

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on March 4, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Ken Miller, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Dorothy Eck (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)
Sen. J.D. Lynch (D)
Sen. Dale Mahlum (R)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Mary Vandebosch, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 123, 2/23/99; HB 192,
2/23/99; HB 91, 2/23/99
Executive Action: HB 123; HB 99

HEARING ON HB 192

Sponsor: REP. JOAN ANDERSEN, HD 23, Fromberg

Proponents:

Stasia Gerrells, Town of Bridger
Lynn Halvorsen, Bridger Chief of Police
Robert Krall, Town of Bridger
Gloria Paldichuk, City of Glendive
REP. FRANK SMITH, HD 93, Poplar

Opponents: None

Opening Statement by Sponsor:

REP. JOAN ANDERSEN, HD 23, Fromberg, said this bill is very important for small towns and municipalities in Montana. She read the title of the bill. Cities and towns are required to provide training for police officers when they are hired. This bill says that when a police officer is hired the city may ask that officer to sign a contract of reimbursement for the training costs if they should leave the town within a period of three years. The reimbursement would include the cost of the training course, the salary for the replacement officer, mileage and expenses. A re-payment would be set up and prorated to the amount of time that the officer worked following their completion of training. That re-payment would have to be within 18 months of leaving employment. Termination of the officer would have to be for cause or if they chose to leave. If the town had a budget problem and terminated a position, they would not have to repay this training. She said the town of Bridger has had the problem of hiring officers, training them and then they go to other jobs. She passed out a handout from the Town of Bridger.

EXHIBIT (los49a01)

Proponents' Testimony:

Stasia Gerrells, Town of Bridger, said in 1997 they sent two police officers to the academy and it costs them approximately \$10,000. Both of them left shortly after the training. This is very hard on their small town budget and they could pay more wages if they didn't have to pay the training fee. She said there are not many places where someone can go and get their education paid for by somebody else and not owe a bill.

{Tape : 1; Side : A; Approx. Time Counter : 3:10 a.m.}

Lynn Halvorsen, Bridger Chief of Police, said since he has been Chief of Police he has lost three officers. He said their town can't pay higher wages because of the cost of putting them through the academy. He said they have become a training ground for the larger departments. He referred to the spreadsheets in

EXHIBIT (1). He said an officer should be able to give his time to a department for three years. And if they move to another department they should be responsible for paying the training or the department that they go to.

{Tape : 1; Side : A; Approx. Time Counter : 3:18 p.m.}

Robert Krall, Town of Bridger, said it is very frustrating to send an officer to the academy and then quit the day he gets back.

Gloria Paldichuk, City of Glendive, said small cities find it difficult to keep paying for training of officers who in turn leave for bigger areas and higher pay.

REP. FRANK SMITH, HD 98, Poplar, said cities should get some reimbursement for the training.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. J.D. LYNCH asked what if they are fired. **REP. ANDERSEN** said generally an officer will work for awhile before going to training. It is usually discovered before they go to training if they are a good police officer or not. They felt that the town would have to pay only if they had budget constraints.

SEN. LYNCH asked what about a medical problem and he has worked for two and half years would he still have to pay for the training. **REP. ANDERSEN** said yes this is discretionary.

SEN. LYNCH said on page 2, section 7 should it always be "shall" instead of "may". **REP. ANDERSEN** said the reason that section was put in the bill was because legal work for small towns is done on a retainer basis. It is hopeful though that towns would not have to enter into litigation in order to recover these costs. **Mary Vandebosch** said the word "shall" or "may" can be decided by the legislature.

SEN. JOHN BOHLINGER said it costs \$600 to send someone to the academy and if this bill passed would it be possible to increase the pay of their policeman by \$50 per month, \$600 per year. **Lynn Halvorsen** said yes it could happen. If they could cut down expenses on training, they can put it toward wages.

SEN. JON TESTER asked why can't they have this agreement now. **Lynn Halvorsen** said some towns do it now, but this give them an

avenue in which they can make the collection stick. If they do it now under contract, they would have to sue them.

SEN. DALE MAHLUM asked if he applied for deputy sheriff would he be sent to the academy right away or would he work for awhile. **Lynn Halvorsen** said he would work for about six months.

SEN. MAHLUM said if he worked with the officer for six months couldn't they see if he was going to work out or not. **Lynn Halvorsen** said probably.

SEN. CHRIS CHRISTIAENS asked if he worked for Fromberg and then went to work for Deer Lodge, couldn't Deer Lodge pick up the training cost. **Greg Noose, MT Law Enforcement Academy**, said chiefs and sheriffs want the choice of whom they are going to hire. And the state wants some assurance that they are qualified. He said there may be a lot of resistance from local police departments that in order to hire a candidate, they would have to pay for the training costs.

SEN. DOROTHY ECK asked how much difference in pay is there between Bridger, Fromberg and Red Lodge. **Lynn Halvorsen** said Bridger and Fromberg are equivalent. Red Lodge pays about \$10 per hour for a starting officer. Starting salary in Yellowstone County for Sheriff Deputy is \$14.58.

SEN. ECK asked if this is because salaries are based on a formula for each county. **Lynn Halvorsen** said the counties are based upon the percentages of sheriffs and the tax base.

SEN. ECK asked if there are any restrictions on salaries. **Lynn Halvorsen** said their restriction is what they can get from their city council.

SEN. DON HARGROVE asked if there are other people hired by the town that they send off to school and pay for their training. **Robert Krall** said there are one or two day schools for other public officials.

SEN. LYNCH asked how did they decide on the three years. If they stay for two years and 9 months do they only have to pay for the three months. **REP. ANDERSEN** said it is prorated on the bill.

SEN. CHRISTIAENS asked if this bill passes will they then have to start addressing highway patrol officers, correctional guards, etc. **Greg Noose** said this is a problem and is a working condition issue. It has less to do with salaries than it does with only having one person on at Bridger and there is a lot of on call

time and it is difficult to compete with Billings, etc. This give them an option and probably won't affect larger communities. He said he didn't think it would affect highway patrol, but perhaps corrections with local jailers, etc. He feels they should at least give it a try.

{Tape : 1; Side : A; Approx. Time Counter : 3:38 p.m.}

CHAIRMAN MIKE SPRAGUE asked if there wasn't an agreement already that when the officer hired on they would stay. **Greg Noose** said this was probably talked about in the interview, but when they are sent to the academy they learn of other job opportunities, etc.

SEN. ECK asked if people who start out at \$6.50/hour have to work for that for three years. **Lynn Halvorsen** said no they have a structured pay schedule.

SEN. ECK said if they are offered another job for higher money it wouldn't take them very long to pay back the training. **Lynn Halvorsen** said yes it would be easier. He said many of their officers hire on with the intent of getting trained and not staying and this is the problem.

Closing by Sponsor:

REP. ANDERSEN said this is a fairness issue and is discretionary. She said if a person worked for one and half years after training they would only have to pay for half of the training.

{Tape : 1; Side : A; Approx. Time Counter : 3:42 p.m.}

HEARING ON HB 91

Sponsor: REP. BRUCE SIMON, HD 18, Billings

Proponents:

Steve White, Self
Bobby Rossignol, Self
Jay Sage, Self
Wally Sept, Self
Phil Olson, Gallatin Co.

Opponents:

Paul Gerber, MT State Fire Chiefs Assoc., Billings Fire Department

Jim Kembel, MT Technical Council
Charles Brookes, Yellowstone Co. Commissioners
Sterling Starr, Billings Urban Fire Service Area
Mike Kadas, City of Missoula
Alec Hansen, MT League of Cities and Towns
Bob Rajala, Missoula Fire Dept.
Gary Simonich, MT Tech Council
Kim Palmieri, Billings Building Dept.
Kurt Albrecht, City of Columbia Falls
Ralph Stone, Self
Craig Kerzman, City of Kalispell
Neil Poulsen, Chief Building official for the City of Bozeman
Kerwin Jensen, Yellowstone Planning Commission
Pat Clinch, MT State Council of Firefighters
Taylor Pierson, City of Livingston

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 18, Billings, said the State of Montana is responsible for building codes. The city can be granted authority by the State of Montana to become building code enforcement persons within city limits. And upon request the city can go four and half miles outside the city limits to enforce building codes. This area is called the donut area around the city. This is fine if they enforce the codes like the state does, but there are some exceptions in the statutes under 50-60-102. The city council can determine which buildings these codes are going to apply to and what kind of fees they are going to charge. They may do plumbing and mechanical, but will let the state take care of electrical, etc. He said the people who live in the donut area don't have any representation. If they don't want a building permit for their horse barn four and half miles outside the city they have no representation. He said there could be a Constitutional flaw here because they are allowing cities to govern people that do not have any voice. Last session they included county commissioners to have some voice on this matter. But he did not put a retroactive date on his bill last session and the cities got to keep the donut area and the county commissions could not grant authority. This bill says if a city wants to have an extended jurisdiction beyond it corporate borders, then the citizens that live in the donut get the opportunity to pass the ballot. If they grant the city the authority to govern them, the city can do so. This bill is for building codes, not for planning or zoning. It is important to grant the citizens their Constitutional rights.

{Tape : 1; Side : B; Approx. Time Counter : 3:53 p.m.}

Proponents' Testimony:

Steve White, Self, rose in support of **HB 91. EXHIBIT(los49a02)**

{Tape : 1; Side : B; Approx. Time Counter : 4:00 p.m.}

Bobby Rossignol, Self, rose in support of **HB 91.**

EXHIBIT(los49a03)

Jay Sage, Self, said people that live four and half miles outside the city do have state building codes and the state needs to address the needs of these people not the city. It is not fair that these people should have to pay city fees. He turned in a letter of support from Arlyss Bolich. **EXHIBIT(los49a04)**

Wally Sept, Self, said representative government is not working well in Missoula. Most cities cannot handle their internal affairs let alone their extended jurisdictions. Failure to pass this bill would give municipalities additional control over private property rights and they don't need more of this.

Phil Olson, Gallatin Co., said his commission supports **HB 91.**

EXHIBIT(los49a05)

{Tape : 1; Side : B; Approx. Time Counter : 4:07 p.m.}

Opponents' Testimony:

Paul Gerber, MT State Fire Chiefs Assoc., Billings Fire Department, rose in opposition of **HB 91. EXHIBIT(los49a06)**

Jim Kembel, MT Technical Council, said they oppose **HB 91.**

EXHIBIT(los49a07)

Charles Brookes, Yellowstone Co. Commissioners, read a letter in opposition of **HB 91. EXHIBIT(los49a08)**

Sterling Starr, Billings Urban Fire Service Area, rose in opposition of **HB 91. EXHIBIT(los49a09)**

{Tape : 1; Side : B; Approx. Time Counter : 4:18 p.m.}

Mike Kadas, City of Missoula, turned in letters of opposition to **HB 91. EXHIBIT(los49a10)** This is not an issue of fees, if they don't do the inspection they don't collect the revenue. He said about half of the new residential construction in Missoula has happened in the donut area and 59 percent of those were new homes. Building codes are a life safety and a consumer protection

issue. Building codes were started in cities and urban areas because that is where most of the density is and where safety is a concern. There will be a major increase in the number of inspections that will have to be done by the state if this bill passes, which would be a cost increase.

Alec Hansen, MT League of Cities and Towns, rose in opposition of **HB 91. EXHIBIT(los49a11)** The authority of cities and towns to enforce codes in the extended area comes directly from the Montana Legislature. This is addressed in section 8 and is enacted by the legislature and enforced by the state. He said in 1981 the legislature exempted most structures from state building codes. The only people that can enforce building codes on residential property is the city or county. If the counties want to step in, the cities would more than likely step down. They need to have building codes to ensure safety and consumer protection. The fastest growing areas are those right around the cities and towns and there needs to be some protection. This is not about power or money it is about public safety and consumer protection.

{Tape : 1; Side : B; Approx. Time Counter : 4:30 p.m.}

Bob Rajala, Missoula Fire Dept., said their job is to protect lives and save property. One of their most effective ways of doing this is working closely with the building department. These codes were written to address tragedies that have happened. The effective use of building code has dramatically dropped life and property loss. They work closely with the rural fire marshals in areas where they provide mutual aide.

Gary Simonich, MT Tech Council, said projects that are less than five plexes are not given proper inspection by state building codes. Therefore, local building codes pick this up. They would much rather work with local officials than deal with state officials in Helena.

Kim Palmieri, Billings Building Dept., said he opposes this bill. **EXHIBIT(los49a12)**

Kurt Albrecht, City of Columbia Falls, turned in a letter of opposition from the Columbia Falls City Council. **EXHIBIT(los49a13)** He said when the city of Columbia Falls expands their jurisdiction they send out a public notice and have a hearing. They get county and state approval, and finally the council votes to create an ordinance established in the extraterritorial jurisdiction. These areas are where their city is growing and when it comes time to annex them they don't want to annex slums. Lives and property can be saved if the buildings

are built correctly. He said they have a 200 lot subdivision outside of the city and the developers requested the city to do building code enforcement. He referred to the Fiscal Note and said cities would lose revenue if this bill passed. This bill will cost the state and city, it endangers peoples lives, is not efficient or timely, and will charge some people double for permits.

{Tape : 2; Side : A; Approx. Time Counter : 4:41 p.m.}

Ralph Stone, Self, turned in opposition to **HB 91**.

EXHIBIT(los49a14) This law will affect all people statewide. It would be better to turn the donut area over to the county commissioners and let them determine on a local level what kind of building and fire protection they want to provide.

Craig Kerzman, City of Kalispell, opposed **HB 91**.

EXHIBIT(los49a15)

Neil Poulsen, Chief Building official for the City of Bozeman, opposed **HB 91**. **EXHIBIT(los49a16)**

{Tape : 2; Side : A; Approx. Time Counter : 4:49 p.m.}

Kerwin Jensen, Yellowstone Planning Commission, opposed **HB 91**.

EXHIBIT(los49a17)

Pat Clinch, MT State Council of Firefighters, said many of their fire departments do provide safety outside city limits. And they need to have the ability to enforce fire codes in these areas.

Taylor Pierson, City of Livingston, opposed **HB 91**.

EXHIBIT(los49a18)

Questions from Committee Members and Responses:

SEN. BOHLINGER said presently where cities do not have extended jurisdiction they rely on the state building inspectors. He wondered if they have to follow the standards that have been established by the state, such as plumbing, electrical, etc.

REP. SIMON said the legislature decided many years ago that state building codes would not apply to single family residents. They only have to get an electrical and plumbing permit.

SEN. BOHLINGER said the largest single investment many people will ever make is an investment in a home. Most of these homes are lived in an average of seven years and they sell them, etc. Future home buyers need to know if those homes are up to code or

not. **REP. SIMON** said there are many homes that are not up to code. His own home was built in 1914 and is not up to code, but is not necessarily dangerous.

SEN. BOHLINGER said without inspection what sort of assurance can they provide people that health and safety issues will be met.

REP. SIMON said most houses are built with the safety features. Lives are in greater danger in the older homes that were built before codes than the ones that are built today. Most fires are caused by electrical problems.

SEN. MAHLUM said if **HB 91** passed there could be in the future, 800 building built that would not be up to code, etc. He asked if people would intentionally build unsafe homes even though they have their families living in them. **Kurt Albrecht** said it could happen. He said he does inspections everyday and they find code violations. People may not intentionally violate code requirements, but it happens. The state adopts a new set of codes every three years and contractors must know these codes.

{Tape : 2; Side : A; Approx. Time Counter : 5:00 p.m.}

SEN. TESTER asked who pays for the mail ballot. **REP. SIMON** said the municipality will.

SEN. TESTER asked if it is the majority of the electors who vote and not a majority of the people. **REP. SIMON** said his intention was the majority. He chose a mail ballot to improve the participation.

SEN. TESTER said how many times would an election have to be held. **REP. SIMON** said those cities that have a donut area can conduct an election and if it is successful in their eyes then it would be the end of it.

SEN. TESTER asked if the election affected the whole donut area and not just one side of town, etc. **REP. SIMON** said the election concerns the four and half mile area around the city. If anyone moves into that area they know what the rules are. These donut areas can become very large. He said in the City of Billings, the net square miles is 27 which is nearly 200 miles in the donut area. This area is almost seven times larger than the actual city limits of Billings.

SEN. TESTER asked if they made the effective date a year from now so municipalities have a chance to hold this election and there is no gap. **REP. SIMON** said it could be changed.

SEN. ECK asked if the county does their own building code enforcement they have to take the whole county on and is this present law. **Jim Brown, Building Code Division, Department of Commerce**, said this is a Constitutional issue. If they have a jurisdiction they have to provide equal protection to all residents. If a county wants to issue building permit they have to cover the entire area, minus the incorporated area.

SEN. ECK said Bozeman is looking at taking back the donut area and making it a special zoning district. Could the county make a special contract to provide building codes in that area. **Jim Brown** said he didn't think they could for just a special zoning district itself. He said counties could become certified for the entire county and develop the staff that they need, and any special areas that are not covered then could be contracted out.

SEN. ECK asked if they would need special legislation or could they form a city/county coding department. **Jim Brown** said they could have an inner local agreement like Butte-Silverbow. And each could be certified within their own area. Several smaller communities or small counties could pool their resources and also have this inner local agreement.

{Tape : 2; Side : A; Approx. Time Counter : 5:11 p.m.}

CHAIRMAN SPRAGUE asked if this bill passed would counties automatically have to form a building permit council. **Jim Brown** said this may happen. This is a very large state with limited resources and it is very difficult to cover the entire state and they would encourage this.

SEN. HARGROVE asked why is it four and half miles from the city limits. **Bob Rajala** said the four and half limit in Missoula covers most of the area. He said if they go outside the four and half mile limit then response time is more and gets into rural volunteer fire areas.

SEN. CHRISTIAENS asked if the county commissioners from Bozeman were taking over the municipal building code part or the planning part of the donut area. **Phil Olsen** said they are taking over the planning and zoning and are not taking over building codes.

SEN. CHRISTIAENS said then his testimony was not accurate because they were taking over the building code inspection part. **Phil Olsen** said he did not say they were taking over building permits, only taking over the jurisdictional area.

SEN. MAHLUM asked if the rural fire departments of French Town and Missoula are not effective in taking care of structures five miles out of the city limits? **Bob Rajala** said often times in rural areas by the time the fire department gets there they only save the basement. This is merely due to response times, not the quality of the fire department. Tax base and station placement does not allow them to get anywhere within five minutes.

SEN. GLASER asked if the four and half miles is line of sight from the city limits. **Jim Brown** said yes, projected on a horizontal plane from the city limit line.

SEN. GLASER asked how can an explosive magazine with 100,000 pounds of dynamite be built within the four and half mile jurisdiction without an inspection. **Jim Brown** said that particular magazine is within the State's jurisdiction.

SEN. BOHLINGER referred to the Fiscal Note and read #2 under the Department of Commerce, Building Codes Division. He said this could be a problem. He said they pay taxes, fees, and services of government and this is part of being a community. He said if they lose this revenue how can they continue to provide the level of safety and assurance that these homes will be safe for future owners. **REP. SIMON** said the money that is collected for building code inspection is to be used for this inspection. The rest of the services will be provided and probably at a better level because they will be able to do inspections in their jurisdiction.

{Tape : 2; Side : B; Approx. Time Counter : 5:25 p.m.}

Closing by Sponsor:

REP. SIMON said building codes are about life safety. He said there are hundreds of houses built that have not been inspected and they are livable and are not burning down. He said there are half million dollar homes being built out in the country and they are not built to shabby standard. He said often times many people will go get a permit and have to have an engineer sign off on it first and this costs a lot of money. He said there are building codes and they will still exist in the donut area. He said the legislature made a decision almost 20 years ago that exempted single family residences. But then cities began doing these inspections for family residences to try and fill this loop even though the legislature didn't require it. He said perhaps they should inspect every house in the state of Montana no matter where it is built. This bill comes down to having representation for those citizens that live in the donut area. He said in the City of Billings their jurisdiction goes almost to Laurel. When

it comes time to annex into the city 20 to 30 years from now building codes won't be the same anyway. This bill is a Constitutional issue and needs to be addressed.

{Tape : 2; Side : B; Approx. Time Counter : 5:37 p.m.}

HEARING ON HB 123

Sponsor: REP. WILLIAM "RED" MENAHAN, HD 57, Anaconda

Proponents:

**JanDee May, Department of Justice
Jane Jelinski, MACo**

Opponents: None

Opening Statement by Sponsor:

REP. WILLIAM "RED" MENAHAN, HD 57, Anaconda, said this bill will allow the county attorney salaries to be paid every two weeks. State employees are paid every two weeks and they have to make a special adjustment to pay the counties because they are paid monthly. The county can still pay on monthly basis, but the state will send the checks twice monthly.

Proponents' Testimony:

JanDee May, Department of Justice, said by law the department has to pay county attorneys half the salary and do it on a monthly basis. The state's payroll system generates payroll every two weeks and because of that they have to go in individually and deactivate 55 positions to pay them monthly. This bill would direct the state to pay county attorneys every two weeks and it would give the counties the choice to pay monthly or bi-weekly.

Jane Jelinski, MACo, rose in support of **HB 123.**

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. MENAHAN closed on **HB 123.**

EXECUTIVE ACTION ON HB 123

Motion/Vote: SEN. CHRISTIAENS moved HB 123 BE CONCURRED IN.
Motion carried 7-0.

EXECUTIVE ACTION ON HB 99

Motion/Vote: SEN. CHRISTIAENS moved that AMENDMENTS FOR HB 99 BE
ADOPTED. EXHIBIT(los49a19) Motion carried 7-0.

Motion/Vote: SEN. CHRISTIAENS moved HB 99 BE CONCURRED IN.
Motion carried 7-0.

ADJOURNMENT

Adjournment: 5:44 P.M.

SEN. MIKE SPRAGUE, Chairman

JODI PAULEY, Secretary

MS/JP

EXHIBIT (los49aad)