MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JEFF MANGAN**, on January 6, 2005 at 3:00 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. Mike Wheat (D)

Members Excused: Sen. Carolyn Squires (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: SB 20, 1/3/2005; SB 32, 1/3/2005
Executive Action: None.

SEN. JEFF MANGAN (D), SD 12, GREAT FALLS informed the committee members that the committee secretary would take roll on sight, and that committee member **SEN. CAROLYN SQUIRES (D), SD 48, MISSOULA** was excused. **SEN. MANGAN** stated that there was some unfinished committee business.

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

Motion/Vote: SEN. HAWKS moved that the Local Government Committee allow the use of proxies. No discussion on the motion. Motion passed unanimously by voice vote.

HEARING ON SB 32

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

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, opened the hearing on SB 32, Include minor sidewalk repair in street maintenance districts.

{Tape: 1; Side: A; Approx. Time Counter: 1.5 - 3}

SEN. BRENT CROMLEY thanked the committee for allowing his bill to go first in the agenda. He informed the committee that **SEN. KIM GILLAN (D), SD 24, BILLINGS,** would be doing the closing sponsor statement in his stead. **SEN. CROMLEY** explained the purpose of his bill, which was "to allow local governments to utilize a portion of the revenues generated by the street maintenance assessment to perform minor repairs to sidewalks." **SEN. CROMLEY** stated that current law restricts the use of that revenue to the runway between the curb and the gutter and prohibits local governments from using the funds to repair local sidewalks. **SEN. CROMLEY** contended that this was needed by urban areas across the state.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.5 - 10}

David Mumford, Public Works Director for the City of Billings, described the purpose of **SB32,** which was to assist property owners in sidewalk maintenance. **Mr. Mumford** asserted that while the Street Maintenance Assessment was a good tool for the city's public works, it limited them to between the curbs. This puts an enormous burden on the property owners. **Mr. Mumford** told the committee that currently minor repairs are not performed and so sidewalks deteriorate to the point that they are non-functional

and a hazard to pedestrians. This then required that whole sections of sidewalk be taken out and replaced at the property owner's cost. **SB 32** allows public works to utilize a small portion on the Street Maintenance Assessment to perform minor repairs to sidewalks, such as cracking, chipping, and sinking. The measure insures preventative maintenance and will reduce the time and cost that goes into replacing whole sections of sidewalk. **Mr. Mumford** then discussed the liability problems associated with sidewalks that are in a state of disrepair. People can trip and fall and then the city is sued for these sidewalk hazards, which is an enormous cost to communities. **SB 32** would allow the government to be more proactive in street and sidewalk maintenance and so save money in the long run. **Mr. Mumford** speculated that with the passage of **SB 32**, sidewalks could go fifty to sixty years without requiring replacement.

Alec Hansen, League of Cities and Towns, told the committee that the League of Cities and Towns had held an annual meeting and declared their unanimous support for the passage of **SB 32. Mr. Hansen** explained that **SB 32** is doing preventative maintenance, which will potentially save the taxpayers, property owners, and local governments money. **Mr. Hansen** also said that **SB 32** will make the sidewalks safer for pedestrians, therefore reducing the number of liability cases related to sidewalk trip and falls. **Mr. Hansen** characterized most of the sidewalks across Montana as being "in tough shape" and that **SB 32** was needed to help local governments cope with the problem. **Mr. Hansen** said that he had letters of support from the cities of Great Falls and Livingston.

Steve Wade, Montana Municipal Insurance Authority, informed the committee that the authority addresses numerous liability cases and claims relating to sidewalk disrepair every month. **Mr. Wade** said that the MMIA thinks that "anything that can be done to give the cities and towns the opportunity to repair [sidewalks] and maintain [sidewalks] would be a good thing." **Mr. Wade** urged the committee's support.

Opponents' Testimony: None.

Informational Witness' Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 10.6 - 24.1}

SEN. RICK LAIBLE (R), SD 44, VICTOR, asked **Mr. Hansen** who owned the sidewalks. **Mr. Hansen** replied that the responsibility was very clouded. **SEN. LAIBLE** clarified that he did not want to know

who was responsible, but who owned the sidewalks. **Mr. Hansen** said that **Mr. Mumford** would be able to answer the question more effectively. **Mr. Mumford** told the Committee that the statutes in most Montana cities designated the city as the owner, but the responsibility for maintenance fell to the property owners by city ordinance.

SEN. LAIBLE requested a follow-up, wanting to know if then the liability fell with the homeowner as well. **Mr. Mumford** informed the committee that generally both the city and the property owner were named in any lawsuit.

SEN. JOHN ESP (R), SD 31, BIG TIMBER, inquired as to whether the proponents thought that "minor sidewalk repair, including cracking, chipping, and sinking" was an adequate definition between what was minor and what was major repair. **Mr. Mumford** stated that they wanted to limit **SB 032** to minor repair and not sidewalk replacement.

SEN. ESP requested a follow-up, asking if it would make sense to add a percentage to the bill, to clarify what minor repair was. **Mr. Mumford** answered that a percentage could be done, but wanted to know if **SEN. ESP** meant that over a certain percentage would no longer constitute minor repair. **SEN. ESP** explained that he felt the definition was too loose and requested the proponents to work on a definition that would prevent misapplications of the bill.

SEN. BOB HAWKS (D), SD 33, BOZEMAN, inquired of **Mr. Wade** that if the responsibility of sidewalk maintenance was determined by city ordinance, why the bill was brought forward on the state level. **Mr. Wade** explained that the Supreme Court has heard cases on sidewalks and determined that there was a duty of the city for sidewalk maintenance and repair. He stated that cities and towns, because of the vast number of sidewalks, had put some of that responsibility onto property owners since property owners see the sidewalks daily and should recognize when they need maintenance. However, the city is still responsible and liable for the sidewalks. **Mr. Wade** stated that **SB 32** would minimize the risk to both the city and homeowner.

SEN. HAWKS requested a follow-up, questioning if what was needed was clarification in the state codes to define the relationship of cities and homeowners in regards to sidewalk maintenance. **Mr. Wade** said that **SB 32** was needed in order to include sidewalks in the Maintenance Districts and to allow cities and towns to spend money maintaining them.

SEN. MICHAEL WHEAT (D), SD 32, BOZEMAN, asked **Mr. Mumford** if, in the case where one part of a large section sidewalk is damaged and it will cost more to repair it than to replace it, then would replacement of that one smaller section be considered minor repair. **Mr. Mumford** stated that panel replacement was not considered minor repair. The reason for this decision was that at the point where one panel was allowed under the definition of minor repair, the definition could be broadened to include whole sections of sidewalk. Panel replacement was specifically left out of **SB 32.**

SEN. WHEAT suggested that the proponents add an amendment to **SB 32** using monetary value to determine what was minor and what was major repair.

SEN. LAIBLE asked **Mr. Mumford** how the funding for sidewalk repair and replacement worked. **Mr. Mumford** explained that currently, the city assessed the cost of repair and/or replacement against the property owner. If it was a whole street, it becomes an S.I.D. If it is a single panel, the property owner is informed that it needs to be replaced and then has the option to replace it themselves or the city will repair the panel and assess the cost against the property owner with their annual fees.

SEN. ESP asked **Mr. Hansen** if **SB 32** was simply shifting the cost of sidewalk repair to a broader base of taxpayers through the street maintenance fund. **Mr. Hansen** said that cities and towns varied in their set-up for street maintenance. Some cities had the districts set up for urban streets and rural streets, some set up commercial street maintenance districts and the street maintenance fee was adjusted by district. **Mr. Hansen** indicated that this was the most common method of street maintenance. **Mr. Hansen** informed the committee that these funds are currently used for sanding, snow removal, and cleaning; **SB32** would simply expand the funding use to sidewalk repair.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 8.5 - 10.3}

SEN. KIM GILLAN (D), SD 24, BILLINGS gave the closing for **SB32.** She told the committee that **SB 32** affected not only the city of Billings, but cities and towns across Montana and that **SB 32** a tool for the cities to protect the safety of their citizens. **SEN. GILLAN** recognized the concerns over the definition of minor versus major repair but said she felt that line 18 of **SB 32** should help satisfy some of these concerns. **SEN. GILLAN** called **SB**

32 a preventive measure, saying "an ounce of prevention is worth a pound of cure." **SEN. GILLAN** held that if these minor repairs were made, it would reduce the burden on homeowners and make it safer for pedestrians. **SEN. GILLAN** promised to convey to **SEN. CROMLEY** the questions of the committee and said they would be addressed before executive action. **SEN. GILLAN** thanked the Committee.

SEN. MANGAN announced the Local Government Committee would take executive action on **SB 32** on Tuesday, January 11th, 2005.

HEARING ON SB 20

{Tape: 2; Side: A; Approx. Time Counter: 0.0}

Opening Statement by Sponsor:

SEN. GLENN ROUSH (D), SD 8, CUT BANK, opened the hearing on SB 20, Revise law concerning municipal water rights.

{Tape: 2; Side: A; Approx. Time Counter: 0.1 - 5.4}

SEN. ROUSH explained the intention of his bill removed the requirement that cities and towns divert water from a closed water source in order to qualify for the consideration for non-abandonment of a municipal water right. **SEN. ROUSH** said that, basically, the bill allowed communities to utilize a regional water source. **SEN. ROUSH** passed out a map showing the regional water systems of Montana.

EXHIBIT(los04a01)

SEN. ROUSH informed the committee that regional water sources were becoming more and more prevalent in Montana. The largest is Dry Prairie. These regional water sources are developing because of the drought in Montana, which is severely affecting communities. Cities and towns along the mountain front are also being affected because of a smaller and smaller snow pack, which reduces the spring runoff supply. **SEN. ROUSH** also said that water quality has become a problem because of federal regulations. These regional water sources are purified and potable. **SEN. ROUSH** talked about his sponsorship of this bill, which he is carrying for the city of Cut Bank. **SEN. ROUSH** told the committee that the city of Cut Bank has held numerous meetings about their water supply and how to insure the protection of Cut Bank's water rights while utilizing these regional water sources. Cut Bank recently joined the North Central Montana Regional Water System,

which is shown on the map (**Exhibit (1)**). Cut Bank holds a good 1914 water right in the Cut Bank Creek and recently made upgrades to its diversion and treatment plant to meet federal water quality regulations. However, the drought has made it difficult for Cut Bank to rely on its supply of water from Cut Bank Creek and the city is planning for the long term. These upgrades and future upgrades, as well as the continuing drought, affect Cut Bank's water rights. **SEN. ROUSH** recognized that there are options under current law for Cut Bank to preserve its water rights, but these are dependent on other users of Cut Bank Creek. **SEN. ROUSH** declared that cities should be able to join regional water sources and not have to abandon their current water rights. **SEN. ROUSH** desired to give the city, and other cities in Montana, another option for doing this. He realized that the water leasing program may provide opportunities to maintain their water rights and still depend on a regional source as its main supply, he saw the program as limited and not extended. **SEN. ROUSH** also told the committee that other regional water members held ground water and other types of water rights and so they could not lease them. **SEN. ROUSH** recognized proponent **Ms. Sarah Bond** as the water lawyer representing the city of Cut Bank and asked the committee to direct questions to her. **SEN. ROUSH** indicated that **SB 20** had the approval of the city of Cut Bank, as well as other cities and towns within the regional water system, the League of Cities and Towns, water lawyers, and the regional water authorities. **SEN. ROUSH** reserved the right to close.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 5.5 - 14.9}

William L. McCauley, chairman of the water committee for the city of Cut Bank, read a written statement for the City of Cut Bank.

EXHIBIT(los04a02)

SEN. ROUSH introduced an amendment to SB 20.

EXHIBIT(los04a03)

SEN. ROUSH apologized for not introducing the amendment earlier but the addition was very recent.

Paul Tuss, Executive Director of Bear Paw Development Corporation, testified on behalf of Bear Paw Development Corporation and the Regional Water Authority. Mr. Tuss said that both organizations support SB 20 and implored the committee to pass the legislation. Mr. Tuss held that current law is an

obstacle for municipalities' participation in regional water systems and SB 20 would correct this problem. Mr. Tuss called regional water systems "the wave of the future," not just in Montana but across the country and declared that SB 20 was a necessity to participation in Montana.

Steve Wade, Montana Rural Water Systems, informed the committee that he represented Montana Rural Water Systems, an organization made up of over 400 water and waste water organizations across Montana. Mr. Wade asked, on behalf of Montana Rural Water Systems, for the support of SB 20.

Mary Phippen, citizen of Cut Bank, Montana, urged the committee's passage of SB 20. Ms. Phippen said that "anything [the committee] can do to help preserve [Cut Bank's] water rights with the declining water supply in [the Cut Bank] area would be greatly appreciated by all the citizens of Cut Bank."

Alec Hansen, Montana League of Cities and Towns, expressed the League's support of SB 20.

Sarah Bond, Water Lawyer for the City of Cut Bank, explained her role in the development of **SB 20. Ms. Bond** called the bill another option for cities to preserve their water rights while dealing with drought and other problems. **Ms. Bond** also said that the bill would be helpful for municipalities in planning for their future water supply and allow flexibility in preserving their water rights.

Opponents' Testimony: None.

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 14.9 - 15.8}

Jack Stults, DNRC/Water Resources, informed the committee that his organization had reviewed **SB 20** and found it to fit into current statutes well. **Mr. Stults** called the bill "clear, concise, and administrable." **Mr. Stults** also noted that **SB 20** was consistent with other recently passed laws regarding leasing of water rights not constituting as abandonment.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 15.8 - 20.4}

SEN. ESP (R), SD 31, BIG TIMBER asked **Ms. Bond** if she prepared the Amendment. **Ms. Bond** said she had. **SEN. ESP** questioned if one could use that water right when one could not get water from the regional source, asking **Ms. Bond** to clarify that regionally one could use both. **Ms. Bond** responded that the way some regional water suppliers saw the intent of **SB 20** was to allow Cut Bank, as a member of the North Central regional supply, to compete with treatment plant for the core system. **Ms. Bond** explained that it was exorbitantly costly to maintain drinking water treatment plants that met Federal regulations and that in order to meet that financial burden, the regional sources needed to be the sole supplier of purified water. However, some cities', as in the case of Cut Bank, treatment plants have been recently upgraded to meet the federal regulations and it would be a waste to not utilize their treatment plants. The Amendment allows the use of these municipal treatment plants during breaks in service and gives the regional water authority more flexibility, but does not allow cities to compete with the regional systems.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 20.5 - 21.9}

SEN. ROUSH again apologized for the manner in which the amendment was introduced. **SEN. ROUSH** called **SB 20** a good and needed bill, imploring the committee to consider these drought-stricken communities and that the cities should not have to give up their water rights in order have a reliable supply of water. **SEN. ROUSH** asked for a concurring vote and thanked the committee for a good hearing.

SEN. MANGAN announced the Local Government Committee would take executive action on **SB 20** on Tuesday, January 11th, 2005.

ADJOURNMENT

Adjournment: 3:42 P.M.

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SEN. JEFF MANGAN, Chairman

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JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT(los04aad0.TIF)