

**MINUTES**

**MONTANA SENATE  
57th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN DALE MAHLUM**, on February 6, 2001 at 3:00 P.M., in Room 335 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Sen. John C. Bohlinger, Vice Chairman (R)  
Sen. Chris Christiaens (D)  
Sen. John Cobb (R)  
Sen. Jim Elliott (D)  
Sen. Bill Glaser (R)  
Sen. Duane Grimes (R)  
Sen. Don Hargrove (R)  
Sen. Ken Miller (R)  
Sen. Emily Stonington (D)  
Sen. Ken Toole (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
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: SB 226, 1/16/2001  
SB 241, 1/16/2001  
SB 278, 1/16/2001  
HB 20, 1/16/2001

Executive Action: HB 20 DP; SB 73 DPAA;  
SB 167 DPAA; SB 198 DPAA;  
SB 71 Tabled; SB 72 Tabled;  
SB 174 Tabled  
SB 66 Taken off Table

**{Tape : 1; Side : A; Approx. Time Counter : 0}**

HEARING ON HB 20

Sponsor: REP. JIM SHOCKLEY, HD 61, VICTOR

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR. This bill was presented at the request of the Law, Justice and Indian Affairs Interim Committee. This would allow the election judges to be exempt from unemployment insurance if they make less than \$1,000 in a calendar year.

Questions from Committee Members and Responses:

Closing by Sponsor:

REP. SHOCKLEY closed.

HEARING ON SB 278

Sponsor: SEN. DALE BERRY, SD 30, HAMILTON

Proponents: Tom Daubert, MT Solid Waste Contractors (MSWC)  
Riley, Johnson, National Federation of Independent  
Business (NFIB)  
Webb Brown, MT Chamber of Commerce  
John Whitman, BFI Waste Services, Billings  
Dean Ulrich, BFI Waste Services, Bozeman  
Donna Tenneson, City-County Sanitation, Inc.  
Byron Roberts, MT Building Industry Assoc.  
Carl Schweitzer, Bozeman Chamber of Commerce  
Doug Sparrow, City-County Sanitation, Inc.  
Brett Kelly, Evergreen Disposal, Kalispell  
Byron Stahly, Helena  
Steve Brown, Lawyer, Helena  
Jesse Wilson, Bitterroot Disposal, Hamilton  
Peggy Trenk, MT Assoc. of Realtors  
Mike Skinner, Lifestyle Homes, Helena  
Terry Archambeault, T & R Trucking, Glasgow  
Jim Dusenberry, J & D Truck & RV Towing, Helena  
Angela Janacaro, MT Contractors Assoc.  
Frank Crowley, City County Sanitation Lobbyist & MT  
Solid Waste Contractors

**Opponents:** Alec Hansen, MT League of Cities/Towns  
Jani McCall, City of Billings & City of Laurel  
Kurt Corey, Director, Public Works, City of Billings  
Tim Burton, City Manager, Helena  
Jerry Driscoll, Billings

**Opening Statement by Sponsor:**

**SEN. DALE BERRY, SD 30, HAMILTON.** Senate Bill 278 was an act to eliminate the authority of cities and towns to ban competition from private garbage and solid waste disposal service providers. If cities should annex areas into the city where there is already a private carrier, they may not elect to provide exclusive garbage and solid waste in the annexed area. The bill would provide healthy competition between the public and private sectors. In the fiscal note it stated that cities and towns who currently provided exclusive garbage and solid waste services within their jurisdictions must discontinue exclusive service by July 1, 2004. There would no longer be exclusive service by the city. In the fiscal note the City of Billings indicated its annual revenue was \$4.5 million. If they provide the best service, people will continue to use the City of Billings' garbage service. If a private carrier can come in and provide a better service at a better price, they can do that. This bill does not keep the cities from staying in business; it allows the competitive process to occur between public and private sectors.

**Proponents' Testimony:**

**Tom Daubert, MT Solid Waste Contractors.** This law would create no private preference even though in the Montana Code Annotated 75-10-102(c) **EXHIBIT(1os30a01)** there is supposed to be a preference for using the private sector. This bill would allow the private sector to continue operating without the fear of local government choosing to ban private sector operators. He had found that some operators are fearful of trying new things or to put out much money because of the possibility of being shut out of the business. He mentioned the 13 taxes the private businesses pay that the public sectors doesn't. It is more important than ever to maintain the tax base that is available. Even though the bill would allow solid waste operators to compete in those communities that have banned the private sector, there is no assurance that they would do so.

**Riley Johnson, National Federation of Independent Business.**

Small businessmen supported the bill and believe that it is good public policy not only in this area but in all areas.

**Webb Brown, MT Chamber of Commerce.** The Billings Area Chamber of Commerce asked him to speak in their behalf. They support the bill. Montana needs to be more supportive of private enterprise.

**John Whitman, BFI Waste Services, Billings.** Current city ordinances of Billings controls what private businesses can haul. They are authorized to provide construction demolition services only. They had asked Kurt Corey, the Public Works Director of Billings, both in writing and orally, to support a change in the ordinance. They had not received a commitment. The City of Billings commissioned a study with MSU Billings to look at solid waste issues. A student had contacted him and he agreed to participate. He asked to receive a copy of the report. He again had asked Mr. Corey for a copy of the report and to date has not received a thing.

**Dean Ulrich, BFI Waste Services, Bozeman.** He handed the committee a signed petition **EXHIBIT (1os30a02)** for the passage of the bill. The second handout shows that in 1997-98, the Street/Sanitation Superintendent requested the removal of "Exclusive Garbage Collection Rights" for the city. But in the budget proposal for 2001-02, they asked the city to pass a resolution for "Exclusive Garbage Collection Rights" so the city would be the only garbage hauler **EXHIBIT (1os30a03)**. This would give them to authority to kick his company out. He felt they should not be allowed to do that.

**Donna Tenneson, City-County Sanitation, Inc.** She gave her testimony and handed in a written copy **EXHIBIT (1os30a04)**.

**Byron Roberts, MT Building Industry Assoc.** They were in strong support of the bill and felt that competition brings down the cost to customers. The private sector should be allowed to do what they are capable of. This would also affect the affordable housing issue in the state.

**Carl Schweitzer, Bozeman Chamber of Commerce.** They stand in support of the bill. They thought that for fair competition things should be equal between the private and public sector.

**Doug Sparrow, City-County Sanitation, Inc.** He handed in a letter from a customer in support of the bill **EXHIBIT (1os30a05)**. He further stated this bill would protect them from the City of Helena if they should pass a resolution for exclusive garbage collection rights. Such an action would put them out of business. The bill would allow their company to continue hauling as they always have.

**Brett Kelly, Evergreen Disposal, Kalispell.** He wanted the bill to go through and they stand at the present time to lose 253 customers to the city when an annexation takes place if the city would pass a resolution for exclusivity.

**Byron Stahly, Businessman, Helena.** They stood in support of the bill and for the protection of haulers who are already in business as well as for those who would like to begin a new business. The private sector needed the bill to promote competition and it ultimately would lower taxes for the taxpayer.

**Steve Brown, Lawyer, Helena.** He had handled litigation for small garbage haulers. The case he spoke about concerned the City of Culbertson and the local garbage service there. This case pointed out that the issue doesn't affect only the large municipalities but the small towns in Montana as well. The local carrier was frozen out and could not provide service to the City of Culbertson after he had provided that service for a number of years. The city did not give him the five years notice required by the statute. He ultimately had to sue. The case was settled before it went to trial. The important legal issues were decided by a judge and the City settled for \$110,000. That garbage hauler depended upon the City of Culbertson for 70% of his business. When the exclusive garbage service ordinance was adopted by the city, he was precluded from providing any service to the residents of Culbertson even though many of them expressed a preference for his service. If SB 278 had been in effect, that lawsuit would not have happened.

**Jesse Wilson, Bitterroot Disposal, Hamilton.** He supported the bill because it was good for the tax base and for the community.

**Peggy Trenk, MT Assoc. of Realtors.** They supported the bill. People are trying to make house payments. More competitive rates would allow homeowners more flexibility and would be good for everyone.

**Mike Skinner, Helena.** He told a story of his experience with disposal. He is in the manufactured home business. On two occasions they tore down some old homes in Helena. There was substantial tonnage to be disposed of. His group provides affordable housing. They had to ascertain the total cost of a home from tearing the old house down, building the new house, to hooking up services. This had to be within a budget. The difference of using the city's disposal bid and the private enterpriser's bid made the difference of whether the families could afford those homes. Competition is good.

**Terry Archambeault, T & R Trucking, Glasgow.** He has been in business since 1962. For the past seven years, they had gone into the Wolf Point area. There is now speculation that the area may be annexed into Wolf Point. With the current law, he would probably get the boot. He does not think this was right. He asked for the committee's support of the bill.

**Jim Dusenberry, J & D Truck & RV Towing, Helena.** He has been in business for 20 years and has used a local hauler for years. They were given good service. The haulers were very flexible and easier to work with than the city and county hauling service. Competition is good.

**Angela Janacaro, MT Contractors Assoc.** The contractors are supportive of the bill and agree with the previous proponents' statements.

**Frank Crowley, City County Sanitation Lobbyist & MT Solid Waste Contractors.** The current law was enacted in 1979. It was a bill first proposed by the solid waste contractors. In 1979 the law had been changed to regulate Class D haulers for garbage. The 1972 Constitution had authorized the charter form for local governments. The haulers wondered if local governments would automatically do anything they wanted with this new power. Because there was so much confusion at that time, the solid waste contractors came forward with a bill asking for protection in the event a city government exercised that kind of plenary power. The bill was adopted in 1979 at the request of the solid waste industry. Since that time, light years have passed in this industry. Today haulers are dependable. They have hundreds of thousands, if not millions of dollars invested in their businesses and equipment with Class D regulations by the PSC. The current law is antiquated. It seems to be working against the public and their consumers. This bill would make those necessary changes.

**Opponents' Testimony:**

**Alex Hansen, MT League of Cities/Towns.** His organization is opposed to the bill. This bill is not going to put anyone out of business or change anyone's business. Changes should occur locally. Private solid waste contractors have considerable protection under state law. It is difficult for cities to become exclusive garbage haulers and it is difficult for cities to be the exclusive hauler in newly annexed areas. This bill would have a detrimental effect on those cities that have exclusive hauling rights. Public service might be the best bargain for the consumers.

**Jani McCall, City of Billings & City of Laurel.** Three people were present to give testimony and answer any questions concerning environmental compliance for solid waste programs. This bill is not necessary. These decisions should be made at the local level. There is nothing forbidding a company to go to the City Council and request the opportunity to present a proposal to provide these services.

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**Kurt Corey, Director, Public Works, City of Billings.** He gave his testimony and handed in a written copy **EXHIBIT (los30a06)**.

**Tim Burton, City Manager, Helena.** He stood in opposition to the bill. He did not feel there was a problem and the bill would create as many problems as the proponents were hoping to solve. Across Montana there are all kinds of situations and a broad brush would not be good. In Helena, the city works with City-County Sanitation and they do a good job. The city is charged with protecting the public health, safety and welfare of the citizens. The city receives complaints that are not necessarily theirs. This bill would change the rules in the middle of the game. The city has a financial commitment and is based upon the system as it is in place now. When rates need to go up, the city does engage the public. The city has done a great job and doesn't want any changes.

**Jerry Driscoll, Billings.** He pays \$78 a year to the city and is furnished a 300 gallon trash can for every two homes. In Missoula, his sister pay \$10 a month to a private company with no trash can. He feels that in Billings it is cheaper with the city. He didn't want any rates raised.

**Questions from Committee Members and Responses:**

**SEN. JOHN BOHLINGER** wondered if there were governing rates for the private haulers in Billings. **Kurt Corey** replied that there is no PSC oversight. **SEN BOHLINGER** noted in the fiscal note that Billings brings in some \$4.5 million annually. If this bill were to be enacted and competition is brought into the scene, would this force the city to raise their rates. **Mr. Corey** said the rates are based upon the efficiency of the system and with competition the rates might have to be raised.

**SEN. BOHLINGER** stated that in Billings, the city rates are \$79 per year and \$375 for commercial rates. He inquired if competition would raise rates for the city. **Tom Daubert** replied not at all. In fact, it could even end up lowering their rates

if they wanted to remain competitive. The private sector might even realize they can't compete. Mr. Driscoll's testimony was compelling in favor of the bill. If government is that efficient, what do they have to fear from competition.

**SEN. BOHLINGER** solicited an opinion about how long the Billings's landfill would last. **Barbara Butler, Environmental Compliance Coordinator, Billings Solid Waste Division.** She has looked at the bill from a different angle. She answers to many people: City Council and six counties that they serve. She refuses money because garbage is money. In order to do that she must restrict and divert waste. Their collection crews are trained to do special things that would help keep certain things out of the landfill. She is ordered to prolong the life of the landfill. To site a new landfill is difficult. They also don't want to have to build a transfer station and be held captive to the hauling rates to wherever it would be taken. She handed out a pamphlet **EXHIBIT (los30a07)** that shows how Billings recycles.

**SEN. DON HARGROVE** stated that the consumer is most interested in the lowest rates available. If that is the city service or a private service, why should the city be opposed to that concept. **Kurt Corey** said that he believed having to change their mode of operation would cost the customer more.

**SEN. HARGROVE** questioned if the public and private sectors follow the same regulations. **Will Selser, Solid Waste Manager, Lewis & Clark Co.** replied yes.

**SEN. HARGROVE** stated that if local government has overhead costs already built in that are paid for by the taxpayers and if this bill would pass, would he believe those taxes help to keep the city rates down which would make it harder for the private sector to compete. **Mr. Daubert** replied that the bill does not change situations to the extent that he would know the answer. The bill allows competition to exist where it has been banned and assures the private sector they don't have to worry about being banned. The bill won't address the possibility as to whether the public sector is subsidizing their program thereby creating artificially lower rates.

**SEN. KEN TOOLE** asked if there are places where there are multiple haulers competing in the same market. **Mr. Daubert** answered there are areas that have multiple haulers and other areas with a single hauler. It is up to the PSC to grant those permits when they see a necessity. When a private hauler has a certificate, that hauler is obliged to serve anyone who desires service in that particular area no matter how remote or uneconomical it

might be. The cities are not under that regulation. Rates should be established by competition.

**SEN. TOOLE** wondered what rates are in comparison between city and private service and how do they differ across the state. **Mr. Daubert** said it does vary because of the cost of service depends partly on how many people are being served and how far apart they live from each other. **Dean Ulrich** offered that in the city of Bozeman, residential rates are just about the same between the two sectors.

**SEN. TOOLE** inquired how long contracts are made with private customers. **Mr. Ulrich** replied that for longer contracts the customer receives rate guarantees. Not everyone wants a contract and then they are just day to day contracts.

**SEN. TOOLE** informed the group that considerable investment has been made in Helena and he had a problem with the fact of competition coming in thereby putting at risk the investment that had been made. **Mr. Ulrich** confirmed that the city could lose some of their investment but the same would be true if the city banned his company from several areas.

**SEN. TOOLE** inquired about regulations concerning private citizens doing their own hauling. **Mr. Ulrich** answered that in Bozeman, residents must have either the city or his company do the hauling. They cannot take their own garbage to the landfill. **Mr. Daubert** added that one of the reasons for the PSC licensing regulations is to stop small groups from hauling on their own because of safety and health reasons.

**SEN. DUANE GRIMES** asked for clarification on the PSC regulations. **Frank Crowley** informed the committee the Class D certificate issued by the PSC is a mixed blessing. It gives an applicant, who succeeds in getting authority, the right to haul in a certain area; however, they can not cherry pick the good areas. Rural Montana has many haulers who have different fee schedules than Helena. To suggest that having a Class D certificate gives the hauler some advantage is not true.

**SEN. GRIMES** inquired if having a Class D certificate created a monopoly. **Mr. Crowley** had just participated in a hearing where an applicant came in and alleged there was inadequate service being provided by a hauler. Another authority can be granted for different reasons. It is a monopoly, but with a qualifier.

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**SEN. GRIMES** inquired if they were not regulated, would areas go unserved and was that the purpose of the PSC. **Mr. Crowley** confirmed that he was exactly correct. The Dept. of Health & Environmental Sciences knew there was a lot of garbage going into coulees and along the highways. That was the reason for the Class D regulation. It solved the problem of unauthorized and unhealthful waste disposal.

**SEN. GRIMES** asked for clarification on the infrastructure that has already been developed in some of the cities like Helena and Billings. What happens to that tax paid infrastructure. **Mr. Crowley** answered that was an issue. That issue is addressed in the last section of the bill. A phase-in was included for Billings and Helena to allow competition to come in. This allows for a period of adjustment. The local government has responsibilities of financing. But nowhere was there a guarantee for any local government in this particular enterprise that there would not be private sector competition. In cities other than Helena and Billings, there have been infrastructure investments and they don't have any guarantee there wouldn't be a private sector entity come in and compete. Cities should not be immune from competition because they had certain expectations. Inversely, Donna Tenneson spoke of her investments and right now that investment is subject to being cancelled with a five year notice.

**SEN. GRIMES** needed assurance that costs would drop if competition were allowed. **Mr. Crowley** answered that if there are two competing entities which would create efficiencies in those entities, then immeasurably that would lead to lower costs for customers.

**SEN. STONINGTON** asked for some history. Was there a deal made for the exclusivity for cities versus the license to haulers for a monopoly to serve in the rural areas. **Mr. Crowley** refuted the statement that a deal had been made. He tried to place into context why this law was initially adopted. The law does not say a city may ban a private competitor. The city assumed that authority. If the city declares itself to be the sole provider, it has to pay market value or give five years notice. When that bill was enacted many assumptions were being made by the charter form of government.

**SEN. STONINGTON** made the assumption that it was an issue of local control. **Max Bauer, General Manager, BFI Waste Services, Montana.** He responded that when that law was written, there was no deal made. The cities assumed they had the authority to ban. His company was the largest company in the state at that time. They had four trucks. Twenty years ago Montana was considerably

smaller. Most haulers could not afford to lose many of their customers. They were panicked when they thought some cities were going to ban the haulers. Even annexation could have wiped out some haulers. From the charter form of government, the cities assumed they had the power to ban. They felt that what wasn't banned by the legislature, the cities and towns could do what they wanted.

**SEN. JIM ELLIOTT** inquired if many people were asking to do business with the private sector instead of the public sector. **Will Selser** did not see any ground swell. They work with the local haulers. The City of Helena can't close the City County Sanitation's landfill with the current law because they are not in the city of Helena. **Mr. Crowley** felt that in Helena, the two sectors are working well together. There is not a ground swell from the residential customers who have service from the city.

**SEN. ELLIOTT** made mention of the fiscal note that indicated the City of Billings could lose a large portion of their revenue if the city were forced to discontinue some or part of their current service. Is there not something in statute that states the legislature may not make a law that would seriously affect the budget of cities or counties. **Alec Hansen** said that several years ago **SEN. MACK COLE** had a bill that was passed as an anti-mandate which said that any enactment of the legislature that would increase the cost by so much, unless there was special provision made, was prohibited. He was not sure if it addressed a decrease.

**CHAIRMAN DALE MAHLUM** asked if the city of Billings used full cost accounting. **Kurt Corey** said that he felt the city did.

**Closing by Sponsor:**

**SEN. BERRY** closed. There are times when government entities do this service better. The bill does not ban the cities from staying in the business. If they run their services efficiently and better, they will stay in business. It is absolutely necessary to maintain a good tax base for the purpose of property taxes and income taxes. In current law, there is a possibility that the cities could give a solid waste business a five year notice and close them down. This is not good for them or for Montana. The city has a compact area while most of the private sector businesses go many miles and they do a good job. His last statement was: all the proponents are in business for themselves, all the opponents are in government.

**EXECUTIVE ACTION ON SB 167**

**Motion:** SEN. STONINGTON moved that SB 167 BE AMENDED EXHIBIT (los30a08).

**Discussion:** SEN. STONINGTON explained the amendments. In number one, wording is taken out because it is already in statute. Number three gives the department rule making authority about easements and covenants. In Section 2, notices are clarified. In Section 3, inspections are clarified. On page 6, line 18 there are two amendments that clarify timing of reviews. At the end of the bill, amendments 13 and 14 state that this law will be effective when the rules are done.

SEN. KEN TOOLE asked which of the amendments are addressing the concerns of the realtors. SEN. STONINGTON replied numbers 2, 3, 9, 13 and 14.

**Vote:** Motion that AMENDMENT TO SB 167 BE ADOPTED carried unanimously.

**Motion/Vote:** SEN. STONINGTON moved that SB 167 DO PASS AS AMENDED. Motion carried 10-1 with Grimes voting no.

**HEARING ON SB 241**

**Sponsor:** SEN. JACK WELLS, SD 14, BOZEMAN

**Proponents:** Linda Stoll, MT Assoc. of Planners  
Betty Biggs, Springhill Zoning District, Bozeman  
Mona Jamison, Representing Gallatin County  
Jon Engen, Big Sky Owners Assoc.  
Bill Arnold, Planning Director, Gallatin County  
Jane Jelinski, MT Assoc. of Counties (MACO)  
Jennifer Smith Mitchell, Gallatin Co. Commissioner  
Byron Roberts, MT Building Industry Assoc.

**Opponents:** Andy Skinner, Helena Property Owners Assoc.

**Opening Statement by Sponsor:**

SEN. JACK WELLS, SD 14, BOZEMAN. Senate Bill 241 addressed the zoning systems in counties. The bill would make 101 zones similar to 201 zones. In statute, Title 76, where 101 zones are described, there is no provision for enforcement. In Bozeman

there are more 101 zones than 201 zones. All 101 zones have been formed by the citizens that live in those zones. They have discovered that if someone violates the provisions of the zoning laws, there is little recourse. In 201 zones, the law provides recourse. After listening to the commissioners in Bozeman and private citizens, the sponsor recognized that some provisions were needed to protect property rights. This bill would be that vehicle.

There was an amendment that should be considered

**EXHIBIT (los30a09)**. On page 2, line 1 of the bill, "residents of the" is taken out and inserted would be "citizen members, each of whom resides in a." The purpose was to clarify the number of members on the zoning commission. The desire was to have two citizen members added to zoning commission.

These zoning districts are established by the citizens who live there. There has to be at least forty acres involved in a district. A petition needs to be circulated requiring 60% of the residents in order to establish a zoning district. Surprisingly, the law is written saying that within thirty days of that action it could be cancelled by a petition signed by 50% of the residents. The county commissioners have sole authority to create these zones after the petitions are provided. But as of now, there is no provision for enforcement. Also, there is no provision in statute to have citizen members on zoning commissions. The bill would add two citizen members to the commission.

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**Proponents' Testimony:**

**Linda Stoll, MT Assoc. of Planners.** They support the bill and the amendment.

**Betty Biggs, Springhill Zoning District, Bozeman.** She gave her testimony and handed in the written copy **EXHIBIT (los30a10)**.

**Mona Jamison, Representing Gallatin County.** People from all over with diverging views have come together to support this bill. Two kinds of zoning districts are already established in law. There are 201 zones created by the county and 101 zones which are driven by the residents. When the statute was passed allowing 101 zones, the enforcement provision was forgotten inadvertently. Without an enforcement provision, the law becomes moot. In the new Section 3, the language is basically the same as the 201 zoning district enforcement provision. The bill would allow for grassroots representation on the zoning commission. That only

makes good sense. The amendment clarifies what the bill was trying to do.

**Jon Engen, Big Sky Owners Assoc.** He gave his testimony and handed in a written copy **EXHIBIT (los30a11)**. He handed in a letter from the Hebgen Lake Zoning Advisory Committee **EXHIBIT (los30a12)**. Another letter came from David Klatt concerning his problem **EXHIBIT (los30a13)**. The last letter was from Dee Rothschiller who is on the Big Sky Owners Assoc. and the Hebgen Lake Zoning Advisory Committee **EXHIBIT (los30a14)**.

**Bill Arnold, Planning Director, Gallatin County.** This bill has proposed two straight forward things. It provides for citizen participation on planning and zoning commissions and provides for enforcement of the laws concerning 101 zoning. He supported the bill and the amendment.

**Jane Jelinski, MT Assoc. of Counties.** This is a great bill and they are supportive of the bill and the amendment.

**Jennifer Smith Mitchell, Gallatin County Commissioner.** The previous proponents have given the necessary points and she agrees. In her experience, it is the most frustrating thing to sit on a commission for an area that you don't live in. The 201 zoning districts have a board of adjustments. Those members must be residents of that area. Her zoning commission feels that lack and would like input from those who live in the zoning district. People come to the commission informing them of violations and the commission has to tell them "sorry" because they have no provisions to enforce those regulations. She supports the bill and the amendment.

**Byron Roberts, MT Building Industry Assoc.** They are in full support of the bill, especially adding resident members to the zoning commission.

#### **Opponents' Testimony:**

**Andy Skinner, Helena Property Owners Assoc.** The bill is supported mostly by government. Government is always trying to expand and their position on expansion of government is not good. If there is a need, so be it. The first part of this bill looks good. Residents should be on the zoning commissions. It irritates him when government says they can't enforce zoning. In Helena the county attorney files an action against violators. There was a building out in Kenwood that was 27 feet high. The regulations said only 24 feet was allowable. The front of the building had to be torn off because the county attorney filed an

action against them. So there are rules to allow them to take action. Section 3, enforcement of zoning provisions, was offensive to him. A whole new laundry list is included. Reviewing buildings that are altered has been the function of the state. If there is an electrical problem, there is a state inspector. The same is true for plumbing, etc. In Section 3, (2) it states: "The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions." This creates a new building department. In Lewis & Clark County, a comprehensive plan has just been established. One of the functions of this plan was they could create a building department. This is just another cost. There should be a fiscal note on this bill but he had not seen one. If a new building department is created in every county of the state, the costs are going to really go up. There are too many fees now. He asked the committee to stop the bill.

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** said that Gallatin County planning has been very helpful. He then asked why **Mona Jamison** felt that the enforcement portion had been left out of the 101 zoning laws inadvertently. Had she looked at the hearing minutes to see why that had not been included. **Ms. Jamison** had not gone back to look at the history. She felt that common sense would dictate the two zoning laws should be the same.

**SEN. GRIMES** posed the possibility that the law had been written as such because there were other remedies for rule. **Ms. Jamison** believed that the remedy would be that of homeowners' associations or individuals hiring private attorneys to file nuisance lawsuits. This bill does not address homeowners' covenants.

**SEN. EMILY STONINGTON** informed the committee that she lives in the Bridger Canyon zoning district and it has been a good experience. She had applied to the zoning commission to transfer a density right. She had two deeds. She wanted to build a barn with an apartment in it. The zoning district allowed only one housing unit per deed. She applied to have that housing unit put under the second deed. She wanted to know what kind of abuses or issues the planning commission is running into. **Bill Arnold** responded that 101 zoning districts vary in their regulations. Some may have transferrable development rights and some may not. Most districts are established where there are a set of outright uses and there may be uses that require special review uses or conditional use permits. Your district may have the conditional use permit requirement.

**SEN. STONINGTON** said that outright uses that don't need any permit are sometimes stipulated in the district and sometimes not. **Mr. Arnold** explained that other conditional use procedures that go through a review with planning and zoning commissions typically have conditions that are applied to those. It would also be a violation if they didn't comply with one or more of the conditions. If a house turns into a bed and breakfast, and they did not go through the review, that would be a violation.

**Closing by Sponsor:**

**SEN. WELLS** closed. He appreciated **Mr. Andy Skinner's** position as he, himself, does not like to be proposing more government. One rationale is that the bill does not make standards or strict requirements across the state. The zoning commissions can pick their own criteria. Perhaps in Gallatin County the county attorney is not as forceful. Apparently in Helena they have been able to get their attorney's assistance. There is a fiscal note but there is no impact. He stated that if the county government would create new planners and directors and start raising taxes, he will be up next session to get rid of this bill.

*{Tape : 3; Side : A; Approx. Time Counter : 0; Comments : The tape was turned in the middle of Sen. Wells' closing.}*

**HEARING ON SB 226**

**Sponsor:** SEN. JACK WELLS, SD 14, BOZEMAN

**Proponents:** None

**Opponents:** None

**Informational Answers:** Mike O'Connor, Executive Director, Public Employees Retirement System (PERS)

**Opening Statement by Sponsor:**

**SEN. JACK WELLS, SD 14, BOZEMAN.** Senate Bill 226 is an interesting bill. He sponsored the bill for some of his former military colleagues. Military recruiters would like to get the names of high school graduates in order to send them material on joining the military and at the same time offer some scholarships, training programs, etc. The high schools go to this section of statute 2-6-109 and say by virtue of that statute they could not give out that list. At first he thought an

amendment to the section would be sufficient. But then he decided to repeal the whole thing.

After picking up the bill, some people had come with concerns about violations of their privacy. **Mr. Greg Petesch** came by to discuss the bill. **Mr. Petesch** and other attorneys in the Legislative Division and Attorney General's office felt 2-6-109 is unconstitutional. It violates two sections of the Constitution. One is on freedom of speech and one on public information dissemination. They pointed out that in looking at that section of law, it talks about how these lists shall not be sold. They make it sound like mailing lists. That is understandable and why it would be put into law. Further down in the section, it states that anyone can go into state agencies that have such lists, go into the office and make a copy of the list. In discussions with **Mr. Petesch**, they agreed that it was strange you could go in and copy it, but you could not even pay to have a copy made. It is open to the public. If repealing that section of law appears to be an insurmountable task, he would propose an amendment to specify lists of high school graduates be made available to certain people like military recruiters.

He had talked with a Marine Corp major in Salt Lake City, Utah who supervises all the northwest United States in administering the programs through recruiting. He said of all the states he works with in the northwest he has no problem of getting lists of graduates and even goes to the schools and presents programs. They have \$80,000 scholarships available for students. In Montana, they get stonewalled by the high schools. This is an unfortunate state of affairs. These students should have the opportunity to hear from the recruiters and to know what is available to them. This bill would assist military recruiters in doing their job.

**Proponents' Testimony: None**

**Opponents' Testimony: None**

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** wanted to know if the recruiters were as aggressive as they were in the 1970's. **SEN. WELLS** had not been closely associated with them lately and was not able to fully answer the question. He related a story of his stepson who almost signed on the dotted line to become a Marine. His parents were not supportive of this. But the end of the story was he did not sign, went on to college on a military scholarship, was

graduated and became a pilot and is now a Lieutenant Colonel in the Air Force.

**SEN. GRIMES** inquired about the section that would be deleted, Section 2-6-109. One of the cross references is to the right of privacy section. He assumed that this was done in 1979 after the 1972 Constitution Convention. There must have been some stronger privacy interests in Montana than in surrounding states that were being addressed under the distribution of mailing lists. He, therefore, felt reticent in repealing that section. **SEN. WELLS** replied that when he had spoken with **Mr. Greg Petesch** concerning that issue, **Mr. Petesch** said those sections of law that address privacy and those particular kinds of material that are very strictly private like medical records, etc. are well protected in statute and would not be available for public dissemination.

**SEN. GRIMES** provided information that he had a bill last session that would have restricted telephone lists. There would have been a "do not call" list. This year the Auditor's Office has something like that going. He felt this bill was going in the opposite direction of that effort to reduce the amount of interference in people's evenings at home. **SEN. WELLS** agreed to some extent with the previous statement. He recognized that problem. But based on the comments from **Mr. Petesch** that Section 2-6-109 was unconstitutional, he decided to press forward with the bill.

**SEN. EMILY STONINGTON** related that she had worked for a mail order company. They purchased lists and it is a big business. This bill would open up all public employee retirement system members to having their names sold on the open market.

**SEN. WELLS** replied that he did not believe that would happen. **Mr. Petesch** had said those lists are protected under another statute.

**Mike O'Connor, Executive Director, Public Employees Retirement System (PERS)** responded that at first he thought it would open up his members to the open market. There is a section in the retirement law, Section 8, that states the mailing list will be used only for retirement organizations formed under 501-C-4. That is in the administrative rules. It states that the only way they would allow someone to use the retiree addresses would be for a limited purpose and no others. This bill would not change that.

**SEN. STONINGTON** asked why this bill was being put into the part of statute that talks about the public employees retirement system. The board that is mentioned in the bill is the PERS

board. **Mr. O'Connor** answered that the reason this bill is in the retirement section on page 2, line 2 is that it refers to Section 2-6-109. All that would do is strike that reference.

**SEN. STONINGTON** said that it is only striking it for the PERS. It is not striking it for anyone else. When she was working for the MT Wildlife Federation in the mid 1980's, they wanted to purchase the Montana outdoors mailing list for soliciting new memberships. They couldn't. They had to go in and copy them down by hand. This bill would not change that. The only list that would not be opened up, under this bill, is the PERS. According to Mr. O'Connor, his list can only be used by retiree organizations.

**SEN. WELLS** responded that again after speaking with **Mr. Petesch**, he felt the bill would do what he was looking for. Section 2-6-109, is a prohibition on the distribution of mailing lists for sale. It states: "An agency may not distribute or sell these lists without securing permission, etc." and it is that section of law that the high schools quote when saying they can't give the recruiters their list. This bill repeals that section of law. The last statement on the bill states: NEW SECTION. Section 2. Repealer. Section 2-6-109, MCA, is repealed.

**SEN. STONINGTON** was incredulous and said that this bill repeals the entire section of 2-6-109. If this section is repealed, this bill would open any list, controlled by a public agency, for purchase.

**SEN. WELLS** said that was essentially correct. He reiterated **Mr. Petesch's** words again. **Mr. Petesch** was surprised that some companys had not already challenged that statute in the courts.

**SEN. STONINGTON** said she did not want her name on the open market and she did not want to commit the State of Montana to manage these mailing lists. She felt there should be a big fiscal note on the bill.

**SEN. KEN TOOLE** related that when he had worked at the Office of Public Instruction, they routinely got requests for mailing lists of social studies teachers, etc. If Section 2-6-109 were repealed, would agencies have to compile information as well.

**SEN. WELLS** said he thought they would, but the agencies could charge for that service and the amount would be whatever was necessary.

**SEN. TOOLE** asked if the agencies could charge market value or just cost because there is a difference. The market value would be above what the cost would be in putting these lists together.

**SEN. WELLS** did not have a firm feel for that question. It seemed that they could charge at least cost if not more.

**SEN. JOHN BOLLINGER** desired to know more about what **Mr. Petesch** has said concerning Section 2-6-109. **SEN. WELLS** related that the discussion had centered around the idea that the constitution addressed two issues. It addressed freedom of speech and the dissemination of public information that is open to the public. He said that when Section 2-6-109 was put into law, it was unconstitutional because it violated those two constitutional provisions. He has always felt that way about it. He had discussed it with other noted attorneys and they all agreed. When **SEN. WELLS** talked to him about drafting his bill, his objective was to enable recruiters to get lists from the high schools. **Mr. Petesch** immediately went to Section 2-6-109 and said that is where they are being prevented and basically that section should not be in statute. It didn't take him long to cover the issue.

**Closing by Sponsor:**

**SEN. WELLS** closed. He recognized the hazards of people not wanting their name on a public list. The Montana Constitution states that once a person has signed up for a public job or is in a public institution, that information becomes public information. He hoped that the cost of purchasing lists would be prohibitive to some but at the same time he felt strongly that military recruiters should have this information available.

**EXECUTIVE ACTION ON SB 66**

**CHAIRMAN MAHLUM** presented SB 66 for discussion.

**SEN. KEN MILLER** preferred to discuss the bill and not take it off the table.

**Discussion:**

**SEN. BOHLINGER** explained his amendment **EXHIBIT(1os30a15)**. It would phase in the implementation. In fiscal year 2002, there would be no change in the current law. Fifty percent of the salary of county attorneys is paid for by the state and would continue. In 2003, fifty percent of the salary will be paid for by the state. In 2004, this would be raised to sixty percent paid for by Montana. In 2005, ninety-five percent payment will be made by Montana.

**{Tape : 3; Side : B; Approx. Time Counter : 0}**

He then handed out a flow chart **EXHIBIT(1os30a16)** that helped in the explanation. The original intent of SB 66 will be met by the year 2005. The counties will continue to be responsible for health insurance benefits.

There was a concern that part-time county attorneys would become full-time county attorneys in order that their salaries would be picked up by the state. The amendment provides a prohibition that would not allow counties to do that, found on page 3, line 14.

**Motion: SEN. BOHLINGER moved SB 66 BE TAKEN OFF THE TABLE.**

**Discussion:**

**SEN. MILLER** appreciated what SB 66 is trying to do. The number one stumbling block is tying county attorney salaries to district court judges. He felt a mistake had been made with the judges by tying their salaries to other state averages. Those states, which include Montana, now are tying theirs to state averages which then causes a perpetual mushrooming effect that is hard to control. The formula is the wrong way to establish salaries.

**SEN. BOHLINGER** responded that using some regional guidelines for establishing a wage scale would be useful. This just means Montana would be competitive with the neighboring states.

**SEN. DUANE GRIMES** felt a salary survey approach would be alright. He did concur that it creates a salary creep effect by its very nature. He did not believe that the county attorneys' work is for state laws. If that were applied to every law, the state would be paying everyone at the county level. He opposed the motion to bring SB 66 off the table.

**SEN. EMILY STONINGTON** said she strongly concurred in tying the county attorneys' salary to the district court judges. The attorneys interact with the district courts. It is not right that the judges' salaries are so much higher. She was not sure that the state should pay all of the attorneys' salary just because the state pays for the judges' salary.

**SEN. KEN TOOLE** did not believe that the laws are state laws only and therefore the county attorneys are not necessarily doing the state's business. He did not believe that the two positions are so intertwined thereby necessitating salaries be intertwined. It then becomes subjective as to what percentage the tie should be.

**SEN. BOHLINGER** answered that laws passed by the legislature do create more work for the county attorneys. He felt that the workload, which the county attorneys are responsible for, is overwhelming. They are charged with protecting the public and they should be paid accordingly.

**SEN. GRIMES** elaborated that money is an issue. He did not want to encumber future legislatures with mandates, and if they are underfunded, is this bill the way to go from a "pay" standpoint. If this is a good "pay" policy it should be applied to every state employee. That would be a big problem for the legislature.

**SEN. STONINGTON** said that if there is concern about the competitiveness of the market and if there is a "brain drain," another option would be to do the same kind of averaging that is done for the district judges. County attorneys do have a sense of public service and they do want to stay in their positions but they are being driven out of their field.

**SEN. TOOLE** asked for data showing problems of retention and/or recruitment from the City of Billings.

**SEN. MILLER** articulated that the legislature does not survey and then make a determination. They use an absolute formula. When other states use absolute formulas and one average is calculated to another average it will not compute. It is not a survey.

**SEN. BOHLINGER** offered that the citizens of Montana have spoken loudly about their need to feel safe in their homes and in their towns. They have asked the legislature to put in place laws that will send the offender to jail. The state needs prosecutors who can do that.

**SEN. BILL GLASER** asked for a limitation on further comments.

**SEN. DON HARGROVE** admitted that everyone is concerned. There is need. This did not seem to be the vehicle to address the need.

**Vote:** Motion carried 6-5 with Elliott, Grimes, Hargrove, Miller, and Toole voting no. A roll call vote was taken.

**SEN. GRIMES** said that the committee needs to look at market salary surveys rather than tying to judges' salaries. He asked if it were the sponsor's intention to leave in the portion that has the state paying for the entire salary. **SEN. BOHLINGER** responded yes.

**SEN. TOOLE** asked again for the information he was interested in: retention and recruitment.

**SEN. COBB** said he didn't think the bill would go anywhere in the end, but a backup plan might be to raise the base to \$70,000 or \$80,000 with the state paying two-thirds. If it all falls apart, the base can be raised up. That gets away from the market salary which doesn't solve their long-term problem and frees up the county money.

**EXECUTIVE ACTION ON SB 73**

**SEN. BILL GLASER** explained that SB 73 takes all the little revenue bills from small vehicles, water craft, etc. and gives the revenue to the local governments. The division is the same as far as local government is concerned so there is not a hodge-podge for the treasurers to handle. It isn't new money, it simplifies the process.

**Motion:** **SEN. GLASER** moved that **SB 73 BE AMENDED EXHIBIT (los30a17)**.

**Discussion:**

**SEN. GLASER** said the amendment cleans up the wording on the bill. The amended bill would clear up the mess of paper work that was created by SB 260, HB 540 and the referendum that the people passed.

**SEN. CHRIS CHRISTIAENS** asked what could be done toward funding transportation districts. **SEN. GLASER** maintained the bill would improve that situation by the very fact that more money is going into local government.

**SEN. STONINGTON** reminded the committee not to confuse this bill with the "big bill" going through the House.

**SEN. GLASER** declared the "big bill" takes all this revenue to the state and divides it.

**Vote:** Motion that **the AMENDMENT to SB 73 BE ADOPTED carried unanimously.**

**Motion/Vote:** **SEN. COBB** moved that **SB 73 DO PASS AS AMENDED. Motion carried unanimously.**

**EXECUTIVE ACTION ON SB 71, SB 72, SB 174**

**Motion/Vote:** SEN. GLASER moved that SB 71, SB 72 AND SB 174 BE TABLED. Motion carried unanimously.

*{Tape : 4; Side : A; Approx. Time Counter : 0}*

**EXECUTIVE ACTION ON SB 198**

**Motion:** SEN. MILLER moved that SB 198 BE AMENDED EXHIBIT (los30a18).

**Discussion:**

SEN. DUANE GRIMES had reservations.

SEN. CHRIS CHRISTIAENS had concerns where it stated local government shall provide matching funds equal to 25% of the cost of the infrastructure project. If the loan authority is being increased to \$4 million, then the local government would have to come up with a minimum of \$1 million or more. That is not good.

SEN. EMILY STONINGTON maintained that a process would be set up by which a local government would put into a competitive mix four treasure state endowment monies, for private business infrastructure. Treasure state endowment monies go to build sewers and public works. This bill would allow local governments to apply for a grant for their public works and a loan which they would match equal to 25% for a private building to be built. Regardless of whether it is a loan or a grant, no local government that is searching for money to do public works in their community would ever do this. It is an empty gesture.

SEN. JOHN BOHLINGER referred to page 9, new section 6; it states these monies would be used to fund business infrastructure projects, not buildings, sewers, etc. It requires a 20% equity commitment by the developer. In the event the project should fail, there is equity backing the project.

SEN. GRIMES asserted that his main concern was with the "high-speed telecommunications connections." If a local community wants to build their infrastructure to attract business and use this as a mechanism to do so, it is good. There are consultants galore within the state. The state has dumped tons of money down the hole to put together the telecommunications infrastructure and the bulk of it has been poorly spent. That part of the amendment is not good.

SEN. DON HARGROVE had talked to high tech businessmen and they say if a company can produce \$20 million a year and have a \$50

million growth plan, the sky is the limit. Money would pour in. If the money is less than that, the company probably won't go anywhere. That kind of money is not really significant to a businessman but it is quite significant for the taxpayer.

**SEN. KEN TOOLE** asked if the person who secured the loan would own all the equipment. If there is a default, where would it go back to.

**SEN. JOHN COBB** suggested removing the first amendment.

**Motion/Vote:** **SEN. GRIMES** moved **SUBSTITUTE MOTION TO AMEND SB019801.AGP BY REMOVING #1. Motion carried unanimously.**

**Motion:** **SEN. TOOLE** moved that **SB 198 BE AMENDED EXHIBIT (los30a19).**

**Discussion:**

**SEN. TOOLE** discussed his amendment. Employees in the business must receive an average wage equal to 150% of the minimum poverty level for a family of four which would equate to approximately \$12 per hour.

**SEN. CHRISTIAENS** inquired what the bill offers now as a wage.

**SEN. TOOLE** said it would be about \$8.00 per hour.

**SEN. BILL GLASER** explained that what the amendment would do is to make all the cheap labor be contracted and the only people that the amendment would address is the high priced help.

**SEN. TOOLE** offered to put in an amendment stating that they could hire no contract help. He felt if the state subsidizes businesses there should be some assurance that people receive a decent wage.

**SEN. DUANE GRIMES** felt the bill had done some things toward salaries but he didn't want to hamper the bill with extraneous language and requirements.

**Vote:** Motion **failed 4-7 with Bohlinger, Cobb, Glaser, Grimes, Hargrove, Mahlum, and Miller voting NO. A roll call vote was taken.**

**Motion:** **SEN. STONINGTON** moved **STRIKE LINES 20 THROUGH 23 and 26 ON PAGE 5.**

**Discussion:**

**SEN. STONINGTON** said that infrastructure are those underpinnings that benefit more than one single business. That includes streets, traffic control, parking, electrical and plumbing systems but not landscaping and remodeling a privately owned business.

**SEN. GRIMES** was surprised that the amendment came from a Senator from the city of Bozeman that has one of the strictest landscaping codes in Montana. He did question what the problem was with remodeling existing buildings. Buildings are a permanent part of the infrastructure.

**SEN. STONINGTON** felt it was inappropriate for public money to be building private buildings.

**SEN. GRIMES** asked what her opinion would be if the building were to be built on the Montana State campus in Bozeman. **SEN. STONINGTON** said that issue did not come up in the hearing.

**SEN. GLASER** offered to segregate the landscaping first and see what would happened.

**Motion/Vote:** **SEN. STONINGTON** moved **SUBSTITUTE MOTION TO STRIKE LINE 26 FROM THE BILL, REMOVING LANDSCAPING.** Motion carried unanimously.

**Motion/Vote:** **SEN. STONINGTON** moved **SUBSTITUTE MOTION TO STRIKE LINE 23 FROM THE BILL.** Motion failed 5-6 with Mahlum, Cobb, Miller, Glaser, Grimes and Bohlinger voting NO. A roll call vote was taken.

**Motion/Vote:** **SEN. GRIMES** moved that **SB 198 DO PASS AS AMENDED.** Motion carried 6-5 with Christiaens, Cobb, Elliott, Stonington, and Toole voting no. A roll call vote was taken.

#### EXECUTIVE ACTION ON HB 20

**Motion/Vote:** **SEN. CHRISTIAENS** moved that **HB 20 BE CONCURRED IN.** Motion carried unanimously. Sen. Grimes will carry the bill.

**ADJOURNMENT**

Adjournment: 7:00 P.M.

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SEN. DALE MAHLUM, Chairman

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MARY GAY WELLS, Secretary

DM/MW

**EXHIBIT (1os30aad)**