

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN TOM BECK, on March 21, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

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

Members Excused: none

Members Absent: none

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

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

Committee Business Summary:

Hearing: HB 421, HB 358
Executive Action:

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

HEARING ON HB 421

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Helena, presented HB 421 which revised county hospital laws but not county hospital districts. HB 421 moved away from archaic concepts found in county hospital law. Many statutes revised in HB 421 were enacted in the 1930's when the notion was the government should provide for the indigent. That concept with so many third party payers has gone out of date and access should be thought about. Many parts of current statute preclude counties who have a county hospital from expanding to additional facilities. HB 421 would bring statutes into a more modern time. It moved away from the definition of

hospitals and talked about authorizing health care facility which are a variety of health providers that were not existent in the 1930's but are common today. **REP. EWER** said they are trying to change the statutes so to have better access to the facilities that are not traditionally thought of as hospitals. HB 421 would make clear revenue bonding would be permissible and revenue bonds for projects would have to be self sufficient. Under hospital district law, you can put a millage of up to 10 mills and 3 mills dedicated to bonded debt service. HB 421 would clarify that districts can borrow using the revenue bond route not subject to a vote of the people and general obligation bonds could be authorized which require a vote of the people. Most facilities revenues are from these bonds.

Proponents' Testimony:

Gene Huntington, Dain Bosworth, stated that they had met with the Montana Health Facilities Authority, Intercap Program and the Board of Investments along with various hospitals who had been trying to work with the current law. The groups organized a meeting with the Montana Association of Counties and the Montana Hospital Association to go through this law and take out the archaic concepts. They started by looking at the hospital district law and tried to make it consistent with laws in county hospitals which included broader definitions of health facilities. With changes in rural communities to keep physicians and adapt to the changes in health care some are medical assistant facilities and not hospitals. The old law was limited to boarding homes and construction of new hospitals. It did not deal with rehabilitating the hospital once it was built. There were a lot of concepts in the law that people have worked around for years and in the past year a question arose in Toole county that became clear that the Attorney General was reading the law literally. It then became clear that unless these laws were updated some of the people who had made plans for facilities or updating them wouldn't be able to go ahead. They worked with the Montana Hospital Association and the Montana Association of Counties and tried to find a bill that everyone could support. He gave the committee a memo from **Mae Nan Ellingson** giving a section by section analysis of HB 421 (**EXHIBIT 1**).

Bob Olsen, Montana Hospital Association, stated that **Gordon Morris, Montana Association of Counties**, signed in as a proponent of the bill but was at a different hearing and unable to attend. He continued that the hospitals supported HB 421 for a number of reasons. They found that it was very important for health care facilities to bring the terminology in statute into modern era. Hospitals in the 1930's provided many of the services the current facilities described in the bill provide but was done in what was called a county hospital. Bringing the terminology into the modern era clarifies for counties they are not limited to what was thought of as hospital business and allows them to do health care services. The change from indigent care to services of access was another important issue of HB 421. Indigent care

being an important factor for counties and being able to make sure indigent people have service in the communities. None of these facilities serve just indigent people but whole communities. Another important feature of the bill clarified the law. All of the issues on bonding are ultimately resolved by bond council, an expensive and time consuming process. For health care facilities to make the transition from the standard hospital type of system for a county to start thinking in terms of health care services, they would need access to capital. He urged the committees favorable consideration of HB 421.

Carl Hansen, Administrator, Pondera Medical Center, stated that the Pondera Medical Center is a joint operation of Pondera County's only hospital and nursing home. He continued that for the last two years they had been working on these issues. They found a lot of the laws and references in the laws outdated and it took them a longer time than necessary to determine where they had to go with their issuance. Section 3(b) on page 5 addressing leases he questioned because the medical center including the medical center is leased to Pondera Medical Center Incorporated which is a non-profit private corporation set up to run the hospital and nursing home for the county. The actual wording in the law limited them with regard to the lease. Other examples he pointed out were some of the discrepancies between the laws and trying to figure out where a hospital and a county fit with the different requirements for districts and requirements for the 3 mills the county for their hospital can raise versus the 10 mills on the books. He encouraged the committee's support for the bill.

Opponents' Testimony: none

Questions From Committee Members and Responses:

SEN. DELWYN GAGE asked about page two, lines two through four, which talked about bond issues with regard to the taxes are not considered indebtedness to the counties for statutory limitation or restriction therefor why was it in the bill? **REP. EWER** said that the section was for the revenue bonds and revenue bonds are not used in statutory debt limitations and general obligation bonds are used.

SEN. GAGE said in section eight dealing with boarding homes which do not constitute a health care facility and in the definition of a health care facility it is a related facility. Would that section allow you to declare a boarding home one way or another depending on your needs? **Mr. Huntington** said that was an attempt by Dorsey and Whitney to not change the law. Boarding homes are allowed in the law which is not a licensed health care facility under the Department of Health. What that section said is that you can still operate a boarding home even though the definition has been changed to health care facility, and because a boarding home is not a health care facility, you can still have one. Another bill in the legislature that generally redefined health

care facility to include certain types of retirement homes that could be a boarding home. In drafting the bill the intent was not to eliminate boarding homes as a county service to be provided. When the definition of what could be financed as a health care facility was changed, a boarding home is not a health care facility under the statute so it still allowed people to have a boarding home even though it was a broader definition.

SEN. GAGE asked if under the definition of a health care facility a boarding home was in conjunction with other types of health care facilities would it be considered a health care facility?

Mr. Huntington said that what used to be called a boarding home would be called an independent living facility which when the bill was drafted was not licensed as a health care facility in Montana. HB 301 dealt with broadening the definition of health care facilities to include system living and independent living facilities. To develop an independent living facility it could be done as a boarding home or as an independent living facility pending the outcome of HB 301.

SEN. HARDING asked if the bill would give health care facilities the same status as county hospitals when dealing with bonding?

REP. EWER said it would expand to a more modern definition of health care facility and get away from county hospitals being the only type of facility. He continued that it would give that type of status as that is where the need was because rural Montana went to building medical assistance facilities due to the fact they do not have the doctors, they have physician assistants.

SEN. DOROTHY ECK asked on page 2 section 8, which referenced general obligation bonds and the indebtedness of counties, if it is a district would that not count toward county limitations?

Mr. Huntington said that the main part was to expand the definition of what you can do with the mill money so that it would allow for more than just building a hospital. If you pledge the operating mill levy in the revenue stream of the hospital, the county would have not general obligation pledge for the bonds and are limited to the revenues of the hospital.

CHAIRMAN TOM BECK to clarify stated that the counties are allowed to levy 10 mills toward a hospital or rest home or otherwise. If there was to be a bond issued for maintenance, construction, or improvements, the county can pledge any number of those mills. So if they pledged five mills, that pledge of permissive mill levy against those bonds it will not increase the bond indebtedness to the county. If they had a specific bond that they did not pledge any of the money to and another mill levy was paying off the general obligation, that would be a general indebtedness. **Mr. Huntington** added that they had to have a vote on the indebtedness.

SEN. ECK said that section 8 subsection 2 addressed that situation and were probably general obligation bonds if they have to have an election.

CHAIRMAN BECK said that as he understood it, the counties probably subsidize a hospital with a mill levy and will use the revenue from whatever hospital they have to pay off the bonds but the counties may subsidize that to keep the doors open.

Mr. Hansen said that when they started out their project, they had intended the community would vote on general obligation bonds but the estimates of the cost to fix the building exceeded the maximum indebtedness of the county. There was a real benefit to rural communities with HB 421.

SEN. GAGE questioned the use of the word depletion in section 10 an 11 and asked **Susan Fox** if it was appropriate? **Ms. Fox** said that was existing law.

SEN. ESTRADA asked who requested the bill draft? **REP. EWER** said he was asked to sponsor the bill by the people from the Montana Association of Counties, Mae Nan Ellingson and Gene Huntington. They pointed out to him the problems in current statute especially with opinions from the Attorney General which took a very strict approach regarding the definition of county hospital. It was an archaic law and needed to be clarified.

Closing by Sponsor:

REP. EWER said that in regards to revenue bonds are supported by revenues but in the case of county hospitals, statutorily 10 mills are allowed. Up to 3 mills not submitted by a vote and 3 additional mills approved by a vote of the people are allowed. Typically hospitals are subsidized and a major portion of the revenue generated by the facility are the fees. Many times there is some subsidy and that subsidy can be a useful component to sell bonds. If more than 3 mills you have to get a vote of the people. HB 421 said given the preponderance of the revenue stream is not tax monies, it should not be against the debt limitation. Ten mills would be modest compared to the revenues. County revenues are small and not having the mills effect the quality of having to make the bonds be part of the debt limitation. HB 421 tried to bring some modernness into the definition of health care facility and it was not a poor versus rich issue but an access issue.

HEARING ON HB 358

Opening Statement by Sponsor:

REP. CLIFF TREXLER, HD 59, Corvallis, said that HB 358 was not a zoning bill, it would was a bill to equalize zoning slightly. A zoning district can be applied for by a group of people and then present it to the county planning board. If 40% of the residents decide they do not agree with the plan it may be protested. HB 358 would add besides the 40% of residents able to protest, 50% of the acreage owners. To head off some concern that this bill

was to benefit a huge ranch, he mentioned that he was not a subdivider or developer but a real estate agent for 20 years and an appraiser. When a zoning district is done, imagination is the limit. The size of acreage, the type and size of houses, whether you can have a yard light or not, whether houses can be painted white or not, what animals can be there, and whether you can park a motor home or not can all be dictated. When zoning is done, it becomes part of your property and must comply with the restrictions. He gave the example of a man in the Flathead found that a section line on a map was used as a boundary for a zoning district. One side could be divided into one acre tracts and the other side it could not be divided into less than 40 acre tracts. Another example he gave was in regard to a man who wanted to subdivide his 54 acre field into 11 lots which was protested. The man was unable to continue raising sheep economically and wanted to subdivide his land. The protesters said the subdivision would be adding to the demise of the valley. The county planners did not find that the man had done anything wrong and set up a zoning district. The neighbors surrounding the subdivision approved in writing the zoning district. He continued with another example and said that as an appraiser there were some people who came to the bank to get a loan. When he went to appraise the 200 acres of land, as agriculture land was at best worth \$1,200 an acre. However, one of the uses of the property could have been subdivision of 10 acre tracts. It qualified to be subdivided as it had septic, water, and access available. Due to that possibility, the property was appraised at \$400,000. If the land was appraised strictly as agriculture, it would have been a loss to the owners borrowing power by approximately \$165,000. The basis of HB 358 was that if the larger land owners should have some input into any kind of zoning district that suggested five two acre tracts between two very large tracts could form a zoning district however big they choose and the two large tract owners would have nothing to say about the zoning. HB 358 would give large land owners input. He said that the opponents would try to give the committee a slant that it would be nice to be able to stop someone from doing something on their land and in closing he would present the reasons why that would not be necessary.

Proponents' Testimony:

Mike Meuli, a rancher from Dayton, read his written testimony (EXHIBIT 2).

Forrest Sanderson, representing the Lake County Board of Commissioner, read his written testimony (EXHIBIT 3).

Carrie Jensen, rancher from Elmo, MT, presented her written testimony (EXHIBIT 4).

John Youngberg, representing Montana Farm Bureau, said that a few years ago zoning was the last thing agriculture producers worried about. Then the allure of country living came and rural

subdivisions began springing up all over. He pointed out that in the Gallatin Valley, nearly 1,200 rural watts were created. These people came into the area for open spaces and yet are closing the door behind them because they want to keep the open spaces and they achieve this by zoning and reducing the value of agriculture land in the area. Many people argue a takings but under takings law zoning has never been shown as a takings of property. HB 358 offered some protection to those property holders who were being surrounded by subdivisions that want to close the door and limit the use the farmers and ranchers had. He urges the committee to protect the farmers and ranchers through passage of HB 358.

Don Allen, representing Montana Wood Products Association, said that many of the comments heard refer to agriculture land and it is important to note that timber has been coming mostly from private holdings. Therefor when talking about agriculture land, timber or forest land is also included. He noted that it was important to understand that an owner of one acre parcel has the same weight as an owner of a 640 acre parcel. The idea that HB 358 would take away the small land owners right to protest is not true and will help assure the farmers, ranchers, and other land owners such as forest land owners will be treated fairly in the zoning process. This bill was not anti-zoning and would not stop zoning efforts. HB 358 will encourage the small lot owners to work with the large owners in good faith and vice versa. HB 358 would not allow large land owners to dictate zoning provisions to small land owner because it does not remove the protest provision for the small land owners and there was still the 40% percent versus the 50% of ownership. This allowed for a buffer for the small landowners to make their case. A stalemate between small and large landowners will not happen as the current law was bias in favor of small ownerships and HB 358 will encourage large and small landowners to work together in good faith to plan for the future area. The ability to maintain for future development or opportunity was important to protect and he encouraged a do pass recommendation for HB 358.

Jim Peterson, Montana Stockgrowers Association, supported HB 358 and added that HB 358 is a question of fairness to all sizes of landowners. HB 358 would not block zoning it would allow for protest by 40% of the freeholders or 50% of those representing the title land to hold off zoning for one year and allow for discussion between land owners. He urged a do pass from the committee.

Lance Clark, Montana Association of Realtors, stated that they support HB 358 and felt this was a fairness issue and urged the committee to pass HB 358.

Candace Torgerson, Montana Cattlewomen Association, strongly supported HB 358 as it would give landowners a change to protect the investment they have made in their land. Land zoning ordinances can have an adverse impact on the resale or refinance value of agricultural land. She urged the committee's do pass recommendation.

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Opponents' Testimony:

Ann Hedges, Montana Environmental Information Center, stated that 76-2-201 which states, "zoning is for the purpose of protecting the health, safety, morals, and general welfare of the peoples in cities, towns, and counties". She commented that HB 358 said that someone who own a lot of land can prevent your local government from being able to protect public health safety and general welfare. She said she believed the proponents had some decent arguments about bringing people to the negotiating table and was a good idea and was how zoning should occur. They believed HB 358 was a disincentive for certain parties to come to the negotiating table. If a person owns quite a bit of land what is the incentive to go to the negotiating table when you can always step in at the last minute and say "I protest, I disagree with this and you can't do this". Why should people go through negotiations when they do have veto power? She continued that there are problems here and the agriculture interests are correct and have serious concerns, but this was not the way to remedy those concerns. Those concerns were that agriculture land is being affected by people moving in to agriculture areas and that they do not know that there was a district formed that covers their land. There are other ways to address that in the context of the bill like saying "unless the zoning was done for the protection of public health and safety". She would give up welfare and moral but public health and safety are important components of why there are local governments and planning and zoning. She further suggested that the 50% must be agriculture land or that it be required that the local governments notify all of the people that are going to be covered by the district. She said the bill could be made to work but in its current form they were opposed.

Don Spivey, Whitefish City/County Planning Board, submitted his written testimony (EXHIBIT 5).

Ted Lange, Northern Plains Resource Council (NPRC), stated they had some mixed feeling on HB 358 and he wanted to convince the committee they should have mixed feelings as well. The agriculture interested who spoke had excellent arguments and there were real concerns which needed to be addressed. This bill however, cut both ways causing some concern. He gave a couple of examples of how they see it as having negative impacts. The main reason he said was that members in the Gardner area are concerned

with the Church Universal and Triumphant and their development activities. The NPRC saw zoning as an opportunity for citizens to protect their property values by making sure land will be developed wisely. He continued that the Church's activities have not been wise or appropriate and HB 358 could create an insurmountable barrier to any kind of zoning. He left the committee with a question regarding out of state interests buying agricultural land and cattle prices have dropped 20% and if they stay down, who will be buying the ranches? Who will be getting the power of protesting zoning, large out of state interests or Montana agriculture producers? Was this a Ted Turner, Jane Fonda relief bill? He said that an increase of the percentage of land ownership from 50% to 60% would be a good idea or the protesters must be voters.

Paul Johnson, representing Montanans for Healthy Future, said that the purpose of zoning laws was to protect the health, safety, and welfare of the people in a community. Under current law, those kinds of zoning decisions were made by a majority of the people in a community. The process involved a public hearing involvement of the planning board, and the county commission and a decision by the elected officials of the people. They oppose HB 358 because it allowed a few or even one land owner to control the decision about health and safety concerns of a whole community. It was a radical departure from current law as a rule by majority process. By turning political control over to property rather than people, it should be thought that it can cut both ways. The example of the Church Universal and Triumphant and other large land owners who represent interests from outside the state and country who can use this law to defeat zoning proposals by agricultural interests. HB 358 was brought in good faith and like many who have spoke, there are legitimate problems to address but there needs to be a better way to address the problem. Providing that much political control in property alone contrary to what people want went to far and he asked the committee to not concur in HB 358.

J. B. Bennet, representing Montana Public Interest Research Group (MPIRG), said that MPIRG Creek was an organization which advocated good government and they opposed HB 358 because it was bad policy for the state of Montana. He said that Paul Johnson expressed their philosophic concerns of rule by property rather than rule by people. He said they also had some practical concerns. Many of the problems brought up by the proponents were legitimate concerns and there are things in zoning that have not worked. Bringing people to negotiate in good faith was one of the point which must be worked on. They did not feel that the change in the protest will accomplish the negotiations and they saw some significant dangers. He said that there was an assumption in HB 358 that large land holders will be the folks who have been there but that may not always be the case. With more people who have looked to Montana as a place to buy unspoiled land more owners may be from out of state and not concerned with community values. Another problem was with public

health and safety and the thought that citizens may want to zone out uses such as hazardous waste facilities. There is a danger in local communities losing their control of their own destinies. He concluded that they need to find a way to encourage people to come to the negotiating table in good faith without weighing the protest. They urged the committee to not pass HB 358.

Melissa Case, representing Montanans Against Toxic Burning, said that growth causes problems and Montana was dealing with problems with growth pertaining to agriculture use, cities, and counties. People were moving to Montana because the area has been preserved and she stated that she thought it was the sponsor's intent to preserve the unique environment Montana has. The problem they had with HB 358 was that there was the possibility of backfire. There was more than agriculture interests at stake as there are other large land owners in Montana that will take advantage of the opportunity to prevent local governments from protecting their communities. They wanted to see some changes in the bill to address their concerns as HB 358 has some good intentions to keep Montana's unique environment. She asked the committee to take a look at the possibility of HB 358 backfiring as it pertains to large industry. She asked the committee to table the bill until the problems could be addressed.

Questions From Committee Members and Responses:

SEN. HARGROVE asked **Mr. Sanderson** if landowners have the option of opting in or opting out of zoning district? **Mr. Sanderson** said that in Lake County they try to get everyone involved and gerrymander the district so that the people who want in share a common goal.

SEN. HARGROVE asked **Mr. Youngberg** what he saw as the long term effect of HB 358? **Mr. Youngberg** said that the long term effect was that the private land owner surrounded by subdivision has the option to do with his property what he wants.

SEN. HARGROVE asked **REP. TREXLER** what he envisioned as the long term effect of HB 358 in terms of land use? **REP. TREXLER** said that he did not believe the true use of the land will be alter very much and that there has been the assumption made that everyone who owns a large piece of land wants to subdivide. The majority of large pieces of land were here first and little tracks were not here to begin with. People with large tracks of land have them for a reason and the real estate market has been good for the last twenty years and if that person has been in the nature to make money, they would have done it by now. He did not know if it would make a big difference in large tracts or small tracts.

SEN. HARGROVE asked **REP. TREXLER** to comment on the suggestion that all of the land owners would be required to be a registered voter? **REP. TREXLER** said he did not see anything wrong with that and that he did not feel it would be an issue.

SEN. GAGE said that the registered voter comment could be a Montanan who may not want to vote. **REP. TREXLER** said he had a valid point and he would leave that decision to the discretion of the committee.

SEN. ESTRADA said she felt it was a problem that everyone in the room would like to resolve and asked **REP. TREXLER** if he would be willing to amend the bill so that everyone was happy?. **REP. TREXLER** said he has met with some of the opponents and has been very open to amend in some way that it would not eliminate what he was trying to do. The majority of the people who wanted an amendment have a particular industry or circumstance they do not like and have been using zoning to get at that particular item. He said that for two weeks he had worked with attorneys to come up with some language that would accomplish an agreement but was not successful.

SEN. ESTRADA directed the same question to **Mr. Spivey**. **Mr. Spivey** said that they have no ax to grind and no particular industry in mind. They are trying to meet the objectives set for them and they do recognize the problem. There were two kinds of problems, one was a good faith negotiation was carried out and then is overturned by 40% of the voters and to fix that you raise the 40% to 60%. Secondly, there may be the situation where someone may not want zoning, or may want to do something so far out into orbit but because they own so much land they could protest the zoning. They have struggled to find an equitable solution and you have to raise the bar on the large property owners so that two or three property owners could not control the destiny of several hundred.

SEN. HARDING asked **Mr. Sanderson** if HB 358 would affect any zoning districts already in place? **Mr. Sanderson** said that in Lake County it has the potential to affect change because when they write a zoning district they write in mandatory review revisions and updates one year after adoption and every five years after adoption.

SEN. HARDING asked how the Church Universal and Triumphant and Ashgrove enter into the picture and what could it do to these groups? **Mr. Sanderson** said that he was not familiar with the Ashgrove scenario but he did grow up in Belgrade and was familiar with the Church Universal and Triumphant operation. It was his understanding that they already control the majority of the population in Park County and there will not be a change in what happens in Park County. In Lake County, at Lake Mary Ronan in 1993, a group of all the major land owners and small land owners got together and negotiated in what he thought was good faith and then the small land owners said they did not like the agreement.

SEN. ECK asked **Mr. Spivey** if a zoning district in some way fits in with a counties master plan? **Mr. Spivey** said that it does in their case and small zoning districts are not allowed. Zoning must be done under the master plan and whatever the master plan

designates the area to be that characterized the range of zoning options. He said that their districts are usually several sections at a time.

SEN. ECK asked what kind of approval is needed by the district besides the opt in opt out provision. Does it also need the approval of the planning board and the county commission? **Mr. Spivey** said that after the neighborhood process is complete, a series of public hearings are conducted before the planning board and the planning board will make a recommendation to the county commissioners. The county commissioners will then make a decision and if they adopt the zoning there would be a thirty day window from the time they make the first resolution of intent until the district is finalized. A protest must occur in the thirty day window.

SEN. ECK asked how many cases have zoning district protests been successful in killing a district? **Mr. Spivey** said that in Flathead County there has only been one in many years which was recently in the canyon. **Mr. Sanderson** said that in Lake County there has only been one overturned although there were protests submitted on all of the districts created. **SEN. ECK** commented that the 40% most of the time was not that bad.

Closing by Sponsor:

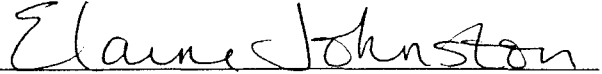
REP. TREXLER said that the opponents mentioned they only wanted to zone some particular thing or person. They turned the whole thing around to say there is some big bad land owner who is going to do something big and bad with his land and they will not like it. The gentleman from Whitefish told the committee that everything has to go through the county planning board and the county commissioners and no big land owner can come in and do these things without it being approved. As far as health and welfare, there are three different departments in the average county to take care of a problem. There are already excellent planning boards and commissioners set up over the last 20 years to take care of those problems. That was not what HB 358 was asking about. All of those methods were in process and all they are saying was if the opposite happens and a group of people are imposing their wishes on their neighbors, they must sit down and talk with their neighbors to reach an agreement. A large subdivision must be approved by a planning board and the county commissioners. People in forestry who buy a large piece of mountainside and manage the forest for the aesthetics, game, and their own pleasure, they should be allowed to do that and not be zoned to not do that. For many ranchers and farmers, their only equity they have would be the value that the ranch has developed in over the 30 or 50 years they have been there. He asked the committee to not do away with the inherited value they have and give them a chance to make an even playing field by approving HB 358.

ADJOURNMENT

Adjournment: 5:00 p.m.



SEN. TOM BECK, Chairman



ELAINE JOHNSTON, Secretary

TB/ej

MONTANA SENATE
1995 LEGISLATURE
LOCAL GOVERNMENT COMMITTEE

ROLL CALL

DATE _____

March 21, 1995

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DORSEY & WHITNEY

A FIRM/FRANCISE INCLUDING PROFESSIONAL CORPORATIONS

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MAE RAN ELLINGSON

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MEMORANDUM

RE: HB 421 - Bill Revising and Clarifying Laws Relating to County Health Care Facilities

The purpose of this Memorandum is to explain briefly the proposed amendments contained in the above-described legislation. In general, the bill proposes expanding references to county "hospitals" to certain of the "health care facilities" defined in 50-5-101 and limiting part 23 of Title 7, chapter 34, which currently governs nursing homes and boarding homes, to boarding homes. The term "health care facility" will be defined in Section 7-34-2201, as amended. (Bracketed language would permit the cross-reference to cover any amendment of the definition in Section 50-5-501.) We initially thought of making the definition by reference Section 50-5-101, but concluded that it is perhaps too broad to get the consensus necessary to pass the legislation and too narrow in that it would not include offices of private physicians or dentists. It appears to us that in many communities the ability to finance private doctors offices may be critical to the operation and viability of a hospital. References below to conforming amendments changing references to "hospitals and nursing homes" to "health care facilities" would thus have the effect of expanding the scope of such sections to any health care facility.

The bill also repeals Section 7-34-2412, which authorizes financing or refinancing of hospital facilities only for those counties in which no hospital exists or in which the only existing hospital has been ordered closed or cannot be reasonably brought into compliance with applicable DHES standards. This provision, as recently interpreted by the Attorney General, precludes a county from issuing bonds to construct or remodel a nursing home or any other type of facility if a hospital already exists in one county, and further raises questions about the ability for a county to remodel an existing hospital. The other amendments are discussed by reference to the particular sections of the bill.

Section 1. Amendment of Section 7-6-2512. This section is amended to change references to hospitals, nursing homes and "hospital facilities" to health care

DORSEY & WHITNEY

RE: HB 421 - Bill Revising and Clarifying Laws
Relating to County Health Care Facilities

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facilities, consistent with the amendments made in Title 7, Chapter 34, Part 22. It is further amended to authorize the pledge of the 10-mill levy to the payment of bonds issued under Section 7-34-2411, if the voters have so approved.

Section 2. Amendment of Section 7-8-2102. This section is amended to change a reference to hospitals to health care facilities.

Section 3. Amendment of Section 7-8-2103. This section is amended to change a reference to hospitals to health care facilities.

Section 4. Amendment of Section 7-34-2201. This section is amended, as is the rest of Part 22, to refer to health care facility instead of hospital. It also defines "health care facility" as described above, and authorizes counties not only to erect, furnish and maintain health care facilities, but also expressly authorizes counties to expand and improve such facilities.

The amendment also clarifies that a county may provide only those health care services that are otherwise permitted by law to be furnished at the health care facility.

Section 5. Amendment of Section 7-34-2202. This section is amended to change a reference to hospitals to health care facilities. The authority to create a commission for the management of nursing homes is not currently granted in Part 23.

Section 6. Amendment of Section 7-34-2203. This section is amended to make conforming changes from hospital to health care and to remove references to indigent. This section's counterpart in Part 23, relating to nursing homes (Section 7-34-2302), is being repealed by this legislation. This section could arguably be repealed as well. The only remaining statement after the amendments is contained in Section 7-34-2201, as amended.

Section 7. Amendment of Section 7-34-2204. This section is amended to make conforming and clarifying changes from hospital to health care facilities. Under current law, the authorized terms of leases of county hospitals (Section 7-34-2204(2)(a) and of county nursing homes (Section 7-34-2303(3)) are inconsistent. This discrepancy causes difficulties for county hospital and nursing homes operating as a unified facility. The amendment would harmonize the limitation, using the current provision applicable to hospitals.

DORSEY & WHITNEY

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Relating to County Health Care Facilities

Page 3

Sections 8 and 9. Amendment of Sections 7-34-2301 and 7-34-2303. As mentioned above, the bill would amend Part 23 to eliminate references to nursing homes, which under the bill would be governed under Part 22 as a health care facility, leaving the reference to county boarding homes. The amendments would expand the definition of county boarding home for the aged to include a boarding home for the infirm. At present, neither "aged" or "infirm" are defined in Part 23.

The amendments clarify that boarding homes may not constitute a health-care facility (if they do, Part 22 is applicable), but boarding homes may be operated with any county health care facility. Section 7-34-2411 is amended (see discussion of Section 12 below) to permit the financing of county boarding homes on a revenue bond basis, without the support of a specific tax levy or the deficiency levy authorized by Section 7-34-2418.

Section 7-34-2303 is amended to conform the provisions for a lease of a county boarding home to those in Section 7-34-2204.

Sections 10 and 11. Amendment of Sections 7-34-2401 and 7-34-2402. These sections are amended to make conforming changes in references to hospital and nursing homes to health care facilities.

Section 12. Amendment of Section 7-34-2411. This section is amended to authorize a county to issue bonds to finance a health care facility and a boarding home, and to finance the acquisition, equipping, improving and expanding, as well as the construction, thereof. Conforming changes are made to implement the pledge authorized under Section 7-6-2615. (See discussion of Section 1 above.)

Section 13. Amendment of Section 7-34-2414. This section is amended to clarify that an election is required to authorize bonds issued under Section 7-34-2411 only if the 10-mill levy under Section 7-6-2615 or the deficiency levy under Section 7-34-2418 is pledged to the payment thereof. Thus, bonds may be secured by revenues of health care facilities and by the three mill levy authorized under Section 7-34-2417 without approval by the voters, as is currently permitted under 7-7-2501, but which would also be amended to provide this chapter the exclusive statute for county hospital financing.

Section 14 and 15. Amendment of Sections 7-34-2415 and 7-34-2416. These sections are being amended to reflect that 7-34-2412 is being repealed.

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Section 16. Amendment of Section 7-34-2417. This section is amended to clarify that the specific tax levies therein authorized may be levied if bonds have been issued and ordinary revenues are not expected to be sufficient to pay debt service thereon, rather than requiring that the bonds be delinquent or "cannot be paid" from such ordinary revenues. The amendments clarify that the bonds must be issued for a health care facility, instead of a county boarding home, so current law in this respect is preserved.

Section 17. Amendment of Section 7-34-2418. This section is amended to clarify that the deficiency levy therein authorized may be pledged only to bonds issued in respect of a health care facility, not a county boarding home, and only if approved by the voters. It thus preserves existing law. Subsection (3) is amended to clarify the circumstances to which the subsection is applicable.

Section 18 and 19. Amendment of Section 7-34-2501 and Section 53-2-802. These sections are amended to change a reference to hospital or nursing home to health care facility or boarding home.

Section 20. Repeal of Section 7-34-2412. This change is discussed in the second paragraph of this Memorandum.

Section 21. This section provides an immediate effective date.

The bill does not authorize a mortgage on county health care facilities or a county boarding home and does not make changes in the hospital district law. It also does not, apart from authorization of county boarding homes, authorize assisted living facilities, which we understand are proposed to be regulated by the Department of Health and Environmental Sciences under other legislation to be introduced next year.

Mike J. Meuli
P.O. Box 2
Dayton, MT 59914
(406) 849-5085

Re:HB 358

"Good" zoning is a balance between the negative effects of private property rights restrictions and the benefits of wise land use planning. I am a supporter of "good" zoning. Zoning that is balanced.

House Bill 358 provides for a balance, that is currently absent, in Montana's zoning statute. Under current law the scales weigh very heavily in favor of the smaller landowner. And this when the smaller landowner has little or nothing to lose in the zoning process while the neighboring agricultural landowners can and have been drastically effected by severe zoning restrictions. HB 358 does not take away small landowners right to protest but merely levels the field and encourages bargaining in good faith at the citizen level.

It is inherent in the process that any zoning takes away some private property rights. However done in a fair and reasonable manner good zoning can actually enhance property values therefore mitigating the loss of control.

When looking at the typical zoning proposal there are usually two groups of landowners involved. One is the small acreage owners and the other consists of owners of the adjoining agricultural properties. Typically the small landowners outnumber the larger landowners by a wide margin. Here is where the current law is out of balance. The small landowners come to the negotiating table knowing that if they don't like the final plan that they can raise the necessary 40% of the landowners to protest and stop the zoning proposal. They also come knowing the agricultural landowners have no power to back up their positions.

The Lake Mary Ronan zoning district in Lake County is an example of the zoning process working as it should and then being derailed. A cross section of landowners worked hard to come up with a fair proposal and did. Without getting into specifics there were several zones moving out from the lake with housing densities ranging from two acre lots to 40 acre lots with cluster development allowed. The Lake County General Plan allowed one acre density over the whole area. As you can see this zoning proposal increased the land restrictions greatly over the county general plan but was accepted as a reasonable compromise by most of the landowners. This proposal went through the hearing process and passed the Lake County Planning Board. However before the county commissioners took action a number of smaller landowners were convinced that they should protest in order to stop this proposal and put more severe restrictions on in a future zoning

plan. The protest was successful and the zoning has been stopped. It is obvious that the next proposal is not going to be balanced and the agricultural landowners are going to suffer significant loss of property values because of it.

There are other examples that are even more extreme. In at least two cases all land that was not already divided into lots was zoned to a 40 acre density with no allowances for clustering. Zoning of this nature is very detrimental to land quality. As a rancher, having received two recent conservation awards for leadership in weed control and range management, I speak with genuine concern for the land. If you travel western Montana and look at land that has been divided into 20 plus acre lots you will find nearly all of it either overgrazed or totally infested with noxious weeds. The very land that is supposed to be protected by zoning will ultimately lie useless and unproductive. Instead of allowing new residents to purchase a reasonable size lot, most zoning plans ultimately force people to own a larger acreage than they desire or are able to properly manage. This leads to less agricultural base, which with every ag dollar turning over seven times in the local communities and across the state amounts to a significant loss to Montana.

Current zoning trends amount to an end run around the subdivision law passed in the last legislative session. Despite subdivision regulations designed to stop them the 20+ acre tracts are forced to continue with the resulting waste of land, damage to surrounding agricultural producers from increased weed invasion, and significant loss of revenue to our state's economy due to lack of agricultural base.

As a rancher in western Montana who has no plans to subdivide, and would like to continue to ranch and provide access for hunting, hiking and other recreation for Montana sportsman, I am concerned that the current law is pushing me the other direction. It is apparent that the only way to assure that my property rights and land values are not zoned away is to be the first one in my area to subdivide.

We need zoning as it allows people to get together and plan for the future of their area. However the current zoning law is unfair to the people most effected by it and needs the balance provided in House Bill 358. With this legislation both parties would come to the table to bargain in good faith and the decision would be left in the hands of the people where it needs to be. Ultimately good land use planning will prevail with all parties being treated fairly.

I thank you for you time and your consideration of this bill.

Sincerely,

Mike J. Meuli



Lake County Courthouse

(406) 883-8211

LAKE COUNTY

108 4th Ave. E.

Polson, Montana 59860

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 3

DATE 3-21-95

BILL NO. HB 358

March 15, 1995

Senate Local Government Committee
Tom Beck, Chairman
Room 405
Capitol Station
Helena, MT. 59620

Re: House Bill #358

Mr. Chairman and members of the Senate Local Government Committee,

My name is Forrest Sanderson, and I stand before you today representing the Lake County Board of County Commissioners and the Lake County Planning Department to voice our support for H.B. #358. Our support for this legislation is based on our planning and zoning philosophy that land use regulation, in the form of zoning, is a consensus driven process, rather than by special interest.

One of the largest obstacles to planning and zoning initiatives in a rural setting is convincing owners of large portions of a district to come to the table and discuss these ideas. Admittedly, a sizeable portion of this problem is the alien nature of these concepts to many owners of agricultural lands in rural Montana. It is our opinion, that the main reasons that owners of large acreage's balk at the idea of planning and zoning is that no one can assure them that they will be afforded adequate protection, under law, from the whims of local government or their neighbors.

It is our firm belief, that, as a result of education and the pressures resulting from change, we can overcome the suspicions surrounding planning and zoning. However, without a change to the current zoning protest language in Montana Law, we can not assure any group of land owners that they will receive equitable treatment in the zoning adoption process.

The real travesty in this scenario is that rules can be twisted and decisions affected by forty percent (40%) of the freeholders, while the rights, wants and expectations of the persons that own most of the affected lands within the proposed district could potentially be ignored. It appears logical to us that in the spirit of equity that if we are willing to protect the minority of freeholders we should also make provisions to protect the individuals that own the majority of the property within a proposed district.

We have heard several opponents of HB #358, many of whom we respect both professionally and personally, speak about affects of this legislation. I have listed some of these concerns and my response below:

CONCERN: By adopting HB #358 we move away from the one person, one vote concept.

ANSWER: Unless we have grossly misinterpreted the language and intent of HB #358, the 40% freeholder clause will remain intact, which covers one person, one vote, while providing some measure of equity to owners of the majority of property within a proposed district.

CONCERN: HB #358 does not do what you want. Protect agricultural ownerships, their rights and expectations in the planning and zoning process.

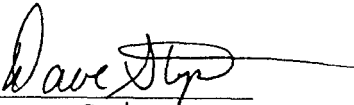
ANSWER: If HB #358 is not the tool to accomplish this goal, what will? To date none of these outstanding professional persons has been able to provide us with an acceptable solution.

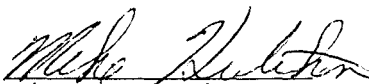
CONCERN: HB #358 is a land barons bill.

ANSWER: Typically, all large blocks of land are the target of exclusionary zoning, it has been our experience that more often than not, the owners of these properties are the Mom and Pop farm operations not land barons. For this reason we believe HB #358 should be referred to as the land owners parity bill.


For the reasons contained in this testimony and the philosophy of Lake County in the planning and zoning process, the Lake County Board of Commissioners and I as a professional planner encourage your favorable consideration of HB #358. Thank you.

Sincerely,
Lake County Board of County Commissioners


Dave Stipe
Chairman


Mike Hutchin
Member


Barry Baker
Member


Forrest Sanderson
Senior Planner

JENSEN RANCH

THOROUGHBRED HORSES — BUILDING ROCK
WHITEFACE CATTLE — TRAILER PARK
RANCH EQUIPMENT

DONALD & CARRIE JENSEN

HWY 93 ELMO, MONTANA 59915 (406) 849-5603

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 4

DATE 3-21-95

BILL NO. HB 358

Senate Local Government Committee
Montana State Senate
Helena, MT 59620

Dear Senators:

As cattle ranchers we ask that you support HB358 to better enable us to be good stewards of our ranch lands.

Presently the current law allows small landowners to bring about zoning without the larger land owners being notified. Recently we had the experience of accidentally finding that approximately a 500 acre portion of our ranch was included in zoning that would prohibit us from having even a duplex on 500 acres.* Closed meetings were being held by a group of small lot owners. If we were ever forced to sell these acres, the value would be diminished.

With larger landowner input, duplexes -- triplexes were allowed condoleona
We need to only look over the fence of our home base to see 10, 20 to 40 acre tracts infested almost solidly with knapweed where once there was 600 acres of good grazing. This is common where low density zoning results in people owning more than they can care for or desire.

The protest provision allowing owners of 50% of the land within a proposed zoning district to protest and stop an unfavorable zoning proposal will have the immediate effect of encouraging the small lot owners to include larger land owners for bargaining in good faith at the citizen level--more equitable zoning will result without protests needing to be generated.

We have a 3rd generation ranch operation and ask that you bring balance to the zoning statue by passing HB358.

Sincerely,

Donald Jensen
Carrie Jensen

March 20, 1995

To: Senate Local Government Committee
Senator Tom Beck, Chairman

Subject: House Bill 358

I am Don Spivey, retired businessman and member of the Whitefish City/County Planning Board. Today I am representing myself, the Whitefish Planning Board and Citizens For A Better Flathead, a group of several hundred interested citizens. We are opposed to HB 358 as currently submitted.

Our single concern is with the addition of the provision adding 50% of the titled property ownership as an overturn criteria. Although we recognize the seeming inequity between the "one man, one vote" and the size of property ownership we believe this is an inappropriate solution.

In our county and more specifically in our Whitefish land-use jurisdiction, we are in the process of updating our Master Plan (3rd update) and moving ahead with zoning the remainder of the unzoned portions of our district in accordance with the updated Master Plan. We are doing this under the strongest of public mandates. The reasons for moving ahead with further zoning is to provide the tools necessary to implement the updated Plan, as defined and allowed in the Montana Land-use Statutes.

Our problem (challenge) is to achieve a super majority support for the characteristics of any proposed Zoning District. Given this proposed legislation we have instances today where 3-4 large property owners, be they farmers, developers or private timber companies could overturn even a 75% supporting majority. The reasons for large property owner opposition in our area has always fallen into 2 categories:

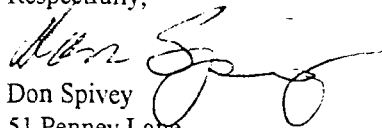
1. Just don't want Zoning
2. They want to do something with the property that the proposed zoning would not support. Those desires are never to preserve the farm or open space but rather to subdivide in some 'unsupported' manner.

With every proposed Zoning District action we conduct several neighborhood meetings and several public hearings to attempt to satisfy as many of the land owners as possible. The seeming inequity between numbers of owners and size of property ownership is always there. Although I believe a super majority of owners is the correct solution some changes to the proposed legislation could provide mediation of the two views, to wit:

1. The 50% could be increased to 70% to dilute the influence of the few over the many.
2. Property owners of filed and deeded parcels could get a vote for each parcel they own thus allowing owner of multiple parcels to have larger representation.

If some change of the type discussed above or simply removing the property size qualifier is not made we remain opposed to HB 358 as it will 'effectively' cripple our capability to serve the public fairly, and we will severely damage the 'one man-one vote' basis of our current form of government.

Respectfully,



Don Spivey
51 Penney Lane
Columbia Falls, MT
257-0724

DATE 3-21-95

SENATE COMMITTEE ON LOCAL GOVERNMENT

BILLS BEING HEARD TODAY: HB 358 HB 421

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Check One

Name	Representing	Bill No.	Support	Oppose
DON SPIDLEY	SELF/PLANNED PARENTHOOD	358		✓
FORREST SANDERSON	LAKE COUNTY	358	✓	
Carrie M Jensen	LAKE SELF	358	✓	
DONALD JENSEN	SELF	358	✓	
Paul Johnson	Montana For Healthy Future	358		✓
Gordon Morris	MACO	421	✓	
Bob Olsen	MT Hospital Assoc	421	✓	
Lance Clark	MT ASSN REALTORS	358	✓	
Mike Meuli	Self	358	✓	
Don Youngberg	MT Farm Bureau	358	✓	
Shirley Ferguson	MT Cattlemen	358	✓	
Jim Feltman	MT. Stockgrowers	358	✓	
Gene Huntington	Quin Bonwood	421	✓	
J.V. Bennett	MontPIRG	358		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

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Check One

Name	Representing	Bill No.	Support	Oppose
Melissa Case	Nontoxics Against Toxic Burning	352		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

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Check One

Name	Representing	Bill No.	Support	Oppose
Steve Browning	Mt Hosp Assn	427		
Ed Lange	NPRC	358		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY