

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN TOM BECK, on March 30, 1995, at 8:00 a.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: Sen. Sharon Estrada

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 604
Executive Action:

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

HEARING ON HB 604

Opening Statement by Sponsor:

REP. WILLIAM BOHARSKI, HD 79, Kalispell, presented HB 604 parts of which have been seen in a similar bill of SEN. JEFF WELDON with some minor changes. At the beginning of the session he put a bill draft in to generally revise local government law. One of the reasons for this bill was due to a problem in the Flathead where things have happened by different appointed boards that the commissioners did not like. Because of statutes, once the board is in place, the decision cannot be made and people do not have a

recourse for an appointed board member. Sometimes, elected officials have the ability to hide behind the appointed boards. The situation is comparable to the legislature having a single committee and giving them the authority to make policy decisions without the whole legislature having the authority to over-ride. That is basically what the whole first section of HB 604 does. Language that was thought to be controversial but has not been is on page 4 line 7 through 13 on the accountability section. Three boards, the library, health and planning board which are created statutorily are left alone and the other boards will stay in place of the statute for a year and then will have the option of doing what is in HB 604. The second half of the bill is a list of notification sections. **REP. BOHARSKI** passed out a sheet that shows what sections apply to what (**EXHIBIT 1**). There are all these things to do public notice on, it gets cumbersome as each notice needs to be done in a different way. Some that were rather nocuous and it was not a big deal to change them and others were left according to statute. The last section which includes the salary bill, the Consumer Price Index was taken out of those who were missed. The Local Government Executive Action Committee section had a technical amendment including annexation into the bill. **REP. BOHARSKI** stated that **REP. MATT BRANARD** presented an amendment to the bill and there was not a full blown hearing on the amendment. The effort to strip the amendment on the House floor failed. This is a fairness issue and what could happen is that streets and rivers may be annexed where no one has the right to protest the annexation which could wholly surrounded an area. Once wholly surrounded, the people inside may be annexed according to the wholly surrounded category, and have no right to protest. **REP. BOHARSKI** offered an amendment dealing with section 12 (**EXHIBIT 2**). The amendment having not had a public hearing was left on the bill to give the public an opportunity to comment. Many of the House members voted for the amendment even though they were not in agreement so that it would receive a public hearing.

Proponents' Testimony:

REP. MATT BRANARD, Missoula, stated that the matter he tried to address in HB 604 came to his attention over a week ago. He passed out some maps showing the reserve street annexation (**EXHIBIT 3**). The annexation of reserve street is contiguous to the city and extended up the middle of the street and he referred to the highlighted area of **EXHIBIT 3**. He pointed out that there was nobody in the annexed area to protest. The laws enacted set up for cities and counties to interact, have been stretched and distorted in this case. If this is allowed to stand to enable any city to annex from a point of being contiguous along the street and make turns to enclose a particular section of land without the right of protest should not be allowed. One of the disagreements with this is that he avoided the process of having a hearing in the House. He did what he could when he had the information in hand. His performance would have been less if he had not tried to address the problem when he did. He consulted

Mr. Greg Petesch in Legislative Council to make sure what he was doing would fit into the scope of HB 604 otherwise the amendment would not have gone on. He referred to **EXHIBIT 3** showing the bogus wholly surrounded is addressed in his amendment and the necessary language is included to really implement what contiguous annexation and wholly surrounded annexation is really about.

Gordon Morris, Director, Montana Association of Counties (MACO), gave technical support for HB 604 with the exception of section 12 and 13 as his remarks will not include those two sections. Technically, the bill can best be presented to the committee with the examination and action of SB 377 which came before the committee, passed and is currently sitting in House Local Government in lieu of HB 604. In looking at HB 604, there are only two significant additions to SB 377. **REP. BOHARSKI** brings in the health and planning boards. The original bill included library boards which have been amended out. The sections dealing with the health and planning boards are in sections 85 through 88 and section 90. In section 1 line 18 subsections a, b and c, there is new language different from that in SB 377. This seems to be taking away the authority of the boards that would be appointed by local government officials and preempting them at every turn if they did something objectionable. The same concern lies in section 1, subsection 17. The most significant thing the bill does is to clarify all of the statutes in title seven by way of the publication and notice requirements. All of these publication and notification sections were coordinated with the notice and publication section in 7-1-2121 and the comparable section for municipalities. All notice provisions will conform with 7-1-2121 which is good as there will not be any confusion as to compliance. One additional consideration added to the bill at MACO's request is section 84 dealing with coordinating salaries for probation officers with other title 7 salary provisions. There are some other housekeeping changes in HB 604 to make it consistent with SB 377. The bill is in good shape but he urged taking out section 12 and 13 which are inappropriate for the bill.

Howard Gipe, Flathead County Commissioner, stated that he worked with **REP. BOHARSKI** on the bill. He urged support of the bill but has some concern about the amendments.

Jim Loftus, MT Fire District Association, stated that they generally support the bill but on section 80 referring to fire districts, they have a problem as far as notification. This is a good bill and does not hurt the budget.

Chris Racicot, MT Building Industry Assoc., gave his written testimony in support of HB 604 after the hearing as he was unable to attend due to another committee hearing (**EXHIBIT 7**).

Opponents' Testimony:

Alec Hanson, MT League of Cities and Towns, stated that there has been very long, arguious, complicated, contentious debate on the subject of annexation this session. The cities were prepared to live with the decisions on annexation set by the legislature but when the amendments of section 12 and 13 were put in HB 604, there was no notice, no hearing, no questions asked and the amendments went through the House like a ship in the night. The reason for all the people from the cities present is that there are serious legitimate concerns about the amendments. These are very radical changes in the annexation laws of the state of Montana of which many go back to 1905. They affect both the wholly surrounded and the contiguous methods of annexation. People who want to change the annexation laws have had six prior runs at the issue and it is surprising that a bill this late in the legislature would make such radical changes. There has been some discussion that the city of Missoula annexed streets where there was no property along the street. Reserve street has a great deal of commercial property and were annexed with out protest because with the old law, non-resident free holders did not have the right to protest. **SEN. HARP'S** bill, SB 52, changed this so that commercial properties now have the right of protest. **Mr. Hanson** stated he was pleased to be having a hearing on the annexation issue as it is very complicated, controversial and will have a tremendous effect on the future development of cities and towns in the state of Montana. **REP. BRANARD** is from the area and has concerns that the cities of Montana are going to grow and they need to be able to expand in an orderly and planned fashion that is good for everyone.

Daniel Kemmis, Mayor of Missoula, stated that what has happened to HB 604 is so blatantly unconstitutional that the sections added will not become part of Montana law. The question is whether this issue will be solved in the committee, the Governor's Office, or the Supreme Court. There is a bicameral legislature to hear and consider everything twice and the Constitution of Montana provides that a bill cannot be changed into an entirely different bill in the middle of the process without giving people the chance to testify twice on the matter. There is a difference between an annexation bill and a bill dealing with boards and commissions. This bill when introduced was a boards and commissions bill and became an annexation bill after the House hearing with out a chance for public testimony. If this bill were to be signed by the Governor, they would have no choice but to challenge it in court. Had they had the chance to testify in the House, the annexation portion would have been stopped. **Mr. Kemmis** showed the committee a satellight photo of the Missoula and pointed out an area that is not part of Missoula but is an urbanized area. Reserve street was a major reconstruction project that took years to finish. With the infrastructure, the urbanization of the area increased substantially. All of the area along reserve street became commercial and required urban and municipal services. He showed

the committee a map of the reserve street area and what surrounding it is in the city. There is a very small area where there is a street, right-of-way, and on both sides a corn field. The amendments in HB 604 would say that the area like the corn field would be treated different. The reason for the wholly surround law is that those people are using municipal services. This bill should not be before the committee and he urged the committee take out the amendments.

Glen Neier, Kalispell City Attorney, stated that HB 604 did not have anything wrong as it was intended to make all the notice provisions the same. However, sections 12 and 13 create some problems. The Montana Supreme Court has already decided in *Calvery vs. the City of Great Falls* that the term wholly surrounded means that a tract of land where all lands on the side of the tract are within the city and it is impossible to reach the tract with out crossing such territory, the tract is wholly surrounded. There has been a similar situation in Kalispell around Grandview Drive. How the bill proceeded through the House seems that the bill has gone from a general revision law to special legislation. If the bill is amended to take section 12 and 13 out in committee and put back in on the floor, the whole bill should be taken out.

Larry Gallagher, City of Kalispell, used a map to show Kalispell's definition of wholly surrounded. The map showed a dark area representing the city of Kalispell with a population of 12,000 and a lighter area surrounding the city with a population of 26,000. The annexation laws in Montana are among the most difficult in the country. The annexation laws today work very well if the intent is to make it very difficult for cities to annex areas adjacent to the city. Representatives and Senators from Kalispell promised the city of Kalispell they would get even for the cities attempts to annex areas. The result was SB 52 and he urged the committee to seriously consider the entire bill as not worthy for consideration with the amendments as they are presently written. The City of Kalispell strongly opposes the changes to the amendments in statute.

Dennis Klukan, Flathead Public Health Officer, read a letter and presented other letters to be submitted into the record (**EXHIBIT 4**).

Jim Wysocki, City of Bozeman, stated that initially he was on the Governor's Task Force dealing with these issues. In terms of notices and requirements for certain boards lined out this was a good idea. It is hard to understand how sections 12 and 13 got into the bill. In regards to section 13, he asked a planner, historical preservation person and an attorney to draw what was stated in subsection one of 7-2-4704 defining antiguous. In each instance, he received a different drawing. This is not only not the place for annexation to be but there needs to be further discussion as to what is being talked about relating to definitions. Some stretching of things on one side or the other

is understandable relating to wholly surrounding. This may not be the time to deal with this issue as there has not been enough time to address the issue in either House. Someone has stretched too far and it may need to be solved in court rather than stuffing legislation.

Anne Hedges, MT, Environmental Information Center, stated that she is concerned with the annexation portion of the bill and that it is crucial to protect aquifers. Section 90 regarding planning boards currently can be removed for just cause. This allows a governing body to get rid of a planning board entirely with out just cause. Planning boards according to statute are there for the sake of efficiency and economy in the process of community development, shall prepare and propose a master plan for the jurisdictional area and must hold public hearing in regard to the master plan. The public has the opportunity to be heard twice before planning is done. If the governing body gets rid of the planning board, how exactly do we get master plans? The public is cut out of the process and half of their ability to participate is gone. Getting rid of a body with out holding a public hearing as planning boards are very important.

Bill Verwolf, City of Helena, opposed HB 604 because of section 12 and 13. Section 12 deals with wholly surrounded property. Section 13 deals with property being annexed by provision of services and provides for a protest process as well as not requiring wholly surrounded in the process. The definition is added to section 13 the same as it is in section 12 meaning you could only annex those properties separated by a street or road even at the request of those property owners. This has been done too rapidly with out consideration of the consequences. Annexation has been debated for a number of years and when changes are made it takes a great deal of discussion. They are greatly opposed to sections 12 and 13. He questioned the validity of HB 604 as it was considered a revenue bill but there is nothing in the bill that makes it a revenue bill.

Joe Menicucci, City Manager, Belgrade, submitted his written testimony and noted that Belgrade has only annexed one wholly surrounded property in the last 20 years. To eliminate that possibility is a great disservice to the taxpayers in communities through out Montana who continue to provide park recreation, police protection and street services for many contiguous and wholly surrounded areas (EXHIBIT 5).

James Kembel, City of Billings, presented his written testimony at the end of the hearing as he was required to be at another committee (EXHIBIT 6).

Questions From Committee Members and Responses:

SEN. JEFF WELDON asked REP. BOHARSKI how their two bills are so identical? REP. BOHARSKI said that they are trying to do the same thing. His original thought was to eliminate every single

board and commission that is not Constitutionally required and dump everything into the laps of the county commissioners and city council.

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

REP. BOHARSKI noted that Bart Campbell drafted HB 604 as well as SB 377.

SEN. WELDON asked in what way is HB 604 a revenue bill? REP. BOHARSKI stated that a number of different things that needed to be corrected. One problem was with impact fees in which HB 473 has perhaps addressed the problem. When Mr. Petesch was given the bill, line 11 and 12 in the title "clarifying fees" determined HB 604 to be a revenue bill as those sections were in the bill. When those sections were removed, since the bill was introduced as a revenue bill it still remained its status as a revenue bill.

SEN. WELDON asked if the House Rules Committee addressed this bill prior to transmittal? REP. BOHARSKI replied that usually the Rules will be on a political and the House will refer to the Legislative Council.

SEN. WELDON asked Mayor Kemmis to clarify that there was only a small section of reserve street that was annexed in a way to only include a street? Mayor Kemmis responded that the situation does not include a long strip of street. Reserve street was annexed with the concurrence of the state Department of Transportation. This was done at one time to clarify who had jurisdiction. Following that the commercial properties on each side have been annexed.

SEN. WELDON asked if the original annexation only included the street and the right-of-way and no commercial or residential property? Mayor Kemmis stated that was correct and was done that way to avoid small spot annexations.

SEN. WELDON asked if the subsequent annexation of commercial property adjacent to reserve street was not accomplished to the wholly surrounding? Mayor Kemmis said that was correct.

SEN. WELDON asked if SB 52 would have been in place at the time, if the commercial properties could have been able to protest the subsequent annexation? Mayor Kemmis said that was correct.

SEN. WELDON asked how frequently in the last several years has the City of Missoula used the wholly surround method of annexation? Mayor Kemmis replied that he was aware of only two or three instances.

SEN. WELDON asked how many methods of annexation are available? Mayor Kemmis answered that depending on the circumstances there are four total methods.

SEN. WELDON asked **Mayor Kemmis** to respond to the idea that the issue with the wholly surround method that causes problems is the perception of inability to have a meaningful protest. **Mayor Kemmis** said that this gets into the whole theory of annexation. The distinction between those who are wholly surrounded and those who are contiguous is that it is conceivable that those who are contiguous can live without depending on municipal services. Wholly surrounded cannot live their lives without drawing on municipal services but can live without paying for municipal services.

SEN. WELDON asked if they are always going to have people from outside the taxable reach of the city who use the city services? Shouldn't they look at other methods of reimbursing cities for services other than just increasing the city boundaries? **Mayor Kemmis** said that this goes into areas that should not be discussed such as a sales tax. This is a justification for not weakening annexation powers any further.

SEN. DELWYN GAGE asked if **REP. BOHARSKI** had any objection to putting language in the bill saying valid parts remain if any parts are determined invalid? **REP. BOHARSKI** said he thought about that but everyone has had someone throw a part into their bill that is questionable if they want it there. A severability clause may be a good idea because there are other things in HB 604 that should not die.

SEN. GAGE stated that courts should not be a policy setting body, the legislature is where these things should be solved and courts should say if they are constitutional and being interpreted according to legislative intent. He asked **REP. BOHARSKI** to respond to the statement. **REP. BOHARSKI** said he has felt that way all along and would like to see more local control. The comparisons between the state and federal government is not the same comparison you can make between municipalities and the state of Montana. The state was created by us and the federal government was created by the states so you must be careful when flipping those around. It is very clear what they are doing with HB 604 and there was nothing underhanded attempted in this bill. He stated he knew the library, health and planning boards do not want to be covered by this but who is going to be held accountable? You cannot un-elect those people or get rid of them if they do something wrong. They are boards that have been created over the years and there have been problems over the years. It is amazing that you can't hold elected officials accountable. From a state level **REP. BOHARSKI** expressed frustration with the agency people in this state because they are unaccountable. Not all are bad but they make decisions that need to be overturned by someone who is accountable to the people. The argument about censorship on library boards is absurd. Why should a board who is not accountable to anyone have the ability to sensor a book?

SEN. GAGE asked **REP. BOHARSKI** if he had any problems with **REP. BRANARDS** amendment. **REP. BOHARSKI** stated that he drafted the amendment.

SEN. DON HARGROVE asked if there was an urgency in sections 12 and 13 that couldn't be dealt with over a couple of years? **REP. BRANARD** responded that you have to attend to problems when you see them and in order to address a lot of the problems with urbanization in Montana, a comprehensive look is needed particularly in western Montana. This problem will keep arising until there is some kind of city, county government. There is a certain amount of urgency in the fact that during all the testimony, nobody gave a good definition of what contiguous should mean and how a roadway should be defined as a boundary. Laws are established for the interaction on the local level and then a local government begins to stretch these laws. People do not have the money to fight the municipalities so they come to the legislature to fix the problem. If there is any way to clarify the language of contiguous and wholly surround it should be done and will not hurt the cities.

SEN. HARGROVE asked **Mr. Wysocki** what some of the confusions are in regards to contiguous and if there is an area like that around Valley Unit in Bozeman that is still not annexed? **Mr. Wysocki** said that they have not annexed any wholly surrounded areas adjacent to the city of Bozeman for at least over 11 years. A few sessions ago they tried to be able to get a change to annex areas that were a little larger than two acres and where not successful. As far as wholly surrounded is concerned and the extension of the street, it is unamended. **REP. BRANARD'S** comment relating to free holders or not, is gone with SB 52.

SEN. DOROTHY ECK asked on page 3, lines 29 and 30 if there was a reason that was by the county commissioner and not the governing body? Is it not going to apply to cities? **REP. BOHARSKI** said that when he did the original draft request, to keep the governing body, it would be a good idea for either the county or city to draft a resolution as to the reasons and conditions to be used when removing members from a board. Those lines do not look like what was intended.

SEN. ECK expressed concern of language that indicates they can remove a person at will. The sponsors indication of a process is important but is not in the bill. She asked **Mr. Morris** to respond to what the current practice is to appoint and remove board members. **Mr. Morris** said that there is no way to remove a board member. **SEN. ECK** asked if attendance could be a factor? **Mr. Morris** said that he did not know of an existing board that has an attendance criteria as a means for attaining status.

SEN. ECK said that in these cases there needs to be some criteria as to what cause could be used. **Mr. Morris** said that she raised a very good point in terms of section 15. It makes sense that the governing body should establish grounds for cause by resolution.

SEN. LYNCH asked if the difference between HB 604 and SB 377 was that the library, health and planning board were included? **REP. BOHARSKI** said that the language on page 3 lines 4 through 6 in HB 604 were not in SB 377 dealing with the final decision being by the local government.

SEN. LYNCH asked **REP. BOHARSKI** how adamant he is on keeping the health and planning boards if this bill goes to conference committee? **REP. BOHARSKI** said that the three boards he has had the most difficulty with are the planning, health and park board. It is a matter of complete broad policy that the boards are advisory to the elected official and they should be responsible and accountable to the elected officials. There is debate on the library boards due to censorship and has come out of the bill. He does not want the boards out of the bill because he wants the elected officials to be held accountable.

SEN. LYNCH asked **REP. BOHARSKI** if he would be surprised if section 12 and 13 came out? **REP. BOHARSKI** said he would not be surprised but the language in the amendment he presented allows for a stop gap for the next two years which is a reasonable request. The House tried twice to take these sections out of the bill but both failed.

SEN. ECK asked if at this time with the planning board both the city and county must approve the recommendations? **Mayor Kemmis** replied that it depends on who's jurisdiction in which the project lies. If it is in both jurisdictions both must approve the recommendations.

SEN. ECK asked **Mayor Kemmis** about the language in applying to the planning board and board of health which parts he finds objectionable? **Mayor Kemmis** said that he has not looked at that part of the bill.

SEN. WELDON asked **Mayor Kemmis** his reaction to the compromise amendment requested by **REP. BRANARD**? **Mayor Kemmis** said that he has a couple of concerns in regard to section 12 and 13. There has been one hearing but there was no notice on the amendment. The amendment is an absolute invitation to even further litigation. Not only is it unconstitutional, but it is not understandable that an area has been wholly surrounded because of a road. This is a solution in search of a problem. All these amendments amount to is an effort to stop the cities from addressing the problems on the ground, in the ground.

Closing by Sponsor:

REP. BOHARSKI stated that the way the bill was drafted it is fine. Certainly, going through these processes it is always heard that you are going to get sued but the legislature makes the policies not the courts. Annexation is a problem and it is very strange that as annexation moves out, there are services to offer people and if 50% do not protest it is all fine. If you

make a comparison, the legislature does not create autonomous bodies, why should they be created in local communities? They are a problem and the legislature created them with out being able to undo what was done. He wants to see an agreement reached and save all the good parts of the bill.

Discussion on HB 605

SEN. GAGE asked the committee if there was any consideration by the committee to put a funding mechanism in the bill and putting the programs on the county level?

SEN. LYNCH said that he was not interested in opening that up but in the interim it could be looked at to include abandoned cars and use matching money.

SEN. WELDON said that he agreed with SEN. LYNCH.

SEN. HARGROVE said that it seems like a good approach but it is a good program now that there is not an urgency to mess with it.

SEN. GAGE said he thinks it makes sense to do the program in the counties instead of letting the state syphoning off the money. The fees may need to be lowered so we're not feeding the general fund or give that money the funding to the counties and let them make the decisions.

SEN. LYNCH said in the mean time counties better think about how they are going to get together collectively to get the cars out of here.

ADJOURNMENT

Adjournment: 10:15 a.m.


SEN. TOM BECK, Chairman


ELAINE JOHNSTON, Secretary

TB/ej

3-36-95

SEN:1995
wp.rollcall.man
CS-09

Sec. ~~64~~ notice to create new county

Sec. ~~75~~ creation of new county

Sec. ~~86~~ removal of county seat

Sec. ~~97~~ incorporation of new municipalities

Sec. ~~108~~ election of new municip. officers

Sec. ~~11, 12, 13~~ extending boundaries of city or town

Sec. ~~14, 15~~ annexation/exclusion of land

Sec. ~~16, 17, 18~~ alternate forms of government -- election

Sec. ~~19~~ vacating street

Sec. ~~20~~ incorporating technical codes

Sec. ~~21, 22, 23, 24, 25, 26~~ local gov't budgets and emergency appropriations

Sec. ~~28~~ sale of timber crops

Sec. ~~29, 30~~ business improvement districts

Sec. ~~31, 32~~ rural improvement districts

Sec. ~~33, 34, 35, 36~~ Special improvement districts

Sec. ~~37, 38~~ lighting districts

Sec. ~~39, 40, 41~~ street improvement districts

Sec. ~~42~~ fire hydrant district

Sec. 43, 44 metropolitan sewer district

Sec. 45, 46 solid waste management district

Sec. 49, 50, 51 water and sewer districts

Sec. 52, 54 urban transportation district

Sec. 55 port authorities

Sec. 56, 57, 58, 59 abandoning streets and roads and eminent domain

Sec. 60, 61 urban renewal housing authorities

Sec. 63 acquisition of land

Sec. 67 dissolution of county park district

Sec. 72 weed district

Sec. 77 rodent control

Sec. 80 fire district

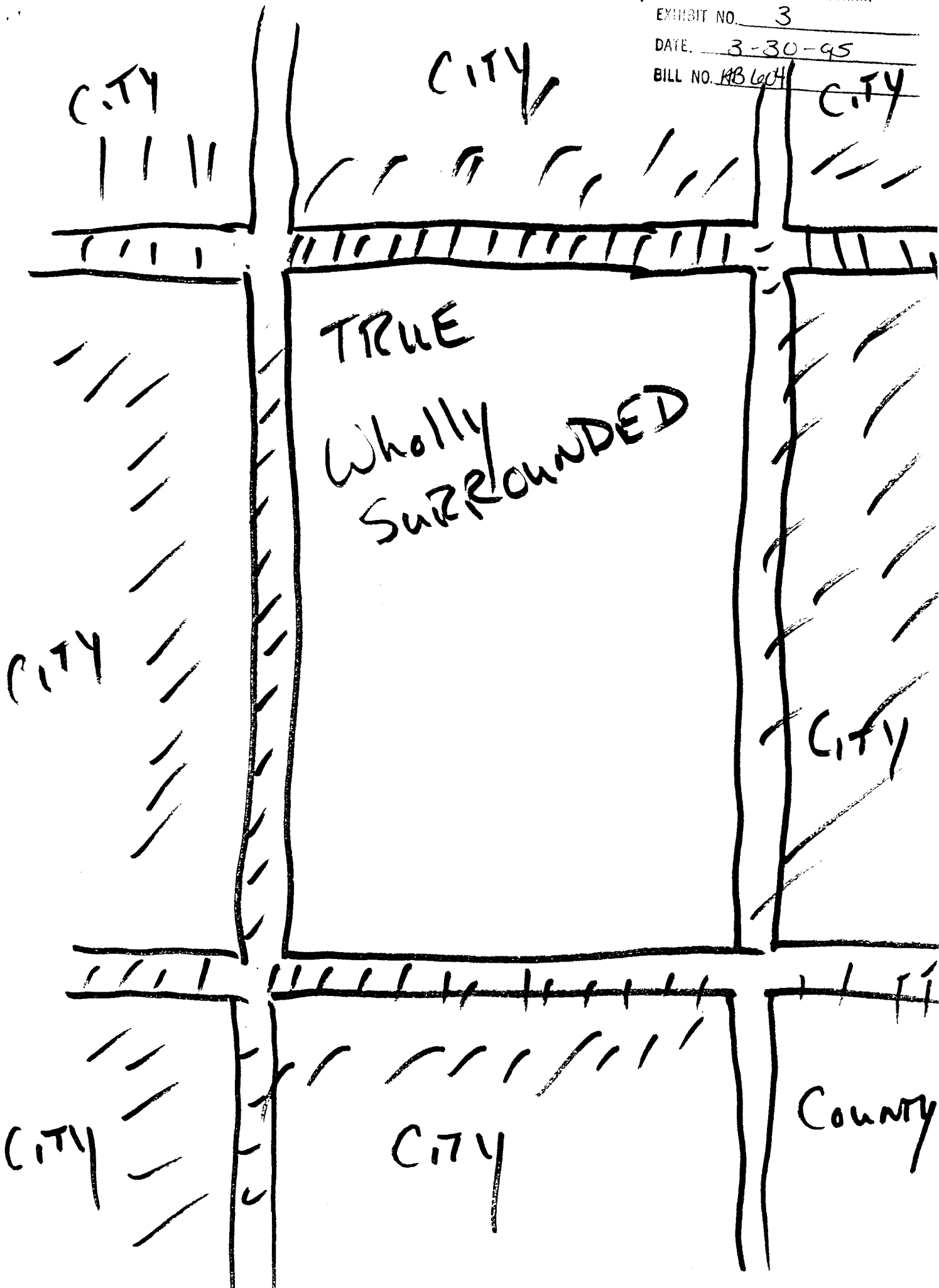
Sec. 83 cemetery district

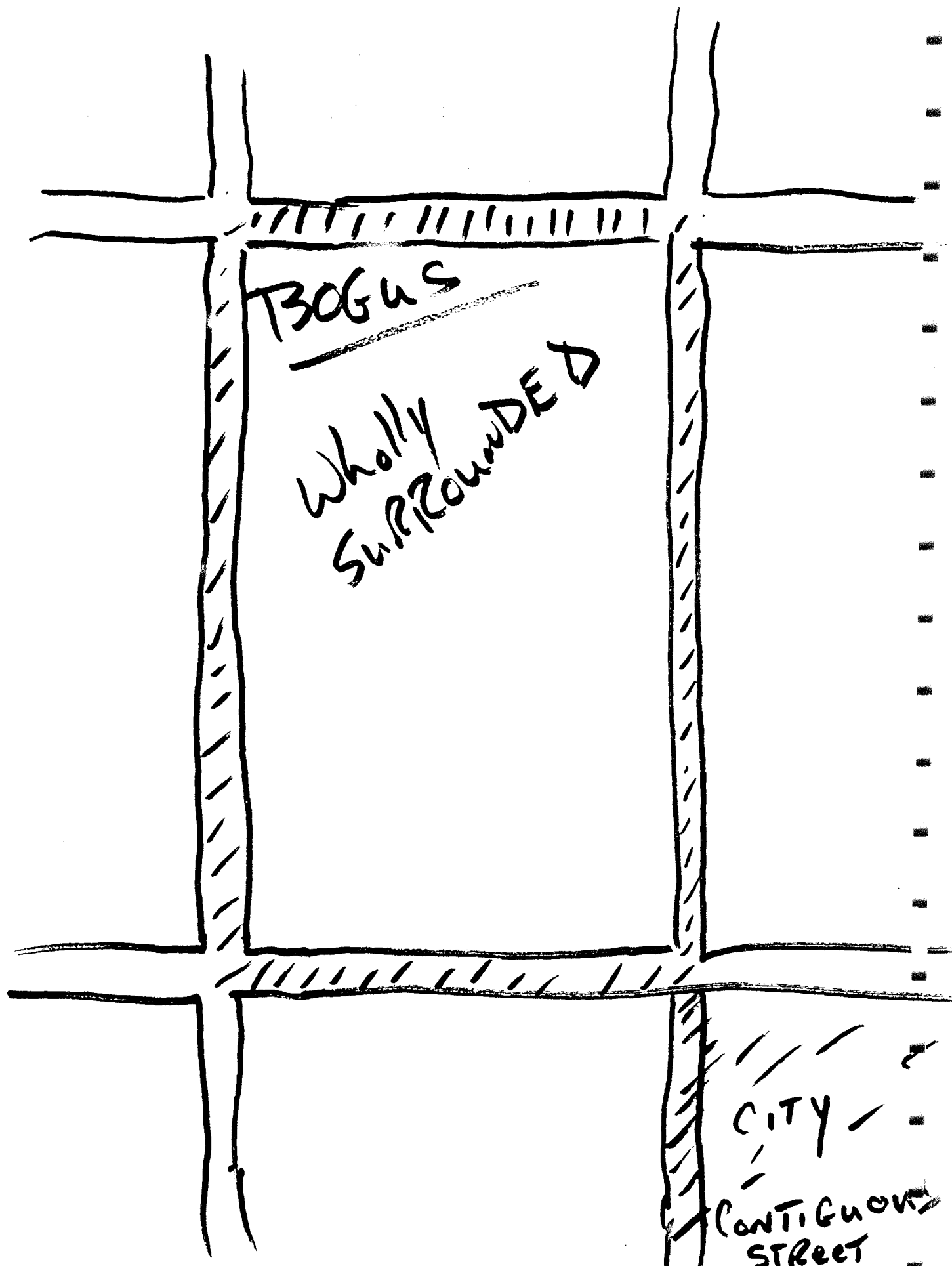
Amendments to House Bill No. 604
Second Reading CopyDATE 3-30-95
BILL NO. HB 604Requested by Representative Brainard
For the Committee of the WholePrepared by Greg Petesch
March 24, 1995

1. Title, line 18.
Following: line 17
Insert: "7-2-4502,"

2. Page 9, line 22.
Insert: "Section 12. Section 7-2-4502, MCA, is amended to read:
"7-2-4502. Protest not available -- exception. (1) Such
Except as provided in subsection (2), wholly surrounded land
shall may be annexed, if so resolved by the governing body of the
city, whether or not a majority of the resident freeholders of
the land to be annexed object.
(2) If the area proposed to be annexed under this part is
wholly surrounded because of the annexation of a street, roadway,
right-of-way, creek, or river or of public land, the resident
freeholders of the wholly surrounded area retain the right to
protest the annexation as provided in part 43 of this chapter."
Renumber: subsequent sections

3. Page 51, line 5.
Strike: "91"
Insert: "92"





BOGUS

Wholly SURROUNDED

CITY

CONTIGUOUS
STREET

A RESOLUTION EXTENDING THE CORPORATE LIMITS OF THE CITY OF MISSOULA, MONTANA, TO INCORPORATE WITHIN THE BOUNDARIES OF THE CITY OF MISSOULA CERTAIN TRACTS OF LAND WHICH ARE CONTIGUOUS TO THE CORPORATE LIMITS OF THE CITY OF MISSOULA. (RESERVE STREET, SOUTH AVENUE TO MULLAN ROAD)

DESCRIPTION - RESERVE STREET (South Avenue to S. 3rd St. W.)

All that portion of Reserve Street right-of-way as shown in the Highway Map Book of the Missoula County Clerk and Recorder's Office, Missoula, Montana labeled "RIGHT OF WAY PLAN OF FEDERAL AID PROJECT NO. M 8103(3) R/W, RESERVE STREET, U.S. 93 TO 3RD STREET - MISSOULA" situated in the SE1/4 of Section 19, the SW1/4 of Section 20, the W1/2 of Section 29 and the E1/2 of Section 30, all in Township 13 North, Range 19 West, Principal Meridian Montana, Missoula County, Montana, lying north and west of the existing city limits as described in Resolution No. 4966 (12/21/89) and Ordinance No. 2586 (11/09/87) AND south of the existing city limits as described in Resolution No. 2995 (01/04/71) and as shown on Exhibit "A" attached hereto.

DESCRIPTION - RESERVE STREET (S. 3rd St. W. to Mullan Road)

All that portion of Reserve Street right-of-way as shown in the Highway Map Book of the Missoula County Clerk and Recorder's Office, Missoula, Montana labeled "RIGHT OF WAY PLAN OF FEDERAL AID PROJECT NO. S 224(2) R/W, RESERVE STREET MISSOULA" situated in the SW1/4 of Section 17, the SE1/4 of Section 18, the E1/2 of Section 19 and the W1/2 of Section 20, all in Township 13 North, Range 19 West, Principal Meridian Montana, Missoula County, Montana, lying north of the existing city limits as described in Resolution No. 2995 (01/04/71) AND South of the existing city limits as described in Resolution No. 5260 (03/02/92) and as shown on Exhibit "B" attached hereto.

WHEREAS, it is the carefully considered and reasoned judgment of the City Council of the City of Missoula that the City of Missoula is able and willing to provide municipal services to the area being annexed. Further, it is hereby determined by the Missoula City Council to be in the best interest of the City of Missoula and the inhabitants thereof as well as the current and future inhabitants and users of the lands being annexed, which lands are contiguous to the corporate limits of the City of Missoula, that these lands be annexed into the City of Missoula.

WHEREAS, it is the decision of the Missoula City Council that the contiguous method of annexation set forth in Title 7, Chapter 2, Part 43, Montana Code Annotated be the method of annexation pursuant to which these parcels or tracts of land be annexed; and

WHEREAS, this area is considered part of the natural growth of the City of Missoula, is a main motor vehicle arterial for the community and the City Council deems it to be in the best interest of the City of Missoula, the inhabitants thereof and the future inhabitants thereof that the boundaries of the City of Missoula shall be extended to include the same within the corporate limits thereof; and

WHEREAS, there was duly and regularly passed and adopted by the Council of the City of Missoula and approved by the Mayor on July 19, 1993, Resolution of Intention Number 5467 proposing the extension of the City limits to include the above described property and describing the boundaries thereof; and

WHEREAS, the City Clerk did mail by first class mail on July 20, 1993, individual written notice to all property owners and purchasers under recorded contract for deed of the property in the area to be annexed as provided by Sections 7-2-4312 and 7-2-4313, Montana Code Annotated; and

WHEREAS, the City Clerk did published notice of such proposed extension of the city limits on July 25, 1993 and August 1, 1993 as provided by Sections 7-2-4312 and 7-2-4313, M.C.A.; and

WHEREAS, the Montana Supreme Court pursuant to its decision in Burritt v. City of Butte, 608 P.2d 563 (1973) has held that a corporation is not a "resident freeholder" within this contiguous annexation method and as best as can be determined by City Officials there are no resident freeholders residing on any land to be annexed pursuant to this resolution; and

WHEREAS, the Montana Supreme Court pursuant to its decision in Kunesh v. City of Great Falls, 317 P.2d 297, 299, 301, (1957) indicated that intention to establish a residence must control and there must be an intention to establish a permanent residence on property annexed is necessary in order to be considered a resident freeholder for annexation protest proposes as a resident freeholder; and

WHEREAS, there were no resident freeholders of the area proposed for annexation according to the assessor's records at the time of notification as duly and diligently verified by City Officials; and

WHEREAS, either no valid protests or less than the statutorily prescribed percentage of protests to the extension of said corporate limits of the City of Missoula were filed with the Clerk within the time allowed by laws

NOW THEREFORE, BE IT RESOLVED by the City Council to annex the lands described herein so the tract(s) or parcel(s) be included in the City limits of the City of Missoula; and


BE IT FURTHER RESOLVED that, if the city annexation of any lot(s), parcel(s), block(s) or tract(s) of land annexed into the city pursuant to this city annexation resolution or any provision of this resolution is ever held to be invalid or unconstitutional, the City Council hereby declares that any such decision shall not affect the validity of the annexation of the remaining lot(s), parcel(s), block(s) or tract(s) of land annexed into the city or the remaining provisions of this resolution. The City Council hereby declares that it would have passed this resolution and annexed each lot(s), parcel(s), block(s) or tract(s) of land into the city as well as each provision of this resolution irrespective of the fact that the annexation of any one or more lot(s), parcel(s), block(s) or tract(s) of land annexed into the city or provision of this resolution may have been declared invalid or unconstitutional, and if for any reason the annexation of any lot(s), parcel(s), block(s), tract(s) of land or any provision of this resolution should be declared invalid or unconstitutional, then the annexation of the remaining lot(s), parcel(s), block(s) or tract(s) of land and resolution provisions are intended to be and shall be in full force and effect as enacted by the City Council.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to file this resolution with the Clerk and Recorder of Missoula County. This annexation shall become effective from and after the date of the filing of said document with the Missoula County Clerk and Recorder.

PASSED AND ADOPTED this 23rd day of August, 1993.

ATTEST:

APPROVED:


Charles C. Stearns
City Clerk

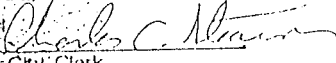

Daniel Kehms
Mayor

(SEAL)

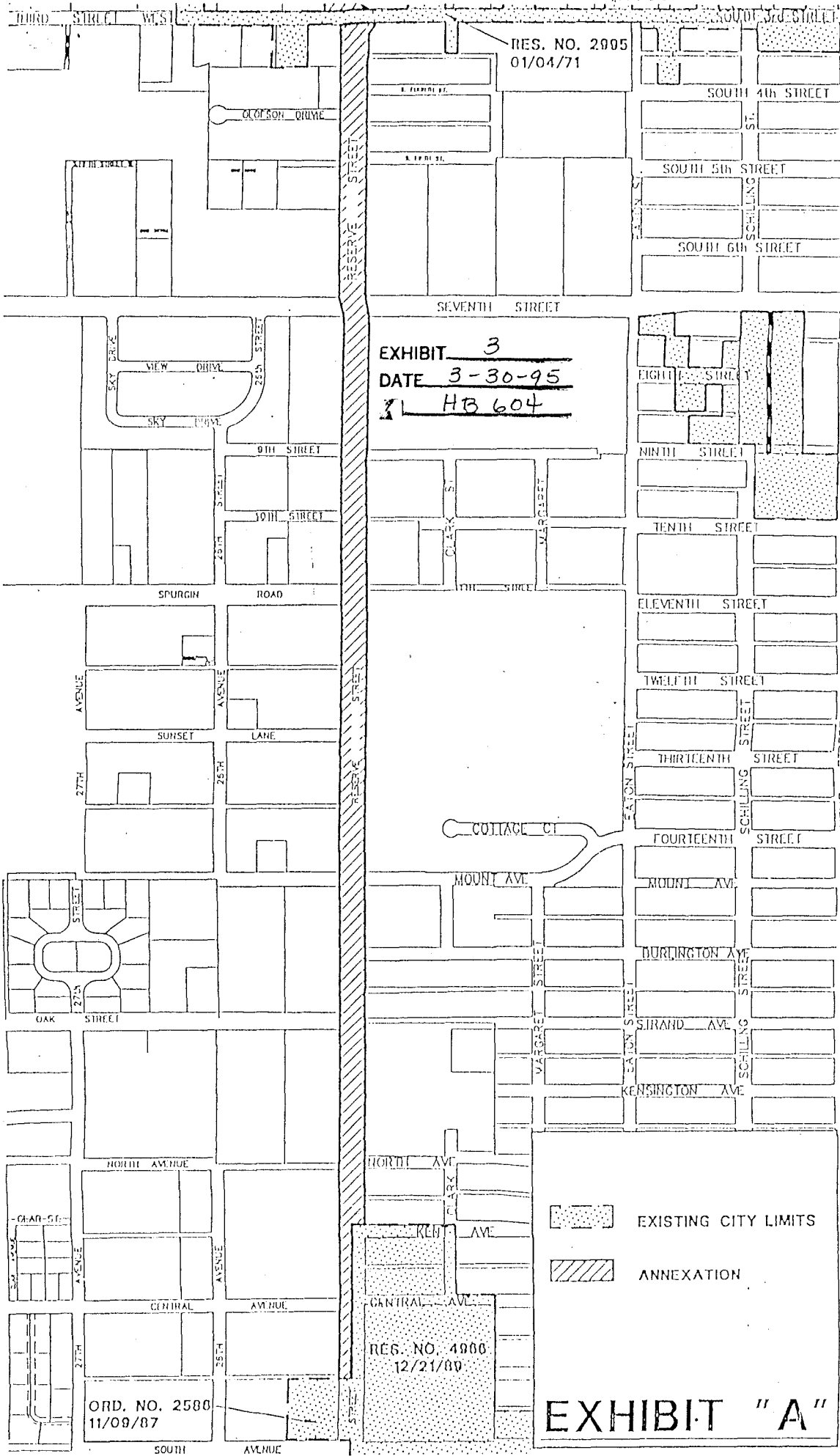
STATE OF MONTANA)
COUNTY OF MISSOULA)SS
CITY OF MISSOULA)

I hereby certify that the above and foregoing instrument is a true and correct copy of Resolution #5477 as the same appears upon the records of my office as City Clerk for the City of Missoula, Montana.

Date:


City Clerk

City of Missoula



RES. NO. 2905
01/04/71

EXHIBIT 3
DATE 3-30-95
HB 604

RES. NO. 4900
12/21/80

ORD. NO. 2580
11/09/87



 EXISTING CITY LIMITS
 ANNEXATION

EXHIBIT "A"

EXHIBIT "B"

9319865

ANNEXATION

EXISTING CITY LIMITS

RES. NO. 5260

03/02/92

CLARK FORK

MISSISSIPPI RIVER

RESERVE STREET

GROVE STREET

RIVER ROAD

CLARK

C. M. ST. P. & P. RY.

RES. NO. 2895

01/04/71



SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 4

DATE 3-30-95

BILL NO. HB 604

OFFICE OF THE PUBLIC HEALTH OFFICER

723 5TH AVE. E., KALISPELL, MT 59901 (406) 758-5750 FAX (406) 758-5858

March 29, 1995

Senator Tom Beck, Chair
Local Government Committee
Montana Senate

RE: HB604

Dear Senator Beck,

The Flathead City-County Board of Health is greatly concerned regarding the inclusion of Board of Health within HB604. Semi-autonomous Boards of Health have served admirably throughout our nation and the world to preserve the Public Health and to provide emergency actions in times of epidemic and disaster.

Boards of Health represent committed citizens and professionals who serve without pay to guarantee the provision of quality health services to our communities. To treat these dedicated citizens as advisory in nature only would represent a disservice to those who serve as well as potentially slowing and limiting the services provided by Health Departments to the members of our community. Additionally, since all members of the Board are appointments of elected local government officials, any potential question of accountability is moot.

The Public Health Improvement Act, as passed by this legislature, recognizes the need for strong and universal public health services for all Montanans. The inclusion of Boards of Health in this legislation would limit the ability for local boards to respond to the health needs of their communities. The members of the Board strongly urge that you amend HB604 to remove mention of Boards of Health from this legislation.

Thank you for your consideration of this request and your continued support of Public Health.

Sincerely,


Dennis J. Klukan, M.S.E.P.H., Secretary



S. Jane Lopp, CLU, ChFC
Special Agent

Western Frontier Agency
295 3rd Avenue East North
P.O. Box 7547, Kalispell, MT 59904
Private Office: 406 257-6886 Fax: 406-755-5764

MARCH 29, 1995

SENATOR ETHEL HARDING, VICE-CHAIR
SENATE LOCAL GOVERNMENT COMMITTEE
HELENA, MONTANA 59601

DEAR ETHEL,

WOULD YOU BE WILLING TO STRIKE "BOARD OF HEALTH" FROM HB 604?

MY QUESTION WHEN I CALLED YOU YESTERDAY, WAS TO ASK HOW TO
APPROACH CHANGING HB 604 TO BEST PROTECT THE PUBLIC HEALTH IN OUR
COMMUNITIES. REALIZING HOW MANY PRESSING ISSUES YOU HAVE TO
CONSIDER, IT SEEMED THE MOST SIMPLE TO REMOVE HEALTH BOARDS FROM
HB 604 AS LIBRARIES WERE REMOVED.

I WOULD BE MOST APPRECIATIVE IF YOU WOULD OFFER THE MOTION TO
AMEND HB 604.

I'VE ATTACHED THE MEMO I SENT TO SENATOR BECK FOR YOUR REVIEW. I
WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE. I DO
BELIEVE MAKING THIS CHANGE IS CRITICAL TO THE PUBLIC INTEREST AND
TO PROTECTING THE PUBLIC'S HEALTH IN THE MOST COST EFFICIENT
MANNER.

THANKS SO MUCH

SINCERELY,

JANE LOPP

(MY HOME PHONE IS 406-752-7026)

P.S.

I THINK IT IS VERY IMPORTANT THAT THE AUTHORITY FOR BUDGET AND
POLICY DECISIONS IN THE PUBLIC HEALTH ARENA REMAIN WITH LOCAL
HEALTH BOARDS. ENCLOSED IS A MEMO I SENT TO SENATOR BECK.

National
Leader

Registered Representative, Prudential Securities Corporation
A Subsidiary of The Prudential
1111 Durham Avenue, South Plainfield, NJ 07080
1-800-302-7121

The Prudential S. Jane Lopp, CLU, ChFC
Special Agent

EXHIBIT

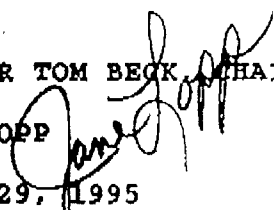
4

Western Frontier Agency
295 3rd Avenue East North
P.O. Box 7547, Kalispell, MT 59904
Private Office: 406-257-6886 Fax: 406-755-5764

DATE 3-30-95

HB 604

TO: SENATOR TOM BECK, CHAIR LOCAL GOVERNMENT COMMITTEE

FROM: JANE LOPP 

DATE: MARCH 29, 1995

RE: HB 604

IT MAY HAVE BEEN AN OVERSIGHT TO HAVE LEFT HEALTH BOARDS IN HB 604 WHEN THE HOUSE COMMITTEE STRUCK "LIBRARIES".

IT IS IMPORTANT TO REMOVE BOARDS OF HEALTH FROM THE PROVISIONS OF HB 602 BECAUSE OF THE VITAL ROLE PLAYED BY HEALTH BOARDS AND THEIR STAFF IN OUR COMMUNITIES AND THE PUBLIC INTEREST THAT IS SERVED UNDER THE CURRENT AUTHORITY.

DURING MY TENURE AS CHAIR OF THE FLATHEAD CITY-COUNTY BOARD OF HEALTH, OUR EMPHASIS HAS BEEN ON PREVENTION WHICH IS MORE COST EFFECTIVE THAN RESPONDING TO A CRISIS SITUATION.

YOU MAY REMEMBER THE MEASLE OUTBREAK IN 1988 JUST AS THE BASKETBALL SEASON WAS STARTING. BELIEVE ME, WE WOULD NOT LIKE A REPEAT. AN "ADVISORY TYPE" BOARD OF HEALTH WOULD BE ABLE TO "ADVISE" COUNTY COMMISSIONERS ON A COURSE OF ACTION BUT A RAPID RESPONSE WOULD NOT BE FEASIBLE. YOU MIGHT ALSO RECOLLECT THAT FLATHEAD HIGH SCHOOL WON THE STATE CHAMPIONSHIP THAT YEAR- IN PART DUE TO THE ABILITY OF THE COUNTY HEALTH DEPARTMENT TO RESPOND EFFECTIVELY AND GET THE EPIDEMIC CONTROLLED.

AT A TIME WHEN THE NATIONAL MEDIA IS QUICK TO BLOW SOMETHING TRIVIAL OUT OF PROPORTION AND THE TOURISTS THAT ARE SO IMPORTANT TO OUR ECONOMY ARE INFLUENCED BY SUCH STORIES, QUICK RESPONSE IS CRITICAL. THAT IS WHAT THE CURRENT LAW PROVIDES. LET'S NOT TAMPER WITH SOMETHING THAT WORKS WELL WITH THE ADDED BONUS OF BEING COST EFFECTIVE!

March 29, 1995

Senator Ethel Harding, Vice-Chair
Senate Local Government Committee
Capitol Station
Helena, Mt.

RE: House Bill 604

Dear Senator Harding,

As a brief follow-up to the letter I have just transmitted, let me state more clearly what I intended to convey. I am adamantly opposed to the legislative language it currently contains, and would like to see the removal of "Boards of Health," or have the bill tabled at this time.

Sincerely,

Casey Blumenthal, RN, BSN
Home Health Director

EXHIBIT 4
DATE 3-30-95
? HB 604

March 29, 1995

Senator Tom Beck, Chair
Senate Local Government Committee
Capitol Station
Helena, Mt.

Dear Senator Beck,

I would like to express my extreme concern regarding the language included in House Bill 604. It is my understanding that one of its intents is to remove local Boards of Health and have the County Commissioners take over as governing bodies.

I have been involved with the Flathead City-County Board of Health for five years, and have watched it act and make decisions on many issues. It is a group of committed professionals, with a low turnover, who are very knowledgeable about the public health issues faced by our county residents. It operates semi-autonomously with a devoted mission to address potential public health risks. Because of this autonomy, and also because of the years of accumulated knowledge regarding public health, it is able to respond quickly to any situation. Most of the members have served repeated terms for many years, and do not need to take the time for extensive background and education in a specific area in order to make an informed decision. There is excellent coordination and communication with the Health Department and its managers; it is a successfully functioning relationship that has a proven track record in the kinds and quality of services provided to Flathead County residents.

I am deeply concerned that without this kind of knowledgeable and close guidance, the public health of our area would suffer greatly. Due to its very specific and locally-oriented mission, our Board of Health has significantly improved the availability, the breadth, the quality, and the management of all public health services in Flathead County (which include Environmental Health, Community Health, Family Planning/AIDS Testing & Counseling, WIC Supplemental Food Program, and Home Health). I feel very strongly that all these forward gains will likely be stopped in their tracks and perhaps even regress, if we are not able to continue with our present form of government. Thank you for your attention to this issue.

Sincerely,

Casey Blumenthal, RN, BSN
Home Health Director

March 29, 1995

Senator Tom Beck, Chair
Senator Ethel Harding, Vice-Chair
Local Government Committee Members
Montana Senate
Capitol Station
Helena, Mt

Dear Senator Beck, Senator Harding and Committee Members,

Please delete "Board of Health" from HB 604. This Bill goes way beyond SB 377 and includes City-County Boards of Health which are semi-autonomous.

For the past several years I have represented the Whitefish area on the Flathead City-County Board of Health. The County Commissioner who represents Flathead County on this Board has stated many times how efficiently this Board works together and how effectively Public Health issues are addressed and our community needs are met.

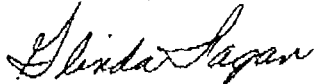
Our effectiveness is due in large part to the current law establishing Health Boards and granting authority. Flathead City-County Health Board members who are appointed by the County Commissioners and serve at their pleasure are dedicated to one purpose: protecting the Public Health.

As unpaid representatives of the community, we are protected to some degree from the scare tactics that some elected officials experience in some parts of this State on an all too regular basis. The importance of that should not be overlooked.

Safe drinking water is not accidental. Sometimes we take for granted having safe water to drink when we turn on the faucet!

By deleting "Board of Health" from HB 604, you will take an important step in helping us to protect the public health.

Sincerely,



Glinda Fagan
570 Haskill Basin Road
Whitefish, Mt 59937

City of Belgrade

STATE OF MONTANA

JOSEPH A. MENICUCCI
CITY MANAGER

HENRY D. HATHAWAY
DIRECTOR OF PUBLIC WORKS

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 5
DATE 3-30-95
BILL NO. HB 604
MARILYN M. FOLTZ
CLERK - TREASURER

March 29, 1995

Senator Tom Beck, Chairman
Senate Local Government Committee
State Capitol, Room 405
Helena, Mt. 59620

Dear Senator Beck and Committee Members,

On Behalf of the City of Belgrade, I strongly oppose H.B. 604. Restricting annexation of wholly surrounded property is a great disservice to the taxpayers in municipalities throughout Montana. The proliferation of rural subdivisions in close proximity to the City of Belgrade continues to impact city services such as streets, parks, library and police protection without additional tax revenue.

Properties that are contiguous to many municipalities receive the benefit of twenty-four hour police patrols. Properties in close proximity to Montana cities enjoy rapid response to emergency situations when sheriff deputies are on patrol several miles away. The service is provided at the expense of City taxpayers.

Passage of H.B. 604 will proved a disservice to city taxpayers, who pay for the services they receive. In fairness to City taxpayers throughout Montana, please oppose H.B. 604.

Thanking you for your consideration, I am.

Sincerely,
CITY OF BELGRADE

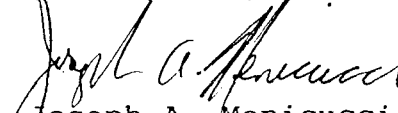

Joseph A. Menicucci
City Manager

EXHIBIT NO.

6

DATE

3-30-95

BILL NO.

HB 604

HB 604

City of Billings

W James Kembel

The City of Billings opposes the amendments placed on the legislation concerning annexation.

We support the testimony of the League of Cities and Towns

W James Kembel

3130195



Montana
Building
Industry
Association

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., Kalispell
Second Vice President
Sam Gates, Missoula
Treasurer
Mark Meek, Helena
Past President
Eugene Graf, Bozeman
Builder Director
Mark Lindsay, Helena
National Representative
Tim Dean, Bozeman
Associate Director
Frank Armknecht, Bozeman
Build PAC Director
Jim Caras, Missoula

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 7

DATE 3-30-95

BILL NO. HB 604

March 31, 1995

Senator Tom Beck
Senate Local Government Committee
Montana State Legislature
Helena, Montana

Re: House Bill 604. Sections 4 and 5, which relate to the authority of counties and municipalities to levy and collect assessments and fees.

Chairman Beck and Committee Members:

The Montana Building Industry Association is an organization of nearly 1,000 small building trade businesses from the around the state of Montana. The MBIA is the home-building leader in encouraging responsible business, planning and building standards. And as you know, the home-building industry is the lead economic indicator to a healthy economy not only nation-wide but in Montana as well.

It is for these reasons the MBIA has initiated the efforts to educate Montanans and clarify the language in Montana statute granting implied authority to assess impact fees on new construction. Following is a brief explanation as to what the true repercussions are of assessing impact fees on new construction in Montana.

Recently, a few school districts in Montana have discussed with their county commissioners the possibility of imposing impact fees on proposed subdivisions. The purpose of these impact fees would be to lessen the burden of receiving new students in the school district's subdivision. A recent legal opinion from the Gallatin County Attorney stated that a county may have implied authority to impose impact fees on new construction for schools. Until the case is litigated in court or clarified by the legislature, no one will know for certain if they do, however there may be some constitutional difficulties that need to be considered prior to litigation.

By amending Section 7-1-2103. County powers. Subsection (2), and Section 7-1-4123. Legislative powers. Subsection (7) with the proposed language, the legislature will clarify what those powers are and what they are not. This needs to be done for several reasons:

1. In Montana's constitution there is, in Article X, Section 1(1), an obligation to provide equal educational opportunities for each of its citizens. The state must fund the school systems in an equal manner Article X, Section 1(3). These requirements reflect the policy that a public school system benefits society as a whole and should be paid for by society as a whole - not by individual users. This is why the mechanism of property taxes has been established to fund

schools - it is a broad based tax imposed on all Montanans. If impact fees were also assessed to new residents to fund new school facilities, many citizens they would pay twice.

2. The US Supreme Court, in Nollan v. California Coastal Commission, 107 S. Ct. 3141 (1987) has said these kinds of exactions must be directly connected to the needs generated by the development. All residents or occupants of the development will use and require roads, water, and sewer. Not all will use or require school facilities. There is no way to predict, how many, if any, resident families may have school children, or whether they will use the public school system. Past litigation in Montana has clarified requirements concerning fair assessment of road, water and sewer impact fees (See Lechner v. City of Billings, 244 Mont. 195, 797 P.2d 191 (1990) but new issues are raised when these fees are applied to school facilities.

3. Article X Section 8, of the Montana Constitution vests the control of schools in a local board of trustees. Allowing county commissioners or a city council to impose impact fees for construction of school facilities raises serious implications for local control of a school district. The local control over buildings for districts could be effectively removed from the trustees and electors of the district and placed in the county or city approving a subdivision.

The use of fees imposed permissively by one political jurisdiction to support a function of another political jurisdiction is questionable under any circumstance, but especially so in the case of schools where control is constitutionally vested in the school district trustees. Commissioners may not be convinced of the needs expressed by school districts, or may have other considerations not related to schools that they must respond to in deciding on imposing impact fees. Whether local control of schools is violated or not, imposing impact fees for schools would intimately involve counties and cities in the affairs of the school districts.

4. Some 20 states have impact fee enabling legislation. The vast majority of those limit impact fees to roads, water and sewer services and do not allow schools. California is one of four states that does authorize school impact fees of \$1 per square foot (all four states are in litigation). In Montana impact fee figures have ranged from \$8,800 to \$14,000 in Jefferson County to upwards of \$20,000 per building site in Gallatin County. If Montana is to have impact fee enabling legislation, this process must be done properly by the legislature not by the courts.

Please give your favorable consideration to HB 604 in its entirety.

Christopher J Racicot
Executive Director, MBIA

DATE March 30, 1995

SENATE COMMITTEE ON Local Government

BILLS BEING HEARD TODAY: HB 604

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dennis Klukas	Flathead Co Bd of Health	604		<input checked="" type="checkbox"/>
W. James Kumbel	City of Billings	604		<input checked="" type="checkbox"/>
Joe Menicucci	City of Belgrade	604		<input checked="" type="checkbox"/>
Glen Meier	City of Kalispell			<input checked="" type="checkbox"/>
Jim Wysocki	City of BZN	604		<input checked="" type="checkbox"/>
Gordon Morris	MA Co.	604	<u>Amend.</u>	
Darlene Staffeldt	State Library	604		
JAMES A. LOFFTUS	MT FIRE DISAST ASSN	604	?	
Larry Gallagher	City of Kalispell	604		<input checked="" type="checkbox"/>
Bill Verwolf	City of Helena	604		<input checked="" type="checkbox"/>
D Kemmis	City of Missoula	604		<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY