



CITY OF BOZEMAN
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

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Senate Local Govt. Comm.
 Exhibit No. 2
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 Bill No. HB 575
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Senate Local Government Committee

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Montana Legislature 2011 Session

RE: HB 575 – Statement of opposition and reasons for opposing. Offer of alternate language.

Senators:

There are 129 incorporated municipalities and consolidated governments in Montana. According to the 2000 U.S. Census, these 129 local governments represent and provide services to the majority (54%) of all Montana citizens. This number is likely to increase when the results of the 2010 U.S. Census are available. There are likewise 129 different sets of community priorities, needs and circumstances. Legislation which applies rigid standards to such diverse communities causes problems. HB 575 was introduced and referred to House Local Government Committee on February 16th, where it was acted upon on February 17th. This pace is too quick for the appropriate review and discussion on this bill. Please do not advance this bill as presently drafted.

Statewide policies should be structured on areas of statewide concern. Local control of local services and decisions is the most reflective of democracy. Local control also allows those with the broadest and most complete understanding of local capacity to serve and needs for service to make determinations of policy. The bill as drafted provides no reasoning or evidence of what widespread issue(s) the bill is needed to resolve that cannot be resolved at the local level. I encourage you to not set statewide regulations that effect the majority of Montana citizens without foundation in fact of a widespread or recurring problem .

The bill as drafted adds additional time, effort, and expense to the process of annexing property. This is counter to the support of jobs and less regulations and delay statements made by many legislators prior to the Legislative session. The City of Bozeman has completed 107 annexations since 1996, with more currently in process. Of these 107, 104 were annexations of private property and were all initiated by the land owner(s). The majority of annexations were initiated to enable land development, with

accompanying jobs and profits. Adding further restrictions in annexation procedures inhibits timely development and raises costs to both private and public participants.

HB 575 proposes to amend Part 46 and 47 methods of annexation. Both of these annexation methods can be initiated by the landowners through petition. In order to proceed under either method by petition the majority of owners must either initiate the petition or vote in favor of the annexation. The primary reason that a landowner would seek annexation is to enable access to local services. These services such as water, sewer, or fire either enable additional land development or they provide a higher quality of services desired by the landowners. A municipality may not annex property without a means and plan to provide services to their new customers. The decision to annex should be between the property owners and the municipality, not others.

Adding more procedural burdens to the annexation process increases the cost to municipalities for accepting annexations. This has the effect of creating a push to annex larger or more numerous parcels at once. Otherwise annexation is not cost/effort effective. This pushes municipalities to be more aggressive in annexation policies rather than being able to work at slower pace or annexing smaller tracts as landowners prefer. This appears counterproductive and sets up greater potential conflict over annexations.

Adding area to an existing community is not the same as creating a new community. There is a much different scope of issues for initial incorporation than for annexation as governance structure and standards do not exist. With annexation the two parties already exist and there are many fewer unknown factors in the decision to annex or not.

Specific objections to the bill as drafted

[Section 1] The bill requires a reference to metes and bounds as part of the annexation but remains silent on whether an existing recorded document such as a subdivision plat may be referenced. As annexations must include full width of the right-of-way of adjacent streets and the plat metes and bounds descriptions may or may not include the full width of the right-of-way this has a potential to require additional substantial and early cost to either the municipality or to the land owner whichever initiates the annexation process.

This section also limits the effectiveness of waivers of right to protest annexation in considering a petition for annexation. This creates an incentive for a municipality to pursue earlier annexation of scattered or individual parcels seeking municipal services rather than waiting to annex a consolidated block of properties. Part 46 annexation can only be initiated by the landowners. If the landowners want to be included in a municipality, why should the state intrude or make the process more complicated than necessary?

Waivers of right to protest annexation allow municipalities greater flexibility in managing services and timing of annexation. An immediate need for services could be met (like a failed septic tank) without a full immediate annexation. Restricting the use of waivers creates pressure to shift discussion about a possible annexation from the ability to serve with infrastructure and the relative merits of annexation for all within an area to bean counting on protests which simply adds more paperwork and tracking burden to the annexation process with no benefits.

[Section 4] Coordination between adjacent local governments is positive. However, when a property is being annexed is too late in the process for effective and holistic consideration of the necessary issues. There are many mechanisms for cooperation including but not limited to intergovernmental agreements as authorized by the Interlocal Cooperation Act 7-11-101 et. seq. MCA. There are many other tools

already in existence. Planning for land development, infrastructure and service delivery should take a broader view and not only be tied to a specific proposal for annexation or many of the possible benefits of interlocal cooperation will be missed. By tying the coordination to a specific services plan for a specific annexation it adds time, effort, and costs to the annexation process to the detriment of the property owners and municipality.

As an example, the City of Bozeman, Gallatin County, and MT Department of Transportation cooperate on preparing a transportation plan which spans the City and up to 5 miles beyond the city limits. Right-of-way widths, construction standards, and many other issues are coordinated so that when an annexation is proposed there are no surprises for either the government agencies or the land owners seeking annexation. The City Street Department and County Road Office meet and discuss coordinated roadway maintenance at the City edges on a regular basis. A standing coordinating committee holds quarterly public meetings including citizens at large and advisory board representatives from both the City and County. Clearly, there is ability to coordinate without the duplicative and uncertain language of the bill.

[Section 5] The section begins with the deceptive conditional statement of "If..." as there will be no portion of property which can be annexed which is not receiving some form of County services. As noted in comments for Section 4, consultation with county or other service providers in transition should be occurring on a regular basis. The proposed language is redundant to the operational coordination which should be occurring anyway and intrudes third parties into the relationship between the annexing municipality and those being annexed.

[Section 6] This section creates many more questions than it might answer. Who decides what is a necessity for fire department reimbursement and for what expenses? This open question generates uncertainty and encourages litigation between local governments. This is counter to effective working relationships and is a waste of public funds. The transfer of the designated provider of fire services 5 years after the annexation is finalized is inconsistent with the smooth transition of services, leads to probable confusion of overlapping service providers, leads to confusion in taxing authorities, and appears counter to the required plan for service availability. Annexation under 7-2-4701 et. seq. MCA can be initiated by owners who presumably want municipal services or they wouldn't have requested annexation. Why should impediments be created to a majority of citizens being able to select the quality of services they wish to receive or from whom they wish to receive service?

[Section 7] The annexation of property to a municipality does not remove property from the area of a county. The ability to request court review of annexation is a procedural question between the property owners and the municipality should one or the other party fail to perform on their responsibilities. Unless the County is an owner of the property, exclusive of right-of-way, which has been annexed there is no compelling reason for a county to have standing to seek review of the decision to annex. If the County wishes to be a party to infrastructure planning or other collaborative discussions about land development with a municipality there are many other mechanisms for them to use.

Alternative

If the Committee wishes to make amendments to improve the annexation process there are possibilities. Presently there are limitations on annexation in the statute which are based on false assumptions of predatory annexation solely for the purpose of municipal revenue. The City of Bozeman currently is in receipt of a request for annexation by persons wanting to pursue land development on a large parcel. Because the land is used as agricultural land to control weeds and keep it productive while the development process proceeds it may not be annexed in the most expedient manner of Part 46 but must follow other slower and more expensive procedures. The suggested amendment below would allow a

private party to pursue annexation most expeditiously with saved time and reduced expenses to both private and public participants. As noted below, this change would only apply when all of the owners are seeking annexation.

7-2-4608. Restrictions on annexation power. (1) No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall be annexed under the provisions of this part.

(2) No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall be annexed under the provisions of this part.

(a) This restriction shall not apply when the petition presented to the council or legislative body is submitted by 100% of the owners of the land to be annexed, and the annexation is in accordance with the city's or town's adopted growth policy.

Thank you for consideration of this testimony. I am available for questions in person or may be contacted at 582-2260 or csaunders@bozeman.net.

Sincerely,



Chris Saunders, AICP
Assistant Director