

MINUTES

MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 13, 1997, at  
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)  
Sen. Steve Benedict, Vice Chairman (R)  
Sen. Debbie Bowman Shea (D)  
Sen. William S. Crismore (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division  
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 388; HB 399; 3/5/97  
Executive Action: None

HEARING ON HB 388

Sponsor: REP. BRUCE SIMON, HD 18, BILLINGS

Proponents: Steve White, Bozeman  
Mary Westwood, Montana Sulfur & Chemical Co.  
Don Chance, MT Building Industry Assoc.  
Kim Hughes, Unifield Engineering, Billings  
SEN. DALE MAHLUM, SD 35, MISSOULA

Opponents: Peter Blouke, Dept. of Health & Human Services  
Al Hanson, MT League of Cities & Counties  
James Kembel, MT Technical Council  
Bruce Bender, City of Missoula  
Kim Palmieri, City of Billings  
Gloria Paladichuk, Richland Development, Sidney

Paul Gerber, Billings Fire Dept.  
Charles R. Brooks, Yellowstone County  
Ron Ashabraner, State Farm Insurance  
Brandt Salo, MT Chapter ICBO  
Craig Kerzman, Kalispell Building Dept.  
SEN. DEBBIE SHEA, SD 27, BUTTE

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 18, BILLINGS. I bring you HB 388 today. I would like to give a bit of background on this bill. This bill is about building codes and not about zoning or planning. I would like you to understand that I am not against building codes. Building codes are good and beneficial and I have consistently supported these codes. What are State Building Codes? Briefly, the state adopts codes. These are national standards that are changed about every three years and there are a variety of these codes. There are the Uniform Building Code, the Uniform Plumbing Code, the Uniform Mechanical Code and the Uniform Electrical Code. Since 1977 when the bill passed, these are the codes that are enforced everywhere in the state. Cities can form their own building code department. They can enforce the state building codes so long as they enforce the same codes that are enforced by the state. They are required to adopt the same codes as the state adopts. In order to be certified, a city has to make an application to the state and be certified. It is essentially a handing down of state authority to local government to enforce the codes that the state adopts. Counties can do this also. They must do it countywide, not just here or there.

In 1969, Legislature passed a bill that said that cities may have extended building code jurisdiction. They could go out to 4½ miles outside the city limits and enforce building codes. At that time, the codes that they were enforcing might have been different than the state's codes because we didn't get uniform on that till 1977. For several years you could have two different codes being enforced. In the case of Billings, in 1971, they did apply and were granted to go 4½ miles outside the city limits. It sounds like a trade off. What is the big deal? They are just enforcing the state building codes. If you look in the Montana Code Annotated, you will find that there are some differences. First, when the state is in charge of enforcement they are required to enforce the codes on certain structures. The MCA exempts a number of structures. It exempts single family residences up through four-plexes; it exempts farm and ranch buildings and storage buildings for personal use. The state decided that a person can build his own house and didn't need permits or oversight. A private home is not a public building. But above four-plexes, you get into the public domain. And these buildings need permits because the public safety is involved.

In the code, it says that you can't apply the codes to these smaller structures; however, the cities can by resolutional ordinance make their codes applicable to those structures. Here

is where the rub comes in. There are four levels of decision making that cities get to make when they get into the code enforcing business. First, they get to pick and choose which of the codes they wish to enforce. By that, some cities may say we will enforce all the codes, some say only these or those codes. Secondly, when the state adopts building codes, they go through those codes and pick which ones they are going to enforce and the cities can pick and choose which ones they want to enforce. The law allows cities to develop their own fee structure and in most cases you will find the fee structure that cities charge is higher than what the state charges for the same services. And lastly and most importantly, that choice of which structure will the city apply the building codes to is decided again by the city council. Most cities, when they get into the business, say they are going to apply it to all structures. They include garages, houses, decks, fences, a sign, etc. Anything you build, you have to get a building permit inside the city limits. Outside the city limits, you don't have to get that permit.

The first and most important part of this bill will be found on page 2, under the definition section. For many years, a municipal jurisdiction area is that area within the city limits and may be an area up to 4½ miles outside the city limits. In some cases you will see the exception where they might even go further than the 4½ miles outside the city limits. The city makes an application; the application has to be approved and then they can go up to 4½ miles outside the city limit. Through my study of this issue, I thought maybe we should go for annexation so those citizens can have some rights. Through a vote, they can say they do or don't want to be a part of the annexation. This is how a democracy is. The citizens have some rights. But in this case, they don't have those rights. Billings is making application right now. At one of those hearings over 500 people showed up. One person spoke in favor of the application, the remainder, 500 people, were all there in opposition. The state makes the decision on their own judgment, not in looking at the 500 to 1 people in opposition to the application. And in further studies, I came across the Montana State Constitution. This document is one that we, as Legislators, take an oath to uphold and defend. I realized that there was something fundamentally and constitutionally wrong. With granting authority to the cities to govern citizens that don't live in the city goes against our own Montana State Constitution. The people who live in these areas outside of the city limits but are taxed by the city via building code fees and rules and regulations, cannot vote for the council members who govern them. The residents of the city elect the city council members. The City of Billings right now has about 27 square miles inside the city limits. The area that they would like to govern outside the city limits, as is often referred to as "the donut area", would be about an additional 200 square miles. This is seven times larger than the city. I do not believe that they should have jurisdiction over one inch outside their city limits. This bill would limit the cities to their jurisdictional limits within their corporate

limits. For me this is a Constitutional issue. Who gets to govern our citizens. Would we allow Wyoming or North Dakota to impose their regulations or fees on our citizens? I hardly think so. Why should we let cities impose their rules, regulations and fees on county residents who have no vote or voice. It is simply not right.

On page 3, under current Montana law, petroleum refineries are exempt from having to comply with the State Building Codes. The reason that they are exempt is because they are very broad, highly engineered facilities that have to meet standards far in excess of ordinary building codes. This bill expands that to include a number of other facilities. I have a letter (**EXHIBIT 1**) from Stone Container Corporation that outlines the kinds of standards that they have to meet in building their facility. When a local building inspector goes in to inspect these facilities, they are in over their head. If it was reasonable to exempt petroleum refineries, it is also reasonable to exempt some of these other facilities like Montana Sulfur which is right next door to a refinery.

We go next to page 5. Most of the cities were certified by the state to be inspectors. They then assumed the responsibility of code enforcement. That was done in 1979. Eighteen years later, the files are virtually void of any material that indicates that the state is doing any oversight. They have not gone back to the cities to see if they still have qualified inspectors. They have not looked to see how they are spending their money. These are basic questions. I feel that the cities need to be checked. This portion of the bill requires that they ask the cities what and how they are doing and see if they are meeting certain standards. The bill states that the cities cannot collect fees in excess of what it takes to run a building codes department. In my own city, they were overcharging. They were putting the money in the general fund and then funding the building fund out of the general fund. They have been doing this for four or five years in a row. Recently, the amount of money paid into the City of Billings general fund for building permits exceeded the amount to run the building codes department. Where did the extra money go? Yes, they spent it for other things. That again, is taxation without representation because much of the money came from citizens from outside the city limits. This is designed to stop that. About a year ago, the rules got changed at my insistence. Those are rules and this would be statute.

I was informed by the City of Laurel that they receive calls from people outside of the city limit asking for inspections. This bill says, on page 6, lines 13-16, that a city may provide a private contract with an individual to provide an inspection outside the city limit. This would allow them to do that. What they lack is the enforcement authority. They do not have the authority to order certain things to happen, but they could provide the inspection. A number of insurance companies and banks are getting to the point where they are starting to require

homes to be inspected before loan money is available or for insurance to be provided.

What we have done in section 6, page 7, is to state that the inspectors out in the field need to be qualified. Our state inspectors that go out and do electrical and plumbing inspections are journeymen. They are licensed by the State of Montana. Originally, that is what we put in the bill, that the city inspectors would have to meet the same qualifications. This was terribly onerous to the cities. So we did modify it somewhat by saying that if they are certified by ICBO, then that would be OK. That is a less stringent requirement but certainly there should be some standards. That is what we are trying to do: set standards for the inspectors. And if the issue is safety, then this fits the bill for that. (He gave an illustration of a true story that happened in Billings that the inspector did not know what he was looking at in an electrical panel and went back to his vehicle to read up on it. Then he returned to the inspection site.)

Another point is that the bill states that if the city does not meet certain standards, they should be decertified and that should be done in a prompt manner. This again address public safety and health, which you will hear a good deal about from the opponents. If they do not have qualified people in their departments, we should remove their certification quickly. The state should assume the responsibility because that is where the authority has come from in the first place. And if they have deficiencies, they should not be allowed to continue inspecting projects.

Lastly, there is an effective date on this bill. I originally thought it should be July, 1997 because of the constitutional issue that is in the front end of the bill. I did not want that to carry on and on. The House, on the Floor, changed the effective date to July 1, 1998. I think that is too long. As a compromise I would like to suggest that you remove that section completely and let this bill become effective in October, 1997. That gives the state time to plan for this. It gives the cities time to plan for this. And it needs a period of time when we are in a down cycle as far as construction is concerned. It is a low point going into the winter. I feel this would be appropriate.

With that, **Mr. Chairman**, I will sit down and let others speak to the bill. I do have a letter (**EXHIBIT 2**) addressed to the committee and to **SEN. TOM KEATING**, from one of his constituents, that I would like to submit.

*{Tape: 1; Side: A; Approx. Time Count: 9:28 AM; Comments: N/A.}*

Proponents' Testimony:

**Steve White, Bozeman.** I am here to testify in support of this bill. As the sponsor stated, this is not an "anti-building

permit" bill, but corrects an injustice in our legal system that has been part of Montana statute for the last 25 years. This is an issue of a government (city) taking money and exercising authority over people outside of their limits. This is taxation without representation. I will hand in a copy of my testimony (**EXHIBIT 3**). Even the Mayor of Bozeman said in a letter to me that he felt it was not right that the donut areas are regulated by officials that they cannot even vote for. My father could not be here today because of calving but I would like to introduce his testimony (**EXHIBIT 4**). He was a County Commissioner in Gallatin County for a number of years as well as County Assessor. Thank you for your time.

**Mary Westwood, Director, Governmental Relations, MT Sulfur & Chemical Co., Billings.** We are outside the city limits of Billings with our plant and offices in Lockwood which is an unincorporated community. MT Sulfur takes waste gases from the Exxon refinery and takes out sulfur and makes products such as fertilizer, etc. We are one of the few remaining independent sulfur companies in the U.S. We are here today in support of HB 388 and in particular we are interested in section 2. When an exemption was made in the last legislature for petroleum refineries, sulfur plants were not included. The fact is that both the Conoco and the Cenex refineries in the Billings area have sulfur plants within their borders. We are an independent sulfur plant and therefore we are concerned that we are not covered by the exemption. In practice, the City of Billings' building inspection people have never been to visit us. They have given us a pass for some 40 years and we want to be certain that continues to be the case. People who are concerned that industrial process facilities are not adequately inspected don't understand the nature of my job and that is to deal with government agencies of every kind. I have participated in more inspections that I can name. In addition, we have an insurance policy which we specifically picked so that we would receive a yearly inspection of our boilers and any other industrial equipment. We like to have this expertise in addition to our own engineering staff so we can keep up to date. Our plant is one of the safest sulfur plants in the country. We have even been called upon to testify in other cases where incidences have happened. We hope to maintain that record of safety for ourselves and for our community and we believe we are entitled to the kind of exemption that the petroleum industry receives. Thank you very much. I hope you can support this bill.

**Don Chance, MT Building Industry Assoc.** The industry's position on the current building codes administration is fairly complex. We feel like we have been walking on egg shells concerned that this bill could be misinterpreted. Our positions on this topic don't come lightly. We have been discussing the building code administration for several years. It should be noted that while we support the majority of the components of HB 388, we in the industry did not originate this bill. **REP. SIMON** has taken his own look at the current problems and has come to essentially the

same conclusions that we have. Frankly, he has put a great deal of time and energy into this effort and we appreciate it. The industry has been and continues to be steadfast supporters of rational building codes when administered fairly, efficiently and with common sense. We support basic code provisions because first, they provide us an important safety protection to an unsuspecting public; second, they do help to provide liability protection to builders who build to the codes; third, they provide an important field check to their own work. If we make a major mistake in our construction practices we want that mistake caught so that we can correct it. And fourth, code inspection does provide some comfort to the consumer and the client that a reputable builder welcomes. We never object to having a third party come and take a look at that work. Having said all that, the current system has outgrown its current design. There are administrative abuses that continue to occur primarily at the municipal level. Overcharging and inappropriate use of permit fees to finance other general fund purposes is a continuing problem. There are some administrative oversights that should not have occurred in the state Buildings Code Bureau. I know they are gearing up to try and correct that. There are inconsistencies in interpretation and legitimate questions about citizens being regulated by entities where they have no representation.

In our minds, however, the largest problem beyond the immediate concerns of overcharging and fund transfers at the city level, is the bizarre patchwork of code enforcement areas and non-code enforcement areas across the state. Currently we can build the same house in three different locations. In one location, we may go through five or six fairly rigorous inspections and will pay for those inspections. The second house, identical to the first one, may only have two inspections: one for plumbing and one for electrical. The third house, in a non-code jurisdiction, isn't going to get any inspections whatsoever. The current system doesn't make any sense at all. We have a hodge-podge or patchwork that is causing these problems. To some extent, it is no one's fault but at the same time it is everyone's fault. HB 388 will fix many of the current problems related to the public administration system. But more importantly, this bill will initiate a more deep-seated policy discussion in the interim about how to fix the overall system.

Our current system is not geared to the kind of building volumes that are now occurring in the state. Down the road, you may see the industry recommending that the certified cities program be completely eliminated and replaced with a statewide code enforcement function by the state Building Codes Bureau. To do so would require some significant changes but it would also get consistency and efficiency across the state, something we do not currently have.

We have no position as an industry on the question of the extra territorial authority. We see that as a constitutional question.

We would ask if the bill moves forward that this provision and other provisions related to the potential city decertification that the Dept. of Commerce be given the flexibility to expand their services to these former code enforcement areas. We see a potential problem in that if the Dept. does not have that capability to extend into that area, we are going to be sitting out there with a real logistical problem. The Dept. must have the ability to be able to staff up quickly to take that responsibility over if a city decertifies. We should note that at this point, our experience with the state Building Codes Bureau almost uniformly has been very positive. We find them to be more efficient than many of the city jurisdictions. The current cost structure is only about half of what the cities charge us for a building permit. We find them to be faster, more efficient and more cost effective than services from the municipalities.

We strongly support the provisions on page 5 requiring the Department oversight of certified city programs. We have been forced to bring legal action in this area and we are considering further legal action to correct problems in city administration that should not exist in such a simple area of government administration. A stronger oversight by the state for what is a state program would correct that.

We also support the requirement of licensure or certification of inspectors. The state Building Codes Bureau already requires this of their own individuals. The current bill draft has language in it that require certified cities to have that requirement or ICBO certification.

Finally, we would like to insure that all the committee members understand that these comments are not a personal criticism of the professional inspectors of the departments. As an industry we have a great deal of respect for both **Jim Brown** and all his people at the Building Codes Bureau and for many municipal departments and their inspectors.

I have a letter (**EXHIBIT 5**) that I would like to hand out from the Home Builders Assoc. of Billings. They are in strong support of HB 388. Their main concern is about the indirect cost factors that the city has been charging.

**Kim Hughes, Unifield Engineering, Billings.** I have a prepared statement (**EXHIBIT 6**) from our President, Jim Stevenson, who could not be here today.

{Tape: 1; Side: B; Approx. Time Count: 9:48 AM; Comments: LOST ONE SENTENCE OF MS. HUGHES.}

**SEN. DALE MAHLUM, SD 35, MISSOULA.** I am in support of HB 388 and will hand in a statement (**EXHIBIT 7**).



Opponents' Testimony:

**Peter Blouke, Director, Department of Commerce.** I debated as to whether to stand as a proponent or opponent of the bill because I think there are many aspects of this bill that are very good and I appreciate the tremendous amount of time and energy that **REP. SIMON** has put into this. He has become very knowledgeable and had imparted a good bit of that knowledge to me. There is a serious issue with the extended jurisdiction question that as the bill is currently written we would have to stand in opposition to. Without repeating a lot of the testimony that you have already heard, I would like to present some amendments that we have put together that will address many of the issues that **REP. SIMON** has raised. If I may, I would like to walk you through these suggested amendments (**EXHIBITS 8, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H**). I have discussed them with **REP. SIMON**. With these amendments I feel we would have an excellent bill. He then explains each amendment.

*{Tape: 1; Side: B; Approx. Time Count: 10:03 AM; Comments: N/A.}*

**Al Hanson, MT League of Cities & Counties.** I will be the first to admit that we don't have a perfect building codes system in Montana. Essentially what we have is kind of a hit and miss system of building code inspections. Fifty-seven cities and towns in Montana do building code inspections and 61 out there don't do them. That is a problem. The state does some and they don't do other types of inspections. There is only one county in this state that really does building code inspections. It does need to be fixed but this bill won't fix it. I would like to review the amendments. I believe it sounds as though they go in the right direction. There has been lots of discussions, animosity, etc. two years ago. There were several efforts to bring the bill off the table in the House and failed by narrow margins. But there has been no resolution. I have facts from three cities (**EXHIBIT 9**) that indicate that the cities are not charging too much. Billings did have a surplus in their building codes account several years ago. There is a fluctuation in building cycles and cities should have the ability to carry reserves that will carry them through the lean times of this business. Great Falls is well balanced. Kalispell is in the same good shape. You hear that taxation without representation is not good. But that authority was given to the cities by the legislature in Chapter 366 in 1969 and that authority is part of the hit and miss system that we have. If the cities do not conduct those inspections in the fast growing areas of Montana, who is going to do it? We need to find a way to get this done in a good manner and keep the people protected. We are willing to work with any concerned parties to find the best way. I do have a problem with the six month reserve limit. It could well affect the small towns. This cost allocation program that has been proposed is another big problem. It would require 57 cities and towns to change their method of accounting. That is a mandate and to avoid a mandate is to seek to decertify the program and

that is not good. We don't want to shut down city programs and we don't want people out there feeling that they are not being represented. We want a good, solid effective building code program in Montana. HB 388 will not help building code enforcement in Montana. I would like to introduce three letters, two from Bozeman (**EXHIBIT 10 & 10A**) and one from Great Falls (**EXHIBIT 11**) that are in opposition to HB 388. Thank you.

**W. James Kembel, MT Technical Council, Billings.** I am coming to you on behalf of the design professionals of Montana. The Tech Council represents the architects, engineers, land surveyors and landscape architects. We are keenly interested in maintaining uniform codes statewide. I do like the sound of **Mr. Blouke's** amendments and would like to look at those with my clients. I will hand in a prepared statement of concerns with the proposed legislation (**EXHIBIT 12**). For these concerns, we oppose HB 388.

**Bruce Bender, Director, Public Works, Missoula.** The thing you want to keep in mind is we are talking about public safety (**EXHIBIT 13**). We disagree on the issue of governance. We should focus on safety. We have been carrying the burden of inspection in the county. We are acting as agents of the state. We have a large residential growth outside the city limits. Since the state does not inspect single dwelling units, the state gave the authority to the cities to inspect these units within a 4½ mile radius. We are concerned with our growth. We have had a 2% average growth in Missoula over the last 30 years. These growths could be future city properties. Our city fire departments are out there now because we have a mutual agreement with the rural fire departments. We do not want to lower the safety for those homes and not have them inspected. The other issue is about what fees we charge. We have done some analysis and have come up with an indirect cost factor of 45%. In looking at our budget, we do not put the direct utility cost and the direct repair of equipment cost in the budget. We followed the U.S. Office of Management and Budget method for calculating this indirect cost factor and came up with 45%. We are charging basically 40% currently. We surveyed other cities and would hand in our findings (**EXHIBIT 14**). I have some letters from some concerned engineers and architects (**EXHIBITS 15, 15A, 15B, 15C, 15D, 15E, 15F, 15G**).

*{Tape: 1; Side: B; Approx. Time Count: 10:20 AM; Comments: N/A.}*

**Kim Palmieri, Billings.** One of the major concerns here is public safety. I have some handouts (**EXHIBITS 16, 16A, 16B, 16C**). The first handout is a page from the 1994 Uniform Building Code. These are minimum standards that are enforced. They protect life, health, property and public welfare. The next handout is a booklet from the insurance industry evaluating building-code effectiveness. Good building codes help reduce insurance costs. The next handout is another page out of the Building Code. This page addresses requirements for hazardous occupancies. The last handout is the front page of the Hazardous Materials

Classification Guide. The point of this is part of this bill wants to exempt industries such as fertilizer plants and chemical plants. This bill reduces public safety. We think the proposed amendments might be good and would like to review those.

**Gloria Paladichuk, Richland Development, Sidney.** We oppose HB 388. Our volunteer fire department and the Mayor are concerned about this bill. The exemptions for industry has potential for major disaster. There was a fire at the Holly Sugar Plant. Holly Sugar is a good neighbor and they have all the necessary inspections. However, we might not be so lucky if other industries locate in our city and not need the inspections. Safety of our volunteer fire fighters is a prime concern of ours. Our fees are reasonable. We have a county building program with no serious problems. We are 530 miles from Helena. During the oil boom we had two California contractors that built an entire rural subdivision. At the end of one year, there were monstrous cracks. So please don't pass a law that will burden small communities and jeopardize our volunteer fire department lives.

**Paul Gerber, Billings Fire Marshall.** I know that **REP. SIMON** is sensitive to life safety issues but with this bill we feel that the life safety issues have been by-passed. Some provisions of this bill could jeopardize life safety. The Montana State Fire Chiefs' Association prepared an Emergency Resolution #1 (**EXHIBIT 17**). It was adopted by this Association just this last fall. We are in agreement that there must be an adoption and enforcement of building codes for all residential and commercial buildings in Montana. The Montana Chiefs are concerned about life safety issues. We have been asked why we haven't prepared a bill to cover every single residential structure in Montana. We don't have the resources and the logistics are not good. We don't want to lose what we already have in place. And that is the 4½ mile jurisdiction area. If this bill is passed, the following might fall through the cracks: rescue or escape windows, the fire-rated sheet rock, solid core doors between home and attached garage, and the testing of L-P natural gas lines and properly installed furnaces. Rural areas experience a larger per capita loss from fire than urban areas. The longer response times are a factor. So those homes need to have as much if not more inspections. Montana ranks eleventh in the nation in per capita fire deaths. The Billings Fire Department stands in opposition to HB 388. And the Montana State Fire Chiefs' Assoc. stands in opposition also.

**Charles Brooks, Yellowstone Board of County Commissioners.**

Yellowstone County rejects this bill as it stands. The County is working with the City of Billings in a restructuring of the city building department. As part of that restructure, the County is looking at agreements that will more actively empower them in the county 4½ mile jurisdictional issue. If this bill passes as written, Yellowstone County has already decided that they will consider building codes under their own jurisdiction. This may not be the most cost effective way of handling building inspections. We encourage you to look at the amendments from the

Department of Commerce. We would be in agreement with those amendments.

*{Tape: 2; Side: A; Approx. Time Count: 10:36 AM; Comments: N/A.}*

**Ron Ashabraner, State Farm Insurance.** We have some concerns about the original language. I am not sure what my company would think of the amendments. But I feel that they would certainly be worth reviewing. State Farm's concern is that the practical necessity of building code requirements is rooted in the most basic tenets of public safety and public policy. You can't promote any measure that promotes either no codes or codes without resources which provides responsible enforcement. The severity of losses that we experience in the rural areas are far more dramatic than those that we find in the venues controlled by codified standards. Thank you.

**Brandt Salo, Building Official for Helena and President of the MT Chapter of ICBO.** I have some additional amendments (EXHIBIT 18) that are somewhat related to those that have been proposed by the Department of Commerce. I think in looking at those, they are a step in the right direction. Otherwise our organization would stand in opposition to HB 388. I would like to go briefly through the four amendments. Thank you.

**Craig A. Kerzman, Kalispell.** I would like to expand on the definition of public that was given earlier. The public is every citizen in Montana, not just those who come into a building like this. HB 388 is going to drop a lot of families through four-plexes. The public will suffer. The effective date of July 1998 is the date we would like to stay with. I will submit my testimony (EXHIBIT 19) and two newspaper clippings (EXHIBITS 20 & 20A).

**SEN. DEBBIE SHEA, SD 27, BUTTE.** I have received a letter from the Butte-Silver Bow Chief Executive, Jack Lynch (EXHIBIT 21) in opposition to HB 388. I will quickly read it and submit it. Thank you.

*{Tape: 2; Side: A; Approx. Time Count: 10:43 AM; Comments: N/A.}*

Questions From Committee Members and Responses:

**SEN. WILLIAM CRISMORE** asked **Mr. Blouke** if these amendments were offered in the House and if they were not, why not? This bill is so complex and so controversial it seems as though the Department should have been involved long ago. **Mr. Blouke** said no, the amendments were not offered in the House. They did not have them developed at that point. And he will assume responsibility for this. Part of the reason is that he was very new at the Department and didn't understand all the issues. He had discussed with **REP. SIMON** the bill at some length. His thought at that time was for the Dept. to remain neutral and get a sense

of what the Legislature might be feeling. Subsequently, after learning a bit more, he felt it was important to bring these issues forward. The amendments do address substantively the issue of representation and the constitutionality.

**SEN. SHEA** asked if the cities do decertify, where is that going to put the Department in terms of their ability to take over? **Mr. Blouke** said that he was not sure what the ramifications would be if all the cities and town were to decertify. He would defer to **Jim Brown** on additional staff. **Jim Brown, Chief, Building Codes Bureau** didn't exactly recall the numbers of staff the present cities have. Billings has eleven; Missoula has twelve; Helena has five staff members. If all of the major cities were to decertify, obviously what Billings requires eleven people to do, we can't magically do with two people. He would assume that even single family dwellings would fall through the cracks even in the city limits if they were to assume that responsibility. They wouldn't have to have the same exact number of people, but at least 50% of the people. Statewide, looking at the "big five" cities, they would probably need another 20-25 people.

**SEN. SHEA** stated that the feeling of the room would be that this issue will keep returning to the Legislature until it is settled. Are you amenable to the proposed amendments and would you be willing to work with the Department? **REP. SIMON** said that he is amenable to some of the amendments and they did clarify some of the things that he really had intended to do. The issue about the first three amendments setting up this county jurisdictional area that looks just like the jurisdictional area of the city, where the county would say, yea, city go ahead and take over that responsibility, he would not accept. It reverses the whole thing. The issue is a policy decision when it comes to whether or not they want to cover single family residence. The Department and the cities have known for a long time that he had intended to come in with this bill. There were discussions within the Department and the cities to have all residential properties inspected no matter where it was built. They didn't bring the bill in. The bill is not before you. So that is not the issue. He is trying to put you back in a position where he thinks you ought to be right now. The decision was made by a previous Legislature to exempt these buildings. If you want to eliminate that exemption for all of Montana, that is a policy decision that you should make with a bill. This is not the bill. You should have had the bill. They tried it up in Kalispell to go countywide. It was put on the ballot and the citizens up there voted 8½ to 1 against having the county take over this responsibility. The reason the Dept. and the cities did not come in with a bill is they know it is highly unpopular. And to finish his answer he said that he is willing to work with others.

**SEN. STEVE BENEDICT** asked about the mutual agreements with the city and rural firefighters districts. Are these negotiated agreements? **Mr. Bender** said yes. The city entered into an

agreement with the rural firefighter districts with mutual response. **SEN. BENEDICT** then asked are your building codes enforcement outside the city negotiated agreements with those residents? **Mr. Bender** said that he would argue with **SEN. BENEDICT** from the government's point of view that you represent them here in the Legislature. **SEN. BENEDICT** said he did not ask that. He asked if the city negotiated those regulations with those people outside the city like they do with the rural fire districts? **Mr. Bender** said it was negotiated with the County Commissioners, so in that context he would say yes.

**SEN. BENEDICT** asked **Mrs. Paladichuk** what dog Richland County has in this fight. You mentioned Holly Sugar and was your worry that another plant could be built that you wouldn't be able to inspect. **Mrs. Paladichuk** said that her county feared plants could be built without inspections and would cause extra risk to their firefighter. **SEN. BENEDICT** asked her if she was familiar with all the groups that inspect these particular plants as they are being built. **Mrs. Paladichuk** said she was not familiar with these groups. **SEN. BENEDICT** informed her that in the State of Montana industrial plants go through much more rigorous inspections than a part-time inspector in Sidney could hope to conduct. Would you agree with that? No answer was forthcoming.

**SEN. CASEY EMERSON** stated that the Holly Sugar Plant had been thoroughly inspected and still had a fire. He couldn't quite understand the reasoning of **Mrs. Paladichuk's** worry about other plants. Her answer did not speak to the question.

**SEN. JOHN HERTEL** asked about the fiscal note and asked if the sponsor had signed it. **REP. SIMON** was glad to address that important question. He felt it was important in this process to recognize that if cities do lose their area of jurisdiction, the state is going to have additional responsibilities. He supports the idea that the state will need the authority to hire additional inspectors. They have \$1 million in reserve. They have money on hand and the inspectors are paid with building fees so they would have the money. The problem is authorization. He fully supports authorization either in this bill or HB 2. There were many assumptions in the fiscal note that he did not agree with. That is why he did not sign the fiscal note. He said that **Mr. Brown** was making an assumption in his answer on the number of additional inspectors and it was based on cities decertifying their program and not providing inspection anywhere either in or outside the city limit.

**SEN. EMERSON** asked if the sponsor was surprised to hear that everyone who was opposed to the bill talked about safety first. The sponsor's last remark was about the fact that this is an unconstitutional situation we have and no one seems to address or complain about that. Yet the Constitution is what we all live under and deal with. That is the more important question. At times, it isn't very handy or cheap, but we are under the Constitution and we have here an unconstitutional situation.

REP. SIMON appreciated the question. It is the central issue whether or not we are going to allow a foreign government to govern citizens inside the State of Montana. That is what is going on right now. They love to talk about fire, safety, etc. and they could have brought the bill in that said all residential structures will be inspected. And again, the reason they didn't was they knew it would be extremely unpopular. The "hats and boots" would be here in force.

*{Tape: 2; Side: A; Approx. Time Count: 10:56 AM; Comments: N/A.}*

Closing by Sponsor:

REP. SIMON closed. This may sound like a Billings problem, but I can tell you MR. CHAIRMAN, that it is not. It is a problem in Bozeman, in Missoula, in Kalispell, in Billings and other cities around the state. Yes, I am heavily involved in Billings, but my research shows that it is a problem all around the state. In Kalispell they had a public vote to have a countywide program. It was rejected by 8½ to 1. We had a public hearing in Billings. Five hundred people showed up. One person spoke in favor of Billings' position but everyone else showed up to speak in opposition. The opponents here today use a loophole.

Yes, there is a need for more personnel at the state level. I understand that and authorization needs to be given to the Dept. so that they may hire additional personnel if needed.

As far as the amendments from the Dept. are concerned, I don't accept the first three amendments that were proposed. The rest I do not have an objection with. They clarify my bill.

There was talk about reserves in Billings. They changed the county procedures because a year ago they provided their state and city auditors a set of figures that showed that, in fact, over a four year period the excess was \$1.5 million that had been used by the city's general fund. They said, well there wasn't any reserve. They had spent the money. It was only after the building people threatened to sue them because they wouldn't fund the reserve account that was set up last July, that they now have come up with new figures and today there is \$250 thousand in this reserve. Their additional response was, no we are starting from ground zero. Forget what happened in the past. We already spent that money. They changed their tune because they have been threatened with a law suit.

As far as fires are concerned, it is a great thing to talk about fires and frighten all of us. But the fact of the matter is, all the houses being built here in the Helena valley that go outside the city limits aren't part of this because Helena doesn't have jurisdiction over them. Neither does the City of Great Falls have jurisdiction outside their city limit. All the houses that are built outside of their jurisdiction have not been causing

problems. Are we having greater numbers of fires outside the city limits of Helena and Great Falls? No. There was an article about this extended jurisdiction in the Gazette back in December. Ironically, in the same paper was an article about a fire that occurred in a chimney because of cracks and holes and this was in an area inspected by the City of Billings. They do make mistakes. In Richland County they are concerned about the hockey rink. Well, that is a public building and will be inspected anyway.

As far as the indirect cost, I would like to point out that this is an issue you heard and that the City of Missoula needs 45%. I went to the Auditor's office downstairs and the language on page 5 of the bill (originally I said they could have up to 10%) the language was reconstructed in the House and we inserted the language giving them the authority to do exactly what the City of Missoula does. If their county procedures are set up in such a way that they don't charge a lot of things into the direct cost and use it as indirect costs, they can do that under the change. But they have to treat this department like the other departments. They can't create a separate kind of accounting procedure for the building codes department that is not used for all the other departments in the city.

What this bill comes down to is an issue of the Constitution. If you believe in the Constitution and if you took an oath to uphold the Constitution, you will vote accordingly. The amendments that were proposed reiterated that this is the issue. They didn't argue that issue with you, did they? They know I am right. They came in through the back door and presented arguments about codes and fires. I would hope that you would recognize the red herring and recognize that they recognize it. I am right and you are right, **SEN. EMERSON**. It is a Constitutional problem and that is the reason it is before you. If they want to have a bill to cover all residential property in the State of Montana, let them bring in the bill. I would appreciate very much your concurrence in this piece of legislation.

{Tape: 2; Side: A; Approx. Time Count: 11:12 AM; Comments: A 10 MINUTE BREAK WAS TAKEN.}

#### HEARING ON HB 399

Sponsor: REP. CARLEY TUSS, HD 46, BLACK EAGLE

Proponents: Darryl Bruno, Asst. Administrator, Addictive & Mental Disorders, Dept. of Health & Human Services  
Steve Meloy, Bureau Chief, Professional & Occupational Licensing, Dept. of Commerce  
Mary McCue, Licensed Professional Counselors  
Gloria Hermanson, MT Psychological Association

Opponents: None



Opening Statement by Sponsor:

SEN. STEVE BENEDICT opened for REP. CARLEY TUSS, HD 46, BLACK EAGLE. HB 399 is an act transferring the duties and responsibilities for certifying chemical dependency counselors from the Department of Public Health and Human Services to the Department of Commerce and providing some rulemaking authority and providing for department powers and duties, providing certification requirements and fees, providing for complaints of unprofessional conduct and sanctions, providing a criminal penalty for violations, providing for transition and amending sections. The fiscal note is probably not accurate. The money that is now being collected from this program under DPHHS will go with the program to the Dept. of Commerce and the bill will be revenue neutral and could actually end up saving a little bit of money. Thank you.

Proponents' Testimony:

Darryl Bruno, Asst. Administrator, Addictive & Mental Disorders Div., Department of Public Health and Human Services. We have requested this bill to transfer chemical dependency counselors to the Dept. of Commerce. There are numerous reasons. Our roles are approving programs, developing treatment standards for state-approved programs and developing standards for schools and assisting community programs and developing prevention programs. All of our work over the years has been done with the state-approved programs. The demands on the certification has increased over the years and in 1987, insurance reimbursement was allowed for chemical dependency counselors. Not only in state-approved programs, but throughout the whole system, many of the counselors who are providing chemical dependency services are in the private sector. Other than certifying them, we have no relationship with them. That compounds our work and responsibilities. Basically this legislation certainly required greater regulation than we were prepared to provide. However, we continued with it. Right now, we estimate less than 30% of the counselors that we certify are working in the state-approved programs. In the last session, numerous licensing and certification were transferred over to Commerce due to reorganization. For some reason our certification program was not. In SB 226, it allowed the professional counselors to take action with fines and incarceration for people practicing beyond their scope of practice. This has brought numerous complaints to our Dept. Our role, again by law, is really with the regulating of state-approved chemical dependency programs. The Dept. of Commerce has that kind of expertise. We feel it should be transferred because all other counseling organizations are in Commerce. They have the expert staff to provide the investigators, the attorneys, etc. It is a good one-stop shopping bill. The issues I really wanted to address because of the nature of chemical dependency counseling and the evolution over the years, are a fairly complex system. Our department is required to administer a comprehensive system of examinations to

evaluate the knowledge and skills necessary for chemical dependency counseling. My concern with the fiscal note is that it does tend to show that the cost will increase in Commerce. That is not true. Those costs that we have now in our department have been absorbed by General Fund dollars. We are proposing to transfer the one position of the direct cost to operate our certification system to Commerce. Those other indirect costs to run a bureau over there would be self-supporting. It should become a self-supporting agency. At our request, the Dept. of Commerce wrote the bill. We would be doing the same services there as we had in the DPHHS. He submitted his testimony (EXHIBIT 22).

**Steve Meloy, Bureau Chief, Professional & Occupational Licensing Bureau.** We support this bill. We work closely with Mr. Bruno and his department. It is a natural working relationship. The Governor had intended this originally. It allows that program to support itself. It should be a savings to the state.

**Mary McCue, Licensed Professional Counselors; MT Chapter of The National Assoc. of Social Workers.** These two groups want to express their support because they share a common board at Commerce. They feel it makes sense that all of the mental health providers and addictive providers be regulated under the same department. **The MT Addiction Services Providers** will be the people transferred to Commerce. They would like me to express their support for this bill.

**Gloria Hermanson, MT Psychological Assoc.** For the sake of one-stop shopping and for simple common sense administration, we support this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. BEA MCCARTHY** asked **REP. TUSS** if she would like to say anything as an opening statement at this point. **REP. TUSS** said that when the chemical dependency counselors were originally placed in the DPHHS that made sense, but as things change, the Department's ability to respond to greater demands gets out of sync. I believe that the transfer to the Dept. of Commerce is a logical and necessary move.

**SEN. STEVE BENEDICT** made a suggested amendment to **Mr. Bruno**. In section 7, page 5, lines 19, 20 and 21, concerning the makeup of the panel, is it necessary to have three certified chemical dependency counselors, one employee of the Department and one member of the public? He was thinking of the professionals closing ranks a bit. To give a bit more balance to the panel, it might be better to have two certified chemical dependency counselors to be able to give the kinds of background that the panel needs and then two members of the public. This would give

more balance. Would you have a problem with this, **Mr. Bruno**?  
**Mr. Bruno** answered no.

**SEN. WILLIAM CRISMORE** asked **Mr. Meloy** to comment. **Mr. Meloy** explained that the language is consistent with the way all the other boards allow the majority on a board to be members of the profession regulated. But it certainly doesn't have to be that way. They have recommended that the public be the majority on the board. So maybe it would be a good move and it might set a precedent.

**SEN. BENEDICT** asked if this would put the Department in an uncomfortable position of being the swing vote with a two and two possible split? **Mr. Meloy** replied that it may, but they would certainly accept that challenge. The Dept. should have the most intimate knowledge of that profession.

**SEN. CASEY EMERSON** asked if the sponsor felt good about the suggested amendment? **REP. TUSS** replied yes.

Closing by Sponsor:

**REP. TUSS** closed. I close and thank you very much and hope you concur.

ADJOURNMENT

Adjournment: 11:28 A.M.M.

  
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SEN. JOHN R. HERTEL, Chairman

  
\_\_\_\_\_  
MARY GAY WELLS, Secretary

JH/MGW