MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JEFF MANGAN**, on January 27, 2005 at 2:59 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 225, 1/21/2005; SB 222, 1/21/2005; SB 279, 1/21/2005; SB 173, 1/21/2005
Executive Action: SB 162

SEN. MANGAN related the order of the hearings. He told the committee that there would be subcommittee meetings later in the week.

SEN. RICK LAIBLE, SD 44, VICTOR, acted as Chairman.

HEARING ON SB 225

{Tape: 1; Side: A; Approx. Time Counter: 2.9}

Opening Statement by Sponsor:

SEN. VICKI COCCHIARELLA (D), SD 47, opened the hearing on **SB 225,** Revise FDIC levels for local government.

{Tape: 1; Side: A; Approx. Time Counter: 2.9 - 4.3}

SEN. COCCHIARELLA explained that the bill would allow local governments to deposit amounts over $100,000. She called it "re-insurance" for local government funds.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 4.3 - 14.5}

Keith Colbo, Montana Independent Bankers, told the committee that the FDIC insurance level has not changed since 1980. He said that local governments should be able in invest in a financial instrument to secure their deposits. He discussed the network of banks and how local governments would put money in a CD within the network members and the network members would exchange deposits to ensure that the money was covered. He stated that the law was used in other states. **Mr. Colbo** said that the bill would help local governments because it allowed them to insure their money at a higher rate and addressed their need to deposit more than $100,000.

Steve Turkiewicz, Montana Banking Association, supported the bill because it would allow local governments to secure a higher rate.

Harold Blattie, Montana Association of Counties, said the bill would offer more flexibility and a greater return to local governments.

Annie Goodwin, Department of Administration, expressed that authority was needed to clarify deposits with local governments.

Alec Hansen, League of Cities and Towns, stated that most of the deposits are worth more than $100,0000. He said that governments could work with their local banks with the bill. He told the committee that it was important for local governments to be insured.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 14.5 - 18.5}

SEN. MICHAEL WHEAT, SD 32, BOZEMAN, wanted to know if the bill applied to specific districts. **Mr. Colbo** answered that it would.

SEN. JOHN ESP, SD 31, BIG TIMBER, asked if the coverage was through the Federal Deposit Insurance Corporation (FDIC). **Ms. Goodwin** replied that it was.

SEN. ESP questioned if the local banks were going to have to go to the market to get matching dollar amounts. **Mr. Colbo** answered that they would. He said that the local bank had to have the money.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 18.5 - 19.4}

SEN. COCCHIARELLA noted that everyone agreed on the bill and it would be good for local governments.

HEARING ON SB 222

{Tape: 1; Side: A; Approx. Time Counter: 19.6}

Opening Statement by Sponsor:

SEN. GREGORY BARKUS (R), SD 4, opened the hearing on **SB 222,** Revise local option fuel tax.

{Tape: 1; Side: A; Approx. Time Counter: 19.6 - 22.2}

SEN. BARKUS explained that a legislator passed a local option tax on fuels and it put the Department of Transportation in a perplexing position. **SB 222** would mandate that if one county

passed the tax, the county had to administrate it one-hundred percent. He said that bill would also clean up the administration of the tax.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 22.2 - 30.5}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 8.1}

Harold Blattie, Montana Association of Counties, stated that the option tax could not be implemented under the current statute. He told the committee that the gas tax was not new but it helps facilitate current law. He explained that **SB 222** would change from collecting the tax at the distribution level to the pump level and would be remitted to the county treasurer. He said that **SB 222** would give a way to implement the tax: either a fifty-fifty percent split, a proportion decided by the city versus county road percentage, or any other agreed method. He discussed section four on enforcement. He noted that the money would provide roads and streets.

SEN. SHOCKLEY and **SEN. WHEAT** exit.

Daniel Watson, Rosebud County, stood in support of **SB 222.**

Carl Schweitzer, Kalispell Chamber of Commerce, supported the bill.

Jim Lynch, Montana Department of Transportation, expressed his support for the bill because the collection process was currently an obstacle to implementing the tax. He said it would save $50,000.

Bill Kennedy, Yellowstone County, noted that the bill was a tool and was discretionary.

Alec Hansen, League of Cities and Towns, noted that the law has been on the books since 1979. He said that there were currently three local option fuel taxes in Montana and confusion erupted when cities wanted to change their limits. He thought it would make the collection process easier and would give money to streets and roads. He stated that it would reduce property taxes and special assessments. **Mr. Hansen** commented that the voters got the choice. He told the committee that the League did not like the first method of distribution and that the bill needed to garner the cities support

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 8.1 - 15.2}

SEN. CAROLYN SQUIRES, SD 48, MISSOULA, asked how many local option taxes were on the way. **Mr. Hansen** answered that this was the last bill and noted that **SB 222** was making the collection procedure of an existing law work.

SEN. SQUIRES wanted to know if there would be two different kinds of local option taxes. **Mr. Hansen** commented that this was an old law and the other bill was a new law. He noted that local voters had control.

SEN. KELLY GEBHARDT, SD 23, ROUNDUP, asked what would happen to commercial businesses if Musselshell county implemented the tax and Yellowstone county did not. **Mr. Blattie** answered that commercial drivers would probably go out of county.

SEN. LAIBLE wanted to know what happened to ranchers that ordered fuel delivered to their ranches through a distributor. **Mr. Blattie** stated that the fuel was not subject to the bill because it was off-road fuel and wholesale.

SEN. LAIBLE asked what happened currently. **Mr. Blattie** answered that there was not a local tax and they could not collect the tax.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 15.2 - 15.4}

SEN. BARKUS urged a do pass.

HEARING ON SB 279

{Tape: 1; Side: B; Approx. Time Counter: 15.5}

Opening Statement by Sponsor:

SEN. LYNDA MOSS (D), SD 26, opened the hearing on **SB 279,** Revise municipal infractions.

{Tape: 1; Side: B; Approx. Time Counter: 15.5 - 18.2}

SEN. MOSS explained that **SB 279** would help the process of challenge of court clog. She told the committee that the bill would allow courts to treat non-jail crimes as municipal offenses. She noted that if an offender chose, he or she could pay a fine instead of appearing in court. She commented that the offense would not go on a criminal record.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 18.2 - 22.1}

Joe Mazurick, City of Great Falls, told the committee that the municipal court was overcrowded and the bill would reduce the cost and court clog. He noted that the fines would still be paid.

Mary Jane Tinsley, Municipal Judge, supported the bill because it would alleviate case load. She informed the committee that some people wait three to four hours for a civil infraction. She supported the amendment that would allow additional municipal infractions. She stated that many people fail to appear and the case would reduce the court clog with those offenses.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 22.1 - 31.1}
{Tape: 2; Side: A; Approx. Time Counter: 2.1 - 2.4; Comments: Tape was accidently recorded over}

SEN. JIM SHOCKLEY, SD 45, VICTOR, asked for an example of an offense that would be decriminalized. **Ms. Tinsley** gave some examples. **SEN. SHOCKLEY** said that he thought they could do that now. **Ms. Tinsley** answered that routinely people go to court to maintain a clean driving record through deferred sentencing.

SEN. SQUIRES wanted to now if people were asking to see the judge. **Ms. Tinsley** responded that people signed a waiver to defer.

SEN. GEBHARDT questioned if current law prohibits decriminalization. **Ms. Tinsley** answered that an amendment was needed.

SEN. ESP wanted to know if it would be a public process. **Ms. Tinsley** stated that notice was given and the bill would add state statute cases.

SEN. ESP asked if the bill would alter state law. **Ms. Tinsley** answered that the fines were prescribed by state law and the city ordinances would mimic state law.

SEN. SHOCKLEY questioned if the bill went beyond traffic law. **Ms. Tinsley** answered that it would extend to fine-only infractions.

SEN. ESP wanted to know how local governments could trump state law. **Mr. Mazurick** stated that they could not.

SEN. SQUIRES asked why judges could not defer. **Mr. Mazurick** answered that they could, depending on city ordinances.

Closing by Sponsor:

{Tape: Comments: Tape was recorded over}

SEN. MOSS thanked the committee. She said that the bill would streamline the court process and help working Montanans.

The committee recessed and moved to Room 303.
SEN. JEFF MANGAN, SD 12, GREAT FALLS, acted as Chairman.

HEARING ON SB 173

{Tape: Comments: Tape was recorded over}

Opening Statement by Sponsor:

SEN. BOB HAWKS (D), SD 33, opened the hearing on **SB 173,** Waterside protection act -- building setbacks.

{Tape: Comments: Tape was recorded over}

SEN. HAWKS said his bill was about waterside management. He told the committee that montana rivers and stream banks were being developed and that was decreasing water quality, reducing recreation, and was a threat to public health and safety. **SEN. HAWKS** explained that **SB 173** would protect resources with a "carrot and stick" approach.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 27.3 - 30.5; Comments: Tape was recorded over and lost a portion of proponent testimony}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 17.5}

Janet Ellis, Montana Audubon, explained the bill. She said that **SB 173** would prevent "spaghetti lots." She contended that **SB 173** would increase flexibility and predictability.

John Wilson, Trout Unlimited, called Montana's waterways "the envy of the nation." He said that they were a draw to tourists and made $290 million annually. **Mr. Wilson** stated that waterways made Montana a desirable place to work and live. He noted that Montanans needed to take a pro-active stance to protect their rights to hunt and fish and preserve Montana waters.

Julia Page, Northern Plains Resource Council, submitted an informational packet and read her testimony.

EXHIBIT(los21a01)
EXHIBIT(los21a02)

Scott Bosse, Greater Yellowstone Coalition, handed out a picture of a house and pointed out that if **SB 173** passed, it would prevent the same thing in the future.

EXHIBIT(los21a03)

Mr. Bosse said that the bill was about public health and safety, He contended that **SB 173** was a balance between property rights and people's safety. He noted that it was also a matter of fiscal responsibility.

Roxann Lincoln, Roxann Lincoln Consulting, urged the committee's support because Montana had numerous impaired water bodies. She felt that Montana needed a statewide minimum standard.

Dick Boehmler, Montana Sierra Club, submitted his testimony.

EXHIBIT(los21a04)

Tim Davis, Montana Smart Growth Coalition, handed out a letter from **Mr. John Harwich.**

EXHIBIT(los21a05)

Mr. Davis said that waterways affect the entire state and needed a statewide standard to protect people.

Matt Clifford, Clark Fork Coalition, stood in support of **SB 173.** He argued that the bill would not be takings. He said that it would only be takings if the bill took away all viable use of a property. He commented that the bill provided for variances.

Stan Frasier, Lewis and Clark Conservation District, urged the committee's support

Paul Roost supported **SB 173.**

Jerry Wells stood in support of **SB 173.**

Michele Reinhart submitted her testimony for the record.

EXHIBIT(los21a06)

Leslie McClane, Montana Environmental Information Council, supported the bill.

Jack C. Marar, Trouts Unlimited, supported **SB 173.**

Mary Ann Guggenhein expressed her support for the bill.

Opponents' Testimony:

{Tape: 2; Side: B; Approx. Time Counter: 17.5 - 31}
{Tape: 2; Side: A; Approx. Time Counter: 2.4 - 15}

Glenn Opell, Montana Association of Realtors, submitted letters opposing **SB 173.** He called **SB 173** an egregious eroding of property rights. He said that it was statewide zoning and did not provide a way for local governments or voters to protest. He told the committee that the setback was the size of Washington Grizzly stadium and people could not build any closer to a stream.

EXHIBIT(los21a07)

John & Mary Hauck submitted their testimony for the record.

EXHIBIT(los21a08)

Michael Kakuk, Montana Association of Realtors and Montana Building Industry Association, contended that the bill lacked definitions. He noted that the bill required permits which would need new local government administration. He had numerous questions regarding the vagueness of the bill. He called **SB 173** statewide zoning and local governments were having their due process rights violated. **Mr. Kakuk** stated that **SB 173** was

counterproductive to local control and was one arbitrary setback for the entire state.

Bill Myers, Bayside Park & Marine Center and Peinter Scenic Cruises, would affect hardworking Montanans and hurt small businesses. He read part of newspaper article and showed some picture to the committee. He stated that he did not qualify for any of the exceptions in the bill and he would lose all use of his property, he noted that there was not a grandfather clause for him.

EXHIBIT(los21a09)
EXHIBIT(los21a10)
EXHIBIT(los21a11)

Mr. Myers called the bill unlawful government takings and there should be a better provision set up by local governments.

Dick Ainsworth gave his testimony in opposition to **SB 173.**

EXHIBIT(los21a12)

Jeff Chaffee, Southern Montana Electric Cooperative, submitted his testimony.

EXHIBIT(los21a13)

Steve Pilcher. Montana Stock growers Association, stated his opposition to **SB 173.** He felt the bill was an unneeded burden on Montanans. He reviewed the issues that he had with **SB 173.**

John Youngberg, Montana Farm Bureau, said that agriculture would be severely impacted by the bill and destroy irrigation.

Harold Blattie, Montana Association of Counties, submitted a paper containing their problems with the bill. He noted that Bigfork County was already successfully sued because of vagueness of definition of "stream."

EXHIBIT(los21a14)

Jim Kembel, Montana Association of Registered Land Surveyors, opposed the bill. He submitted their issues with the bill.

EXHIBIT(los21a15)

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 15 - 16.8}

Tim Burton, Montana Department of Transportation, told the committee that they were committed to working with the sponsor to resolve their issues with the bill.

John Dilliard, Department of Environmental Quality.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 16.8 - 27.3}
{Tape: 3; Side: B; Approx. Time Counter: 0 - 17.5}

SEN. SHOCKLEY asked **Mr. Answorth** about the house that fell in the river. **Mr. Answorth** answered that the fall of the house was caused by alteration of the streambed.

SEN. SHOCKLEY wanted to know if **Mr. Kakuk** thought the bill constituted takings. **Mr. Kakuk** believed that it did not.

SEN. SHOCKLEY wanted to know who drafted the bill. **SEN. HAWKS** replied that it was Tim Davis.

SEN. SHOCKLEY questioned **Mr. Davis** what the difference was between ordinary and mean high water mark. **Mr. Davis** answered that it came from stream access laws.

SEN. ESP asked **Mr. Kakuk** about the definition of stream. **Mr. Kakuk** said that the definition did not narrow it down well.

SEN. MOSS questioned **Ms. Page** about the findings on the Upper Yellowstone. **Ms. Page** stated that the findings were good and deserved review.

SEN. LAIBLE wanted to know if a local government could do all the things that the bill did on a state level. **Mr. Kakuk** replied that the local government could craft the setbacks but he was not sure if the local governments could impose fees.

SEN. WHEAT asked about the definitions and what determined a river. **Mr. Davis** stated that the definitions came from Fish, Wildlife, and Parks. He said that the bill created a permit process and there was a variance process. He noted that the bill said a person just had to fulfill one of the conditions and there was no takings. **SEN. WHEAT** asked what **Mr. Davis** thought about grandfathering. **Mr. Davis** answered that existing non-conforming uses were grandfathered and that he was willing to clean up the language in the bill. **SEN. WHEAT** questioned whether the bill

would override local zoning. **Mr. Davis** answered that there was no existing zoning. He expressed his hope that the bill would promote local governments to zone and implement setbacks.

SEN. WHEAT wanted to know if, in the best interests of the citizens because the state owns all water in the rivers, it was the state's job to step in. **Mr. Kakuk** responded that the state did have that right.

SEN. MANGAN questioned if this was statewide zoning. **Ms. Ellis** answered that they established statewide setbacks across Montana.

Closing by Sponsor:

{Tape: 3; Side: B; Approx. Time Counter: 17.5 - 21.3}

SEN. HAWKS stated that the time was critical and the problem needed to be solved. He asked the committee to take a broader view of the issue. He called the bill a "carrot and stick" approach. He contended that the state needed to take care of its resources. He argued that the bill was not takings and would not put the government at risk. He promised to look at narrowing down the definitions. **SEN. HAWKS** felt that the bill would encourage local action. He discussed **Mr. Meyer's** concerns and stated that he would work to meet the legislative intent of the bill. He said that they would work on some amendments and submit a gray bill in the future.

SEN. LAIBLE acted as Chairman.

EXECUTIVE ACTION ON SB 162

Motion: **SEN. MANGAN moved that SB 162 DO PASS.**

Motion/Vote: **SEN. MANGAN moved that SB 162 BE AMENDED. Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.**

EXHIBIT (15)

Motion: **SEN. SHOCKLEY moved that SB 162 DO PASS AS AMENDED.**

Motion/Vote: **SEN. MANGAN moved that SB 162 BE AMENDED. Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.**

EXHIBIT(los21a16)

Motion: **SEN. SHOCKLEY moved that SB 162 DO PASS AS AMENDED.**

Discussion: **SEN. MANGAN** reviewed the reasons and explanations behind the bill.

Motion: **SEN. SHOCKLEY CALLED THE QUESTION ON SB 162.**

Vote: **Motion that SB 162 DO PASS AS AMENDED carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.**

ADJOURNMENT

Adjournment: 5:52 P.M.

_____
SEN. JEFF MANGAN, Chairman

_____
JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT(los21aad0.PDF)