

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JEFF MANGAN**, on March 30, 2005 at
6:35 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

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

Members Excused: Sen. Kim Gillan (D)
Sen. Carolyn Squires (D)

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: HB 450, 3/8/2005; HB 591, 3/7/2005
Executive Action: HB 591; HB 450; HB 365; HB 105

SEN. JEFF MANGAN, SD 12, GREAT FALLS welcomed all the people watching from the video conference sites. **SEN. MANGAN** explained that the meeting was part of a pilot project involving the use of video conferencing to conduct committee hearings. He thanked Vision Net, Information Technology Services, Partners in Health-tel network, and the Eastern Montana Telemedicine Network. **SEN. MANGAN** announced that evening the sites were in Billings, Bozeman, Glasgow, Kalispell, and Missoula. He said that the committee would follow normal procedure for the committee hearings but with six sites, instead of just one. **SEN. MANGAN** reviewed how the committee would call for witnesses. **SEN. MANGAN** asked that witnesses to keep their testimony brief as the committee had three bills to hear and take executive action on that night.

HEARING ON HB 450

{Tape: 1; Side: A; Approx. Time Counter: 2.1}

Opening Statement by Sponsor:

REP. MIKE JOPEK (D), HD 4, opened the hearing on **HB 450**, Revise state land management.

{Tape: 1; Side: A; Approx. Time Counter: 2.1 - 6.6}

REP. JOPEK said that **HB 450** was a good neighbor approach to land use plans. **HB 450** noted that the land board was exempt from subdivision rules. **REP. JOPEK** explained that the trust lands provided money for education. It asks land boards to implement review criteria rules in consideration of local planning. He stated that the bill acknowledged local control so it did not violate the Constitution. **REP. JOPEK** contended that in selling trust lands, land boards should take local government's land use plans into account. He noted that the land board must consider the plans but retained discretion.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 6.6 - 14}

SEN. MANGAN called for proponents in Billings.

SEN. MANGAN called for proponents in Bozeman.

SEN. MANGAN called for proponents in Glasgow.

SEN. MANGAN called for proponents in Kalispell.

SEN. MANGAN called for proponents in Missoula.

SEN. MANGAN called for proponents in Helena.

Jeanne Holmgrum, Department of Natural Resources, called **HB 450** a good neighbor bill. She said the bill explained how to develop trust lands. **Ms. Holmgrum** promised that the department would work with the local governments. She commented that they had worked hard on the amendments.

Kathy Bramer, Superintendent of Public Instruction's Office, stated that the bill clarified current practice. She said **HB 450** helped incorporate land use planning at the local level with the land board's practice. She stated that the bill better articulated review criteria. She noted that it retained local control.

Ann Hedges, Montana Environmental Information Center, felt that the bill would help resolve conflicts. She declared that the land board should have to comply with local regulations.

Linda Stoll, Montana Association of Planners, stood in support of **HB 450**.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 14 - 15}

SEN. MANGAN called for opponents in Billings.
SEN. MANGAN called for opponents in Bozeman.
SEN. MANGAN called for opponents in Glasgow.
SEN. MANGAN called for opponents in Kalispell.

Joan Vetter wished to speak as a proponent.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 15 - 16}

Joan Vetter supported the state lands program. She was also concerned about the future of educational funding. She urged a do pass.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 16 - 21.1}

SEN. MANGAN called for opponents in Kalispell.

Clarice Ryan opposed the bill because of the risk factors involved. She believed that the state should uphold a funding principle of holding the trust in the most secure commodity. She

declared that the land was more stable and the value was assured, regardless of fluctuations in money. She stated that **HB 450** gave extensions of regulatory control over private land. She said that the bill would intrude into private property. **Ms. Ryan** felt it was important for the Department of Natural Resources to retain management control over trust lands because the responsibility and accountability for the trust lands fall back on the state. She stated that the bill needed to consider some amendments.

SEN. MANGAN called for opponents in Missoula.

SEN. MANGAN called for opponents in Helena.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 21.7 - 28.4}

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, asked **Ms. Ryan** what type of amendments were needed to the bill. **Ms. Ryan** responded that the bill needed to address the authority of the Department of Natural Resources to retain the ability to determine harvest policies. She told the committee that the land owner of the trust land is responsible for expenses of the land's use.

SEN. MICHAEL WHEAT, SD 32, BOZEMAN, questioned the sponsor if the bill needed further amendments. **REP. JOPEK** urged caution in amendments because the land board had the ultimate discretion.

SEN. KELLY GEBHARDT, SD 23, ROUNDUP, wanted to know if the reason for the bill was to increase the value of land sale. **REP. JOPEK** answered that the land board could take advantage of land banking and the privileges were already in statute. He noted that the value of land exceeded the returns from leasing. He said that a better option could be a conversation practice with the local municipalities.

SEN. O'NEIL asked about "land banking." **REP. JOPEK** replied that the bill was not associated with land banking concept.

SEN. MANGAN wanted to know how **Ms. Holmgrum** responded to the concerns of the opponents. **Ms. Holmgrum** assured the committee that the bill had no impact on private property.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 28.4 - 29.3}

REP. JOPEK reiterated that **HB 450** was a good neighbor bill. He said that the state trust lands had a high value and the land board should work more closely with local municipalities.

HEARING ON HB 591

{Tape: 1; Side: B; Approx. Time Counter: 3.6}

Opening Statement by Sponsor:

REP. MIKE JOPEK (D), HD 4, opened the hearing on **HB 591**, Clarify applicability of local zoning regulations to sand and gravel operations.

{Tape: 1; Side: B; Approx. Time Counter: 3.6 - 7.2}

REP. JOPEK said that the bill sought clarity in how local governments interpret how to review state law. He told the committee that **HB 591** was a Montana Association of Counties consensus bill. He explained that **HB 591** clarified zoning regulations regarding sand and gravel operations in zoned areas. It acknowledges the right of local officials to regulate gravel and sand operations in residential areas and gives the officials the ability to designate residential zoning. **REP. JOPEK** stated that local governments could prohibit sand and gravel operations in residential areas and impose reasonable conditions on them in non-residential areas.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 7.2 - 18.2}

SEN. MANGAN called for proponents in Billings.

Daniel Watson, Rosebud County Commissioner, supported **HB 591**.

SEN. MANGAN called for proponents in Bozeman.

Jennifer Magic, Planning Director for Gallatin County, stood in support of the bill. She told the committee that they had been regulating sand and gravel operations for several years and appreciated the clarity in the bill.

SEN. MANGAN called for proponents in Glasgow.

SEN. MANGAN called for proponents in Kalispell.

Todd Spangler supported **HB 591**. He said that the industry was meeting regulations already and the bill clarified the regulations. He noted that the bill only applied to zoned areas and sand and gravel pits already operating are grandfathered in.

Bradley Chase stated that he lived between two gravel pits and would appreciate the clarity and regulations **HB 591** offered.

Dave Hadden stood in support of **HB 591**.

Derek Nielsen urged the committee to concur in **HB 591**.

Bill Albert told the committee that he lived next to a gravel pit and was in favor of the bill.

Mark Schwager said that counties are changing from resource extraction to a recreational and residential area. He felt that **HB 591** clarified land use development and helped insure property owners maintained the value of their property.

Kim Davis supported **HB 591** because gravel and sand operations impact communities. He thought that the local regulations should have an influence on the operations.

Michael Hall, Flathead County Commissioners, supported the bill. He said that the bill clarified laws.

SEN. MANGAN called for proponents in Missoula.

Bill Carey, Missoula County Commissioner, supported the bill.

SEN. MANGAN called for proponents in Helena.

Michael Kakuk, Montana Contractors Association and Montana Association of Realtors, gave the committee a memo supporting the bill.

EXHIBIT (los67a01)

Ann Hedges, Montana Environmental Information Center, stood in support of the bill.

Steve Welch, Department of Environmental Quality, told the committee that their department regulated sand and gravel operations. He said that **HB 591** would put the authority to regulate at the local level, where it belonged.

Linda Stoll, Montana Association of Planners, said that the bill would clarify laws. She urged the committee to concur in **HB 591**.

Gordon Morris, Montana Association of Counties, stated that he had worked closely with **REP. JOPEK** to come up with a good bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 19.3 - 22.4}

SEN. JIM SHOCKLEY, SD 45, VICTOR, asked if sand and gravel were minerals. **Mr. Kakuk** replied that there were three clear cases by the Montana Supreme Court to clarify sand and gravel as minerals through case law.

SEN. RICK LAIBLE, SD 44, VICTOR, wanted to know if there was anything in the bill that would allow retroactive regulations. **Mr. Kakuk** answered that it was a basic tenet of Montana zoning.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 22.4 - 23.2}

REP. JOPEK told the committee that the bill was a consensus bill and asked the committee not to amend the bill or it may fray the coalition.

EXECUTIVE ACTION ON HB 591

{Tape: 1; Side: B; Approx. Time Counter: 23.2 - 24.9}

Motion/Vote: **SEN. WHEAT** moved that **HB 591 BE CONCURRED IN**. Motion carried unanimously by voice vote. **SEN. GILLAN** and **SEN. SQUIRES** voted aye by proxy.

SEN. LAIBLE was appointed to carry **HB 591**.

EXECUTIVE ACTION ON HB 450

{Tape: 1; Side: B; Approx. Time Counter: 24.9 - 25.8}

Motion/Vote: SEN. HAWKS moved that HB 450 BE CONCURRED IN.
Motion carried 10-1 by voice vote with SEN. ESP voting no. SEN. GILLAN and SEN. SQUIRES voted aye by proxy.

SEN. BOB HAWKS, SD 33, BOZEMAN, was appointed to carry HB 450.

EXECUTIVE ACTION ON HB 365

{Tape: 1; Side: B; Approx. Time Counter: 25.8 - 30.2}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 7.8}

Motion: SEN. ESP moved to RECONSIDER THE MOTION TO TABLE HB 365.

Discussion: SEN. WHEAT asked why they had tabled the bill in the first place. SEN. LAIBLE said the bill had merit and there was nothing to force local governments to submit to the time frame. SEN. HAWKS described the bill as a solution looking for a problem. SEN. ESP contended that the problem was not isolated and that SEN. DANIEL MCGEE, SD 29, LAUREL, thought the bill was a good idea.

Vote: Motion to RECONSIDER THE MOTION on HB 365 carried 6-5 by voice vote with SEN. GILLAN, SEN. HAWKS, SEN. MOSS, SEN. SQUIRES, and SEN. WHEAT voting no. SEN. GILLAN and SEN. SQUIRES voted no by proxy.

Motion: SEN. ESP moved that HB 365 BE CONCURRED IN AS AMENDED.

Discussion: SEN. MANGAN asked Ms. Stoll if the 22-day limit was necessary. Ms. Stoll answered that it was a contractual arrangement and performance standards were associated with the agreement. SEN. MANGAN wanted to know if the typical experience was local governments did not follow up on documents that they sent for review. Ms. Stoll replied that had not been her experience. SEN. ESP felt that it was important to put sideboards on the process and gave a developer some recourse and accountability. SEN. GEBHARDT said the 22 days would be enough because the process usually requires 2 to 3 weeks. SEN. O'NEIL said that counties already have contacts and 20 days was the standard. SEN. ESP told the committee that the difference was when it was contractual, the county could act but the developer had no recourse. Leanne Kurtz, Legislative Services, clarified

that the twenty-two day limit was for the review and submitting of the certified final plat.

Vote: Motion that HB 365 BE CONCURRED IN AS AMENDED failed 5-6 by roll call vote with SEN. ESP, SEN. GEBHARDT, SEN. LAIBLE, SEN. O'NEIL, and SEN. SHOCKLEY voting aye. SEN. GILLAN and SEN. SQUIRES voted no by proxy.

EXECUTIVE ACTION ON HB 105

{Tape: 2; Side: A; Approx. Time Counter: 7.8 - 26.6}

Motion/Vote: SEN. WHEAT moved to RECONSIDER THE MOTION TO TABLE HB 105. Motion carried 8-3 by roll call vote with SEN. GEBHARDT, SEN. LAIBLE, and SEN. O'NEIL voting no. SEN. GILLAN and SEN. SQUIRES voted aye by proxy.

Motion: SEN. WHEAT moved that HB 105 BE CONCURRED IN.

Discussion: SEN. HAWKS asked Mr. Morris if he still objected to the bill strenuously. Mr. Morris answered that the Montana Association of Counties was considering backing off of the bill.

Motion: SEN. GEBHARDT moved that HB 105 BE AMENDED with HB010503.alk.

EXHIBIT(1os67a02)

Discussion: SEN. GEBHARDT explained that the amendment came at the request of the Montana Public Employees Retirement Board. He told the committee that the PER Board had sent him a letter.

EXHIBIT(1os67a03)

SEN. WHEAT asked if the amendment did what the letter requested. Leanne Kurtz, Legislative Services, replied that the amendment mirrored the handout.

Vote: Motion that HB 105 BE AMENDED with HB010503.alk carried unanimously by voice vote. SEN. GILLAN and SEN. SQUIRES voted aye by proxy.

Motion: SEN. WHEAT moved that HB 105 BE CONCURRED IN AS AMENDED.

Motion: SEN. O'NEIL moved that HB 105 BE AMENDED with HB010501.alk.

EXHIBIT(los67a04)

Discussion: SEN. O'NEIL explained that the amendment clarified light duty and allows the injured deputy to work in any department. He noted that it took away the worker's ability to veto light duty.

Motion: SEN. WHEAT moved that SECTION 1 of HB010501.ALK BE SEGREGATED.

Discussion: SEN. MANGAN segregated Section 1 and asked for any discussion on Sections 2 and 3.

Vote: Motion that HB 105 BE AMENDED with SECTION 2 and 3 of HB010501.alk carried unanimously by voice vote. SEN. GILLAN and SEN. SQUIRES voted aye by proxy.

Motion: SEN. O'NEIL moved that HB 105 BE AMENDED with SECTION 1 of HB010501.alk.

Discussion: SEN. WHEAT said that section 1 was too restrictive. SEN. GEBHARDT commented that if a deputy injured himself in a charity baseball game, they should not be entitled to benefits. SEN. WHEAT noted that the bill already stated "performance of duty." SEN. LAIBLE felt that the worker's compensation system could deal with the issue and said that he was going to vote no. SEN. GEBHARDT gave a counter example of a deputy getting drunk at a training conference and falling off a balcony and that it should not be a worker's compensation case. SEN. MANGAN agreed with SEN. WHEAT about the amendment being too restrictive. SEN. O'NEIL contended that special treatment was for special duties. He said that other county employees should get the same treatment for just as hazardous of duty.

Motion: SEN. HAWKS CALLED THE QUESTION ON SECTION 1 OF HB010501.ALK.

Vote: Motion that HB 105 BE AMENDED with SECTION 1 of HB010501.alk failed 4-7 by roll call vote with SEN. ESP, SEN. GEBHARDT, SEN. O'NEIL, and SEN. SHOCKLEY voting aye. SEN. GILLAN and SEN. SQUIRES voted no by proxy.

Motion: SEN. WHEAT moved that HB 105 BE CONCURRED IN AS AMENDED.

Discussion: SEN. MANGAN told the committee that he would vote for the bill in committee but said he would not carry the bill

because the bill was a slippery slope. **SEN. LAIBLE** opposed **HB 105** because it was an unfunded mandate on local governments.

Vote: Motion that **HB 105 BE CONCURRED IN AS AMENDED** carried 8-3 by roll call vote with **SEN. GEBHARDT, SEN. LAIBLE,** and **SEN. O'NEIL** voting no. **SEN. GILLAN** and **SEN. SQUIRES** voted aye by proxy.

SEN. WHEAT was appointed to carry **HB 105** on the floor.

EXECUTIVE ACTION ON HB 365

{Tape: 2; Side: A; Approx. Time Counter: 26.6 - 27.4}

Motion/Vote: **SEN. SHOCKLEY** moved that **HB 365 BE TABLED AND THE VOTE REVERSED.** Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 8:00 P.M.

SEN. JEFF MANGAN, Chairman

JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT ([los67aad0.PDF](#))