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Education and Local Government Interim Committee

59th Montana Legislature

SENATE MEMBERS

JEFF MANGAN--Chair
JEFF ESSMANN
KIM GILLAN
BOB HAWKS
RICK LAIBLE
ROBERT STORY

HOUSE MEMBERS

MARK NOENNIG--Vice Chair
ELSIE ARNTZEN
KATHLEEN GALVIN-HALCRO
ROBIN HAMILTON
MIKE JOPEK
JON SONJU

COMMITTEE STAFF

LEANNE KURTZ, Lead Staff
EDDYE MCCLURE, Staff Attorney
FONG HOM, Secretary

LOCAL GOVERNMENT SUBCOMMITTEE MINUTES

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

June 12, 2006

Capitol Building, Room 102
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. RICK LAIBLE, Chair
SEN. KIM GILLAN
REP. MIKE JOPEK

COMMITTEE MEMBERS EXCUSED

SEN. JEFF ESSMANN
REP. JON SONJU
SEN. JEFF MANGAN
REP. MARK NOENNIG

STAFF PRESENT

LEANNE KURTZ, Lead Staff
FONG HOM, Secretary

Visitors List and Agenda

Visitors' list, Attachment 1
Agenda, Attachment 2

CALL TO ORDER AND ROLL CALL

SEN. LAIBLE called the meeting to order at 1:33 p.m. The Secretary noted the roll (**Attachment 3**). Sen. Jeff Essmann, Sen. Jeff Mangan, Rep. Mark Noenning, and Rep. Jon Sonju were excused.

SEN. LAIBLE said that although the Committee did not have a quorum, they will still hold the meeting.

IMPACT OF CITY CLASSIFICATION ON MUNICIPAL FIRE DEPARTMENTS - Brett Waters

MR. WATERS, Fire Chief of the Central Valley Fire District and Belgrade City Fire Department, distributed LC 5000, a proposed bill draft allowing any city or town to contract for fire protection services, to establish a volunteer fire department and to establish rules governing fire department (**EXHIBIT 1**). He said that the amendments that they are proposing significantly impact the communities that are classified due to their size. He said that in current law there are requirements that when cities reach a certain size population, they have to have a paid fire department and they can't contract for certain fire protection or pieces of fire protection operations. He said that what they are proposing is giving that power back to the local areas so that the local areas can look at the best local options for their fire protection needs, allow contracting for services if that municipality desires to do that, and take the classification of the city out of the equation.

QUESTIONS

SEN. GILLAN asked if it was possible under the proposed revisions for cities to rely on volunteers firefighters instead of expanding the fire department. MR. WATERS said that it would be up to the local jurisdictions to look at all the different options for fire protection and to make a decision that was best for them.

SEN. LAIBLE asked whether third-class cities were protected or not. MR. WATERS said that all municipalities, cities, and towns in the state of Montana are required to have a fire department. He said that the degree of fire protection or the level of service that is being provided is dictated by their local governments, city councils, and town councils, and that they were the ones that established the budgets and set that degree of fire protection for funding.

SEN. LAIBLE asked if every community has to have a fire department or fire protection whether it is volunteer or contracted with an adjacent city or town. MR. WATERS said that as first-class or second-class cities grow, the option of contracting for fire protection from another agency or consolidation is taken away from them. That is only allowed in third-class cities. Secondly, in first-class cities, you are not allowed to have any volunteer supplementation of personnel. He said that third-class cities don't have that issue, that it is an option for them to have volunteer fire departments, career departments or a combination thereof, or contracts.

REP. JOPEK asked Mr. Waters if he was talking about mutual aid contracts. MR. WATERS said that the City of Belgrade has an interlocal agreement with the Central Valley Fire District where they provide inspection services, maintenance services response, equipment, everything. He said that mutual aid is different.

PUBLIC COMMENT

ALEC HANSEN, League of Cities and Towns, said that they do not have a position on the bill. He said that before the committee proceeds on this issue, they might want to talk to paid firefighters in Montana and see what they think. If the bill, as proposed, shows up in January, it will become a controversial issue.

SEN. GILLAN asked Mr. Hansen if he could find out how other states allow their municipalities to supplement paid departments with volunteers. MR. HANSEN said that he would find out how western states handle this.

SEN. LAIBLE said that he thinks it would be appropriate if Mr. Hansen and Mr. Blattie work on this and see how it affects all cities.

HAROLD BLATTIE, Executive Director of MACo, said that given that the language in the bill draft is exclusively amending municipal language, if a municipality moved into a position of having to have a paid fire department, there is no new taxing authority that goes along with that. He said that trying to figure out how to implement that with existing resources could be problematic.

SJR 11 WORK GROUP PROGRESS REPORT (LC 3000) - Tim Davis, Montana Smart Growth Coalition.

MR. DAVIS gave an update on the SJR 11 Working Group. He distributed LC 3000 (**EXHIBIT 2**) and said that the working group met and started going through a legislative draft to have specific language on certain issues that are contained in LC 3000. He said that the discussions have allowed the working group to address cleaning up things in SB 116, how to modernize the purposes of zoning, both municipal and county zoning statutes, cleaning up annexation laws, certificates of survey, and cleaning up a provision in streamlining subdivision review to put in place zoning that implements a growth policy and addresses the primary subdivision review criteria.

MR. DAVIS said that there is also a non-consensus bill, LC 3002. He said that some things that are being discussed are: a right to cure provision; combining citizen-initiated zoning with county-initiated zoning; addressing the "bathroom in the barn" issue and how to redefine or address condos, multiple dwelling units on a single piece property within a subdivision; and

protest provisions, how to close some of the loopholes for divisions of land that are exempt from

subdivision review. He said that the group will come with a consensus proposal.

QUESTIONS

SEN. LAIBLE said that he noticed in the action challenging the creation of a zoning district, it commences within 5 years and the bill would change it to 30 days. He asked Mr. Davis to explain how the work group ended up with 30 days. MR. DAVIS said that the 30 days comes from other types of protests that are in land use law. He said that they wanted to have a reasonable amount of time after the establishment of zoning to protest or challenge it.

PUBLIC COMMENT

MICHAEL KAKUK, Montana Building Industry Association, said there are some serious and significant public policy decisions to be made. The Association still has very high hopes that the SJ 11 process is going to result in some significant and much needed changes.

TAMMY MCGILL, Montana Association of Planners, said MAP is committed toward working for a consensus on annexation, zoning, and subdivision regulations.

QUESTIONS

REP. JOPEK asked if Ms. McGill if the definition of agriculture would fall under the growth policy. MS. MCGILL said that the definition of agriculture for each jurisdiction would fall under the growth policy but would then be implemented through annexation or zoning regulations.

REP. JOPEK asked how agriculture as defined locally would play out as far as the restriction of annexation. MS. MCGILL said that some agriculture uses would not be annexed the way the statute is currently written, but if it is part of the growth policy, it would have the ability to be annexed and would not change the definition.

PUBLIC COMMENT

GLEN OPPEL, Montana Association of Realtors, said that MAR is in the same position as the Montana Building Industry Association. He said that they have a land use regulation task force that has looked at the consensus and non-consensus bills. He said that they also have a legislative committee that will look at the bills at the end of July.

MYRA SHULTS, Consultant Land Use Attorney for JPIA, MACo, said that the group will continue to work on the non-consensus issues. She said that the Model Subdivision Regulations are finished and are posted on the MACo and MAP websites and that the "The Blue Book" has been re-published and is also available on MACo's website and websites for engineers and surveyors. She said that the Department of Commerce and the Department of

Labor will work together to publish the Montana Subdivision and Surveyor Laws and Regulations.

QUESTIONS

SEN. GILLAN said that she would like a status report on changes a couple of weeks prior to the next meeting so that she can talk to people in her district about those issues. MS. KURTZ said that it would depend on when the working group meets and what they come up with. SEN. GILLAN said that she would ask the working group to try and meet in advance of the next meeting so that the working group would put together that synopsis.

REP. JOPEK asked Mr. Davis why number 4 on page 5 of the draft was struck out. MR. DAVIS said that that was transferred into another provision. MS. KURTZ said that the language in subsection (1) of section 6 mirrors what the cities are allowed to do for the establishment of zoning districts. She said that subsection (4) is specific to height of buildings and yards. Subsection (1) states that the governing body can do what it thinks is appropriate.

REP. JOPEK asked if set back lines were taken care of in subsection (1). MR. DAVIS said that initially the work group was going to amend subsection (4) but they chose to simply take the exact language from city to provide more flexibility to counties when they are establishing zoning districts. He said that if you look at subsection (1), it states that zoning districts may regulate or restrict the erection, construction, and reconstruction, alteration, repair, and use of building structures or land.

REP. JOPEK said that some jurisdictions don't hold a public hearing on a first minor but they go to their planning boards for ratification of the staff report. He asked if that is still allowed with the new language. MR. DAVIS said that he believed so because they will be able to have a public meeting but not a public hearing.

SEN. LAIBLE reminded the working group that the process is to build consensus, to bring a bill to the committee that the committee can feel comfortable with as a good balance, good for communities, and good for citizens.

BREAK

HJR 10, study of wildland fire statutes and policies - Leanne Kurtz, Research Analyst, LSD

MS. KURTZ gave a brief background on the HJR 10 study. She said that the study was assigned to the Environmental Quality Council Study Subcommittee, which charged their work group to look at the statutes in the Montana Code Annotated regarding fire and update them to

reflect current realities. The work group broke the study up into three parts: review the statutes; establish a state fire policy; and look at wildland-urban interface.

Ms. Kurtz said that the work group started on statute review resulting in six bill drafts. The bill

drafts were sent to the EQC Study Subcommittee for review and then were posted to their website for public review and comment. She said that because of the work that the group did on statute reviews, they did not have time to look at any solutions to perceived problems or real problems with development in the wildland-urban interface. Ms. Kurtz said that EQC has formally referred the issues of wildland-urban interface and the authority of fire chiefs to the Education and Local Government Interim Committee.

Ms. Kurtz said that the work group is bringing to the committee three bills dealing with wildland-urban interface: LC 4000, LC 4001, and LC 4002.

QUESTIONS

SEN. GILLAN asked Sen. Laible to address the issue of the subcommittee making a non-quorum recommendation to the full committee for acceptance of the issues referred from EQC. SEN. LAIBLE said that although this subcommittee does not have a quorum, knowing that this is where the three members of the committee sit on this particular issue, they should be able to have a quorum at the August meeting to make a motion of proposed bill drafts.

BOB HARRINGTON, Forestry Division Administrator, Department of Natural Resources and Conservation, gave a presentation on HJR 10 and the Wildland-Urban Interface in Montana (**EXHIBIT 3**). He said that the state of Montana is responsible for the protection of 55 million acres of which about 5 million acres can be considered wildland-urban interface. Mr. Harrington discussed the costs of wildfire suppression, firefighter and public safety, and proposed legislation. He said that he has heard that around 200,000 more people will be moving to this state by the year 2025. He said that DNRC Director Sexton is committed to mandatory but flexible planning regulations that would mandate local government to address the wildland-urban interface in the sense of developing subdivision regulations that address defensible space, ingress and egress, and water supply.

TAPE 1B

REVIEW OF PROPOSED LEGISLATION - Leanne Kurtz, LSD

LC 4001 requires local governing bodies to designate the wildland-urban interface in their jurisdictions and requires subdivision regulations to prescribe certain requirements for proposed subdivisions located within the designated wildland-urban interface (**EXHIBIT 4**). Ms. Kurtz said that she added the definition of defensible space to the bill, and that the distance of defensible space and the required ingress and egress necessary for fire suppression and the water supply is necessary.

LC 4000 added items that growth policies must consider, one of which is fire and wildland fire in the jurisdictional area, including whether there is a need for regulations requiring defensible

space, ingress and egress, and adequate water supply (**EXHIBIT 5**). Ms. Kurtz said that this bill would also add fire and wildland fire to the language that discusses subdivision regulations providing for avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety or welfare by reason of natural hazard. She said that the third item is the list of things subdivision regulations have to include. She said that there has been discussion in the work group about the stricken language "approved construction techniques"; what are approved construction techniques, who can approve them. The language that the group came up with states that the Department of Labor and Industry's Building Codes Bureau, through their administrative rule process, would list those construction techniques that would mitigate hazard from fire.

LC 4002 prohibits a local governing body from including certain building regulations in subdivision regulations (**EXHIBIT 6**). Ms. Kurtz said that subsection (4), page 7, says "notwithstanding the provisions of subsection (1)(d) subdivision regulations may not include building regulations". She said that the builder and realtor organizations are very interested in pursuing that measure.

PUBLIC COMMENT

MICHAEL KAKUK, Montana Building Industry Association, said that MBIA would be opposed to LC 4001 because local governments already have authority to do everything that DNRC wants them to do. He proposes inserting language in LC 4000, page 3, subsection (4) to say "the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need for regulations addressing defensible space, ingress and egress, and adequate water supply". He also suggested going into the purpose section, page 5, subsection (9), to say "the avoidance of subdivisions that would involve unnecessary danger of injury to health, safety and welfare by reasons of natural hazards, including fire and wildland fire". He also said that the legislature should prohibit any attempt to implement building codes through subdivision regulations and that a combination of LC 4000 and LC 4002 would clear that up.

BERNIE JACOBS, Counsel for Building Codes Bureau, Department of Labor and Industry, distributed a copy of his presentation outline that explained the role that Building Codes Bureau and Building Regulations play in wildland-urban interface issues (**EXHIBIT 7**). Mr. Jacobs said that the Building Codes Bureau of the Department of Labor is the only agency that is allowed to promulgate building regulations. He said that he approves the language in LC 4000, subsection (1)(e) because it doesn't restrict commissioners or governing bodies from dealing with mitigation efforts relating to fire. He said that in LC 4002, the insertion of a new paragraph 4 is a valid thing.

BRUCE SUENRAM, Fire Logistics, said that he endorses LC 4000 and LC 4002. He said that it is a good combination. He said that he agrees that they need to be able to apply zoning to solve some of the existing situations.

HAROLD BLATTIE, Executive Director, Montana Association of Counties, said that he got involved in the HJR10 work group because he wanted to assure that counties have the authority to impose burning restrictions when needed. He said that without Ms. Kurtz guiding the work group, they would not have gotten to where they are now. Mr. Blattie said that they came up with a good package of bills and there still will be some policy decisions that will have to be addressed during the next session.

TAPE 2A

TAMMY MCGILL, Montana Association of Planners, said that MAP does not think that building codes belong in subdivision regulations because they have no manner of enforcement. She said that her constituents agree that the subdivision regulations should be left alone.

TIM DAVIS, Montana Smart Growth Coalition, said that one of the reasons they had problems with SB 456 when it came forward was that you need to have building codes for the entire county or not at all. He said that one of the things that they discussed last session was allowing the provisions of SB 456 to be in effect for part of the jurisdictional area so that counties have flexibility regarding the adoption of building codes. He said that he is encouraged to hear that the Department of Labor is adding wildland-urban interface standards to their building codes, and he would encourage the committee to be careful when talking about public health and safety that they don't take away powers unless you know they are balanced elsewhere.

QUESTIONS

SEN. GILLAN asked Mr. Kakuk if it was a public policy of the state of Montana that all homes constructed in the defined wildland-urban interface have to have metal roofs and how could that be accomplished with existing statutes. MR. KAKUK said that if that authority exists, it is under Title 50.

TIM LLOYD, Bureau Chief for the Building Codes Bureau, said that the International Wildland Interface Code has three prescriptive paths where you can have non-combustible siding, metal roofs, and non-combustible eaves.

MS. GILLAN asked if there is existing statutory authority for the state of Montana to make policy decisions requiring metal roofs or non-combustible construction or non-combustible siding in the wildland-urban interface areas. MR. LLOYD said that the authority in subdivision laws states approved construction techniques, but there is nothing out there to define what those techniques are. The Building Codes Bureau is the only agency that can promulgate building code regulations.

REP. JOPEK asked Mr. Harrington where the money comes from for fire suppression costs. MR. HARRINGTON said that it is 100% general fund. REP. JOPEK asked if Mr. Harrington has

done an overlaid map which looks at the valuation and improvements in those areas shown on page 1 of his handout. MR. HARRINGTON said no, they have not, but it could be done working in partnership with Department of Revenue once they have whatever boundaries they wanted to look at.

REP. JOPEK asked if the Fire Management Strategy Bureau is talking to the Real Estate Bureau in DNRC to try to come up with compatible language as they are looking at development potentials on state lands. MR. HARRINGTON said that they talk all of the time. They have discussed several things: the implementation of Programatic EIS, the existing condition of the cabin site leases around the state, many of which do not comply to the same wildland-urban interface standards, the implementation of new developments and the decision for real estate EIS.

REP. JOPEK asked Ms. McGill how enforcement of building codes are done on commercial buildings that have sprinklers in them and why is that different from residential buildings. MS. MCGILL said that from a planners perspective and a subdivision perspective, there are no differences. She said that Building Codes inspectors do come into commercial and industrial buildings once the plat is signed.

REP. JOPEK asked what the difference is between sprinklers and hydrants in new subdivisions, if one is the infrastructure put in before plat and the other is done after plat. MS. MCGILL said that the difference is that it is put in and becomes part of an exaction and part of the impacts that the subdivision brings in.

REP. JOPEK asked if there was a correlation between the allowed height of a building to the height of the ladder truck in the fire department. MS. MCGILL said that she has never heard the height of a building being correlated to the height of a ladder truck. She said that the height of a building in zoning is correlated to air, light and space, and that would not be looked at in subdivision review because the building is not put up until the plat is signed and filed.

REP. JOPEK asked if the identification of areas as described in LC 4000 done beforehand or is it done at the time of review. MS. MCGILL said that that is generally done beforehand in their growth policies, which the subdivision regulations correlate with. REP. JOPEK asked if it was appropriate to place conditions of approval on a subdivision which talks about sprinklers, shingles, concrete sidings. MS. MCGILL said that it is not appropriate because those are zoning issues and that you don't want to put a condition of approval that is a zoning issue.

REP. JOPEK asked Mr. Kakuk if, as a conditional approval, a local government should be able to tack on sprinklers, shingles, and concrete sidings if they have identified an area in the growth policy that is fire danger. MR. KAKUK said that would work under the proposal that was heard today.

REP JOPEK asked Mr. Kakuk what he thought of sprinklers and hydrants and height of the building. MR. KAKUK said that hydrants are not a building code, that is outside the four walls of a building. He said that the height of a building is not a building codes issue and that regulating the height of a building is within the purview of local government.

SEN. GILLAN asked Mr. Harrington to elaborate on the statement "the policy of DNRC when it comes to handling fire and protection of structure not on DNRC land". MR. HARRINGTON said that the actual protection of the structure is going to be the fire department, volunteer or paid.

SEN. GILLAN asked if there are other states that have the attitude that is equivalent to DNRC's towards those who move into the hinter lands: buyer beware, you are out there on your own. MR. HARRINGTON said that there is not much public education for someone who builds out in the hinter lands because it is only after someone has built out there that it is an issue. A lot of that education occurs between the local fire department and those homeowners.

SEN. LAIBLE asked Mr. Harrington if the majority of the leased cabin sites are small enough that they don't qualify for a structure or a water or septic system to be put on them. MR. HARRINGTON said that quite a few of the sites have septic systems as opposed to connecting to city services.

SEN. LAIBLE asked at what point during the process in LC 4000 did DNRC decide to create another bill because there are similarities in both LC 4000 and DNRC's bill. MR. HARRINGTON said that DNRC supports LC 4000. He said that it is important to understand that the discussion of wildland-urban interface has been relatively recent and that it was only at the last meeting where everyone was expressing their views about what they would like to see in terms of changes to statute that this difference arose.

AUTHORITY OF FIRE CHIEFS IN TITLE 7, CHAPTER 33 - Leanne Kurtz, LSD

MS. KURTZ discussed the proposal on the issue of the fire chiefs (**EXHIBIT 8**). She said that Title 7, Chapter 33 has several parts dealing with fire protection: rural fire protection, rural fire districts, fire companies, municipal fire departments. Ms. Kurtz said that the group wanted to have one section in Title 7, Chapter 33, that applies to all local government fire entities that prescribes the duties of a fire chief. The work group plans to solicit comments on the first proposal with changes. She said that she will put that in bill draft form prior to the August meeting.

PUBLIC COMMENT

BERNIE JACOBS, Counsel for Building Codes Bureau, said that in the last paragraph, it says "in accordance with MCA and Administrative Rules, the Fire Chief shall have a program which regularly examines the community for fire hazards, inspection of commercial properties, with an emphasis on those occupancies identified as a high risk to life and property", the problem they

have is that there is existing in the state today, a pervasive problem of conflicting jurisdiction between the authority that fire departments and fire chiefs have and the authority that the Building Code Bureau has, particularly relating to inspections. Mr. Jacobs suggested inserting language in the proposal that clarifies "that inspection of commercial properties by the fire people would only occur after the building has been approved for occupancy by the building official".

INSTRUCTIONS TO STAFF

MS. KURTZ suggested that Sen. Laible, on behalf of the subcommittee, ask the full committee to accept referral of the wildland-urban interface and authority of fire chiefs. She said that at the last meeting there will be discussion on the issue of the classification of cities and fire departments, and a discussion on the technical assistance for planners brought up by Professor Horwich and David Cole.

SEN. GILLAN said that she would like Tim Davis to provide a status report from the group one to two weeks prior to the August meeting.

TAPE 2B

ADJOURNMENT

ACTING PRESIDING CHAIR GILLAN adjourned the meeting at 4:28 p.m.

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