MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JEFF MANGAN**, on April 5, 2005 at 3:43 P.M., in Room 102 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)
Sen. Mike Wheat (D)

Members Excused: None.

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 614, 3/31/2005; HB 720, 3/31/2005
Executive Action: HB 614; HB 720; HB 342

HEARING ON HB 614

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

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on **HB 614**, County courthouse restoration act.

REP. HARRIS called his bill the "County Courthouse Restoration Act." He explained that **HB 614** allowed a very small portion of General fund money to be used by the Montana Historical Preservation Office. The Office would hire an architect to go out to Montana's county courthouses and assess them for classic architectural styles and disability access. Then the architects would work with the office to apply for grants and donations to restore the county courthouses. **REP. HARRIS** said that Montana had a rich historical heritage and that heritage was suffering as the courthouses fell into disrepair. **REP. HARRIS** discussed some of the courthouses in Montana. **REP. HARRIS** stated that with a little bit of help, the courthouses could be restored. **REP. HARRIS** handed out a fact sheet of **HB 614** and a sheet that showed some of the historical courthouses of Montana.

EXHIBIT(los72a01)
EXHIBIT(los72a02)

REP. HARRIS commented that Texas, under George W. Bush's governorship, put $100,000 towards the restoration of their courthouses and that **HB 614** only allocated $39,200 over the next 2 years. **REP. HARRIS** pointed out that some of the most important legal cases occurred in the courthouses of Montana.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 0.4 - 21.9}

SEN. SAM KITZENBERG, SD 18, GLASGOW, stood in support of **HB 614**. He offered to carry the bill if no one on the committee wished to.

Alec Hansen, Montana League of Cities and Towns, said the bill coordinated with another bill, that restored main streets in Montana. **Mr. Hansen** said the bill symbolizes Montana's heritage. He noted that the greatest speech in Montana History was delivered from the steps of the Silverbow County Courthouse: F. Augustus Heinze's famous Standard Oil Shutdown Speech.

Gordon Morris, Montana Association of Counties, supported the bill. He noted that there were some beautiful county courthouses.

Arnie Olson, Montana Historical Society, handed out his testimony in support of **HB 614.**

EXHIBIT(los72a03)

Jim Kembel, American Institute of Architects, noted that the Institute supported the bill and he had brought along two architects with experience is restoration projects.

Jim McDonald, A&E Architects of Missoula, supported **HB 614.** He said that he worked in several county courthouses and there were vast differences in the amount of money that counties had to restore their courthouses. He thought that the bill would help counties that could not afford to restore their courthouses apply for grants and donations. He noted that courthouses were important places for community events. **Mr. McDonald** told the committee that the bill encouraged sustainable architecture. He commented that many of the courthouses did need a lot of work to restore them but they could be saved and restored with help from **HB 614.**

Don Jones, Montana Advocacy Program, stood in support of **HB 614.** He said that many of the courthouses were not disability accessible and needed to be. He stated that **HB 614** would provide money to restore Montana's historical buildings and improve access to governmental buildings and services. He noted that many county courthouses were not accessible to people with disabilities. **Mr. Jones** told the committee that their goal was to ensure that everyone had access to the historical buildings of Montana and access to the services that they provide.

Rick Schlenker, Schlenker and Mckittrick Architects P.C. of Helena, told the committee that some counties had the ability and staff to go after grants to restore their courthouses and some did not. He discussed his work on the Lewis and Clark county courthouse. He said that restoring of the buildings made more economic sense than replacing. He noted that the building could not be replicated and the longer they stood without the resources to restore, the worse they would get.

Lieutenant Governor John Bohlinger supported **HB 614.** He discussed his experience with the Capital building's restoration and he stated that the money was well-spent. He called the county courthouses "mini state capitals" and said that the residents took pride in their historical buildings. He asked the committee

to concur on **HB 614** and preserve Montana's heritage. He showed the committee a posterboard showing examples of Montana's historical county courthouses.

EXHIBIT(los72a04)

Chere Jiusto, Montana Preservation Alliance, told the committee that her program work with historic districts to get grants from the federal government and the private sector. She noted that some counties could not afford to provide disability accessability and restore their historic buildings. She handed out a sheet showing some of the grants that are available for historic restoration.

EXHIBIT(los72a05)

Don Allen, Granite County, stood in support of **HB 614.**

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 21.9 - 24.5}

SEN. LAIBLE asked the sponsor where alternative funds for restoration came from. **REP. HARRIS** answered that there were federal funds available, as well as grants and donations that could be applied for.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 24.5 - 25.3}

REP. HARRIS thanked the committee. He noted that **HB 614** had to be blasted out of committee and therefore money was not allocated for **HB 614** in **HB 2** and the money allocation would need to be added if **HB 614** passed the Senate.

HEARING ON HB 720

{Tape: 1; Side: A; Approx. Time Counter: 25.6}

Opening Statement by Sponsor:

REP. JOHN SINRUD (R), HD 67, opened the hearing on **HB 720,** Regulatory certainty for land use.

{Tape: 1; Side: A; Approx. Time Counter: 25.6 - 29.5}

REP. SINRUD explained that when one wanted to get a site-specific land use permit, they were required to fill out an application. **HB 720** allowed local governments to establish a completeness review process to determine when applications were complete. It also said that local governments would be required to notify an applicant when applications were deemed complete. **REP. SINRUD** said that **HB 720** was designed to give some certainty to the process. It prevented applications from being rejected because the law changed in the time between the submitting of the application and the end of the review process. **REP. SINRUD** declared that it was unfair for local governments to reject applications on the basis of laws that were not in effect at the time of the application.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 29.5 - 30.5}
{Tape: 1; Side: B; Approx. Time Counter: 2.5 - 12.9}

Curt Chisholm, Montana Building Industries Association, read the committee a portion of the Montana State Plating Act and interpreted it to mean that the rules in effect at the time the application is completed and submitted are the statutes that will govern the application's review and approval or disapproval. **Mr. Chisholm** said that this portion of the Plating Act should be applied to all land-use applications. **Mr. Chisholm** noted that the bill put local governments in control of the time lines and the local laws.

Michael Kakuk, Montana Building Industries Association and **Montana Association of Realtors,** discussed how **HB 720** would affect conditional use permits. **HB 720** mandates that once an application is deemed complete, the rules under which it was filed will be the same rules under which it will be evaluated. **Mr. Kakuk** gave the example of extractive use in a zoned area. **Mr. Kakuk** explained the effect that **HB 720** would have on septic systems. He said that it would affect Title 50. **Mr. Kakuk** stated that **HB 720** did not cover installation, only affected the application process from the point the application was complete to approval. He declared that **HB 720** was not a vested rights bill.

Byron Roberts, Montana Building Industries Association, said that Montana needed a regulatory certainty statute to prevent ad-hoc regulations on development. **Mr. Roberts** felt that the developer had the right to know under what rules his application would be reviewed. He commented that local governments still have the right to ask for additional information and **HB 720** did not guarantee approval of an application.

Mike Jarrett, Southwest Montana Building Industries Association, stated that it was not fair for projects to be rejected for rules that the developer did not know about when he submitted the application. **Mr. Jarrett** said that type of situation has happened and has huge cost and time ramifications, which makes some projects cost-prohibitive.

Don Allen, Western E Trade Organization, went on record in support of the bill.

Alec Hansen, Montana League of Cities and Towns, agreed with the idea that there should be some regulatory certainty. **Mr. Hansen** said that when the bill was first introduced, he had some concerns and problems with it but with the amendments, he could support the bill. **Mr. Hansen** told the committee that his issues with the bill had been resolved. He appreciated that the local governments were given more control.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 12.9 - 14.6}

Joan Miles, Lewis and Clark County Health Departments, submitted a letter of opposition for Missoula County.

EXHIBIT(los72a06)

Ms. Miles said that her main issue with **HB 720** was the lack of certainty in it. She informed the committee that they had 6 county attorneys look at the bill and reach 4 different conclusions about its impacts. **Ms. Miles** feared that a subdivision might be approved and then not develop for several years and with **HB 720,** she could not enforce regulations on the subdivision, even if the situation had changed.

Informational Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 14.6 - 19.7}

Linda Stoll, Montana Association of Planners, explained that the reason they were not proponents was because there were some uncertainties in the bill. She expressed her confidence in the committee's ability to clarify the issue.

Jennifer Magic, Planning Director for Gallatin County, expressed her uncertainty about **HB 720.** She said that she was concerned about the inclusion of conditional use permits. **Ms. Magic** said that it was Standard practice in their office that the regulations in place at the date of the application were the regulations that governed the application's review. She stated that her main problem was with conditional use permits. She handed out some examples.

EXHIBIT(los72a07)
EXHIBIT(los72a08)

Ms. Magic explained that change was the nature of the conditional use permit process and they were designed to be flexible. **Ms. Magic** told the committee that one would rarely find regulations to govern conditional use permits in the code. They were evaluated on a case-by-case basis. She referred to her examples and informed the committee that the regulations in the permits were not found in code, but were designed to be site specific.

SEN. MOSS exits

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 19.7 - 27.4}

SEN. HAWKS asked the sponsor if **HB 720** allowed for the process to evolve in regards to conditional use permits. **REP. SINRUD** answered that the bill allowed conditions to unfold but the law cannot be changed, in regards to what is and is not allowed. He explained the review process. He said that the developer should know what is required or allowed at the start of the process. **REP. SINRUD** thought it was unfair to change the rules for evaluation when the developer does not have the time or ability to alter their application. He noted that local governments had the ability to develop and determine a time line. **SEN. HAWKS** wanted to know how the bill affected the design review process. **REP. SINRUD** responded that the local governments would have to tighten the regulations and they continue to have the right to make changes to the law but the changes would not affect an application already in progress.

SEN. HAWKS questioned **Ms. Magic** about the predictability of the conditional use permit process. **Ms. Magic** answered that the process was not predictable and was subject to numerous processes. She said that there was no way to determine standards.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 27.4 - 29.3}

REP. SINRUD reiterated that the bill would increase predictability. He said that developers already know that the conditional use process is uncertain but they should be assured that what was an allowed use at the completion of the application would still be an allowed use at the end of the review, even if the law changed during the review process. **REP. SINRUD** felt that the builders should know the laws that would govern their application. He commented that local governments were in charge. **REP. SINRUD** thanked the committee.

SEN. ESP exited.

EXECUTIVE ACTION ON HB 614

{Tape: 1; Side: B; Approx. Time Counter: 29.3 - 30.6}
{Tape: 2; Side: A; Approx. Time Counter: 0.1 - 1.7}

Motion: **SEN. LAIBLE moved that HB 614 BE CONCURRED IN.**

Discussion: **SEN. O'NEIL** stated that it would be too expensive to make them earthquake resistant, energy efficient, and handicap accessible. **SEN. O'NEIL** said that the bill was not economically feasible. **SEN. WHEAT** disagreed and told the committee of his experience with the Carnegie Library Building in Bozeman, Montana. He noted that in the process of restoration, they also made the building earthquake-proof. **SEN. WHEAT** said the bill was good and that **SEN. O'NEIL** had the wrong idea.

Motion: **SEN. SQUIRES CALLED THE QUESTION ON HB 614.**

Vote: **Motion that HB 614 BE CONCURRED IN carried 9-2 by voice vote with SEN. ESP and SEN. O'NEIL voting no. SEN. MOSS voted yes by proxy. SEN. ESP voted no by proxy.**

SEN. WHEAT was appointed to carry **HB 614.**

EXECUTIVE ACTION ON HB 720

{Tape: 2; Side: A; Approx. Time Counter: 1.7 - 6}

Motion: **SEN. LAIBLE moved that HB 720 BE CONCURRED IN.**

Discussion: **SEN. HAWKS** said that the bill was about a complicated process and noted that conditional permits were unpredictable naturally. He stated that if there were some clarifying amendments, he might be able to support the bill. **SEN. LAIBLE** asked **Mr. Kakuk** to give some clarity to **HB 720. Mr. Kakuk** directed the committee to page 3, line 3 and quoted "based solely on the ordinances and regulations in effect at the time. **Mr. Kakuk** maintained that **HB 720** gave some certainty in the process but not in the outcome of conditional use permits. **SEN. SHOCKLEY** commented that **Mr. Kakuk** was right.

Vote: **Motion that HB 720 BE CONCURRED IN carried 6-5 by roll call vote with SEN. GILLAN, SEN. HAWKS, SEN. MOSS, SEN. SQUIRES, and SEN. WHEAT voting no. SEN. MOSS voted no by proxy. SEN. ESP voted yes by proxy.**

SEN. LAIBLE was appointed to carry **HB 720.**

EXECUTIVE ACTION ON HB 342

{Tape: 2; Side: A; Approx. Time Counter: 6 - 8}

Motion/Vote: **SEN. SHOCKLEY moved to RECONSIDER THE MOTION TO TABLE HB 342. Motion carried 8-3 by voice vote with SEN. GEBHARDT, SEN. GILLAN, and SEN. WHEAT voting no.**

Motion/Vote: **SEN. SHOCKLEY moved that HB 342 BE CONCURRED IN. Motion failed 4-6 by roll call vote with SEN. LAIBLE, SEN. O'NEIL, SEN. SHOCKLEY, and SEN. SQUIRES voting aye. SEN. MOSS voted no by proxy.**

Motion/Vote: **SEN. LAIBLE moved that HB 342 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote.**

ADJOURNMENT

Adjournment: 4:50 P.M.

_____
SEN. JEFF MANGAN, Chairman

_____
JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT(los72aad0.PDF)