MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JEFF MANGAN**, on March 17, 2005 at 3:28 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:
Sen. Jeff Mangan, Chairman (D)
Sen. John Esp (R)
Sen. Kelly Gebhardt (R)
Sen. Kim Gillan (D)
Sen. Bob Hawks (D)
Sen. Rick Laible (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Jim Shockley (R)
Sen. Carolyn Squires (D)

Members Excused: Sen. Mike Wheat (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 142, 3/7/2005; HB 454, 3/7/2005; HB 365, 3/7/2005
Executive Action: None.

HEARING ON HB 142

{Tape: 1; Side: A; Approx. Time Counter: 0.4}

Opening Statement by Sponsor:

REP. RICK RIPLEY (R), HD 17, opened the hearing on **HB 142,** Permit issuance of grant or revenue anticipation notes for water, sewer projects.

{Tape: 1; Side: A; Approx. Time Counter: 0.4 - 3.6}

REP. RIPLEY told the committee that the bill was requested by the Department of Natural Resources and allowed communities easier borrowing from the revolving drinking water and waste water fund and also allowed for a limited loan forgiveness. **REP. RIPLEY** said that communities in Montana need low cost financing for water infrastructure.

EXHIBIT(los59a01)
EXHIBIT(los59a02)

REP. RIPLEY directed the committee to look at the maps that he handed out. He explained that Federal funds are not always available in a timely fashion and **HB 142** would allow communities to borrow money until their federal funds came in. **REP. RIPLEY** stated that **HB 142** also permitted limited loan forgiveness for the communities in the greatest need.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.6 - 9.1}

Anna Miller, Department of Natural Resources and Conservation (DNRC), explained that **HB 142** was a cash flow measure. She said that the Department of Natural Resources received funds from two sources: Federal money from the Environmental Protection Agency and matching funds from the general obligation bonds. **Ms. Miller** told the committee that these were revolving loans. She said that the problem was that sometimes the Federal Government was late with its payments and **HB 142** allowed the Department of Natural Resources to borrow money until the Federal funds came through. **Ms. Miller** stated that loan forgiveness was also allowed under **HB 142,** which were basically hardship grants.

Steve Wade, Montana Rural Water System/North Central Montana Regional Water Authority/Dry Prairie Regional Water Authority,

urged the committee to support **HB 142.** He read a letter of support into the record.

EXHIBIT(los59a03)

Mr. Wade said that **HB 142** solves current problems with the revolving fund and allows communities to continue to provide good and safe drinking water.

Gordon Morris, Montana Association of Counties, supported **HB 142.**

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 9.1 - 14.8}

SEN. ESP asked **Ms. Miller** how the governments involvement would make communities disadvantaged. **Ms. Miler** explained that some communities had built a water system and incurred a lot of debt but the water systems did not work out. **Ms. Miller** said that the bill would advance them some money. **SEN. ESP** wanted to know if "disadvantaged" referred to financially disadvantaged. **Ms. Miller** affirmed that. **SEN. ESP** questioned if a two-thirds vote was required. **Ms. Miller** said that there was an indebtedness clause and so did demand a two-thirds vote.

SEN. MANGAN questioned **Ms. Miller** as to whether there would be any conflict between **HB 142** and **SB 242. Ms. Miller** said that she would coordinate amendments. **SEN. MANGAN** wanted to know if there was a choice for communities between reducing interest and reducing the capital through the hardship grants. **Ms. Miller** responded that the Department would work with communities to find the best possible solution.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 14.8 - 15.9}

REP. RIPLEY said that water systems were important projects. He pointed out that the fiscal note was zero. **REP. RIPLEY** promised to work out coordinating amendments.

HEARING ON HB 454

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

Opening Statement by Sponsor:

REP. JIM PETERSON (R), HD 30, opened the hearing on **HB 454,** County resident voting in road levy elections.

{Tape: 1; Side: A; Approx. Time Counter: 16 - 18.7}

REP. PETERSON stated that **HB 454** authorized county commissioners to allow certain county residents to vote in a road levy election. **REP. PETERSON** explained that some of his constituents in Petroleum County were ranchers who commuted to the farm and would be taxed by a road levy but could not vote on it. He said that county commissioners would be allowed to make a resolution to give certain voters who lived in the city but owned property in the county the right to vote on road levies that would affect their property in the county. He commented that the hearings would be publically noticed and only qualified voters would be allowed to vote.

Proponents' Testimony:

John Jensen, Fergus County Commissioner, supported **HB 454.**

Gordon Morris, Montana Association of Counties (MACo), said that municipality residents should be allowed to vote in a rural election road levy if it affected their property.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 29.5}

SEN. HAWKS asked **REP. PETERSON** if the bill was legal because he could not find a legal way for business owners who live outside the city to vote in city elections. **REP. PETERSON** said he did not know why they would not be allowed to. He noted that **HB 454** did limit the votes to road levies.

SEN. SHOCKLEY wanted to call **HB 454** the "Urban Cowboy Bill." **REP. PETERSON** said that would be a good idea.

SEN. ESP wanted to know if **HB 454** could be a slippery slope and the limitations might creep in the future. **REP. PETERSON** replied that the current situation was taxation without representation.

SEN. MANGAN asked **REP. PETERSON** how the county commissioners would select which owners would vote. **REP. PETERSON** responded that the bill required public notice and public hearings and had other limitations.

SEN. MANGAN questioned **Mr. Morris** how voters would be notified of the election. **Mr. Morris** said that **HB 454** established a procedure for qualified voters and that the voters must certify their ownership of property with the election official. **Mr. Morris** stated that the bill was very narrow.

Closing by Sponsor:

REP. RIPLEY asked for the committee's favorable consideration.

HEARING ON HB 365

{Tape: 1; Side: B; Approx. Time Counter: 2.4}

Opening Statement by Sponsor:

REP. RICK MAEDJE (R), HD 2, opened the hearing on **HB 365,** Revise use of land surveyors in survey reviews.

{Tape: 1; Side: B; Approx. Time Counter: 2.4 - 6.9}

REP. MAEDJE told the committee that counties were having to go to outside surveyors for reviews for mistakes and omissions. He said that the problem was that there was no time line on the process for error/omission review. **HB 365** would put a time line of 20 days on the process. **REP. MAEDJE** stated that the examining surveyors should only check for errors and omissions and then get it back to the original surveyor. **REP. MAEDJE** went through the process of error and omission review. He said that another problem with out-of-state surveyors was they would make corrections to the survey by applying their state's laws instead of Montana law. **REP. MAEDJE** declared that the governing body had no right to impose the more stringent extra laws. **REP. MAEDJE** noted that there was an amendment to the bill.

EXHIBIT(los59a04)

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 6.9 - 7.4}

Jim Kembel, Montana Association of Registered Land Surveyors, stood in support of **HB 365.**

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 7.4 - 10.9}

Linda Stoll, Montana Association of Planners, opposed **HB 365** because she felt it was a solution looking for a problem. She told the committee that the number of days for omission/error review was usually a contract between examining surveyors and counties. **Ms. Stoll** said that the part about requirements not being more stringent than Montana law is already in current law. She submitted a letter of opposition from Cora Cummings, Lincoln County Clerk and Recorder.

EXHIBIT(los59a05)

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 10.9 - 14.9}

SEN. GILLAN asked **Mr. Kembel** who determines if there is an error or omission in a survey. **Mr. Kembel** replied that it varied. **SEN. GILLAN** queried whether statute demanded that every survey was routinely checked for errors and omissions. **Mr. Kembel** said yes.

SEN. GILLAN wanted to know why the bill only allowed 14 days for the original surveyor to make any corrections, while it allowed 20 days for the examining surveyor to just notify the county clerk. **Mr. Kembel** explained that the examining land surveyor had 20 days to complete the review and the original surveyor had 14 days to file the correction so they actually had 34 days to complete the review process.

SEN. GILLAN asked what the typical time frame was and whether they would correspond with the other bills. **Mr. Kembel** said he was not involved with those bills and could not know.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 14.9 - 15.3}

SEN. MANGAN allowed **Mr. Throssell** to state his name and opposition to the bill.

Robert Throssell, Montana Association of Clerks and Recorders, opposed the bill.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 15.3 - 30.5}
{Tape: 2; Side: A; Approx. Time Counter: 0.1 - 5.9}

SEN. SHOCKLEY asked the sponsor why the counties contract out-of-state surveyors. **REP. MAEDJE** responded that when counties do not get what they want, they go out of state. **SEN. SHOCKLEY** said that they had to be licensed in Montana. **REP. MAEDJE** replied that for review surveys, they do not have to be a licensed land surveyor, clerk and recorders can review the survey as well. **SEN. SHOCKLEY** wanted to know what **SEN. DANIEL MCGEE, SD 29, LAUREL,** thought about the bill. **REP. MAEDJE** noted that **SEN. MCGEE** was the co-sponsor of **HB 454. SEN. SHOCKLEY** stated that if Montanans are not doing the work fast enough, maybe they should get motivation. **REP. MAEDJE** replied that he did not know who was at fault but that many people are upset because the review process takes too long.

SEN. LAIBLE questioned **Mr. Kembel** what happened if the reviewing surveyor did not meet the 20 day deadline. **Mr. Kembel** said that nothing happened. **SEN. LAIBLE** stated that, in that case, nothing would change. **Mr. Kembel** replied that legal action by the developer could be taken if they did not meet the 20 days. **SEN. LAIBLE** asked if the better business practices could handle the problem. **Mr. Kembel** responded that state law would help motivate the surveyors. **SEN. LAIBLE** wanted to know if there was a shortage of land surveyors. **Mr. Kembel** answered that time was the issue because land surveyors are extremely busy during the summer months and not so busy during the winter. There is not a shortage of surveyors but a shortage of time and that was why counties went to out-of-state surveyors.

SEN. MOSS wanted to know how many planners worked for a county government. **Ms. Stoll** guessed approximately 100 members. **SEN. MOSS** asked if any of those members had voiced a concern about the issue at hand. **Ms. Stoll** replied that they did not know of the problem and had not heard of it.

SEN. MOSS asked **Mr. Morris** if he was aware of this problem. **Mr. Morris** answered that he had some concerns about the bill but **REP.**

MAEDJE had removed his objections through amendments. **Mr. Morris** felt that the bill was just unnecessary.

SEN. ESP questioned the sponsor if the problem he was addressing with **HB 454** was the amount of time it took to get a certified copy of the survey. **REP. MAEDJE** affirmed that was the case. **SEN. ESP** wanted to know if the bill was amended in committee or on the House Floor. **REP. MAEDJE** said that it was amended in Committee. **SEN. ESP** asked if the sponsor was willing to amend the bill any more. **REP. MAEDJE** responded that if it improved **HB 454,** he was willing to amend the bill. **SEN. ESP** proposed that the time line be different if errors or omissions were found, he suggested 20 days if an error was found and 14 days if no error was discovered. **REP. MAEDJE** said that sounded like a good idea.

SEN. HAWKS wanted to know how the clerks and recorders felt about **HB 454. Mr. Throssell** stated that counties have different methods of review. He feared that there would be problems in smaller counties because they have to go out of county and out of state and the mailing and timing deadlines would be a hindrance. **Mr. Throssell** noted that most problematic delays were the fault of developers.

SEN. GEBHARDT asked **Mr. Kembel** who had the liability for an error or omission that was not caught by review. **Mr. Kembel** answered that the surveyor did and that is why they carried error and omission insurance. **SEN. GEBHARDT** questioned why the surveyor did not get the review done since they held the liability. **Mr. Kembel** said that surveyors appreciated a double check. **SEN. GEBHARDT** asked what **Mr. Kembel** thought of the use of the word "may." **Mr. Kembel** said he did not know if one could be a reviewer, if the license had been let go. **SEN. SHOCKLEY** stated that a surveyor had to be licensed to work for the government, no matter what.

SEN. SHOCKLEY questioned **Mr. Kembel** if most counties had a county surveyor or contracted a county surveyor. **Mr. Kembel** did not know.

SEN. MANGAN wanted to know how the Clerk and Recorders Office would know when the 20 day time-line started and why, if Lincoln county was so concerned with a time line, they did not just put a 20 day deadline in their contract with a surveyor. **REP. MAEDJE** replied that it was not just one county. **SEN. MANGAN** asked whether the problem was Montana surveyors verses out-of-state surveyors. **REP. MAEDJE** answered that large counties surveyed within their local government, small counties fall under **HB 454.** He stated that if the counties send surveys out, they must meet a

20 day deadline from the day that the reviewing surveyor gets the survey.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 5.9 - 11.1}

REP. MAEDJE went over the survey process again and noted that the bill only covered the final plat survey being reviewed for errors and omissions. He stated that if an error was discovered, it was returned to the original surveyor and he fixed it and re-submitted it to the Clerk and Recorder. The reviewing surveyor than had to sign the survey. **REP. MAEDJE** disagreed with **Ms. Stoll** that out-of-state surveyors were not accidently implementing their own states laws to surveys. **REP. MAEDJE** said that whether or not a property owner had paid their taxes had nothing to do with the process that **HB 454** was trying to improve. **REP. MAEDJE** felt there should be no problem for a reviewing surveyor to get a survey done in 20 days. He promised to work on amendments to help clarify the bill.

ADJOURNMENT

Adjournment: 4:38 P.M.

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SEN. JEFF MANGAN, Chairman

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JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT(los59aad0.PDF)