MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JEFF MANGAN**, on March 31, 2005 at 6:34 P.M., in Room 472 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: HB 342, 3/21/2005; HB 366, 3/7/2005; HB 436, 3/8/2005
Executive Action: HB 666; HB 436; HB 342

SEN. JEFF MANGAN, SD 12, GREAT FALLS welcomed all the people watching from the video conference sites. **SEN. MANGAN** explained that the meeting was part of a pilot project involving the use of video conferencing to conduct committee hearings. He thanked Vision Net, Information Technology Services, Partners in Health-tel network, and the Eastern Montana Telemedicine Network. **SEN. MANGAN** announced that evening the sites were in Billings, Bozeman, Butte, Havre, and Roundup. He said that the committee would follow normal procedure for the committee hearings but with six sites, instead of just one. **SEN. MANGAN** reviewed how the committee would call for witnesses. **SEN. MANGAN** asked that witnesses to keep their testimony brief as the committee had three bills to hear and take executive action on that night.

HEARING ON HB 342

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

Opening Statement by Sponsor:

REP. DAVID WANZENRIED (D), HD 97, opened the hearing on **HB 342**, Revise laws on sewer districts.

{Tape: 1; Side: A; Approx. Time Counter: 3 - 5.7}

REP. WANZENRIED explained that his bill dealt with Special Improvement Districts (SIDs), which are a way that counties and municipalities can extend their services into areas. **REP. WANZENRIED** told the committee that **HB 342** would change the law relating to the way that protests could be filed in regards to sewer districts. He told the committee that sewer districts currently have a super-majority requirement for a protest and **HB 342** would repeal the seventy-five percent protest rule. There was also a time requirement of 15 days from notification to file a protest. **REP. WANZENRIED** said that sewer district protests should have the same standards as other SIDs and **HB 342** would bring the protest requirement to fifty percent.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 5.7 - 30.6}
{Tape: 1; Side: B; Approx. Time Counter: 2.3 - 7.4}

SEN. MANGAN called for proponents in Billings.

Clayton Fiscus rose in support of **HB 342.** He said that the bill would allow citizens to protest an unwanted sewer district. He stated that **HB 342** upheld the Constitution that a majority vote

should rule. He noted that elected officials only need a majority vote. **Mr. Fiscus** told the committee that the burden would be lifted from property owners trying to get an impossible seventy-five percent protest and the burden would be shifted to developers and local governments to show the need for the SID. **Mr. Fiscus** reviewed some examples of how if a super-majority was needed for every vote, nothing would pass.

Dave Brown, Billings City Council, said that it was wrong for people to have to collect a seventy-five percent petition in order to defeat something that could do damage to their property. He stated that **HB 342** helped uphold the democratic process.

SEN. MANGAN called for proponents in Bozeman.
SEN. MANGAN called for proponents in Butte.
SEN. MANGAN called for proponents in Havre.
SEN. MANGAN called for proponents in Roundup.
SEN. MANGAN called for proponents in Helena.

Michael Kakuk, Montana Association of Realtors, expressed support for **HB 342.** He offered an amendment that would insert a revised subsection 3, which would allow a city commission to overrule a protest on a 2/3 vote. **Mr. Kakuk** said the overrule could only occur if the SID was ordered by the Department of Environmental Quality or the Environmental Protection Agency, or the proposed improvements were necessary to protect public health. **Mr. Kakuk** told the committee that he showed the proposed amendment to Legislative Services and she showed it to the Code Commissioner. The Code Commissioner expressed serious concerns over whether the amendment would fit under the title of the bill.

Michael Bennett, Missoula resident, told the committee that he had lived in Montana for 22 years and owned and operated a small business in Missoula. He pointed out that a city determined everything about an SID. He noted that SIDs do not require a vote, like bond issues do, and so property owners were being taxed without a say on the matter. **Mr. Bennett** declared that seventy-five percent was a huge obstacle. He stated that there were numerous reasons that the super-majority could not be met. He said that many people do not know that they can protest, and many of those that do have a "you can't fight city hall" attitude. He said that notices do not always get to people in time. **Mr. Bennett** told the committee that there was also a fear of retaliation by the city, and there were waivers of protest that a previous owner might have signed and would prevent the current owner from protesting. **Mr. Bennett** noted that the city could bring back the project after six months and continue to bring it back until they wear the protesters out. He commented that cities would redraw the SID boundaries to leave out

protesting households. **Mr. Bennett** felt that sewer SIDs were stacked in the city's favor.

SEN. MANGAN reminded **Mr. Bennett** of the committee's time constraints.

Mr. Bennett acknowledged the need to be brief. **Mr. Bennett** said that sewer districts were not a health and safety issue. He informed the committee that he had asked Missoula city officials to show him actual cases of people becoming sick because of improper waste disposal and all that Missoula could show him was a typhoid epidemic in 1890.

SEN. MANGAN told witnesses that he may have to limit testimony due to time constraints.

William E. Hollenbaugh read his testimony into the record.

EXHIBIT(los68a01)

Lee Wareing, Florence resident, told the committee about his experience with a proposed sewer district in Florence, Montana. He stated that the system was unnecessary but the city attempted to force the sewer system on the citizens because the city would make money on the installation of the system. He noted that city had gotten grants for the project even before the public hearings and comments. He said that a company called MAPS worked to get a sewer project installed, whether the property owners needed it or not. He told the committee that he and another gentleman, Duane Knapp, had experience with sewer systems and they started informing the people of Florence what was going on. He handed out a letter of support, written by **Mr. Knapp.**

EXHIBIT(los68a02)

Mr. Warening said that Florence was able to meet the seventy-five percent protest and stop the SID but it was very difficult. He told the committee that he was able to persuade **Senator Conrad Burns** to withdraw his financial support of the project, when **Mr. Warening** informed **Senator Burns** about the scam.

SEN. MANGAN asked **Mr. Warening** to stick to the issues in **HB 342.**

Mr. Warening declared that people that are affected by SIDs should have an equal opportunity to protect themselves and the right to protest. He encouraged the committee to concur in **HB 342.**

Loreen Folsom, Missoula resident, passed out some documents involving the Rattlesnake Sewer Project in Missoula.

EXHIBIT(los68a03)

Ms. Folsom contended that the issue was not purely a Missoula issue. She reviewed the document packet. She told the committee that the first page was a letter that the city of Missoula sent to SID residents and the back of the page had a withdrawal of protest, the second page was from 1992 and showed the cost of the sewers, the third page was letter from the Missoula City Engineer that said it would be more cost-effective to install the sewer system then, and the forth page was a Rattlesnake Homeowners Association newsletter. **Ms. Folsom** felt it was inappropriate for the city to be able to use taxpayer's money to lobby for waivers of protest.

Will Snodgrass, Missoula Resident, told the committee that he served as the chief investigator for the plaintiff in the Whistle-blower Missoula waste water reprisal case, Howard Alger v. City of Missoula. He stated that he would be mailing by certified mail each committee member a 40-page packet containing some sensitive documents regarding the case. **Mr. Snodgrass** stated that in the current Rattlesnake Sewer project, the protest was over seventy percent. **Mr. Snodgrass** told the committee that the city of Missoula had employed numerous scare tactics to stop the Rattlesnake protest. **Mr. Snodgrass** claimed that people were not allowed to testify at public hearings.

SEN. MANGAN stated that he recognized the issues that brought **HB 342** forward but asked **Mr. Snodgrass** to stick to the merits of the bill.

Mr. Snodgrass said that this was not just a Missoula issue. He thought that it was key to public participation. **Mr. Snodgrass** stated that city governments were trying to stifle testimony and employing scare tactics. **Mr. Snodgrass** declared that public participation was the key and the seventy-five percent hurdle precludes that participation. **Mr. Snodgrass** thought that it was unfair not to trust the public to make decisions at seventy-four percent but do trust the public to elect politicians at fifty-one percent.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 7.4 - 26.9}

SEN. MANGAN called for opponents in Billings.

Chuck Tooley, Mayor of Billings and **President of Montana League of Cities and Towns,** said the **HB 342** would make it more difficult for municipalities to protect public health. He stated that the bill would open the public to health risks. **Mr. Tooley** stated that if the city council could not override negligent property owners who protest an SID, **HB 342** would force cities to use funds raised from all waste water rate payers to finance the SID. **Mr. Tooley** discussed the requirement for firms to pay for infrastructure up front and said that requirement would preclude small developers or individuals. **Mr. Tooley** told the committee that the waiver of protest was an excellent tool for cities to be able to provide needed infrastructure.

SEN. MANGAN called for opponents in Bozeman.
SEN. MANGAN called for opponents in Butte.
SEN. MANGAN called for opponents in Havre.
SEN. MANGAN called for opponents in Roundup.
SEN. MANGAN called for opponents in Helena.

SEN. MANGAN cautioned opponents to maintain some brevity.

Mike Kadus, Mayor of the city of Missoula, handed out a map.

EXHIBIT(los68a04)

Mr. Kadus explained why a super-majority is needed in any municipality. He directed the committee to the map and showed where there were no sewers available. **Mr. Kadus** noted that most of the homes in the area were served by seepage pits. He stated that many of the septic systems had failed. He told the committee that the city was regulated by the state as far as water quality in the Clark Fork River and they had to have an extensive waste water treatment plant. Because the city is growing so much, Missoula spent $19 million to upgrade the waste water plant. He said that they were required to change 3,000 septic systems over to sewer systems. **Mr. Kadus** stated that the city was putting forth half the funds required to pay for the SID into the Rattlesnake. He commented that all the SID did was put the big pipe in the ground and people in the Rattlesnake are not forced to hook up to the sewer system, unless their system failed. **Mr. Kadus** maintained that water quality and the cost of treatment affected everyone. He noted that if Missoula was unable to show a significant improvement in water quality, they could be forced to upgrade their treatment plant again.

Alec Hansen, League of Cities and Towns, said that the law was necessary to provide for public health and water quality. He noted that there was no way for the City Council to overrule the

protest. **Mr. Hansen** thought that a higher standard was necessary to fulfill the government's responsibility to protect people. He discussed super-majorities in the state code and commented that they play a significant role in law. **Mr. Hansen** stated that **HB 342** was a threat to the water quality in Montana and that it was a Missoula issue.

Tim Burton, Helena City Manager, said that clean water was the city's number one priority to protect public health and safety. **Mr. Burton** told the committee that the current law works. He stated that there were only a few septic systems within the city limits and many of them were failing and health was being affected. He commented that the city was working with the neighborhoods to improve the sewage systems. He suspected that over fifty percent of the property owners would protest hooking into the city system and that would leave Helena unable to protect water quality and public health. **Mr. Burton** liked the idea of the amendments, but they were outside the scope of the bill.

SEN. MANGAN asked for the witnesses to keep their comments brief.

Jani McCall, City of Billings, rose in opposition and gave the committee a letter from the Mayor of Billings, opposing **HB 342.**

EXHIBIT(los68a05)

Linda Stoll, Montana Association of Planners and Montana Local Health Officer's Group, opposed the bill.

Joe Mazurek, City of Great Falls, stated their opposition to **HB 342.**

Steve Wade, Montana Rural Water Systems, rose in opposition to **HB 342.** He said that cities need to be allowed to construct sewer systems to protect health.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 26.9 - 30.5}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 9}

SEN. JIM SHOCKLEY, SD 45, VICTOR asked **Mr. Kadus** if he had considered digging deeper wells. **Mr. Kadus** answered that Missoula had a sole source aquifer and he did not believe that going deeper into the aquifer would solve the problem. **SEN. SHOCKLEY**

clarified that the homes in question were already on a city water system. **Mr. Kadus** replied that it was a private-city water system. **SEN. SHOCKLEY** wanted to know how deep the wells in the area were. **Mr. Kadus** said that it depended on the depth of the aquifer and he noted that there was a well in the area that had been shut down because of contamination.

SEN. SHOCKLEY asked **Mr. Kadus** if he thought it was appropriate for Public Works Director and the Chief Engineer to use their time and the city's materials to lobby people to withdraw their protests, as shown by the letter in Exhibit 3. **Mr. Kadus** disagreed that they were lobbying people, he contended that they were working for the city council to provide residents with as much information as possible. He noted that the decision affected everyone in the Missoula valley. **Mr. Kadus** felt that if the city could not use funds to inform people than the discussion would be one sided. **SEN. SHOCKLEY** questioned whether it was using city assets to participate in politics. **Mr. Kadus** replied that it was using city assets to inform the public about a serious health issue.

SEN. BOB HAWKS, SD 33, BOZEMAN wanted to know whether there was another mechanism besides a seventy-five percent protest to stop an Sewer SID. **Mr. Burton** responded that a combination of mechanisms work best. He said that one must consider the public health issues that failing septic systems cause. **Mr. Burton** stated that meetings with the neighborhoods work and phasing-in the projects to make the project more affordable to the property owners. He noted that the property owners had a responsible to protect health. **Mr. Burton** told the committee that failing wells and septic systems were very volatile health risks.

SEN. MANGAN noted that the committee was on a time line and asked committee members to keep it short.

SEN. RICK LAIBLE, SD 44, VICTOR asked **Mr. Kadus** what cost per resident would be to hook-up. **Mr. Kadus** answered that it would be about $6,000 for the main line, which the SID would finance.

SEN. MANGAN told **SEN. LAIBLE** that he would not allow the discussion to be turned into a Rattlesnake issue. He cautioned **SEN. LAIBLE** that he would not allow him to go through that particular scenario.

SEN. LAIBLE questioned whether that were areas that had been over the fifty percent protest margin but not over the seventy-five percent margin. **Mr. Kadus** replied that the Rattlesnake was the only time that the protest was over fifty percent.

SEN. JOHN ESP, SD 31, BIG TIMBER wanted to know if **Mr. Kadus** would agree with the amendment that **Mr. Kakuk** had proposed. **Mr. Kadus** answered that they could consider it but they could not amend the bill. He noted that the provision was used very rarely and should not be a big issue. He said that the city council take opposition into account and considered very carefully.

SEN. ESP asked **Mr. Snodgrass** if he was aware of any other instances in which the opposition was close or over the fifty percent margin. **Mr. Snodgrass** answered that all the subdistricts in the Rattlesnake were over fifty percent and there were other instances as well. **Mr. Snodgrass** stated that there are laws that governed the SID projects and the laws were being broken. He said that the law required stringent investigation of viable alternatives.

SEN. MANGAN stopped **Mr. Snodgrass** and informed him that the committee would not be deciding that specific issue. He warned **Mr. Snodgrass** that he would not allow him to come up and answer questions if he could not stick to the merits and issues of **HB 342. Mr. Snodgrass** stated that **SEN. MANGAN** had not called a single opponent on time and only the citizens were being censored. **Mr. Snodgrass** expressed his objection to this.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 9 - 11.5}

REP. WANZENRIED stated that his bill was about fairness and clean water. He reminded the committee that citizens had to collect seventy-five percent of the property owners signed protests in just 15 days. He noted that in some cases previous property owners had waived their right to protest and so current owners could not protest. He said that even if the citizens got seventy-five percent of the current residents, the protest may not be viable because some of the protesters' rights had been waived by a previous owner. **REP. WANZENRIED** asked the committee to look the bill and consider the cost to the citizens. **REP. WANZENRIED** stated that seventy-five percent was too high a standard. The high percentage was a deterrent to people protesting. **REP. WANZENRIED** thanked the committee and encouraged a do concur.

HEARING ON HB 666

{Tape: 2; Side: A; Approx. Time Counter: 11.6}

Opening Statement by Sponsor:

REP. BOB BERGREN (D), HD 33, opened the hearing on **HB 666,** Revise laws related to county water and sewer districts.

{Tape: 2; Side: A; Approx. Time Counter: 11.6 - 13.1}

REP. BERGREN explained that his bill would allow people to create a district without an election. Every resident would have to sign the petition and the boundaries of the district would have to be determined. Then the County Commissioners could declare the district organized without an election. **REP. BERGREN** went over the second part of his bill, which allowed rural water and sewer districts to incur debt to build infrastructure.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 13.1 - 25.9}

SEN. MANGAN called for proponents in Billings.

Rick Russell, Manager of Lockwood Water and Sewer District, read his testimony into the record.

EXHIBIT(los68a06)

Mr. Russell noted that attached to his letter were estimates of the Lockwood Sewer Project's construction costs and the election results.

Karl Peters, Chairman, Lockwood Water and Sewer District Board of Directors, noted that they had tried to pass three sewer bond issues. He said that Lockwood was an unincorporated city near Billings and if they were incorporated, Lockwood would be the 2nd largest incorporated city in the state.

Mike Cruzan stood in support of **HB 666.**

Nancy Belk, resident of Lockwood, spoke in favor of **HB 666.**

Clayton Fiscus supported **HB 666.** He commented that he would like to see an amendment to a simple majority so that if someone does not vote, it is not recorded as a no vote.

Bill Kennedy, Yellowstone County Commissioner, stood in support of **HB 666.**

Merrill Walker, resident of Lockwood, urged a do concur on **HB 666.**

SEN. LAIBLE exited.

SEN. MANGAN called for proponents in Bozeman.
SEN. MANGAN called for proponents in Butte.
SEN. MANGAN called for proponents in Havre.

Deen Hanson, Hill County Water District, stood in support of **HB 666.**

SEN. MANGAN called for proponents in Roundup.
SEN. MANGAN called for proponents in Helena.

Michael Kakuk, Montana Association of Realtors, expressed their support for **HB 666.**

Dan Keil, Montana Rural Water Systems, gave the committee a petition.

EXHIBIT(los68a07)

Anna Miller, Department of Natural Resources, supported the bill because it would clarify who can vote in a district. She noted that some people may own property in a district but not live there and they should have a vote on what happens in the district. **Ms. Miller** said that the bill would clarify in regards to condominium units and "transient" communities. She approved of the section which allowed subdistricts to incur debt and pay for improvements.

Steve Wade, North Central Montana Regional Water Systems, expressed support for the bill. He asserted that it would give elected officials in the districts the practical tools that they needed to change in an ever-changing regulatory environment.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 26.8 - 29.3}

SEN. SHOCKLEY asked the sponsor if it was a high standard to require the signature from all the real property owners in a district. **REP. BERGREN** responded that there could be water and sewer districts where nobody lives in the district and **HB 666** provided a process for the formation of the district when no electors lived in the district.

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS wanted to know if the sponsor would be willing to amend the percentage to eighty percent. **REP. BERGREN** deferred to **Mr. Wade. Mr. Wade** answered that the concept behind the unanimous vote is if a district consists on one developer or just a couple of property owners or the district is supported unanimously, they can dispense with the election.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 29.3 - 30.4}

REP. BERGREN thanked the committee and the witnesses. He said that water and sewer districts were growing rapidly and **HB 666** addressed some concerns. **REP. BERGREN** stated that the ability to incur debt was the number one improvement of the bill.

HEARING ON HB 436

{Tape: 2; Side: B; Approx. Time Counter: 2.1}

Opening Statement by Sponsor:

REP. DENNIS HIMMELBERGER (R), HD 47, opened the hearing on **HB 436,** Developer option of donating land to school district.

{Tape: 2; Side: B; Approx. Time Counter: 2.2 - 3.8}

REP. HIMMELBERGER explained that his bill would give more options to developers and taxpayers. He notes that current law required a subdivider to donate land or money to the governing body. **HB 436** would allow the developer to donate land to a school district instead, subject to the approval of the local governing body and acceptance by the school board of trustees. **REP. HIMMELBERGER** asserted that **HB 436** would relieve the burden on local governments of maintaining the donated land and also offer some new building sites for public schools without cost to the taxpayers.

Proponents' Testimony:

{Tape: 2; Side: B; Approx. Time Counter: 3.8 - 10.5}

SEN. MANGAN called for proponents in Billings.

Matt Rosovich, stated that many urban areas had excess park land and the parks departments did not have the money to maintain the parks. He noted that schools were having to purchase land to accommodate their growth. **Mr. Rosovich** declared that both schools and parks serve a similar purpose and are used for recreational activities. He said that **HB 436** would reduce the money that schools had to spend, thereby reducing monetary burden on taxpayers. He commented that the Parks department would also benefit. **Mr. Rosovich** stated that **HB 436** would help everyone and had no financial downside.

Don L. Small, School District #2, stood in support of **HB 436.**

Mike Cruzan urged the committee's support of **HB 436.**

Mike Kennedy, Yellowstone County Commissioner, supported **HB 436.** He said **HB 436** would simplify the process of subdivisions next to schools.

Clayton Fiscus stood in support of **HB 436.** He stated that land donated to cities for parks will stand unimproved for decades and it was going to waste. **Mr. Fiscus** said that the schools could use the land.

SEN. MANGAN called for proponents in Bozeman.
SEN. MANGAN called for proponents in Butte.
SEN. MANGAN called for proponents in Havre.
SEN. MANGAN called for proponents in Roundup.
SEN. MANGAN called for proponents in Helena.

Jani McCall, City of Billings, stated that she represented School District #2 in Billings, and also for Gordon Morris, Montana Association of Counties. She said that all three of their organizations supported **HB 436. Ms. McCall** told the committee that after the bill was amended, they could agree with the bill.

Michael Kakuk, Montana Association of Realtors, supported **HB 436.**

Opponents' Testimony:

{Tape: 2; Side: B; Approx. Time Counter: 10.5 - 23.2}

SEN. MANGAN called for opponents in Billings.
SEN. MANGAN called for opponents in Bozeman.

Dave Skelton, Senior Planner for the City of Bozeman, explained that Bozeman was currently working on park, trails, and open space plan. He was concerned about the effect that **HB 436** would have on the plan. **Mr. Skelton** said that Bozeman was annexing over 500 acres and Bozeman wanted to protect the city's amenities and provide ample open space. **Mr. Skelton** stated that the main concern was the park department's ability to keep pace with development.

John Harper, Bozeman Recreation and Parks Advisory Board, stated that **HB 436** would reduce the amount of park land and impair the community's ability to develop their trail network. **Mr. Harper** said that there was not another way for their community to acquire park land. He pointed out that there was no requirement for schools to use the land for classroom buildings or recreation area, it could be used for a parking lot. **Mr. Harper** asserted that **HB 436** subverted the law and would reduce park area.

Sandy Dodge, Bozeman Recreation and Parks Advisory Board, feared that **HB 436** enabled developers to give land that rightfully belonged to the city as park land to school districts. He noted that it would allow developers to avoid the costs of developing a park. **Mr. Dodge** stated the bill would pit cities against the schools. He felt that the city should work with the schools to use land to the best advantage. **Mr. Dodge** explained that public access to recreational facilities was limited with schools because during the summertime the schools took down the basketball nets and locker up the school yard. **Mr. Dodge** asserted that parks were key to quality of life.

SEN. MANGAN called for opponents in Butte.
SEN. MANGAN called for opponents in Havre.
SEN. MANGAN called for opponents in Roundup.
SEN. MANGAN called for opponents in Helena.

Mike Kadus, Mayor of the city of Missoula, told the committee that the amendments improved the bill but that there were still problems. He informed the committee that Missoula recently completed a master parks plan and the study showed that in the older parts of the city, they had much more park land and better park land. **Mr. Kadus** concluded that current law is not providing

park land as well as in the past. He noted that Missoula was spending money to purchase good park land. **Mr. Kadus** explained the "fee in lieu" provision of the law, which allowed the city to accept money from a developer instead of land. **Mr. Kadus** said that the money could be used to develop and improve existing parks. He stated that Missoula did not acquire park land without a plan for it and if the city could not develop the land - they accepted the fee in lieu of. **Mr. Kadus** asserted that **HB 436** would create an additional level of competition that would hurt parks more.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Counter: 23.2 - 30.9}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 1}

SEN. HAWKS asked **Mr. Kadus** to characterize the relationship between the schools and the city in regards to recreation. **Mr. Kadus** answered that they had a good relationship and cooperated. The city wanted more access to the school's gymnasiums. He noted that the problem with schools is that when school is in session, the playgrounds are not open to the public. **SEN. HAWKS** queried whether different liability concerns were a problem. **Mr. Kadus** said that was why the city does leases.

SEN. ESP inquired who would be the governing body in Missoula. **Mr. Kadus** said it would either be the City Council or the County Commission depending on the jurisdiction of the subdivision. **SEN. ESP** asked if they should not see the bill as just one more choice in regards to subdivision land. **Mr. Kadus** responded that was why his opposition was reluctant. He told the committee that Missoula does not have enough park land in the areas that have most recently developed. **SEN. ESP** questioned if that was because Missoula took too much fee-in-lieu. **Mr. Kadus** answered that Missoula had actually taken too much land and bad park land. He noted that the fee-in-lieu of is only the value of the unsubdivided land and so the money was not worth it.

SEN. ESP asked **Mr. Skelton** about his relationship with the city council. **Mr. Skelton** stated that he was the speaker of the Recreation and Parks Advisory Board. **SEN. ESP** questioned if the city council was receptive to the Board's recommendations. **Mr. Skelton** replied that the city commission gave a lot of weight to the board's advice. He noted that they worked well with the education system as well. **SEN. ESP** wanted to know if the board advised the City Council that a piece of land would be better park land than school land if the Council would heed **Mr.**

Skelton's advice. **Mr. Skelton** responded that they most likely would.

SEN. ESP wanted to ask **Mr. Kennedy** a question. **Mr. Kennedy** had already left.

Closing by Sponsor:

{Tape: 3; Side: A; Approx. Time Counter: 1 - 2.9}

REP. HIMMELBERGER stated that he felt they had already addressed the opponents arguments. He pointed out that the local government had to approve the donation and the school board did not have to accept any land. **REP. HIMMELBERGER** said that the bill would not affect limited park land because the bill did not force the local governments to give land to the school, it was just an option. **REP. HIMMELBERGER** thanked the committee and said hello to his wife in Billings.

EXECUTIVE ACTION ON HB 666

{Tape: 3; Side: A; Approx. Time Counter: 2.9 - 3.9}

Motion/Vote: SEN. SHOCKLEY moved that HB 666 BE CONCURRED IN. Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy. SEN. LAIBLE voted aye by proxy.

SEN. MICHAEL WHEAT, SD 32, BOZEMAN was appointed to carry HB 666.

EXECUTIVE ACTION ON HB 436

{Tape: 3; Side: A; Approx. Time Counter: 3.7 - 11}

Motion: SEN. SHOCKLEY moved that HB 436 BE CONCURRED IN.

Discussion: SEN. SHOCKLEY said that the only objection to the bill was that the city would lose park land but the city has a veto and so there was no real opposition. **SEN. HAWKS** stated that he understood the threat. He commented that park land presented a major challenge and cities had to be dedicated to their plans. **SEN. HAWKS** argued that cities had a financial obligation to see land to a school instead of donating it because the city and school were differing tax authorities. He said that the bill may apply better in smaller towns but it presented some concerns in larger cities. **SEN. ESP** expressed his support for **HB 436** because

the city council and the school board had a veto. They can set their priorities for the city first and the school second. **SEN. ESP** stated that **HB 436** just gave another option and did not create any political angst. **SEN. SHOCKLEY** told the committee that he had more faith in the competence of the cities of Missoula and Bozeman to act in their own best interests. **SEN. O'NEIL** said that he thought the bill would allow cities to get money from the school district in exchange for the land. **SEN. LYNDA MOSS, SD 26, BILLINGS,** stated her support for the bill. She asserted that **HB 436** was an opportunity to bring the schools into the loop to discuss development and address growth. **SEN. MANGAN** argued that **HB 436** would pit the school against the city government.

Vote: Motion that HB 436 BE CONCURRED IN carried 7-4 by roll call vote with SEN. HAWKS, SEN. MANGAN, SEN. SQUIRES, and SEN. WHEAT voting no. SEN. SQUIRES voted no by proxy. SEN. LAIBLE voted aye by proxy.

SEN. SHOCKLEY was appointed to carry HB 436.

EXECUTIVE ACTION ON HB 342

{Tape: 3; Side: A; Approx. Time Counter: 11 - 21.5}

Motion: SEN. SHOCKLEY moved that HB 342 BE CONCURRED IN.

Discussion: SEN. WHEAT asked **Mr. Kakuk** to explain his proposed amendments. **Mr. Kakuk** explained that he had cut and pasted the provision from **HB 431** except he had changed "board" to "council or community" and instead of "unanimous", he substituted " two-thirds." **SEN. WHEAT** wanted to know why **Mr. Kadus** opposed the override provision. **Mr. Kadus** explained that the amendment was not legal under the title of the bill. **SEN. WHEAT** questioned whether the title covered the amendment. **Mr. Kadus** said that he would not argue with the code commissioner. **SEN. MANGAN** told the committee that the problem was the word "eliminating." **Leanne Kurtz, Legislative Services,** explained that the title said "eliminating" and with the amendments, the bill would be "revising", not "eliminating." **SEN. WHEAT** stated that he respectfully disagreed with the Code Commissioner. **SEN. O'NEIL** wanted to know if they could change the title. **SEN. MANGAN** informed the committee that he would not accept the motion to amend. He said that he respected the Code Commissioner's opinion and believed that the amendment did not fit under the title of the bill. **SEN. KELLY GEBHARDT, SD 23, ROUNDUP,** pointed out that the title talks about sanitary sewers and they are not mentioned

anywhere else in the bill. He concluded that the bill did not fit with the title at that point.

Substitute Motion: SEN. GEBHARDT made a substitute motion that HB 342 BE TABLED. SEN. MANGAN did not accept the motion.

Discussion: SEN. SHOCKLEY asserted that **HB 342** was about Missoula and in his experience, Missoula was always trying to increase the power of the city. He said that seventy-five percent was an unreasonable hurdle. **SEN. ESP** disagreed with **SEN. GEBHARDT.** He felt that the title did fit the bill. He expressed his support for the bill.

SEN. GEBHARDT WITHDREW the substitute motion that HB 342 BE TABLED.

Discussion: SEN. KIM GILLAN, SD 24, BILLINGS wanted to know if another compromise percentage would work. She noted that after speaking with the people involved, there was no in-between. **SEN. HAWKS** stated that changing the percentage would not improve the bill and that they needed an amendment to give the local governments a check on protest. He said that without the amendment, the bill should be voted down.

Vote: Motion that HB 342 BE CONCURRED IN failed 5-6 by roll call vote with SEN. GEBHARDT, SEN. HAWKS, SEN. MANGAN, SEN. MOSS, SEN. SQUIRES, and SEN. WHEAT voting aye. SEN. SQUIRES voted no by proxy. SEN. LAIBLE voted aye by proxy.

Motion/Vote: SEN. ESP moved that HB 342 BE TABLED AND THE VOTE REVERSED. Motion carried 10-1 by voice vote with SEN. O'NEIL voting no.

ADJOURNMENT

Adjournment: 8:54 P.M.

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SEN. JEFF MANGAN, Chairman

_____
JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT(los68aad0.TIF)