

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on March 11, 2003
at 3:05 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. John Esp, Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Jim Elliott (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick Laible (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: Sen. Jeff Mangan (D)

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 269, 2/25/2003; HB 333,
2/25/2003; HB 339, 2/25/2003
Executive Action: HB 333; HB 264

HEARING ON HB 269

Sponsor: REPRESENTATIVE BOB BERGREN, HD 90, Havre

Proponents:

Mike Batista, Department of Justice

Steve Larson City of Helena

Pat Clinch, MT Council of Professional Firefighters

Mona Jamison, American Promotional Enterprises

Opponents:

None

Opening Statement by Sponsor:

REPRESENTATIVE BOB BERGREN said on behalf of the Department of Justice and the Fire Marshal's office he introduced HB 269. He said it brought several changes to the code regarding the fire marshal's office, most deal with redefining occupancies and a few regarding instances when a reporting system is used. He said that Leanne Kurtz had brought some potential problems with the bill to his attention and he maintained she would draft some amendments for executive action. He said there was clean up language on the first page. On the second page they were striking that language because it was a duplicate process, the national fire incident reporting system will be available to anyone who needs that. He said there was a lot of clean up on page 4, 5, 6, and 7. He said he was a proponent of taking changing codes out of state statute so the law stayed up to date. He said section 5 redefined assemblies. Page 8 struck a lot of requirements, that the auditor had recommended. He reserved the right to close.

Proponents' Testimony:

Mike Batista, Department of Justice said it was within the division of criminal investigation where the state fire marshal's office resides. He said this bill was largely the result of limitations that are currently imposed on the state fire marshal's office, primarily because of staffing. He said prior to the special session they had a staff of 13 employees, after the session and governor imposed budget cuts it dropped to 10.5, as of yesterday they were currently staffed at 7.5. He gave that background because the fire marshal's office is responsible for conducting life safety inspections throughout the state of Montana, with 7.5 investigators and inspectors it is a difficult task at best. He maintained they were responsible for conducting

life safety inspections on school buildings, daycare centers, homes for the disabled, places of public accommodations like hotels and bed and breakfasts, state owned facilities, prerelease centers, prisons, and jails as well as underground storage tanks. He said they roughly completed 900 inspections a year, and roughly 40 to 70 fire investigations a year. He maintained they had a difficult task based on the number of people to cover the entire state. He said this bill would allow them some flexibility on how they used that staff. On page 2 lines 5 and 15 "its budget and other inspection and investigation" language was stricken. He said they felt that language was important and should be left in. He said there were a couple other references to that in the bill which were also struck. He said that had been put in the bill to reflect the difficulties the bureau has with completing those inspections and trying to live within the resources of the department and still address issues of public safety. He also made a couple comments about the parts of the bill that had been amended. He said on page 1, Section 1, starting on line 19, the fire marshals office had been excluded from the deliberations with the Department of Administration because it is better suited for local fire departments to address their needs to fight fires in state owned buildings than it is the state fire marshals office to do that for them. He said Section 2 on record keeping had been amended because there is currently a national fire incident reporting system that local agencies can report directly too on central repository of all fire incidents in the state. He did not see a need for the state fire marshals to be an intermediary in that process. He said they would certainly help facilitate the exchange of that information between local fire departments and the national incident reporting system. In Section 4 line 27, "Damage indemnity bond" is struck. General liability insurance is required for public displays, he said that reflects actual current practices in the insurance industry today. And finally section 6 a number of occupancies are stricken. That is because they are listed in the fire code which changes every couple years and rather than coming every session to make changes to the list of occupancy they felt it was better to strike that language. He said this really cleaned up the MCA and allows them a little more flexibility in how they use their resources. They were in support of the bill and would appreciate the committee's consideration.

Steve Larson, City of Helena said he was in support of the bill in particular the amendments to the MCA. He made himself available to answer questions.

Pat Clinch, MT State Council of Professional Firefighters said they were in support of the bill. He said the changes made to the occupancy were very important to them, because making them generic made a lot of sense. He said they supported the amendment

to Section 1, to have the fire marshals office out of the negotiations with the Department Administration. He reiterated they were in support of the bill.

Mona Jamison, American Promotional Enterprises said they were in support of the bill as it had been amended.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR KELLY GEBHARDT asked Mike Batista if the incident reports that get filed in the National system were accessible to them at any time.

Mike Batista replied they did have access.

SENATOR BRENT CROMLEY asked, on page 2 if (h) was deleted because that information would be available on a national level. He assumed it was available on a local level as well, through the local investigation agency. Is that correct.

Mike Batista said that was correct.

SENATOR CROMLEY asked how it got to the national level.

Mike Batista replied it goes from the local agency to the national system. He replied they had one person in their office that acted as a facilitator to make that happen.

SENATOR CROMLEY assumed that generally their office would not have much in the way of the information on page 3, new sub 5. Is that correct.

Mike Batista said they maintained their own information relative to a fire investigation. He said they would retain investigative case information.

SENATOR JERRY BLACK asked if the State Fire Marshal would always be available to investigate fires as they have in the past.

Mike Batista replied that was correct.

SENATOR BLACK asked if this bill put more responsibility on the local fire departments for record keeping and reporting duties.

Mike Batista said he did not know if it required more responsibility. It is something that has always been there, it is done throughout the state. Some departments have done a great job and some have not, but they were finally getting to a point where the ease of transferring this data is greatly enhanced. He thought the additional burden on local fire departments would be their need to conduct inspections.

SENATOR BLACK asked if they would be paid by the state to perform those inspections.

Mike Batista said there would be no compensation to local governments by the state.

SENATOR BLACK said it would seem that it would be quite difficult for local departments to do.

Mike Batista stated he was probably correct. Most departments are volunteer fire departments. He said this was an additional responsibility.

SENATOR BLACK asked if those inspections had been done by the state previously.

Mike Batista replied that was correct.

SENATOR JOHN ESP asked when the last time Sweetgrass County High School had been inspected.

Mike Batista said he could not answer that.

SENATOR ESP asked if fire codes were generated by the state or if national fire codes were adopted.

Mike Batista said he would defer that question to the state fire marshal.

Terry Phillips, MT State Fire Marshal replied the fire code was adopted by administrative rule, and they were in the uniform fire code since 1973. He said he couldn't say for sure when the high school had been inspected.

SENATOR ESP asked how often they would try to inspect high schools.

Terry Phillips replied statutes required them to be in the schools every 12 months. Staffing shortages did not allow them to do that.

SENATOR CAROLYN SQUIRES asked if the donut bill passed if they would be responsible for inspections within 3.5 miles of the city.

Terry Phillips replied that they would be responsible for the areas outside the city.

SENATOR SQUIRES asked if someone were to build an establishment within the 3.5 miles how long it would take to get it inspected.

Terry Phillips stated currently the building codes would cover that situation. In the past if they could not get to it the building code people would do the initial fire inspection as not to hold up the business from opening.

SENATOR SQUIRES asked if there was any liability for them doing it versus the fire marshal.

Terry Phillips said they have an MOU, (memorandum of understanding) developed between the two agencies and interchange inspections are done to help the other out. He said they worked together quite well, and he did not know if there was a liability.

SENATOR SQUIRES wondered what it meant in the title where it said "eliminating review responsibilities for architectural plans represented to local governments".

Terry Phillips said originally it stated that the fire marshal was to do sprinkler and alarm plan reviews. Through the MOU they had made an agreement with building codes to do that because they have the plan reviewers on staff. So that is taken out of the code so it does not say the fire marshal has to do that.

SENATOR SQUIRES said she was concerned that new facilities be inspected appropriately.

Terry Phillips, said the building and fire codes were companion codes. He did not see where that would diminish safety.

{Tape: 1; Side: B}

Closing by Sponsor:

REPRESENTATIVE BERGREN said he appreciated **Mr. Batista** bringing up the important issue of the General Liability versus the bond required for fireworks. He said there are parts of the bill he wished he did not have to bring before the committee. He asked the committee to remember that a little over a year ago there

were 12 people staffing this department and today there are 7.5. He said a lot of this is because they are underfunded and understaffed. He thanked the committee for the questions and their concerns about the reporting system. He asked for their concurrence. He said that there was another bill HB 196 that would amend page seven of this bill, and he was striking that section so he asked the committee to work with Leanne to work out coordinating language. He appreciated the hearing.

HEARING ON HB 333

Sponsor: REPRESENTATIVE KARL WAITSCHIES, HD 96, Peerless

Proponents:

Carol Kienenberger, Phillips County
Harold Blattie, MT Association of Counties

Opponents:

None

Opening Statement by Sponsor:

REPRESENTATIVE KARL WAITSCHIES, HD 96, Peerless said he brought this bill forward at the request of several county commissioners. He maintained it was a simple bill. He said it would allow different funds to keep the interest earned in that fund. Current law only lets two funds keep their interest and the rest goes to the general fund. He said this legislation would allow the interest to accrue to each fund if the commission so desires. He reiterated that it was not mandatory. He said it was a good bill and he would answer any questions.

Proponents' Testimony:

Carol Kienenberger, Phillips County, submitted written testimony.
EXHIBIT (los51a01)

Harold Blattie, MT Association of Counties thanked the Representative for bringing the bill forward. He maintained the bill had gone through his membership resolution process and had been adopted by the membership. He said it was an encouragement for those other funds to save knowing they would be the benefactors of the interest. He hoped they would support the bill.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR LAIBLE asked the sponsor if the fund had to be spent by the end of the year and this would allow them to carry it over to the following year.

REPRESENTATIVE WAITSCHIES replied that only the interest could be retained. For example if the money is not being used that money and the interest must go into the general fund, this bill would allow the interest to stay in the fair board fund.

Closing by Sponsor:

REPRESENTATIVE WAITSCHIES pointed out that the counties had requested this, the state was not telling the counties what to do. He asked for their concurrence for the counties.

EXECUTIVE ACTION ON HB 333

Motion: SEN. GEBHARDT moved that HB 333 BE CONCURRED IN.

Motion: SEN. CROMLEY moved that AMENDMENT HB033301.ALK DO PASS.

Discussion:

SENATOR GEBHARDT said he thought they should research that because they are established in a different code section. There may be some language that may be considered.

SENATOR MIKE WHEAT asked if he was just trying to expand it to any fund that may be created.

SENATOR CROMLEY replied no it did not expand it, it just takes out the specific reference.

SENATOR ESP asked **Leanne Kurtz** if the amendment changed the intention of the bill.

Leanne Kurtz said she agreed that it did not change the intent of the bill only took out the examples.

Vote: Motion carried unanimously.

Motion/Vote: SEN. SQUIRES moved that HB 333 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

HEARING ON HB 339

Sponsor: REPRESENTATIVE JEFF PATTISON, HD 95, Glasgow

Proponents:

Carol Kienenberger, Phillips County
Harold Blattie, MT Association of Counties

Opponents:

None

Opening Statement by Sponsor:

REPRESENTATIVE JEFF PATTISON, HD 95, Glasgow said the bill under MT Code Annotated 76-204-1 does not allow counties having less than 15,000 residents to create the office of county auditor. In these counties the duties of the county auditor fall upon the clerk and recorder. This bill is attempting to allow them to put in an auditor for purposes of heavy work loads. He stated it did not make them do this it only permitted it. He stepped down to allow proponents to speak.

Proponents' Testimony:

Carol Kienenberger, Phillips County submitted written testimony. EXHIBIT (1os51a02)

Harold Blattie, MT Association of Counties said they were in support of the bill. He thanked the representative for bringing the bill forward on their behalf. He said the bill had under gone the scrutiny of the association and was endorsed unanimously. He reiterated that the bill did not remove the requirement of the bigger counties to have an auditor just allowed smaller counties to have an auditor if they so choose.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR ESP said in the bill there seemed to be a policy change that auditors would no longer be elected.

Harold Blattie replied he did not recall that being the intention. He said it was the intention to make it an either or situation.

SENATOR GEBHARDT said the compensation would be decided by the Compensation Board. He wondered if they were limiting that person to be paid a certain salary. He wondered if you could hire an auditor for around \$10.50 an hour.

Carol Kienenberger said they were thinking it would be an elected position and that is why it came under the Compensation Board. She did not think they were necessarily looking at a full time position.

SENATOR GEBHARDT said as long as they were researching the rest of it they might want to give it some thought.

{Tape: 2; Side: A}

SENATOR CROMLEY asked what the population of a fourth class county was.

Harold Blattie said they based that on taxable evaluation. He explained that population was not a factor.

SENATOR CROMLEY asked if the addition in sub part 1 meant some counties would not be required to have an auditor.

Harold Blattie said that was not his understanding. He said this did impose a requirement that all counties that have a population of over 15,000 have an auditor.

SENATOR CROMLEY said for example if you have a fourth class county of 14,000.

Harold Blattie, said yes.

SENATOR CROMLEY said right now they would be required to have an auditor and if this bill were to pass they would not be required to have an auditor.

Harold Blattie replied under current language they do not apply to counties having a population of less than 15,000. So what it used to say was all counties of first second, and third class will have county auditors and then in (2) it imposes the 15,000 population part of the test. So read together, any county of first, second, third or fourth class having a population of more than 15,000 is required to have an auditor.

Closing by Sponsor:

REPRESENTATIVE PATTISON thanked the committee for the questions. He maintained the intent of the bill was for counties like

Phillips county to be able to have an auditor to help with the work load. He asked for the committee to concur.

EXECUTIVE ACTION ON HB 264

**Motion/Vote: SEN. LAIBLE moved that HB 264 BE CONCURRED IN.
Motion carried unanimously.**

ADJOURNMENT

Adjournment: 4:10 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los51aad)