

MINUTES

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

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on March 16, 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 Vandenbosch, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 205, 3/10/1999; HB 353,
3/10/1999; HB 300, 3/10/1999;
HB 338, 3/10/1999
Executive Action: HB 411

EXECUTIVE ACTION ON HB 411

Discussion:

Mary Vandenbosch said this bill allows a city to designate the

Business Improvement District board as the Parking Commission if the two areas are the same. The city cannot appoint members under the current law because the Parking Commission is supposed to draw from the electors of the city and the Business Improvement District is supposed to pick members from property owners within the district.

Motion/Vote: SEN. LYNCH moved HB 411 BE CONCURRED IN. Motion carried unanimously 9-0.

SEN. DUANE GRIMES took over the chair.

HEARING ON HB 205

Sponsor: REP. BILL TASH, HD 34, Dillon

Proponents:

Mike Murphy, MT Water Resource Assoc.
John Youngberg, MT Farm Bureau Assoc.
Steve Snezek, MT Assoc. of Realtors
John Bloomquist, MT Stockgrowers Assoc.
Ron deYoung, MT Farmers Union
Larry Marshall, MT Assoc. of Registered Land Surveyors
Jon Metropoulos, Flathead Joint Board of Control for three
Irrigation Districts
Jim Foster, Helena Valley Irrigation District
Jay Chamberlin, East Bank Irrigation District
Holly Franz, Self
Stephen Ries, Ries Surveying

Opponents: None

Opening Statement by Sponsor:

REP. BILL TASH, HD 34, Dillon, read the title of the bill. He said with more and more subdivisions taking place especially on agricultural lands, it interferes with infrastructures, ditches and water deliver systems. Many of these ditches are tampered with and altered in these subdivisions. He said they had a lateral ditch that was in a subdivision that was used by his family since 1927. This ditch was very important to the ranch as it recharged springs and underlying aquifers within the ranch properties. This bill requires the subdivider to establish ditch easements within the subdivision.

Proponents' Testimony:

Mike Murphy, MT Water Resource Assoc., said subdivisions involve a lot of irrigated lands and determining the rights to these ditches that cross the subdivision can be difficult and confusing. Sub-section 9, page 2, would ensure in the subdivision process that the purchaser of irrigated land would have access to the waters in which they are entitled. Subdivided acreages are cut off from water rights due to the absence of an easement. This section also provides an exception provision, lines 14-17, page 2. These provision will help ensure the stability of irrigation projects in the state as well as protecting the purchasers. He discussed sub-section 10 of the bill on page 2. This bill will provide less litigation and will help with the onset of the subdivision with more planning and research.

{Tape : 1; Side : A; Approx. Time Counter : 3:15 p.m.}

John Youngberg, MT Farm Bureau Assoc., said Belgrade, Montana is one of the fastest growing areas in the state and there are many problems with subdivisions and water rights. He gave an example of an individual who was out walking his ditch one day and it runs through a very exclusive subdivision. Some of the people had landscaped right up to the ditch and had tapered down the ditch edges. One homeowner wondered what he was doing in their back yard as they assumed the ditch was theirs. Nobody had told them that there had to be a ditch easement. He said the second example took place in the city of Belgrade. He said the developers had brought in a preliminary plat and had recorded where they were going to move the ditch. When the engineer held the plat up the ditches missed each other by 15 feet. By that time there had already been lots platted and streets put in. And they now have a ditch that runs up hill for one block. This bill will take care of those problems.

Steve Snezek, MT Assoc. of Realtors, rose in support of **HB 205**.

John Bloomquist, MT Stockgrowers Assoc., said this bill reduce questions, uncertainty, and litigation.

Ron deYoung, MT Farmers Union, rose in support of **HB 205**.

Larry Marshall, MT Assoc. of Registered Land Surveyors, passed out a suggested amendment. **EXHIBIT(10559a01)** He said right now it is very difficult to track down the contact person when trying to get information on a particular ditch.

Jon Metropoulos, Flathead Joint Board of Control for three irrigation districts, said this problem is only increasing.

Jim Foster, Helena Valley Irrigation District, said if they divide a 40 acre tract into two 20 acre parcels with tract A being adjacent to their irrigation system. And the subdivider does not provide a water conveyance easement through tract A for tract B, it can be locked out from the reasoning water. Even though tract B is physically unable to receive water the acres are still in the district and assessed the annual \$17.96 per acre charge. This bill will help prevent this type of problem from occurring by requiring that easements be filed and recorded. Disclosure to buyers is important because someone will buy a parcel and is surprised to find out that they are paying assessments with no way to receive water.

Jay Chamberlin, East Bank Irrigation District, said he used to live in the Bitterroot valley and there is tremendous growth there. Many of these ditches become a conveyance system that have to serve six or eight people, but at one time only served one person. They assess all irrigated lands within the boundary that the irrigation water serves. He said there is nothing more frustrating to a land owner who has just purchased a piece of property and then to find out that physically it cannot receive water. This bill will help with water rights and protect those lands that deserve to have water.

Holly Franz, Self, said this bill will prevent troubles that have plagued developers, irrigators, and home owners around the state.

Stephen Ries, Ries Surveying, said he deals with many of these problems in his business.

{Tape : 1; Side : A; Approx. Time Counter : 3:30 p.m.}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JON TESTER asked about the amendment that the land surveyors are presenting. **(EXHIBIT 1) REP. TASH** said he doesn't feel that this amendment is needed because it is in present law and wouldn't solve anything. This would become another added responsibility to land owners that they don't need. He feels it is the seller and the realtor's responsibility to properly identify any existing irrigation facilities.

SEN. TESTER asked if it is difficult to find out who owns the ditches and where do they go to find this information. **REP. TASH** said in some instances it is difficult to determine who owns the ditches and where the parameters are, etc.

SEN. DALE MAHLUM asked why should people have to pay an assessment for a service that they don't get. **REP. TASH** said this is a concern, especially for irrigation districts. If someone buys a piece of property and he has water rights, it is the responsibility of that landowner to understand what they have bought. The purpose of this bill is to see that those properties are going to be subdivided have been properly represented.

SEN. MAHLUM said what if the ditch is a half a mile away and there is no way to get water to this property. **REP. TASH** said the purpose of this legislation is for people to be more responsible for their own actions when these properties are represented and sold. This legislation will keep people from buying a piece of irrigated property and then have to carry water in a bucket to irrigate it.

SEN. CHRIS CHRISTIAENS asked how do they deal with the ownership of these ditches. **John Bloomquist** said the Clerk and Recorder may have information on easements and water rights. He said the Department of Natural Resources has all of this information very available.

SEN. CHRISTIAENS said in some instances more water has been granted than is available. **John Bloomquist** said water rights and ditch rights are two separate things. This doesn't get into the issue of if anybody is going to be guaranteed the delivery of water. This deals with the issue of recognizing the conveyance system.

SEN. CHRISTIAENS asked does the individual whose property the ditch crosses, own the ditch? **John Bloomquist** said it is just like a road and whoever owns the easement is the one who owns the ditch.

SEN. DON HARGROVE asked if the assessment is in another section of law. **REP. TASH** said that is correct and this is a matter of clarification.

ACTING CHAIRMAN GRIMES referred to the amendment from the land surveyors. **(EXHIBIT 1)** He asked if this is somewhere else in law. **Holly Franz** said she had a case in which there was a six mile ditch and the ditch owner didn't know who was going to develop property along that ditch. This amendment would require everyone that has a ditch to come in and file some type of recording with

the Clerk and Recorder. There is a concern because there will be thousands of people out there that would have to file this type of record.

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

Closing by Sponsor:

REP. TASH said this is a matter of disclosure. There are going to be more and more subdivisions, and they want to see that they are regulated and done properly.

HEARING ON HB 353

Sponsor: **REP. BILL TASH, HD 34, Dillon**

Proponents:

Jane Jelinski, MT Assoc. of Counties
Mona Jamison, MT Historical Society Foundation
Sharon McCabe, MT Historical Society

Opponents: None

Opening Statement by Sponsor:

REP. BILL TASH, HD 34, Dillon, said this is for the acquisition by Madison County to acquire Robbers Roost. Madison County has owned it for several years and acquired it from a tax role back in the 1930's. He read the title of the bill. He said it was amended to make sure that the group that did acquire it would not be burdened with a large amount of management. The purpose is to preserve Robbers Roost. He turned in a newspaper article about Robbers Roost. **EXHIBIT(1os59a02)**

Proponents' Testimony:

Jane Jelinski, MT Assoc. of Counties, said there are several situations in which counties would like to provide certain non-profits with the opportunity to reside in an available building.

Mona Jamison, MT Historical Society Foundation, said if a county owns a historically significant building it can make a deal with a non-profit to restore the building and in turn the county will sell or give it to the non-profit. In turn if that non-profit wants to sell it to another entity, that entity has to continue to preserve that piece of property.

Sharon McCabe, MT Historical Society, said this bill will allow preservation of historically significant building and monuments.

{Tape : 1; Side : B; Approx. Time Counter : 3:50 p.m.}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. CHRISTIAENS asked what the reference to a food bank meant. **Jane Jelinski** said often a better financial move is to preserve a building, rather than buying a piece of property and building. This is an advantage for non-profits to do this and gives them the ability to establish food banks, etc.

SEN. CHRISTIAENS said he would hope that these non-profits wouldn't change the preservation of that building by having it for a different use. **Jane Jelinski** said the bill is written to ensure that the historical preservation is important, not the ultimate use.

SEN. CHRISTIAENS asked if they considered adding the state into this. **REP. TASH** said he hadn't considered that, but perhaps it could be amended.

SEN. CHRISTIAENS asked if anyone had talked about removing all liability so that the city doesn't just automatically release a piece of property to relieve themselves of an old oil spill, etc. **REP. TASH** said page 3, line 8 addresses this problem somewhat as well as the current language.

SEN. CHRISTIAENS said he would like the staff to look into this issue.

SEN. HARGROVE asked if there is a need for some sort of mechanism to monitor this deed transfer. **REP. TASH** said line 8 addresses this problem and it has to be used for historical significance. He used the example of the Department of Fish, Wildlife and Parks, who owns Bannack and all work they do is strictly under their jurisdiction. They cannot use it for commercial use, etc., because it has to be left in a historical state.

SEN. MAHLUM said on line 28, page 1, perhaps they could change that to address this concern. **REP. TASH** said he would encourage that.

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

ACTING CHAIRMAN GRIMES said this bill doesn't limit the purpose for which one of these transferred properties can be used. He asked what would prevent a soup kitchen, etc. from being formed in this historical building. **Mona Jamison** said this comes down to the discretion of the local governing body that is entering into the contract. There is no limitation in the initial transfer as to the use of the property. But in the contract it has to be preserved and provides for the reversion of the property to the county for non-compliance. If they wanted a soup kitchen it would have to be in that contract.

ACTING CHAIRMAN GRIMES asked if she was familiar with **SB 207** which allowed the transfer of county property for non-profit purposes. **Mona Jamison** said she was not aware of that bill. The county owns the property at Robbers Roost and they can't maintain it. If they don't do something to allow these friendly deals they are going to lose these properties by sheer weather.

Closing by Sponsor:

REP. TASH said there are a lot of buildings owned by municipalities. Madison County owns this building and they want it preserved.

{Tape : 1; Side : B; Approx. Time Counter : 4:05 p.m.}

HEARING ON HB 300

Sponsor: **REP. KARL OHS, HD 33, Harrison**

Proponents:

Linda Stoll, MT Assoc. of Planners
Glenna Obie, Jefferson Co. Commissioners
Jane Jelinski, MACo
Mike Murry, Lewis and Clark Commissioner
Larry Marshall, MT Assoc. of Registered Land Surveyors
Stephen Ries, Ries Surveying

Opponents:

Byron Roberts, MT Building Industry Assoc.
Cliff Christian, MT Building Industry Assoc.

Opening Statement by Sponsor:

REP. KARL OHS, HD 33, Harrison, said this specifies that with major subdivisions there would be 60 working days for review and

35 working days for minor subdivisions. He said with current law often times the 60th day falls on a weekend or holiday and this will clarify that.

Proponents' Testimony:

Linda Stoll, MT Assoc. of Planners, submitted a letter from Alan McCormick, Montana Assoc. of Planners. **EXHIBIT(1os59a03)** She also turned in a submittal check-off sheet for minor subdivisions. **EXHIBIT(1os59a04)** This checkoff sheet was established by the state legislature and planners and county commissioners must meet these standards. She said often counties only have one planner and it is very difficult for them to get all of their work done in the allotted time frame. This bill will clarify when action is required by the local government.

Glenna Obie, Jefferson Co. Commissioners, said rural counties are rapidly growing areas. Jefferson County is the second fastest growing county in the state. She turned in a subdivision review for Jefferson County. **EXHIBIT(1os59a05)** She said their county only has one planner and he has to hire all of his own clerical staff, etc. She also turned in a population estimate for counties from the Department of Commerce. **EXHIBIT(1os59a06)** She said planning in Jefferson County is done by a volunteer planning board. Public meetings have to be posted, major subdivision have to have a hearing and it takes time to get all of these requirements done in an appropriate fashion. She said the planning board and commissioners try to view the property when a development is being proposed and it takes time. She said they want to do their job and be able to provide for the health and safety of their citizens and new citizens moving into their county. She said to do a good fair job it takes time and this bill is fair to everyone included. She passed out a handout from the Stillwater County Planning Office. **EXHIBIT(1os59a07)**

{Tape : 1; Side : B; Approx. Time Counter : 4:17 p.m.}

Jane Jelinski, MACo, said if a major subdivision is submitted on a Friday there is only 41 actual working days for this review. This is not a lot of time to work on a major subdivision review that has hundreds of lots, access concerns, traffic concerns, water concerns, and public and health issues. Planning boards are more than likely going to turn down a subdivision review if they don't have enough time to look at it thoroughly. She turned in a letter of support for **HB 300**. **EXHIBIT(1os59a08)**

Mike Murry, Lewis and Clark Commissioner, said this bill allows them some more time to review applications. He said occasionally if they run out of time they have to ask the applicant to request

an extension. This is not the way it should work and this bill will help eliminate that. He said in Lewis and Clark County they average three subdivisions per week.

Larry Marshall, MT Assoc. of Registered Land Surveyors, passed out some proposed amendments. **EXHIBIT (los59a09)** He said with this amendment they would be allowing 75 days for review. He said they would like to change three working days to five working days in the amendment. This will help protect the developer and the home owner.

Stephen Ries, Ries Surveying, rose in support of **HB 300**.

Opponents' Testimony:

Byron Roberts, MT Building Industry Assoc., said they would all like to have more time in their lives. But time is money and the longer it takes the governing body to approve a subdivision or review a house, the more it will cost the home buyer. He said they must be able to build homes in a reasonable time. He said they have not heard of any time frame problems from governing bodies. Most are complying with these time frames without a great deal of inconvenience. Page 1, line 17, the governing body can request a time extension from the subdivider and most have no problem doing this. Subdivision review and approval is fee based. If there is an overload of subdivision reviews, they can hire more staff, etc. to take care of this. If it is changed to 60 working days the governing body would have 72 days for review. The clarification is already in existing law.

Cliff Christian, MT Building Industry Assoc., said this battle was already fought in the subdivision platting laws and this has worked very well. **EXHIBIT (los59a10)** He said developers are happy to extend time to the governing body if they need more time. If this bill passes then next session they will be in here again trying to extend the time, etc.

{Tape : 2; Side : A; Approx. Time Counter : 4:32 p.m.}

Questions from Committee Members and Responses:

SEN. JOHN BOHLINGER asked what is the time line for major and minor subdivisions. **Jane Jelinski** said major subdivisions are 60 days and minors are 35 days.

SEN. BOHLINGER asked if this law passed would it be 72 days? **Jane Jelinski** said it depends on holidays and weekends.

SEN. BOHLINGER asked how affective are counties and does it take them the full 60 days, etc. to process the review. **Jane Jelinski** said the Association of Counties voted unanimously to request this legislation because it is a problem. Rapidly growing counties are stacked up with hundreds of subdivisions. Smaller growing counties also have problems because they are losing tax base and they don't have the staff, etc. to deal with subdivisions, etc.

SEN. BOHLINGER asked in those rapidly growing counties can they contract with outside professional help? **Jane Jelinski** said yes they can, but most don't have the revenue to do that.

SEN. BOHLINGER asked if the developer would be responsible for providing for part of the cost associated with these subdivisions, etc. **Jane Jelinski** said counties do provide for filing fees. She used the example of a huge subdivision that was adjacent to another subdivision and there was some water concerns. She said they were close to the deadline with the review and an engineer came in with hydro-geological information that directly contradicted the developer's information. She said they had to have more time to get an outside independent review for this subdivision. The conditions of that data was changed tremendously because of that report from an outside source and this extension of time was important.

SEN. DOROTHY ECK said the problem seems to be that there are not always enough staff to do the work. And are the fees that they receive efficient enough to cover the work of the staff. **Glenna Obie** said in Jefferson County in 1996 they went from a half time planner to a full time planner. She said in their budget last year they charged \$300 for a minor and \$600 for a major subdivision. Those fees do not cover the planner's full salary. The budget is very limited and they do use metal mine licensing tax funds to cover the planning department's budget.

SEN. ECK asked in counties without these earmarked funds would they use General Fund money. **Glenna Obie** said yes, they would have to increase the mill levy fund and take the money out of some other department.

SEN. ECK asked if the fee is capped. **Glenna Obie** said they could raise the fee if they wanted.

SEN. ECK said time limits are important, but would it be a problem if fees were increased to review subdivisions. **Byron Roberts** said fees should be charged and Local Governments have the authority to do this.

SEN. ECK asked how often do they run into a situation where the planner will ask for an extension. **Jane Jelinski** said it happens on the larger, more complex subdivisions occasionally. She said they had a developer from the east that subdivided the area into one acre lots and in the covenants she provided that each lot could have one horse, one lama and one buffalo. They wouldn't let her do that and this was a case in which they asked for an extension over the deadline to get her some information on why they couldn't do this because she was going to sue them. **Mike Murry** said they average about 15 per year that need extensions. However, under the law they don't have the authority to do it, but they do it anyway. **Cliff Christian** said in the current law the subdivider can consent to an extension of review. He said the fees are \$300 and \$600 per lot not per subdivision. County planning departments do more than just review subdivisions. **Mike Murray** said the problem is the staff doesn't have time to do an adequate subdivision review. The developer has the right to say no if they don't want the extension and then the planning board usually turns down a potentially excellent development.

SEN. BOHLINGER asked if an option is available for an extension of time by the developer. **Mike Murry** said the developer may asked for an extension at anytime.

Closing by Sponsor:

REP. OHS said he represents a very small county government with a very big growth problem. He said their planning staff is all voluntary and this is a problem. If the planner does not have the time, the subdivision will more than likely be turned down.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. MIKE SPRAGUE, Chairman

JODI PAULEY, Secretary

MS/JP

EXHIBIT (1os59aad)