MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **VICE CHAIRMAN BOB HAWKS**, on January 13, 2005 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:
Sen. Jeff Mangan, Chairman (D)
Sen. John Esp (R)
Sen. Kelly Gebhardt (R)
Sen. Kim Gillan (D)
Sen. Bob Hawks (D)
Sen. Rick Laible (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Jim Shockley (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jennifer Kirby, Committee Secretary
Leanne Kurtz, Legislative Branch

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

Committee Business Summary:
Hearing & Date Posted: SB 116, 1/4/2005; SB 157, 1/4/2005; SB 175, 1/4/2005
Executive Action: SB 40; SB 140

VICE CHAIRMAN BOB HAWKS (D), SD 33, BOZEMAN, directed the Committee Secretary to take roll on sight. **VICE CHAIRMAN HAWKS** said that the Local Government committee had three hearings scheduled for that day and that he would chair the first two hearings, and **CHAIRMAN JEFF MANGAN (D), SD 12, GREAT FALLS** would be back to chair the third. **VICE CHAIRMAN HAWKS** relayed the order of the hearings: **SB 175, SB 157, SB 116. VICE CHAIRMAN HAWKS** than directed people to sign in if they intended to testify, and to leave any written testimony with the Committee Secretary. **VICE CHAIRMAN HAWKS** reviewed the rules and order of events for Senate Hearings.

HEARING ON SB 175

{Tape: 1; Side: A; Approx. Time Counter: 2.5}

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, BILLINGS opened the hearing on SB 175, Allow zoning classification as street maintenance assessment method.

{Tape: 1; Side: A; Approx. Time Counter: 2.6 - 4.6}

SEN. CROMLEY said that **SB 175** came at the request of local governments, who felt that there is a need for an additional method for assessing the street maintenance fees when a street maintenance district is set up. **SEN. CROMLEY** explained that currently there are four factors that go into determining what a property owner's street maintenance fee would be: area, frontage, number of lots, and a combination of these factors. **SB 175** would add an additional factor for consideration and that would be the zoning of the property. Currently, the use of the property was not taken into account when assessing fees, so a residence was charged the same fee as a strip mall. **SEN. CROMLEY** felt that it was unfair. **SEN. CROMLEY** thanked the committee.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 4.7 - 10}

Jani McCall, City of Billings, told the committee that they had intended to have **David Mumford, Public Works Director for the City of Billings,** at the hearing but his flight was grounded due to weather conditions. **Ms. McCall** asked the committee to bear with her as she would attempt to relate all relevant information and if the Committee had a question that she could not answer,

Mr. Mumford would be available to answer the question before Executive Action. **Ms. McCall** went over the methods for determining street maintenance fees currently and informed the committee that the Billings City Council had established a subcommittee to address the inequities in these fees. The current system does not take use into account, for example a "nine-thousand square foot residential property pays the same assessment cost as a nine-thousand square foot commercial property, and the wear and tear on the roadway and maintenance requirements are not the same." **Ms. McCall** explained that **SB 175** would allow communities to use the property's zoning to distribute the cost of maintenance more proportionally to the property's contribution to maintenance needs. **Ms. McCall** related that numerous Billings homeowners had approached the council regarding the high assessment fees. A single homeowner with a one acre lot, who has one car using the roadway is paying the same as a commercial business on a one acre lot that may have one thousand or more people use the roadway.

Alec Hansen, League of Cities and Towns, shared that the idea behind **SB 175** was presented at the League's annual conference and the members of the League voted unanimously to support the bill. **Mr. Hansen** called **SB 175** an "equity proposition." The goal of the bill is to connect the use of the service with the cost of the service. **Mr. Hansen** gave the committee the example of a family with two cars compared to a strip mall. The family was not putting a huge strain on the street system, whereas the mall was a traffic generator that would greatly increase the need for maintenance of the street system. **Mr. Hansen** contended that **SB 175** was a fairer way to assess the fees.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 10.7 - 14.8}

SEN. JERRY O'NEIL (R), SD 3, COLUMBIA FALLS, asked **Mr. Hansen** how much weight would be given to different zoning classifications and who would decide what weight would be given to each. **Mr. Hansen** deferred to the City of Billings, but said he believed that the zoning would be combined with the other factor: area and frontage, to determine the fee. **Mr. Hansen** promised to get the question answered before the committee took executive action. **Ms. McCall** told the committee that they would combine square footage

with the zoning classification. **Ms. McCall** said she thought they could have the information to the Senators by the next day.

SEN. RICK LAIBLE (R), SD 44, VICTOR, questioned **Ms. McCall** as to whether **SB 175** was a zero sum gain bill. **Ms. McCall** deferred to **Mr. Hansen. Mr. Hansen** said the city of Billings might have to answer the question. **SEN. LAIBLE** read the statutes, quoting "the city council shall estimate as near as is practicable the cost of maintenance in each established district, etc, etc." **SEN. LAIBLE** believed that meant there was a net amount of money necessary for the maintenance of the district, and that total amount would not change. However, the share of cost to meet that amount would be redistributed, commercial property would pay more, and residential property would pay less. **Ms. McCall** said that was her understanding. **SEN. LAIBLE** concluded that the bill was a zero sum gain in that case.

SEN. KIM GILLAN (D), SD 24, BILLINGS, inquired of **Ms. McCall** whether there was a mechanism in place to re-determine the street maintenance fees if a property is re-zoned and the fee should change. **Ms. McCall** said that would automatically trigger a reassessment of the fees.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 14.8 - 16}

SEN. CROMLEY responded to some of the questions that had been raised during the hearing. **SEN. CROMLEY** confirmed that **SEN. LAIBLE** was correct in thinking that **SB 175** was a zero sum gain bill. The bill would redistribute the fees more fairly. **SEN. CROMLEY** thought it made sense to take into account the use of the property as one of the factors to determine street maintenance fees. **SEN. CROMLEY** said there would still be some discretion given to local governments regarding the weight that each factor had, but that it was important to give them the additional method to ensure fair assessments.

HEARING ON SB 157

{Tape: 1; Side: A; Approx. Time Counter: 17.7}

Opening Statement by Sponsor:

SEN. SAM KITZENBERG (R), SD 18, GLASGOW opened the hearing on SB 157, Voter retention language for county attorney races.

{Tape: 1; Side: A; Approx. Time Counter: 17.8 - 22.6}

SEN. KITZENBERG said the purpose of his bill was to revise the ballot language that would be used when a county attorney was running unopposed. **SEN. KITZENBERG** shared that his main reason for bringing up this bill was accountability. **SEN. KITZENBERG** told the committee that the language he proposes is currently used for judicial officers and **SB 157** would extend its use to county attorneys. **SEN. KITZENBERG** explained that the reason he was "quote: picking on county attorneys" is that to run for county attorney, one has to have a law degree, which makes it difficult to find qualified candidates for county attorneys. The desire was to insure that county attorneys were being held accountable to the public. **SEN. KITZENBERG** stressed that for a county attorney who is doing his or her job, there should be no fear. He characterized the bill as a check on the system. **SEN. KITZENBERG** said that **SB 157** should prevent bad county attorneys from being retained just because no one ran against them, put county attorneys in line with the other side of the judicial branch, diminish the chance that a county attorney would ignore a potential case because of a personal interest or outside pressure would create the possibility for new attorneys to get in and look at things differently, prevent the problems that arise from a county attorney who does not do his or her job, prevent attorneys from settling cases that should be sent to trial, and it reduces the inactivity of pursuit of criminals that are still at large. **SEN. KITZENBERG** informed the committee that if a county attorney is not retained, the replacement clause gave the responsibility for finding a qualified candidate to the county commissioners. **SEN. KITZENBERG** told the committee that he had received several calls regarding this bill and some of them asked him why he was picking on county attorneys and not extending it to all local and county elected officials. **SEN. KITZENBERG** responded that he started drawing up amendments to expand the scope of the bill, but was unable to add them because **SB 157**'s title and legislative rules limited what he could put in a single bill. **SEN. KITZENBERG** rested his case and reserved the right to close.

Proponents' Testimony: None.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 22.6 - 30.4}
{Tape: 1; Side: B; Approx. Time Counter: 0.1 - 9.5}

Bob Zenker, Madison County Attorney and Montana County Attorneys' Association, stood in opposition to **SB 157.** The Association represents every county attorney in the state with the exception

of one who had forgotten to pay his dues. **Mr. Zenker** reported that he was in trial that morning in Virginia City, roughly 130 miles from Helena and the state prevailed in that trial. **Mr. Zenker** said he drove through the horrible snowstorm to be at the hearing, not just because the outcome is important to him but to show the committee the kind of dedicated professionals that most county attorneys are. **Mr. Zenker** was upset by the cynical views that **SEN. KITZENBERG** showed. He acknowledged that some bad county attorneys exist, but most of them were career public servants who are dedicated to what they do. **Mr. Zenker** mentioned that county attorneys are members of the executive branch, not the judicial branch. **Mr. Zenker** explained that as career public servants, over a period of time, county attorneys amass significant experience, knowledge, and skill and having a "fresh face" may not be the best thing for the county. **Mr. Zenker** maintained that it took a number of years to be a good county attorney, "the practice of law is just that- a practice. And the only way you get good at it is to go and do it." **Mr. Zenker** believed that **SB 157** was superfluous and unnecessary. **Mr. Zenker** maintained that there are mechanisms already in place to deal with bad county attorneys and to get them out of office. County attorneys are subject to popular vote. **Mr. Zenker** agreed that these elections may not matter if no one runs against the county attorney but contended that there are reasons that no one opposes the county attorney. One reason is that most of the attorneys in the county think that the county attorney is doing a good job, another reason is that nobody wants it. **Mr. Zenker** said that he "used to feel special about running unopposed, until it dawned on me that was the case." Another real concern for **Mr. Zenker** was that in rural and small counties, like Madison county, there are as few as three or four attorneys in the entire county and there is the possibility that no one will be available or willing to be the county attorney. Another concern was that if the bill was applied to one particular class of persons but not to others in a similar position (i.e. elected officials), it may not pass Constitutional muster. **Mr. Zenker** said that at the very least, the legislation was wrong and unfair. **Mr. Zenker** noted that he was not in favor of expanding the legislation, for the same reasons he objected to **SB 157** for county attorneys. **Mr. Zenker** contended that the retention clause has been part of Montana law for a very short period of time but so far, no one has ever lost an uncontested race so **SB 157** serves no purpose.

Mr. Zenker submitted an outline of his testimony.

EXHIBIT(los09a01)

Dennis Paxinos, **Yellowstone County Attorney**, rose in opposition to **SB 157**, but said that he wanted to inform the committee more than he necessarily wanted to oppose directly. **Mr. Paxinos** first point was regarding treating county attorneys like judges. **Mr. Paxinos** agreed that judges do require a vote when they are elected, if the race is uncontested. He told the committee that process gives the public input on the judicial races. However, there are already statutes in place to get rid of bad attorneys and to fill their positions. **Mr. Paxinos** explained how a judicial vacancy was filled. First, candidates are required to fill out application forms that are subject to public scrutiny; then there is a time for public comment; a selection committee, that is made up of a diverse group of citizens, interviews the candidates; then the committee makes recommendations to the governor; the governor and his staff conduct interviews; and than make an appointment. On the next election cycle, the appointed judge stands against an opponent or a retention vote. The legislation over the past twenty years has added a large number of duties to the job of a county attorney and it requires current county attorneys to have an extremely high level of expertise. **Mr. Paxinos** imparted that there was a lot of frustration from county commissioners to county attorneys and also within the county attorney association because of the additional duties. So if **SB 157** passes, there could be significant consequences. **Mr. Paxinos** laid out a hypothetical situation that a rural county attorney lost the retention vote and the incoming appointed attorney does not go through the stringent process that is required of judges. **Mr. Paxinos** questioned that at that point "whose county attorney is it? It's the County Commissioners and is not the people's county attorney." **SB 157** did not have that safeguard in. **Mr. Paxinos** explained his second problem with the legislation. The Montana legislature had already dealt with the problem. A law was passed last session which allowed county commissioners to hire a private attorney to represent them and the other officials in a county. **Mr. Paxinos** contended that county commissioners did not want to pay for a private attorney, they wanted a county attorney that they controlled. **Mr. Paxinos** declared that **SB 157** would not have any effect on him as he was the most popular elected official in the county; but in a rural county where just a few votes decide an election, as was seen in the recent House of Representatives election, **SB 157** could have a significant effect. **Mr. Paxinos** believed that there is another statute on the books that mandates that all county elected officials are to be treated the same. So if the committee decided to pass **SB 157**, they must impose the law on everyone. **Mr. Paxinos** agreed with **Mr. Zenker** that the bill should die in committee, not be extended. **Mr. Paxinos** told the committee that they would see bills during the session trying to switch to a district attorney system. **Mr.**

Paxinos explained what a district attorney system is. **Mr. Paxinos** argued that the legislature has already put too much burden on county attorneys and they need to pass bills to help the county attorneys, not make life more difficult. **Mr. Paxinos** said that Montana is already struggling to find competent people who want the job. The experience requirement has been lowered from five years to three years and it may disappear. Soon, the requirement would be a law degree and someone willing to take the job. **Mr. Paxinos** urged caution on **SB 157.**

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 9.7 - 19.7}

SEN. JOHN ESP, SD 31, BIG TIMBER, asked the sponsor how he would respond to the testimony of the opponents. **SEN. KITZENBERG** agreed that ninety to ninety-five percent of elected officials do a good job, but he was concerned with how an average citizen can deal with an official who is not doing an adequate job. **SEN. KITZENBERG** contended that people are scared to criticize their county attorneys. **SEN. KITZENBERG** said he had wanted to expand his bill to all elected officials but was unable to. **SEN. KITZENBERG** maintained his intention was to hold officials accountable to the people.

SEN. KELLY GEBHARDT, SD 23, ROUNDUP, questioned the sponsor if line twelve of the bill required a technical change, because in some instances county attorneys do not serve a specific county, they serve a district. **SEN. KITZENBERG** agreed and thanked the Senator.

SEN. O'NEIL asked if, because county attorneys were so difficult to replace, the bill could be amended to make the county attorney selection process the same as legislators. The political party of the outgoing official would select three candidates and the county commissioners would select one of those three. **SEN. KITZENBERG** said he would have no problem with such an amendment.

SEN. CAROLYN SQUIRES, SD 48, MISSOULA, wanted to know how **SEN. O'NEIL's** idea would work when there was such a shortage of qualified and willing attorneys. **SEN. KITZENBERG** agreed.

SEN. O'NEIL queried whether is was true that the county commissioners could appoint any attorney practicing in Montana. **SEN. KITZENBERG** believed that was correct and thought that would give a bigger pool to choose from.

SEN. HAWKS asked **Mr. Zenker** to comment on the discussion of amendments. **Mr. Zenker** said there was a misapprehension about how a county attorney position is currently filled under state statute. **Mr. Zenker** explained that the County Commissioners appoint a replacement; however they must first seek a candidate from within the county. The commissioners must ask every attorney in the county if they want the post. Only after all attorneys in the county have declined the position, the commissioners can appeal state-wide for candidates.

SEN. O'NEIL wanted to know if the statutory reference in **SB 157** was the current system. **Mr. Zenker** said he thought so.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 19.7 - 21.8}

SEN. KITZENBERG wanted the committee to know that the bill was not aimed at his own county attorney. **SEN. KITZENBERG** said his county attorney was doing a good job but that there were problems in Montana and the people needed a way to deal with a county attorney that was doing a bad job. **SEN. KITZENBERG** wished he could have included all elected officials in the bill but regreted being unable to expand the bill. **SEN. KITZENBERG** called the county attorney an important office and that the job needed to be done well. Even the county attorneys's association does not want a county attorney in their organization that is not doing their job. Bad county attorneys taint the reputation of good ones. **SEN. KITZENBERG** wanted to know "how do you see justice served?". **SB 157** is needed to deal with the situation. **SEN. KITZENBERG** thanked the committee.

HEARING ON SB 116

{Tape: 1; Side: B; Approx. Time Counter: 24.2}

Opening Statement by Sponsor:

SEN. RICK LAIBLE (R), SD 44, opened the hearing on **SB 116,** Revise subdivision laws.

{Tape: 1; Side: B; Approx. Time Counter: 24.3 - end of tape}

SEN. LAIBLE explained the generation of the bill, House Joint Resolution 37 from the 2003 session, which sought to address the problems associated with Title 76, Chapter 3. The study was given to the interim Education and Local Government Committee. The

committee was split into two parts and the local government portion addressed the Title 76 problems. **SEN. LAIBLE** named **SEN. MANGAN** "the driving force behind the bill" as the chairman of the subcommittee. The subcommittee appointed a working group made up of a large cross-section of the people most affected by Title 76 Chapter 3. **SEN. LAIBLE** said the working group worked on consensus for the bill. The subcommittee wanted unanimous support. **SEN. LAIBLE** credited the working group with doing a majority of the work. **SEN. LAIBLE** said that whenever the working group came to **SEN. MANGAN** with a problem, he sent them back to work on the solution. **SEN. LAIBLE** called **SB 116** the culmination of these solutions. **SEN. LAIBLE** noted there was an amendment to the bill.

EXHIBIT(los09a02)

SEN. LAIBLE commented that there was an agreement among the members of the working group to get consensus on any amendments to the bill. **SEN. LAIBLE** went over some parts of the bill: time frames and additional information after the public hearing. **SEN. LAIBLE** again credited the staff, subcommittee, the working group, and the leadership of **SEN. MANGAN** as Chairman. **SEN. LAIBLE** informed the committee that there was an informational packet in their folders.

EXHIBIT(los09a03)

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 0.7 - 25.6}

SEN. JEFF MANGAN, SD 12, GREAT FALLS, went on the record in support of **SB 116**. As Chairman of the interim subcommittee, he commended the working group. **SEN. MANGAN** told the committee that **SB 116** remained a work in progress but that it was a good bill. **SEN. MANGAN** said it was his discretion whether or not to carry **SB 116** and decided to ask **SEN. LAIBLE** to carry it. He thanked **SEN. LAIBLE** for agreeing to do so.

Peggy Trenk, Montana Association of Realtors, rose in support of **SB 116. Ms. Trenk** shared her experience with the working group. During the eighteen months, they spent a lot of time identifying problems and coming up with solutions. **Ms. Trenk** said they went through and looked at what was working positively and added it to the bill. They also walked through the processes to make sure that they worked. **Ms. Trenk** felt they had come up with a process that worked for everybody. **Ms. Trenk** said the goal of her organization was to increase accountability and predictability, which she felt was accomplished in **SB 116. Ms. Trenk** explained

that the process was difficult, because when one word was changed in a statute, it could have innumerable effects on other parts of the law. **Ms. Trenk** gave the committee the example of when they discovered that they needed to clarify that there could be more than one hearing on a subdivision. One would think it would be easy to just say more than one hearing, but it was more complicated because statutes needed to be clear on public knowledge of the hearing and when the hearing process would actually end. **Ms. Trenk** said that they wanted predictability and accountability and in exchange for that, the organization had accepted the possibility of a longer hearing process. **Ms. Trenk** conceded that **SB 116** was not a simple bill but it would improve the way Montana grows in the future. **Ms. Trenk** informed the committee that their attorney, who helped craft the bill, was at the hearing to help answer questions.

Tim Davis, Montana Smart Growth Coalition, stood in support of **SB 116. Mr. Davis** informed the committee that Montana Smart Growth Coalition was another member of the working group. **Mr. Davis** declared that **SB 116** has made the process more predictable, increased the opportunity for public comment, and improved and increased the time lines throughout. **Mr. Davis** also contended that the consolidation for minor subdivisions was an improvement. **Mr. Davis** complimented the development community for accepting the changes. He thought that one of the best improvements was regarding subsequent public hearings, if new information was revealed after the initial hearing. This gave the local government a better opportunity for good public comment. **Mr. Davis** informed the committee that there were some other amendments in the works and that Montana Smart Growth is committed to consensus.

Michael Harris, Gallatin County, declared their support for **SB 116. Mr. Harris** submitted a letter of support.

EXHIBIT(los09a04)

Ann Hedges, Montana Enviromental Information Center, endorsed **SB 116. Ms. Hedges** said it finally put minor subdivisions in solid statute and that it made a lot of sense. MEIC was committed to continuing to work on the bill.

Anita Varone, Lewis and Clark County Commissioner, called **SB 116** a consensus bill. She declared that the bill corrected a lot of problems in subdivision law. **SB 116** provided consistency in the law. She commended the working group and subcommittee. **Ms. Varone** said that private situations need the predictability and a list of what to do when subdividing. **SB 116** addressed a lot of

complaints that **Ms. Varone** has heard. **Ms. Varone** discussed the law relating to public hearing and the problems associated with the statute of "a public hearing" or one. **Ms. Verone** said that more than one was needed to address public concern.

Myra Shults, Missoula Attorney, told the committee she was a member of the working group and that they worked very hard and met often to write **SB 116. Ms. Shults** said that they were a diverse group and represented many interests so it was truly a consensus bill. **Ms. Shults** shared a story about **Lawyer Michael Kakuk** and herself spending three days debating over the use of "and" or "or" in one of the amendments. She felt this showed the care that was taken in the writing of **SB 116. Ms. Shults** described the numerous entities involved in the writing of the bill. She felt that big counties would not necessarily benefit from most of **SB 116,** but small counties would see a lot of good come out of the bill. **Ms. Shults** maintained that the bill gave a definite procedure for subdivisions and urged the committee to pass the bill.

SEN. SHOCKLEY left the committee.

Byron Roberts, Montana Building Industry Association, supported the bill. He designated the most important parts of the bill were the requirement that local governments identify materials that must be included in the subdivision application and secondly, a completeness review. **Mr. Roberts** felt that a report on the pre-application process would be advantageous to both the subdivider and the local government. He also applauded the modifications to Section 13, which required that local governments name statutes in their decision. **Mr. Roberts** said that would ensure that local governments had a firm basis for their decisions. **Mr. Roberts** expressed their pride in being involved in "a true coalition effort."

Jani McCall, City of Billings, read the notes of Billings City Planner, Ramona Mattix.

EXHIBIT(los09a05)

Ms. McCall said that the city supports the bill but that it does need a few amendments.

Opponents' Testimony: None.

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 25.6 - 29.5}

{Tape: 2; Side: B; Approx. Time Counter: 3.3 - 15.5}

Alec Hansen, League of Cities and Towns, provided some information for the committee. **Mr. Hansen** said that there were still some issues with the bill. **Mr. Hansen** asked the committee to take a little more time before executive action. He introduced **David Nielsen** to provide additional information regarding **SB 116.**

SEN. MANGAN assured **Mr. Hansen** that he planned to take time with the bill and make sure that it worked for everyone.

David Nielsen, Helena City Attorney, informed the committee that one problem with Montana subdivision law was regarding the statute of "you could only have one hearing, before your planning board or your governing body. That's an issue that has divided attorneys." **Mr. Nielsen** explained that some attorneys interpreted the law to mean a person only got one hearing, period. **Mr. Nielsen** interpreted the law to mean that a person got one hearing in front of the planning board and one hearing in front of the governing body. **Mr. Nielsen** directed the committee's attention to **Mr. Kakuk**'s informational packet (**Exhibit 3**). **Mr. Nielsen** discussed Section 8. **Mr. Nielsen** felt that the bill failed to make clear whether there could be multiple public hearings and in front of whom the hearings should take place. **Mr. Nielsen** asked the committee to look at Section 9, which dealt with subsequent hearings on new information. **Mr. Nielsen** thought that the time frame was short, because at the time of the planning and city commission hearings, a subdivider would be over fifty days into the process. At that time, if new information surfaced and there needed to be another hearing, the clock was running low and the local governments would only have ten days or less to reach final decision. A proposal that **Mr. Nielsen** put forward was that if there were less than twenty working days at the time that new information surfaced, the sixty-day deadline could be extended. **Mr. Nielsen** felt that in order to give proper public notice of the additional hearing, more time was necessary. **Mr. Nielsen** said he was given pause regarding the amendment that stated "review public comment on new relevant and credible information." **Mr. Nielsen** declared that in front of an administrative body, the words did not carry the same evidentiary burden that they did in a court of law. **Mr. Nielsen** did not want a high level evidentiary criteria. He promised to work with **Mr. Kakuk** to sort out the legal language. **Mr. Nielsen** called the subdivision hearing process a "quasi-judicial process" and only information that was on the public record could be accepted after the hearing process started. He was afraid that, inadvertently, section 9 had failed to distinguish that when discussing "new information." **Mr. Nielsen** did not want to legalize external

judicial communication. **Mr. Nielsen** commented that an amendment was in the works to limit that and he said he would be comfortable with that section, if the amendment was passed. **Mr. Nielsen** directed the committee's attention to Section 13, which amends the written statement requirements. If the city passes the subdivision without conditions, they are not required to give a written findings. Section 13 that requires a different and more critical analysis go into the written report. **Mr. Nielsen** felt that it raised the bar on the legal analysis. So **Mr. Nielsen** proposed that Section 2 be amended to assist with this. The amendment would require subdividers to tell the local government what statutes they thought were applicable to their subdivision. It would also be a part of the application process to note any special and unique applications. **Mr. Nielsen** felt that early disclosure would expedite the process. **Mr. Nielsen** discussed Section 19. The changing growth policy is more time-consuming and the staff needed more time to the applicability date. **Mr. Nielsen** said that the amendment allowed multiple applicability dates, up to 150. **Mr. Nielsen** thought that January, 2006, was too soon of an applicability date.

Questions from Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Counter: 15.5 - 30.8}
{Tape: 3; Side: A; Approx. Time Counter: 0.1 - 5}

SEN. HAWKS asked **Mr. Nielsen** about the decision-making process. He presumed that decision -makers needed to reference codes to substantiate their decisions. His question was whether this would become a liability for decision makers. **Mr. Nielsen** said that currently they do not cite the Montana code but cite from their own subdivision codes, the legal analysis portion of the bill was new.

SEN. HAWKS asked a follow-up, whether decision-makers were going to have to be completely founded in code and regulation. **Mr. Nielsen** said that they had to have a rational reason, but they did not want to be held liable if they mis-cite or forget a statute.

SEN. ESP questioned **Michael Kakuk, Montana Association of Realtors**, about his chart. **SEN. ESP** wanted to know where the sixty day clock started and when the application was deemed complete so the government could not change the rules that governed the application. **Mr. Kakuk** directed the committee to the correct chart to answer the question. **Mr. Kakuk** went through the clock and chart. When the application is submitted, it goes through the element review, which is five days, and during that

time the regulations could be changed. Once it gets through the element review, it next goes through the information review. This ensures that there is enough information to make a decision. **Mr. Kakuk** noted that it was a difficult process to change the subdivision rules, but that the rules that govern the application could still be changed at this point. However, once the application is through the information review, the application is deemed complete. That starts the sixty day clock, and the rules that governed that application could not be changed.

SEN. ESP clarified that the element and informational review was before the chart starts. **Mr. Kakuk** confirmed this.

SEN. HAWKS asked the sponsor if local governments could limit the number of applications that would be in the pipeline at one time. **SEN. LAIBLE** deferred to **Mr. Davis**. **Mr. Davis** said that the bill allowed local government to set a time when they will accept new applications so they can stage out the application process.

SEN. MANGAN directed **Mr. Kakuk** to review the amendments proposed by the city of Billings (**Exhibit 5**). **Mr. Kakuk** said he had not seen the amendments.

The secretary gave **Mr. Kakuk** a copy of the proposed amendments to look over.

Mr. Kakuk responded to the first complaint of the preliminary or final plat not being clear. He said that since they are not clear, they would definitely need to fix it. **Mr. Kakuk** looked at the recommendation that the bill clarify between required and adequate information. **Mr. Kakuk** offered to discuss this with the city of Billings but noted that the language in that section had been agonized over. **Mr. Kakuk** considered the third complaint of public comments being too generic. **Mr. Kakuk** explained the reference was to public comments that came out during the public hearing process but if it needed to be clearer, they would work on it. **Mr. Kakuk** commented on the fourth recommendation that exemptions only be allowed if they complied with an adopted growth policy. **Mr. Kakuk** felt that was a separate issue and that growth policies should not be regulatory. **Mr. Kakuk** offered to discuss the issue. **Mr. Kakuk** looked at the fifth complaint about limiting who could sue. **Mr. Kakuk** said that the statute was very clear about who could sue.

SEN MANGAN asked **Mr. Kakuk** to respond to **Mr. Nielsen's** concerns. **Mr. Kakuk** said that if a city attorney was unclear regarding the 'one hearing' section of the bill, it would absolutely have to be addressed. **Mr. Kakuk** thought that **Mr. Nielsen's** take on Section 6

Chapter 20 made sense. **Mr. Kakuk** felt that the working group could work on the concerns on public hearings. **Mr. Kakuk** said that mandating the developer submit a list of relative statutes was too high a burden and many subdividers would not know the statutes and could not hire a lawyer to figure it out for them. However, requiring full disclosure of all unique or special statutes was reasonable. **Mr. Kakuk** discussed the concept that the written report would be too large a burden. He agreed that the bar had been raised but the intent was to require local governments to be more explicit. **Mr. Kakuk** surmised that compliance with the regulations would reduce the number of lawsuits, because it forced local governments to ground their reasons in law. **Mr. Kakuk** reiterated that they were willing to discuss and work with anyone on improving the bill.

Closing by Sponsor:

{Tape: 3; Side: A; Approx. Time Counter: 5 - 6.8}

SEN. LAIBLE expressed his appreciation to the committee, the working group, and the subcommittee. He promised to work to make **SB 116** a better bill and get consensus on it. He asked the committee to be patient and they would make the bill as close to perfect as possible. **SEN. LAIBLE** quoted Sir Winston Churchill in closing "Is this the end? Is this the beginning of the end? No, it is the end of the beginning." **SEN. LAIBLE** thanked the committee.

SEN. MANGAN expressed his desire to set a date to take executive action and asked **Mr. Nielsen**, **Mr. Davis**, **Mr. Kakuk**, and **Ms. Shults** to inform him when there was consensus and the bill was ready for executive action.

EXECUTIVE ACTION ON SB 40

{Tape: 3; Side: A; Approx. Time Counter: 8.8 - 9.9}

Motion/Vote: **SEN. ESP moved that SB 40 DO PASS. Motion carried unanimously. SEN. SHOCKLEY voted aye by proxy**

EXECUTIVE ACTION ON SB 140

{Tape: 3; Side: A; Approx. Time Counter: 9.9 - 15.5}

Motion: **SEN. GEBHARDT moved that SB 140 DO PASS.**

Motion: **SEN. GEBHARDT moved that SB 140 BE AMENDED.**

EXHIBIT(los09a06)

Discussion: **SEN. GEBHARDT** explained the amendment. The purpose of the amendment allowed all of the mutual aid agreements that were currently in place to remain in place and effective. It allowed them to enter other agreements outside of emergency service but did not negate current agreements.

SEN. MANGAN asked **SEN. GEBHARDT** to explain number twelve. **SEN GEBHARDT** answered that number twelve would strike "12" on page 5, line 30, and insert "11."

Vote: **Motion carried unanimously.**

Motion: **SEN. GEBHARDT moved that SB 140 DO PASS AS AMENDED.**

Discussion: **SEN. ESP** clarified that the bill did not negate any current agreements and that local governments would have the choice to continue what they currently do or to switch to the bill's new process. **SEN. GEPHARDT** confirmed that was the case.

Vote: **Motion carried unanimously. SEN. SHOCKLEY voted aye by proxy**

SEN. MANGAN noted they had decided not to do executive action on **SB 129.**

ADJOURNMENT

Adjournment: 5:03 P.M.

_____
SEN. JEFF MANGAN, Chairman

_____
JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT(los09aad0.PDF)