerely,

Stephen F. Herbaly Planning Director

SFH/NW/

F:\FRDO\LETTERS\BILLS.LTR

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Pax # 4/20 - 44-19 - 44-360	lad me blan water

DATE 3-14-95

TESTIMONY OF FRONTIER OUTDOOR ADVERTISING
PRESENTED TO HOUSE COMMITTEE ON LOCAL GOVERNMENT
Re: SB-182 March 14, 1995

MILLANEL JAKE

SB-182 would allow a county or incorporated city or town to acquire, through eminent domain proceedings, outdoor advertising property. In acquiring the outdoor advertising, the county or incorporated city or town would be required to pay just compensation. The issue presented is what would constitute just compensation under the circumstances created by the passage of SB-182.

Generally, the method utilized by the State in valuing signs is a cost-less-depreciation approach. With this method, the replacement cost of the sign, minus depreciation, is the determined value of the sign. This method has been deemed reasonable because of one crucial concept—the concept of relocation/substitution.

In the common eminent domain scenario, a sign must be removed to make room for a new exit or to widen a highway. In such a situation, the sign owner may simply relocate his sign, often in the same immediate area, without any significant impact to his earning or income potential. Since there is minimal adverse impact on income, an appraisal based on cost or relocation expense is not unreasonable.

However, SB-182 would create an entirely different situation in which the cost-less-depreciation method would result in severe inequities. The passage of this legislation would allow counties and incorporated cities and towns to literally regulate outdoor advertising out of existence in the areas of their jurisdiction. Therefore, unlike the general eminent domain situations where sign relocation is a practical and reasonable solution, sign owners in those local jurisdictions which have taken full authority over sign regulation will not have a meaningful relocation option available to them.

Historically, eminent domain proceedings by the State have generally not impacted the sign owner's right to relocate and repermit a sign on a location which will allow the owner to continue to generate income from the sign to a degree not appreciably different from the income derived before the condemnation. This would not be the case in those counties and cities which decide that outdoor advertising must be removed and cannot be replaced. Under these circumstances, the loss of income will be permanent.

In simple terms, eminent domain proceedings undertaken by the State have not had drastic effects on sign owners' income because of the ability to relocate the sign in question. Eminent domain proceedings undertaken by local jurisdictions under this legislation, however, would effectively destroy a sign's income-earning potential by precluding relocation within the jurisdiction.

This is why the cost-less-depreciation approach of sign valuation, though reasonable in other situations, is not reasonable within the context of SB-182. In jurisdictions where relocation is not a possibility, just compensation must be based on a valuation method which recognizes the lost income earning potential in determining the fair market value of the sign.

Within the industry, a sales comparison approach is used to determine fair market value for the sale of signs. This method is based on analysis of comparable sales data and development of a gross income multiplier. This constitutes a valuation based on the potential market rent and gross income of a sign. valuation method is applied within the industry by market participants, is understood by appraisers with knowledge of the sign industry, and fairly reflects market conditions. In short, the cost-less-depreciation approach will not result in a fair market value or just compensation to a sign owner, where such owner will dispose of the sign and lose the corresponding revenue stream. Since the sale of a sign represents the most analogous situation to the likely disposition of signs under SB-182, the industry's method for valuing signs in the context of a sale should be utilized.

Outdoor advertising signs represent significant investments by their owners, significant earning potential, and legitimate property interests. The legislature unquestionably has every right to decide, as a policy matter, to delegate authority over sign regulation to counties and cities across the state. These local jurisdictions, in turn, have every right to decide that billboards will not be allowed in their locales. However, this does not give them the right to dispose of these signs without just compensation to their owners. As has been pointed out, cost-less-depreciation valuation would not constitute just compensation where relocation is not a possibility.

Therefore, the original version of SB-182 was amended in the Senate to define just compensation as fair market value determined on industry standards of valuation. This valuation method is carefully qualified to apply only to acquisitions undertaken under this particular legislation. It does not require that this method be applied in other situations or by the State in its eminent domain/condemnation actions involving signs.

EXHIBIT__

March 14, 1995

Mr. Chairman, Members of the Local Government Committee:

My name is Harriett Meloy; I live at 1317 Ninth Ave., Helena.

I speak for myself as a former member of the Helena Lewis & Clark Co. city/county planning board. During my two and a half terms on the board I was concerned about the appearance of the corridors leading into Helena, and was especially worried about the profliferation of billboards along the routes.

I am in favor of Senate Bill 182 because it give counties and towns clear power to control outdoor advertising in zoned and unzoned areas within their jurisdiction either by zoning regulation or ordinance.

--Allows counties and towns &(who choose) to take over regulation of outdoor advertising from the state on interstate and primary roads within their jurisdiction as long as local regulatons are as restrictive as state standards.

--Mandates just compensation for the acquisition of legal noncomforming outdoor advertising signs pursuant to state law.

I ask that you vote for S.B. 182--minus the unacceptable "just compensation based on industry standards" amendment.

Thank you.

Variant Miloup Suz, 1317-9th Suz,

Art. II, §29

om favisor

CONSTITUTION OF MONTANA

Effect of former conviction on registration and sale of out-of-state subdivision land, 76-4-1236.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 642, 643, 960, 965, 968, 972, 1041, 1080, 1108.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate - adoption schedule, Trans. 2997. Debate — committee report, Trans. 1076,

EXHIBIT.

1800 through 1825, 1846 through 1848, 2305. Debate - style and drafting report, Trans.

2507 through 2509, 2921. Delegate proposals, Vol. I 128, 218, 317. Final consideration, Trans. 2656 through

2658. Text as adopted, Vol. II 1089.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Cross-References

Due process, Art. II, sec. 17, Mont. Const. Eminent domain power of Department of Fish, Wildlife, and Parks, 23-1-102, 87-1-209, 87-1-703, 87-1-709.

Eminent domain power of rural coopera-

tives, 35-18-106.

Eminent domain power of cemetery association, 35-20-104.

Acquisition of property for highways, Title 60, ch. 4, parts 1 and 4; Title 60, ch. 5, part 1. Eminent domain power of Department of

Transportation for airport purposes, 67-2-301.

Acquisition of property for airport purposes when zoning insufficient, 67-6-301.

Eminent domain power of municipality for airport purposes, 67-10-102, 67-10-201, 67-10-205, 67-10-221.

Eminent domain power of airport authority, 67-11-201, 67-11-204, 67-11-231.

Eminent domain power under extraterritorial airports section, 67-11-231.

Eminent domain generally, Title 70, ch.

Eminent domain power for open-pit mini-

ng, 82-2-221. Eminent domain power to acquire underground natural reservoirs, 82-10-303.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 643, 644, 711, 960, 966, 972, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate - committee report, Trans. 1825 through 1828,

Debate - style and drafting report, Trans. 2509, 2921.

Delegate proposals, Vol. I 96, 177, 252, 308.

Final consideration, Trans. 2658, 2659. Text as adopted, Vol. II 1089.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Cross-References

Importation of armed persons, Art. II, sec. 33, Mont. Const.

One witness insufficient to prove treason, 26-1-301.

Criminal syndicalism, 45-8-105.

Bringing armed men into the state,

Evidence in trial for treason, 46-16-202. Estates, Title 72.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 624, 644, 960, 966, 968, 972, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1828, 1829. Stock & with a teample stronger of the

- (c) separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit shall be equal to the amount assessed under subsection (3)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the amount assessed under subsection (3)(b), the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the current fair market value;
- (d) if the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad.
- (4) Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 531, L. 1981.

- 70-30-302. Assessing compensation date and measure interest. (1) For the purpose of assessing compensation, the right thereto shall be deemed to have accrued at the date of the service of the summons, and its current fair market value as of that date shall be the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.
- (2) If an order be made letting the plaintiff into possession, as provided in 70-30-311, the full amount finally awarded shall draw interest at the rate of 10% per annum from the date of the service of the summons to the earlier of the following dates:
- (a) the date on which the right to appeal to the Montana supreme court expires or, if appeal is filed, to the date of final decision by the supreme court; or
- (b) the date on which the property owner withdraws from court the full amount finally awarded.
- (3) If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (2)(a) and (2)(b) of this section until the full amount is withdrawn from the court.
- (4) None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires.
- (5) No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or

BLUE ROCK HISTORIES

"Historical Research for Montana"

DATE 3-14-95-

Allan Mathews, Historian • Box 145 • Alberton, Montana 59820 • (406) 722-3346

February 28, 1995

House Local Government Committee House of Representatives Capitol Station Helena, MT 59620

RE: S.B. 182 - Support, without just compensation based on billboard industry standards.

Dear Chairman Boharski and Committee Members:

My name is Allan Mathews and I live in Alberton, Montana, a town that has recently had to deal directly with the negative implications of what is allowed under the present outdoor advertising law. As a businessman, I am a long-time supporter of responsible advertising, having served as president of Alberton's economic development organization, as a town council member and as county planning board representative. However, I and many others, have come to recognize that the current law allows for abuses that degrade the integrity of our landscapes and hurt the economic factors that bring tourists to our beautiful state.

Year after year, studies conducted by the Institute of Tourism and Recreation at the University of Montana, have shown that viewing scenery was the most commonly mentioned primary attraction for vacation travelers to visit Montana. The giant billboards allowed under present law are in direct conflict with that information. We need to provide the tourists with what they are looking for, and that is scenery, not glaring, intrusive advertisements. The Task Force bill S.B. 182, will help local governments regain a sensible balance between tourist information and economic good sense.

Back in the 1980s, the town of Alberton saw its economy decimated by the pull-out of the Milwaukee Railroad. Through the ensuing years we have pulled ourselves back up by realizing that the scenic and recreational opportunities presented by our area attract tourists, who in turn, help support our community with vacation dollars. The huge billboards that have recently spread throughout Montana are certainly not helping us preserve or foster that source of economic vitality. S.B. 182, without the last minute amendment to allow just compensation based on billboard industry standards, will assist communities throughout the state in tapping into the interest in Montana's scenic beauty.

In Alberton, three huge billboards have been erected, two of which

Roger S. Munro, M.D., F.A.C.S. Adult and Pediatric Utology Missoula Medical Plaza • 900 N. Orange Street, Suite 206 • Missoula, MT (406) 543-1967 • FAX (406) 543-5379 Fax # (406) 543-5379 FAX COVER SHEET TO: House Local Government Committee FROM: Dr. Roger Munio PAGE OF (including this page) CONFIDENTIALITY NOTICE: This facsimile transmission contains information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, please notify the sender by telephone to arrange for return or destruction of the information. Thank you!! Please Support Senate Bill 182 faxes.doc without just compensation based on industry Standards.

Nancy Munro
DR. Roger S. Munro
510 Big Flat Rd
Missoula Mi

TOTAL P.01



DATE 3-14-95 -

Christopher J. Racicot Executive Director Suite 4D Power Block Helena. Montana 59601 (406) 442-4479 (406) 442-4483 Fax 1994-1995 Officers President Stan Helgeson, Billings First Vice President Bob Ross, Jr. Kalispeil Second Vice President Sam Gates, Missoula Transcrer Mark Meek, Helena Past President Eugene Graf Bozeman Builder Director Mark Lindsay, Helena Not on a Ropheser for a Em Dean Bournan AssociateDirector Frank Armkheetit Bozoni Build PAC Director

Jim Caras, Missaulai

March 14, 1995

House Local Government Committee Montana State Legislature Helena, Montana

Re:

Senate Bill 323

Dear Representative Bill Boharski and Committee Members:

The Montana Building Industry Association is an organization of nearly 1,000 building trade businesses from the around the state of Montana. The MBIA is the home-building leader in encouraging professional business, planning and building standards.

It is for this reason that the MBIA must stand in support to SB 323. The MBIA has been a long standing proponent to encouraging sound planning and building practices. Proper planning and zoning is essential to protecting both the public and the building industry.

However, prudent land use planning or zoning should be conducted through widespread consent of both the effected public, the appointed planning staffs and elected officials. This type of consent can only be achieved through an unemotional assessment of the facts and a sincere commitment to include each surveyed opinion.

Senate Bill 323 will go a long way to ensure that the public is not improperly circumvented (through the use of the emergency zoning provision) in the planning or zoning processes.

True zoning and land use planning should not be conducted by the private agenda of a few self-serving bureaucrats manipulating the law for their benefit. Rather, it must come from the people as all worthwhile government change should.

Please give your favorable consideration to Senate Bill 323, the public deserves to be part of such a effectual process.

Sincerely,

Chris Racicot

Executive Director, MBIA



Lewis and Clark County

P.O. Box 1724 P.O. Box 1724 316 North Park Helena, Montana 59624 Telephone 406/447-8304

Board of County Commissioners

SB 323

Mr. Chairman and members of the House Local Government Committee, for the record, I am Blake Wordal, a Lewis and Clark County Commissioner representing Lewis and Clark County here today. First, I need to relate to you a little of the history of SB 323 in order to explain our position on this legislation. Before this session of the Montana Legislature started, Senator Beck and Representative Ed Grady met with the County Commissioners about the issue of emergency zoning. Senator Beck explained his intentions to introduce this legislation, and we agreed to work with him to try to create legislation which met the needs of the concerned citizens which he represents and the local governments which must operate under the provisions of the legislation.

Once the legislation was drafted, we met with Senator Beck and proposed amendments, most of which were acceptable to him. Senator Beck submitted the amendments to the Senate Local Government Committee where they were adopted. Lewis and Clark County supported SB 323, as amended. Unfortunately, the amendments were stripped from the bill during Senate floor action, and without the amendments, we can not support the bill. We continue to take this position because without the proposed amendments, we believe that this legislation would not allow local governments to take any action under emergency conditions. In effect, the ability of local governments to deal with emergencies would not exist.

In reviewing the proposed legislation, it is helpful to use a couple of examples which might require emergency zoning:

- 1. Groundwater monitoring shows a dramatic rise in nitrate levels for a particular area. Emergency zoning could be instituted to restrict development to low density while alternatives to septic treatment or water supplies are considered.
- 2. A significant flood event changes the floodplain area or development occurs in areas of potential, but unmapped floodplain. Zoning could be instituted to provide building review, or setbacks to prevent damage to structures or development in the floodplain areas that may increase the risk of human injury.
- 3. Construction within natural drainages could alter the natural storm water flow pattern or velocity which could result in flooding down-stream. "310" permits issued by the conservation district do not cover intermittent streams or "dry" natural drainages and counties without erosion and sediment control ordinances would not be able to regulate any disturbances.
- 4. A proposed mine creates an influx of new development. It may be necessary to provide emergency zoning to guide growth to certain areas and away from others while the



and policies, to guide growth which may include protecting community character and property values. Citizens may create their own zoning districts, but the process requires petitioning by 60% of the landowners which would be cumbersome on a community-wide scale.

Page 2, Lines 14 and 19: "(3) Emergency zoning may not be adopted under this section:(d) to preclude any use of property that is subject to state review and permitting."

Nearly all property uses are subject to some form of state permitting. All subdivisions less than 20 acres require state health department permitting and most construction including single-family dwellings, multi-family dwellings, and commercial structures require at least an electrical permit. This provision would preclude the use of emergency zoning in each of the above examples.

Page 3, Lines 5 and 6: "(7) The boundary of the proposed interim zoning may not extend beyond the area that is subject to the conditions creating the emergency".

Again, zoning may only regulate potential development, thus the boundaries that are subject to the conditions creating the emergency may be quite broad and cannot be limited only to the immediate area (spot zoning). The proposed language is not a problem as long as the interpretation allows the boundaries of an emergency zoning district to take into account all potential effects from a proposal or impacts such as groundwater pollution or a proposed mine.

The intent of emergency zoning is to implement temporary measures based upon impacts resulting from an existing situation (or development) where the expansion of such situation may exacerbate the impacts; or, where a potential situation (or development) may create significant adverse impacts. In any case, the zoning is temporary in nature, to allow for studies to be conducted (further groundwater testing, for example), or a comprehensive plan update, to develop goals, objectives, and policies. Groundwater testing may show that contamination is not wide spread and does not need further action; therefore, permanent zoning or other solutions are not necessary. On the other hand, groundwater testing may show dangerous levels of nitrate which require immediate remediation. Emergency zoning, therefore, may have prevented further impacts or threats to human health and safety. In either event, it is the potential development that is regulated in response to a perceived impact to public health, safety or general welfare. This example would be difficult to classify under the proposed language of "permanent and irreparable" and "constitute such an immediate threat to the public health, safety, and general welfare..."

Zoning litigation clearly shows that zoning is intended to be proactive in nature. This is best accomplished through the comprehensive planning process where citizens may decide what is best for a community. There may be instances where emergency zoning may be necessary in order to protect a community from unexpected growth. The intent of emergency zoning is to provide a mechanism to protect the public health, safety, and general welfare. This intent also includes protecting the "status quo" until the citizens can get together with the government and amend or create a comprehensive plan or zoning district.

We strongly support the procedures for enacting emergency zoning including the public notice provisions. The bill, without the amendments, suffers from the malady of unintended consequences. I do not know what rationale was used during the floor debate to strip the

SENATE COMMITTEE OF THE WHOLE AMENDMENT

February 20, 1995 10:59 am

Mr. Chairman: I move to amend SB 323 (second reading copy -yellow).

ADOPT

REJECT

Signed:

Senator Gage

That such amendments read:

1. Page 2, lines 6 and 7.

Strike: "OR" on line 6 through "FROM" on line 7

Strike: "MAY" on line 7

Insert: "will"

2. Page 2, line 10.

Strike: "AND"

3. Page 2, line 12.

Following: "(c)"

Insert: "be permanent and irreparable; and

(c)"

Following: "<u>immediate</u>" Strike: "A POTENTIAL"

Insert: "such an immediate"

4. Page 2, line 13.

Following: "cannot"

Strike: "MAY NOT"

Insert: "the harm cannot"

5. Page 2, line 16. Following: "reasons:"

Insert: "for aesthetic reasons;"

6. Page 2, line 17.

Following: "(b)"

Insert: "(b)"

Renumber: subsequent subsections

7. Page 2, line 18.

Strike: "AND"

8. Page 2, line 20

Following: "permitting"

Insert: "; or

(d) to preclude any use of property that is subject to state

Amd. Coord.

431059CW.SPV

DATE 3-14-8

My name is William M. Spilker - I reside at 801 Harrison. I am a Real Estate Broker appearing on behalf of Mt. Assoc. of Realtors.

I urge your support of SB323

SB323 is necessary in order to define what constitutes an emergency and sets forth the procedures county commissioners are to follow when adapting emergency zoning regulations.

The law already provides an orderly procedure for the adoption of land use zoning for both counties and cities. This process involves the use of a adoption of a master plan, a series of hearings and procedures for protest. It is a bottom up process that involves the planning process and those people affected by the proposed district. We support this concept.

What we are dealing with today is the emergency zoning action which is imposed from the top down without the benefit of the planning process. It turns the orderly planning ¹process on its head.

Let me quickly tell you what happened in Lewis and Clark County

In late October 1994 the L & C planning staff issued a letter with a 29 page set of proposed land use restrictions. This was the first time anyone knew of its existence, although the staff had been working on this since April. Accompanying this material was a schedule indicating a couple of work sessions with final adoption by the county commission expected in early December. It was truly on a fast tract, and defiantly a top down approach.

To give you the flavor of these regulations they included.

- Complete county wide despite very diverse areas in L & C County.
- 2. No buildings over 25 Feet high.
- 3. 300 foot set back from lakes and rivers
- 4. No building could be built that would be visible on the ridge line from the valley.
- 5. No building could be built without a permit if it was over 150 sq.ft.
- 6. Permit required to cleaf, grade or excavate an area over 5000 sq. feet.
- 7. Permit required for the construction of a roadway (even a driveway on private property.)
- 8. There was much more but, this gives you an idea of the extent of these regulations none of which seemed to be of an emergency nature.

Besides the onerous nature of the document itself the county planning staff, the planning board nor the county

commissioners could ever give an answer as to what the emergency was which caused the proposal. Nor could they ever come up with any minutes in previous meetings which showed any discussion as to the need for this document. These questions were asked at every meeting. There has never been an answer.

The interesting part of this process, since the planning staff began the effort in April 1994 is that they probably could have gone through the preferred and normal procedure by updating the master plan and proposing an implementation strategy which might have included a zoning ordinance.

In any event SB 323 will give direction and specifivity to the emergency zoning statute. On page 2, lines 8-14 defines what constitutes an emergency. It requires some level of findings to determine if there is a threat to public health, safety and welfare.

Secondly it provides and outlines what does not constitute an emergency on Page 2, lines 15-21. Aesthetics are not a treat to health, safety or general welfare, it cannot be a general broad based regulation, but must address the specific emergency.

Additionally the bill provides for an orderly process for the adoption of the iterim zoning regulations by giving notice as to the boundaries of the proposed district and the nature of the emergency.

SB 323 is sound and it really provides some detail as to what constitutes an emergency and adopts a rational procedure for the implementation of interium regulations.

As one final thought. Please pass the bill in the form you have before you. Committee amendments were made, but stricken by the full Senate. The bill as written provides specific direction and does not leave the open ended clauses which are up to someone's later interpretation.

State State

Aller Sylver

City of Helena

EXHIBIT 51

DATE 3-14-95

BB 383

March 14, 1995

Representative Bill Boharski, Chairman House Local Government Committee

Dear Committee Members:

The Helena City Commission supports SB 323, "An Act requiring local governments to hold a public meeting before adopting interim zoning regulations; increasing the public notice requirements for creating interim zoning districts; providing a definition of emergency for purposes of interim zoning; amending sections 76-2-206 and 76-2-306, MCA; and providing an immediate effective date and a retroactive applicability date" with amendments.

The City of Helena has used interim zoning several different times when situations arose that needed to be quickly addressed. Using each of these zoning situations, I would like to discuss why some amendments are needed for SB 323.

The City's commercial zoning districts allow bars to be located by right and without additional public review. In 1990, the Stardust Casino introduced nude dancing as one of their bar activities. Again responding to Helena's citizens, the City quickly adopted an interim zoning ordinance that became permanent to require such activities to be considered through the conditional use permit (CUP) process.

In 1992, a 160 + foot high communications tower was installed by the Helena Civic Center. A request was then received to install a communications tower, that was almost 300 feet high, by Legion Field. Quickly responding top concerns about the unrestricted heights that were being requested for these towers, the City adopted interim zoning to require that towers exceeding 75 feet in height would require a conditional use permit. This interim zoning ordinance then became a permanent ordinance amending the City's Zoning Ordinance.

In each case, although the citizens believed these zoning issues to be of paramount importance for the protection of morals and property values, it might have been difficult to satisfy all of the requirements of the three-part test required by SB 323, and to prove that nude dancing or large antennas would have caused "imminent direct and significant harm to the public health, safety, or general welfare"; that nude dancing and large antennas would "adversely affect the majority of persons residing in or owning the land in the area impacted"

because the interim zoning affected all of the property located in the city that was designated as the B-2 (General Commercial) and CLM (Commercial-Light Manufacturing) zoning districts; that nude dancing and large antennas would result in "permanent and irreparable" damage or harm; AND that nude dancing and large antennas constituted "such an immediate threat to the public health, safety, and general welfare" that the harm could not be prevented through the regular planning and zoning processes. Finally, perhaps the City's interim zoning to address nude dancing and large antennas would have been considered a response to concerns related to "aesthetic reasons".

Each time interim zoning was adopted by the City of Helena, a public hearing was held that was legally advertised 7 days in advance of the hearing. Time is of the essence when interim zoning is needed so the unwanted use does not become established and does not become "grandfathered" and continue as a nonconforming use. Therefore, it might be more appropriate to make the legal advertising requirements the same for both a county and a city of 7 days. Keeping the same legal advertising requirements for both jurisdictions can minimize conflicts.

The City of Helena has concerns related to parts 3 and 4 of Section 2 of SB 323 as it relates to the emergency. Therefore, the City of Helena asks that SB 323 be amended to remove these requirements before interim zoning could be considered.

Specifically, the City of Helena asks that the following language be deleted from Section 2 of SB 323 that would amend Section 76-2-306, MCA (which affects city zoning):

- (3) For the purposes of this section, "emergency" means the actual development or proposed development of land that is causing or will cause imminent direct and significant harm to the public health, safety, or welfare. To cause direct and significant harm, the development must:
- (a) adversely affect the majority of persons residing in or owning land in the area impacted;
 - (b) be permanent and irreparable; and
- (c) constitute such an immediate threat to the public health, safety, and welfare that the harm cannot be prevented through the regular planning and zoning process provided for in Title 76, chapter 1, and this chapter.

Further, the City of Helena asks that the following language also be deleted from Section 2 of SB 323 that would amend Section 76-2-306, MCA:

(4) (a) for aesthetic reasons.

Finally, these same changes should be done to address similar concerns for the proposed changes to Section 76-2-206, MCA (which affects county zoning), as presented in Section 1, (2) and (3) (a).

The City of Helena urges SB 323 be amended to address these concerns.

Sincerely,

Kathy Macefield
Kathy Macefield

Planning Director

EXHIBIT 20	_
DATE 3-14-55	_
SS 323	

Jim Richard Montana Wildlife Federation Montana Association of Planners

- SB 323 is a response to a recent proposal in Lewis and Clark County. Ironically, in the only problem cited by the proponents, the present system worked in response to public opposition, the county did not adopt interim zoning regulations.
- Interim zoning does not need to involve an "emergency." Current law provides for enactment of interim zoning where a comprehensive plan is being developed or updated, or where regular zoning is being drafted. Interim zoning prevents unregulated development that could be in conflict with the plans or zoning regulations being drafted.
- SB 323 is based on the erroneous concept that an "emergency" must exist as a prerequisite to enacting interim zoning, and tries to narrowly define what constitutes an "emergency."

In fact, land use regulations rarely can correct, or even deal with, existing development and problems. Land use regulations are most effective in preventing future land use problems. The presence of an "emergency" usually means zoning cannot effectively deal with the problem.

- A number of counties have legitimately enacted interim zoning to prevent impending unregulated development:
 - northern Powell County
 - Cardwell area of Jefferson County
- Concept of Proposed Amendments (which would address the real concerns of the proponents of SB 323):
- Delete the concept of "emergency" zoning.
- 2. Require the governing body to determine that there is a condition that poses a real or potential threat to the public health, safety or general welfare, and that the threat may not be prevented through the regular planning and zoning process provided for in Title 76, Chapter 1, and the zoning statutes.
- 3. Interim zoning may not be adopted:
 - (a) to impose general standards, criteria, or procedures that are not exclusively designed to alleviate the condition identified above;
 - (b) to preclude existing nonconforming uses of property.
 - (c) for solely aesthetic reasons.

AMENDMENTS TO SB 323 Third Reading Copy as Amended

Proposed by the Montana Wildlife Federation Montana Association of Planners

1. Page 1, lines 6 and 7

Following: "DISTRICTS;"

Strike: "PROVIDING A DEFINITION OF EMERGENCY FOR PURPOSES

OF INTERIM ZONING;"

2. Page 1, line 13

Following: "interim"
Strike: "or emergency"

3. Page 1, line 14

Following: "address"

Strike: "true emergency"

4. Page 1, line 17

Beginning of line:

Strike: "emergency" Insert: "INTERIM"

5. Page 1, line 18

Beginning of line:

Strike: "emergency"
Insert: "INTERIM"

6. Page 1, line 23

Strike: "emergency zoning.

7. Page 2, lines 4 through 15

Strike in their entirety

Replace with: "(B) DETERMINES THAT THERE IS A CONDITION THAT POSES A REAL OR POTENTIAL THREAT TO THE PUBLIC

HEALTH, SAFETY OR GENERAL WELFARE, AND THAT THE THREAT MAY NOT BE PREVENTED THROUGH THE REGULAR PLANNING AND ZONING PROCESS PROVIDED FOR IN TITLE 76, CHAPTER 1, AND THIS CHAPTER."

8. Page 2, lines 16 through 23

Strike in their entirety

Replace with: "(2) INTERIM ZONING MAY NOT BE ADOPTED UNDER THIS SECTION:

- (A) TO IMPOSE GENERAL STANDARDS, CRITERIA, OR PROCEDURES THAT ARE NOT EXCLUSIVELY DESIGNED TO ALLEVIATE THE CONDITION IDENTIFIED IN (1)(B) ABOVE;
- (B) TO PRECLUDE EXISTING NONCONFORMING USES OF PROPERTY;
- (C) FOR SOLELY AESTHETIC REASONS."
- 9. Page 3, line 5

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WILLIAM M Speher Mt Ason & Real forts

SB 227

- 19. Page 4, lines 12 through 17
 Strike in their entirety
 Replace with: "(4) INTERIM ZONING MAY NOT BE ADOPTED UNDER
 THIS SECTION:
 - (A) TO IMPOSE GENERAL STANDARDS, CRITERIA, OR PROCEDURES THAT ARE NOT EXCLUSIVELY DESIGNED TO ALLEVIATE THE CONDITION IDENTIFIED IN (3) ABOVE;
 - (B) TO PRECLUDE EXISTING NONCONFORMING USES OF PROPERTY;
 - (C) FOR SOLELY AESTHETIC REASONS."

VISITOR'S REGISTER

Stepl Fromen	nent	COMMITTEE	BILL	NO.	
DATE 3-14-95	SPONSOR(S)				

PLEASE PRINT PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Sara Busas	Same Vancrea's Visual Env	182	AlVor	eon 20
Gerald J. Quinn	WhitePish	227		l-
Graig Kerzman	Kalispell	227	/	
Mick Roberry	DEPT OF TRANS.	182		
Andrew Epple	CITY OF BOTEMAN	SB 227	2	
Rose Mynnson	Citrus For Scenic Lake Cont			V
Larry Gallagher	CitygKalospell	SB 227	X	
Paul Do Va	Billings Fire Dast.	5B 227	Ż	,
Paula Laurie Stanton	se/f	SB 227		V
& LAMy Brown	Ag Pros. Assoc	227		X
Chris Imhoff	Leasie of women voterson	323~	_X	-Xuith a
Lars Lithandu	Frankler Outdoor	182		-
Blake / Wordal	HUKE Clark Co	5B323		vwith amend

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

VISITOR'S REGISTER

Total Losse	ment	COMMITTEE	BILL NO.	
DATE 3-14-95	SPONSOR(S)			

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Vin GANNAU	My HRT AP	182		4
FRIC MYHRE	MYHRE Adu.	182		_
DON STIVEY	SOLF	182	n	~
Ray White	self	5B 227		
Ken Dager	α α	SB 227	1	
Kim Palmieri	Mt Chapter ICBO	5B 227	V	
Fern Hart	Missoula Courry Commission			~
Janes Janes	Sace aucres Usual Su.			
Joanne Rubie	Save America's Visual Env.			
John Stewart	Save America's Visual Env.	1		
Jim Brown	MJ. Dyt. of Commercy	SB 227	In-	only
BRUCE Williams		SB 227	V	
Jun Richard	City of KALISAELL MWF/MT. assu pla	SB323	<u> </u>	

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

CAL Aguegamant TE 3-14-95 sponsor	VISITOR'S REGISTER COMMITTEE R(S)	BILL NO.	
PLEASE PRINT	PLEASE PRINT	PLEA	SE PRIN
NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE SUPPORT
Ed Milland	9 Clarysjew	<i>S</i> 323	1 2
Mr Andrea	Hum Papety	43 3	X
Fred L Ray	Helena Riag Own	us 32=	x
Foren Down	Heleno Riag Owner	osa 323	X
Ted Cange	NPRC	323	×
Johnwagoner	Joseo Outdoon D.	182	
Chris Pacicot	MT Building Industry	15xx 5B	X
Chico Pacicot	Mr Building Industy;	l	X
Janet 911is	MT Audubon	50 323	λ
Em. Casu Emera	u Bozeman	ウ27 182	×
IEC Hansen	MICT	227	
IM Nugert HARRIETT CMELOGY	CITY OF MISS	aula 227 58182	XX
EASE LEAVE PREPARED TESTING AVAILABLE IF YOU CARE TO	MONY WITH SECRETARY. WIT O SUBMIT WRITTEN TESTIMON	NESS STATE	MENT FORMS
V. Bennett M MCNAB	Mont PIRG Montana Rehnical	38 227	X