MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 2, 2001 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 242, 1/23/2001; SB 337, SB 342, 1/30/2001
Executive Action: SB 25, SB 293

HEARING ON SB 337

Sponsor: **SEN. DALE BERRY, SD 30, HAMILTON**

Proponents: **Zane Sullivan, General Council for the MT Association of Realtors**
Ronda Carpenter, MT Housing Providers
Roger Halver, MT Association of Realtors
Joe Mueller, representing self

Opponents: **None**

Opening Statement by Sponsor:

SEN. DALE BERRY, SD 30, HAMILTON, opened on SB 337, a bill brought forth on behalf of the property managers of Montana. The bill dealt with settlements under $3,000. These claims, which were few in number, mostly represented rent and damages.

Proponents' Testimony:

Zane Sullivan, General Council for the MT Association of Realtors, said the bill addressed two basic issues: 1) to bring and maintain an action relative to possession of rental properties and 2) in what form could that action be maintained. Presently, actions concerning landlord/tenant actions could be maintained in the district court, city courts, or justice courts, but not in small claims courts unless they were addressing only dollar amounts. Small claims courts currently had jurisdiction up to $3,000 in money claims only. The bill amended section 25-35-502 to expressly permit small claims courts to address the actions for possession. The bill would grant rights to the small claims court to hear actions for possession so long as that total case did not exceed the $3,000 jurisdictional limit. He noted the sponsor'S amendment, **EXHIBIT(jus27b01).** They also requested section
3-10-1004 of the Montana Code Annotated be amended at the same time. He pointed out small claims court jurisdiction appeared in two different locations in the Montana Code in the general judiciary sections. The bill addressed the form of a complaint initiating an action in small claims court. That form had been modified to allow and facilitate actions for possession. In section 70-24-427, the action amendment would specifically address small claims courts relative to removal to another court. In the sponsor's amendment, he noted that "landlord" should not stand alone, but should be followed by "or property manager". The amendment also inserted in section 25-35-505 a critical change. Previously, the statute indicated who could maintain actions in small claims courts by indicating a person had to be a party to

the action in order to maintain a suit. In property management scenarios, he claimed that didn't always work. For example, the owner could have entered a rental agreement, left the state and put the property under the guidance of a property manager. If the property manager had to obtain possession or seek payment, current law precluded the property manager from taking action. The change specifically authorized the property manager, acting on behalf of the property owner, to maintain actions for up to $3,000 or actions for possession. Subsection 6 of 25-35-505 removed property managers' activities for obtaining possession of rental properties.

Ronda Carpenter, MT Housing Providers, said it was a coalition of landowners associations across the state. She said this same problem had been addressed in previous sessions. She said property managers had first-hand knowledge of the events because they were the ones who had corresponded with the tenants; they had handled the daily situations. She argued taking matters to small claims court was a reasonable solution to the problem. It addressed the added costs of hiring attorneys and it placed the matter in an appropriate forum.

Roger Halver, MT Association of Realtors, asked for support of the legislation.

Joe Mueller, representing self, said he was in the property management business with a broker's license. He oversaw about 300 apartments. He said the situation didn't arise much, but it got expensive and complicated. Typically, the apartment return was the main objective. Simplifying the process and keeping the costs down were good ideas. He urged support of the bill.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. RIC HOLDEN asked for clarification on an action for possession. He understood wanting to collect rent money and he wanted clarification on what was desired beyond rent owed.
Zane Sullivan, General Council for the MT Association of Realtors, said typically there were common actions for delinquent rent. One of the other issues addressed was tenants would continue to occupy the property despite the fact they lacked any legal ability to do that according to the owner and property manager. Under Montana law, he felt it was not possible for the property manager or owner to physically evict the person. They needed a court process to determine the rights of the parties and

to verify the property manager, on behalf of the owner, was entitled to the return of the physical premises. Therefore, it was seeking a judicial determination as to the rights and obligations of the parties and who was legally entitled to occupy that premises.

SEN. MIKE HALLIGAN commented there was a reason years ago for all the landlord/tenant stuff to be housed in Title 70-24. Then justice court was utilized instead of small claims court. He wondered the reason. **Mr. Sullivan** didn't recall the reason. In order to see how the proposed legislation would fit, he noticed specifically it was the same judge regardless of courts.

SEN. HALLIGAN said this seemed to limit the claims of the landlord to not exceed the limits allowed under small claims court. However, if there happened to be counter claims, it didn't seem to limit those to below the $3,000 limit. Was that the intent? **Mr. Sullivan** said yes. He believed under the removal concept, if the totality of claims exceeded the $3,000 jurisdictional limit, then it was removed to justice court.

SEN. DUANE GRIMES asked if any Justice of the Peace had spoken to this matter. **SEN. BERRY** said he hadn't received any messages from advocacy groups or the justice people. He felt it was straight-forward and a simplifying process.

Closing by Sponsor:

SEN. BERRY closed on SB 337. He mentioned that this was a matter of fairness for the parties, both landlords and tenants. If it went through justice court, attorney fees would be tacked onto tenants, landlords, and property managers. A problem that arose was that it just wasn't worth it. The property owners and landlords simply wanted the property back. It seemed rather odd, but was reality. He didn't want people to go unchecked because the process was too costly and too time consuming to address. The bill simplified the process and benefitted everyone.

HEARING ON SB 342

Sponsor: **SEN. DALE BERRY, SD 30, HAMILTON**

Proponents: **Zane Sullivan, General Council for the MT Association of Realtors**
Roger Halver, MT Association of Realtors
Joe Mueller, representing self

Opponents: **Robert Throssell, MT Magistrates Association the Judges of the Court of Limited Jurisdiction**

Opening Statement by Sponsor:

SEN. DALE BERRY, SD 30, HAMILTON, opened on SB 342. He reiterated that property managers managed property for people out of state. Therefore, this bill asked that with the existence of a legal contractual agreement, the property manager could represent the landlord in court.

Proponents' Testimony:

Zane Sullivan, General Council for the MT Association of Realtors, said SB 342 was an amendment to the Montana Residential Landlord and Tenant Act. It sought to clarify who was entitled to bring an action pursuant to the Landlord and Tenant Act. It sought to amend section 70-24-401. It afforded property managers the ability to act for and on behalf of their contractual clients, the owner of the property, in seeking the remedies and redress afforded to the owner under the mentioned Act. He believed it had been done already in the state of Montana, but some courts had questioned whether the property manager had the authority. If the lease agreement was in the name of the owner, the question arose whether the property manager could maintain the action. The property managers already looked upon it as their job.

Roger Halver, MT Association of Realtors, provided a letter from Bruno Friia, a property manager; **EXHIBIT(jus27b02).** The letter addressed some of the problems they encountered and how this bill and
SB 337 would rectify them. He urged support of SB 342.

Joe Mueller, representing self, said that when an owner retained his services, they questioned if he would be able to assist during times of trouble. Currently, an attorney would have to be retained. He felt it was a simple matter to handle landlord/tenant situations because it was documented. He said it was a statewide problem and clarification would remove some confusion.

Opponents' Testimony:

Robert Throssell, MT Magistrates Association the Judges of the Court of Limited Jurisdiction, expressed concern that this bill allowed person's not licensed to practice law in effect to practice law. He didn't speak on the previous bill, but the tie-

in allowed someone to represent another in small claims court, which currently was not the provision of small claims court. It was a people's court before a judge. This bill put the judges of the Courts of Limited Jurisdiction in a difficult position. He noted that the practice of law was regulated by the Supreme Court and for that reason, he urged a Do Not Pass.

Questions from Committee Members and Responses:

SEN. RIC HOLDEN said it seemed like the bill dove-tailed with the other one. He asked for clarification because the amendment to SB 337 said unless all parties were represented by attorneys, no party could retain council in small claims court. That in itself seemed odd to put into statute. However, the focus on this bill requested that the owner didn't need to be present in the court in order to afford remedies. How did these two correlate?
Zane Sullivan, General Council for the MT Association of Realtors, clarified the all or none attorney situation referred to 25-35-505 sub 2. He said that was already in statute. It was not something new. Therefore, he believed the bills didn't detrimentally affect a tenants position and give undue position to the owner or property manager because if the tenant wished to have an attorney, the tenant could do that. It automatically forced the other side to retain council or it moved up to the justice court level. He didn't think anything was changed. However, the opponent to SB 342 indicated that the requested change was tantamount to having an attorney represent someone and brought the property manager into the practice of law. He didn't see it that way. The reason for SB 342, under the small claims court statute, already addressed that an employee of a corporation could represent the organization in small claims court. Also a partner of a partnership could represent the partnership in small claims court. This bill addressed who was the real operative party in the relationship between an owner and a property manager. That was the relationship that the property manager had contracted to do. They were not soliciting small claims court actions on behalf of individuals at large. They entered small claims court in a very narrow sense to represent the interests of the person they had contracted with to represent. He argued it was not any different from an employee representing a corporation, which already existed in state law.

{Tape : 1; Side : B}

SEN. HOLDEN asked if there was anything in the bill or if an amendment needed to be crafted that would require the property manager to have signed, written consent of the landlord to present to the judge indicating he/she had the right of representation. **Mr. Sullivan** replied **SEN. BERRY** had alluded to

the fact that under present law, a property manager must have a written agreement with the owner in place in order to act as the property manager. Most property manager agreements did contain express authorization. However, he didn't know if it was a legal requirement.

SEN. MIKE HALLIGAN commented that SB 337 requested the ability to go to small claims court, which allowed the provision to not have an attorney. SB 242 would then allow a property manager to initiate an action (file the complaint), but it didn't necessarily mean they could represent someone. He thought they would still come under the normal provisions of the Landlord Tenant Act. He asked for clarification. **Mr. Sullivan** replied he was correct. He clarified that the term "represent" meant the ability of the property manager to do what they contractually had agreed to do (manager the property). SB 342 clarified that in the capacity of property manager, they had the ability to take the necessary actions to carry through management of the property. If that involved initiating a court action to seek payment of delinquent rents or recover possession, that was what they were authorized to do. At the present time, the Landlord Tenant Act raised questions about whether court actions were part of the contractual agreement.

SEN. HALLIGAN re-referred to **Mr. Throssell** how a person would initiate through the process. **Robert Throssell, MT Magistrates Association,** believed that initiating a complaint was an action of an attorney on behalf of a client. He felt an individual could pro se initiate a complaint for themselves, but if they did it on behalf of someone else, they were practicing law. He argued that property managers were coming before the court representing someone else and it constituted practicing law.

CHAIRMAN LORENTS GROSFIELD asked for clarification that only the word "court" was used in the bill. He wanted to know if it was specific to small claims court or could be any court. **Mr. Sullivan** said the intent was not to limit it to small claims court. At the present time, it was not impossible for a property manager to appear in justice court or take the same action in district court if the jurisdictional levels were exceeded. In many instances, they needed to address the issue via an attorney at the justice court level according to the rules. However, SB 342 requested the property manager to initiate the action in whatever court had the appropriate jurisdiction.

CHAIRMAN GROSFIELD asked to have "initiate" clarified. Did it mean to have the initial papers filed, or did it mean to follow through the entire case. **Mr. Sullivan** said the two most likely forums were small claims court and justice court. In those

instances an incorporated property manager who appeared in a justice court action would appear under existing rule through an attorney. In the justice court setting the property manager could be the initiating party, and also could be a witness. In the small claims court process the property manager would testify about the rental agreement because they were seeking this remedy in their capacity as property manager. He reiterated it would not preclude the tenant from having an attorney, nor the property manager.

Closing by Sponsor:

SEN. DALE BERRY, SD 30, HAMILTON, closed on SB 342. He felt it boiled down to the person in the contractual agreement with the tenant was the property manager. The property manager had a contract with the owner, but the property manager was the person dealing directly with the tenants. No matter who represented whom, the property manager had control of the records, was aware of the property, and would be the one to present the details. No matter the structure, the property manager would be the one to handle the case in court. This dealt with an irresponsible tenant and needed to be simplified.

HEARING ON SB 242

Sponsor: **SEN. JERRY O'NEIL, SD 42, KALISPELL**

Proponents:
Bruce Simon, representing self
Bobbie Rossignol, representing self
Dale Williams, Flathead Co. Commission
Rick Rossignol, representing self
Russell Crowder, representing self
Steve White, representing self
Mike Fellows, MT Libertarian Party

Opponents:
Alex Hansen, MT League of Cities and Towns
Byron Roberts, MT Building Industry Assoc.
Bruce Bender, Director of Public Works Missoula
Neil Poulsen, Building Official for City of Bozeman
Charles Brooks, Yellowstone County and the Billings Chamber of Commerce
Tim Davis, Executive Director of Montana Smart Growth Coalition
Joe Mazurek, City of Great Falls

Opening Statement by Sponsor:

SEN. JERRY O'NEIL, SD 42, KALISPELL, opened on SB 242. As currently written Montana Code Annotated 50-60-101 created a 4.5 mile area beyond the city limits, or doughnut area. The adjoining municipality presently was given the power to administer, supervise, and enforce building regulations including inspection of buildings and the issuance of permits. The elected county government under the county commissioners were severely limited in creating rules for the citizens of the doughnut area. The citizens were denied the right to vote for the officials who imposed the rules upon them. This was equivalent to allowing the government to take over a business in a hostile manner and then require the owner to design the space according to the government's specifications.

The Montana Constitution in Article 2 stated the public had the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agency prior to the final decision as may be provided by law. This could be interpreted to mean that citizens of the doughnut area should be allowed to vote for the city council and mayor prior to the city making the rules that applied to the doughnut area. At a public hearing, the officials knew that the doughnut area citizens didn't have the ability to vote someone out of office. He argued that the participation was not the same as for those who did have the ability to vote for the officials. The Montana Constitution under Article 2 section 17 stated that no person should be deprived of life, liberty or property without the due process of law. He believed due process of law included the power to vote for the government that controlled how a person used his/her property.

The U.S. Constitution under Article 4, section 4 stated the U.S. should guarantee to every state in the union a republican form of government. Under a democracy or a republican form of government, the citizens affected by the government rules were allowed to vote for the rulers. Therefore, the current building code laws did not keep with the U.S. nor Montana Constitution. SB 242 would not put the citizens of the doughnut area at risk. The court and the legislature had the power to protect these citizens. The citizens would still be subject to the laws regulating the electrical and plumbing inspections.

He acknowledged opponents could state the risks of deregulating them, but he argued that many citizens lived outside the area of municipality control and they were doing just fine without great risks to themselves or others. Looking at the comparison of fire insurance rates for municipalities, the doughnut area, and rural areas, the major factor affecting the rates was the distance from a fire department, the quality of that department, and the distance to a fire hydrant. It was not affected by the building code regulations on the doughnut area. If the legislature believed that residents of rural Montana needed more government dictates regarding how they should build their homes, they could

do it in such ways that wouldn't violate the citizens' rights to a democratic form of government.

Proponents' Testimony:

Bruce Simon, representing self, said he carried a bill, HB 91 in 1999 to address essentially the same issue with a twist; the citizens in the area were provided a public vote. The bill was vetoed by the governor. SB 242 eliminated the public vote because it was too expensive to hold the elections. He believed that the idea of extra-territorial jurisdiction was a violation of the Constitutional rights of the citizens who lived in the area. A local governing body made a number of decisions that did not apply only to those living in the city, but also those outside the city. He wondered how it was Constitutional to allow a city council to make decisions that were enforced against county residents. He said his county tried to rectify it with an appeals board. However, the appeals referred only to interpretation disputes on the building codes, not on issues involving the existence of a building permit. It also did not hear cases involving the fee charged for the building fee. He argued it was seldom that anyone appealed a decision of a building official on the interpretation of building codes. It simply was a difference of opinion. He pointed out 50-60-102, which stated building code applicability. The city used this statute to adopt regulations that applied to all the county residents even though the residents couldn't vote for the city leaders. He likened this to governing by a foreign government. County residents didn't want to be governed by the city. He felt the state would enforce building codes if the extra-territorial area was removed from city governance. Therefore apartments and such would apply for the building permit from the state and not the city. He also pointed out plumbing and electrical were excluded from building codes. They were in section 5 and section 6 of 50-60-102. They were handled differently. Therefore, arguments about fire hazards and such wouldn't apply. He argued electrical fires were the primary source of fires. Another point: any county government could create their own county-wide building department. The citizens would have to be allowed to participate in the matter before the leaders could make a decision. The county officials were elected by the whole of the people. He said this was not about building codes and public safety, it was about the rights of citizens to be represented by the governing bodies who made decisions that affected their daily lives.

Bobbie Rossignol, representing self, said two years ago she testified in the Senate Local Government committee on a bill similar to this one. She was afraid of the repercussions of testifying because the mayor of the city was there. Following that, her husband received a summons to appear in court. She had

prepared packets for each committee member containing news articles and other information about what they had been through and what had happened to her family; **EXHIBIT(jus27b03).** She specifically noted that the opponents would argue safety issues over-rode financial issues. She begged to differ and supplied an article from the *Missoulian* in the packet, where the city acknowledged it was about money. Another piece was a petition following the governor's veto of HB 91. In one week, they had over 500 citizens' signatures. She said they were still concerned about that. However, those people were not there because she didn't want to mislead them that they could make a difference, but then through the process be shown they made no difference at all. She urged passage of the bill.

Dale Williams, Flathead Co. Commission, submitted his favorable testimony; **EXHIBIT(jus27b04).**

Rick Rossignol, representing self, provided his stated remarks in **EXHIBIT(jus27b05).** He also handed in arguments from his court case pending in Missoula District Court; **EXHIBIT(jus27b06).**

{Tape : 2; Side : A}

Russell Crowder, representing self, said he was the president of the Flathead Co. Planning Board, but was there to represent residents of Flathead County. He agreed with everything stated by the proponents so far. He noted that if this was a safety issue, the insurance companies would have statistics on the issue. However, he was unable to locate that information and rates had not risen within the doughnut area. Therefore, he felt it was not a safety issue. He said Flathead County residents rejected a county-wide building department. This indicated that if the county residents within the jurisdictional area had the representation, they would not choose what was now in Flathead County. He urged consideration that the will of the people was being ignored. He said the issue was really about money for the city taken from property owners who lacked representation. At a city council meeting, the city manager said it best: employees would have to be laid off and staffing levels would need to change. Even senior council members said annexed areas didn't present building code problems, but infrastructure ones such as roads, drainage, and side walks. As a president of a planning board, he said the infrastructure was examined during subdivision review. He noted this was only a revenue source and nothing else. He said this was the proper committee for reviewing this bill to truly look at the proposed legislation for what it was. He felt they had the chance to right a wrong.

Steve White, representing self, provided his testimony in favor of the bill, **EXHIBIT(jus27b07)**. He also presented an article on a 1997 bill about annexation, **EXHIBIT(jus27b08)**; a Bozeman *Chronicle* editorial regarding the doughnut area, **EXHIBIT(jus27b09)**; and a letter in support of the bill, **EXHIBIT(jus27b10)**.

Mike Fellows, MT Libertarian Party, provided his testimony in support of SB 242, **EXHIBIT(jus27b11)**.

Opponents' Testimony:

Alex Hansen, MT League of Cities and Towns, said the proponents were right in that the issue had been debated for six years. He said it was a divisive, emotional issue. He felt there was a lot of rhetoric and a solution needed to be found. The real problem wasn't the city nor the Constitution, but the state law. The law was written by the legislature allowing cities to enforce building codes beyond their corporate boundaries. It was an enactment by the legislature and he assumed it was Constitutional. He felt it was done because in densely populated areas around cities and town, there had to be some method to provide life safety inspections. Beyond philosophy and rhetoric, he felt most states had building codes that applied to structures in densely populated areas. He asked how that could be accomplished without infringing on people's Constitutional rights. He offered a solution that was not presented to the sponsor yet, **EXHIBIT(jus27b12)**.

{Tape : 2; Side : B}

This proposal allowed counties to enforce building codes in selected areas. Current law stated that county building codes had to be enforced county wide. If Missoula County enforced the code, it would encompass the city of Missoula as well as the rural parts to Seeley Lake. The amendment allowed the county to enforce the life safety codes throughout the county. He felt it provided a level of public safety and consumer protection that was vitally important. It established a political connection between the service and the government agency administering/authorizing the service. It hopefully addressed the problem of foreign governments and the attitude of the cities in ensuring safety and adequate application of reasonable building code in areas where it was needed. He argued the issue was not about money nor philosophy, but about a practical way to provide building code enforcement in areas where it was truly needed. He also was glad the bill was in this committee because it would receive thoughtful, logical consideration and a workable solution to finalize the issue.

Byron Roberts, MT Building Industry Association, said the association felt building codes were essential to the health and safety of families in Montana. He felt communities needed the ability to provide well-designed neighborhoods, extensions of infrastructure, and home lots. Extra-territorial authority provided for this. The authority was implemented by mutual consent of both city and county government. It did not involve a vote, but was a common, nationally used tool for many years. It allowed city and county government to do jointly what they could do individually in a like manner. He said the current system was used nationally as a transition from rural to urban, and for the extension of public facilities to the proper planning of an area. He urged a do not pass on the bill.

Bruce Bender, Director of Public Works Missoula, said the city had been inspecting in the doughnut area since 1979. In the last 10 years, construction value in the city of Missoula as well as the doughnut area had gone from $36 million to $120 million. About 30% of that activity occurred within the doughnut area. He felt it was a growth and protection issue as well as a health and safety issue. He said the code was nationally adopted and not something one city imposed. Rather the state chose what to adopt from the code, then the cities had the ability to adopt the usage of the code. He argued it was 75 years worth of information that helped to illustrate its value and the importance of safety. Certified inspectors met national certified inspection tests as well as state tests. In regard to representation, one of the issues, at least for Missoula, was that county commissioners did intercede for residents outside the city limits. He argued the city was aware that those people needed intercession from their elected officials and the city was responsive to the county commissions. If the doughnut area was removed, the residents would have to get state permits and seek help in the state capital as opposed to going to the local city offices. He argued the city did not make money on the issue because the actions were controlled by state authority. He mentioned despite the location of the property various agencies had to respond when called. Firefighters could not discriminate based on location. He also noted cities were rated for fire insurance based upon what they provided and this included the areas in question.

Neil Poulsen, Building Official for City of Bozeman, provided his testimony in opposition to SB 242, **EXHIBIT(jus27b13)**.

Charles Brooks, Yellowstone County and the Billings Chamber of Commerce, said they opposed the legislation because the county and city had entered into an agreement to cover the doughnut area. They also had a city/county planning board. An appeals board appointed by the county commissioners had also been

established. He felt it was an avenue to express concerns regarding the doughnut area. He suggested Yellowstone County and the city of Billings had worked a fair and equitable approach to the doughnut area. He had not seen the amendment presented, but he felt the commissioners could agree to it and it might be the final solution. However, they felt the issue was working in the Billings area.

Tim Davis, Executive Director of Montana Smart Growth Coalition, said all his points had been covered and they urged a no vote on SB 242.

Joe Mazurek, City of Great Falls, said the city did not have an area of extra-territorial jurisdiction. He had not been involved in this debate before. He found it interesting that the bill would do something that was vigorously opposed at the state level. The state wanted control over federally mandated acts such as clean air and water because people would rather deal with a native Montanan instead of going to a national person. Some of what SB 242 would do would be to transfer some of the enforcement to the state level. It seemed unusual because most citizens would prefer to deal with someone in their immediate jurisdiction or close proximity. The city felt it was purely a health and safety issue and not about money. They felt it was important in growth areas to ensure public safety and it was to the benefit of the people from a protection and insurance perspective. Constitutionally, the legislature had delegated the authority to local governments out of a recognition of public health and safety issues. There was no more important role of the local government than to provide the basic fundamental health, welfare, and safety issues. He felt the League of Cities and Towns amendments repaired a problem. Currently, the county government could only propose an ordinance that would go county wide. It may not be appropriate in all counties, but allowing them to do it through the proposed amendments could be a good solution to finally address the issue. He encouraged defeat of the bill or adoption of the amendments.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES said building codes affected residential as well as commercial properties, yet all the major complaints came from the residential sector. He wondered if the bill would remove the doughnut area for both commercial and residential. **Bruce Simon, representing self,** replied no. The statute under 101 clearly stated the exemptions to state building codes. Commercial was not exempt no matter where it was built. This included apartment buildings with five or more units. These places would require building permits no matter what. He argued that the

legislature had agreed not to inspect residential property because it was someone else's business, yet the city could do that. He argued it should be the legislature who decided and not the city about these matters.

SEN. GRIMES asked for clarification.

{Tape : 3; Side : A}

Jim Brown, Building Code Inspector, said eight areas in Montana had extended jurisdictions and applied to whatever codes the communities were approved to enforce on residential and commercial buildings.

SEN. GRIMES asked if under the bill, a commercial building just outside city limits would now fall under the state building code division and not the city or county.
Mr. Brown said yes.

SEN. GRIMES furthered by asking about the backlog of building code approvals. He wondered if there were significant delays at the state level as opposed to the city level. **Mr. Brown** said commercial projects that could be approved were handled within two to three weeks at the state level. He guessed the state was no worse nor better than at the local level.

SEN. GRIMES asked if the intention of the bill was to remove the restrictions on both commercial and residential building proposals. **SEN. O'NEIL** said yes. The commercial approval should go to the state. However, if the county and state wanted to pass another law to take it back to the counties, that was OK. He clarified he wanted to remove the doughnut area for those people who did not have the authority to vote for the people making the rules.

SEN. RIC HOLDEN asked if **Mr. Simon** had an opportunity to see the amendment proposed. **Mr. Simon** replied he received a copy during the hearing and hadn't had a chance to fully absorb its contents. He was concerned about having a county adopt this "spot" kind of thing. He thought there was a Missoula court case over that issue. The court ruled they had to have a county-wide jurisdiction, they couldn't have a partial jurisdiction apply to part of the county and not in others. He felt it prohibited the amendment from being appropriate. He urged consideration from that standpoint. He interpreted the amendments to remove the doughnut areas from city control, but then the counties would have to go through the public process to establish those zones and set-up a building department. He saw some benefits, but was concerned that it wouldn't apply county-wide.

SEN. HOLDEN re-directed. He asked if **Mr. Hansen** was aware of any court ruling regarding the county's ability to do what the amendment proposed. **Alex Hansen, MT League of Cities and Towns,** said the amendments proposed a change in the law. If the law was changed, then maybe the court's ruling would change. He felt a better person to address it would be **Mr. Mazurek.** He felt the law change would signify the legislature's intent to allow this. If a city could be allowed to enforce building codes within a county, then a county could enforce a building code in a select area through due process. He assumed it would be legal, but some research could reveal the true answer.

SEN. HOLDEN asked if **Mr. Williams** saw the amendment, then asked his opinion on it in relation to running Flathead County. **Dale Williams, Flathead Co. Commission,** said the amendment meant additional baggage. He was concerned about telling part of the constituency that they would be operated by a different method than the rest of the group. Barring that concern, as long as the division was not mandated, but remained an option to the county, it would be OK. He reminded the committee that his area had flatly rejected through referendum a building department. As long as the county commission was given the option of using the public process, it could be viable.

SEN. AL BISHOP noted that the proponents' materials called the current law unconstitutional, yet he didn't recall an action filed to declare it unconstitutional. He asked why that might not have been filed. **Joe Mazurek, City of Great Falls,** responded that he wasn't aware of any action challenging it. He thought it was a practice done nation-wide. He believed that since the legislature delegated the authority by statute to local governments to extend the building code beyond the city limits in order to protect safety and welfare, then that could be a reason why. He addressed the proposed amendments. He argued all kinds of districts were created in counties. As long as they were based on valid criteria, specific districts could be created and it wasn't unconstitutional.

SEN. MIKE HALLIGAN wanted to know who had to apply for what permits. **Mr. Hansen** understood state law to say anything less than a five-plex was exempted from state building inspection on everything but plumbing and electrical. Therefore, a commercial building beyond the city would be inspected by the state. A residential structure beyond the city would be inspected by the state for plumbing and electrical. If the building was inside a city or jurisdictional area, the city did the plumbing, electrical, and the life safety. The hole was in the areas beyond the city, there was no life safety inspection on anything less than a five-plex.

CHAIRMAN LORENTS GROSFIELD questioned that 10 to 15% of the building official's work was in the jurisdictional area outside the city limits. He wondered if the fiscal note estimated the building code budget would be paid for by the program. **Neil Poulsen, Building Official for City of Bozeman**, said in the past that was correct. However, the work had slowed down, so it was not that much.

CHAIRMAN GROSFIELD clarified that it was 30% of the work in the area as well as 30% of the cost had been recovered from the area. **Mr. Poulsen** said the work, but not the costs. Typically, in Bozeman the work was more residential than commercial.

CHAIRMAN GROSFIELD addressed **Mr. Simon** regarding the issue of how much cities could make on the extra-territorial areas. He asked for clarification. **Mr. Simon** said the bill dealt with that in 1997. The bill stated the building department could not spend the money for purposes other than the building department. It would restrict the money to be used strictly for building code enforcement. He argued the city of Billings ripped-off $400,000 a year in building code money and used it in the general fund. They created a reserve account starting at 0. The builders raised such havoc that they agreed to begin with $25,000 in the account. Two years later, the account had grown to over $1 million. The city was then forced to cut building fees in order to comply with the statute that said they couldn't have more than one year's budget in that reserve. They reached the limit in two years. He said a good deal of the money came from county residents who didn't have a voice in the city government.

CHAIRMAN GROSFIELD clarified that part of the bill was working OK. **Mr. Simon** said it met its purposes, but he didn't know why the city had to get the reserve to its maximum. He argued the city could stop in-taking money and run the department at its current level for one year. He felt it was excessive, but in order to gain some control, the statute said the money had to be used for a specific purpose.

CHAIRMAN GROSFIELD asked if the eight municipalities were appropriately only charging the amount the program cost. **Mr. Hansen** believed it was true and it was the law. He had heard complaints about separate accounting systems for building departments, but he assumed they were complying because they were subject to audit. He felt it was an issue addressed in the audit. He noted the revenue into the city of Billings came from huge commercial projects such as the InterState Bank building, which was the largest inspection project in the state of Montana. The idea was to get a building permit and pay a fair amount for the

service. He felt the Simon law passed in 1997 codified that idea and cities were complying.

CHAIRMAN GROSFIELD said the fiscal note on the bill was $300,000 or so. He wanted to know what the amendment did to the fiscal note. **Mr. Hansen** said it would be up to the counties. He felt the people of Kalispell didn't support building codes in the county; therefore, they wouldn't implement a building code authority under the bill. However, Gallatin County might. It would reduce the cost to the state. Cost reduction would depend entirely on how many counties wanted to enforce building codes instead of the state.

CHAIRMAN GROSFIELD re-directed the question and asked what was the special state revenue account. **Mr. Brown** said a special state revenue account was established for all building code funds such as permit fees and plan review fees. The state would want to reserve the right to be adequately staffed to do the inspections that would now fall under their responsibility. He believed that all of the counties with this doughnut area, with the exception of Flathead, would probably have an interest in this. The state would not hire people, and then look for work, but would hire them as the need developed.

Closing by Sponsor:

SEN. O'NEIL closed on SB 242, saying the extra-territorial area was needed to continue life safety inspections. It was needed within an area of 4.5 miles of the city, but not beyond that. He argued the state already inspected plumbing and electrical. He understood the inspection would include trusses, wall and floor joist, and foundations. These were currently the things that the bank and the insurance company ensured were inspected. Therefore, these types of inspections were already being done without state intervention. To have cities continue to do this had people paying in essence double taxes because the bank or insurance company did it first. He said it applied to residential construction and not to the commercial structures or the five-plexes. He commented that if someone argued it wasn't about an issue, it was specifically about that issue. Therefore, this issue was about money. Addressing the comment that it was exercised between the city and the county, he felt the bill would not change that, but would allow the county to continue the practice instead of the city. It gave the authority to those who were elected by the people. He argued the bill was designed specifically to allow people to contact their elected officials to address their concerns. He felt electrical and plumbing inspections were sufficient to prevent fire losses. The 25% less fire loss in inspected buildings could be attributed to their age

and not to the fact they were inspected for life safety issues. He commented the amendment would transfer the authority to local government. He felt the authority should be given to those who were elected by those affected. He noted the Rossignol's had challenged the Constitutionality of the statute and had been fighting in the courts for several years. They still hadn't received a reply.

{Tape : 3; Side : B}

EXECUTIVE ACTION ON SB 293

CHAIRMAN GROSFIELD asked **Ian Marquand** to present amendments to the bill.

Ian Marquand, Society of Professional Journalists, said in consultation with **Brenda Nordlund** amendments had been created. He noted the language had evolved quickly and he had not had a chance to run it past the council for the Montana Freedom of Information Hotline. He wished to clarify it with them before it became finalized. Three words would be added to the section regarding permitted disclosure of personal information, "and journalistic articles". Therefore, the bill text would read, "to conduct research activities, and produce statistical reports and journalistic articles as long as the personal information is not published, disclosed to a third party, or used to contact individuals." He noted it could seem contradictory. However, they felt it gave the media/reporters, the opportunity to examine the records, do research, then through examination of the records be able to access a name of an individual through other public records. Any publication or disclosure of personal information would not be directly from the driver record, but from publicly available court or law enforcement records. The Society felt comfortable with the language, but again asked to be able to run it past the lead council for the media.

SEN. JERRY O'NEIL asked if inspection of drivers' license records revealed the governor's spouse had a valid license and 10 D.U.I.s, would the media want to publish that sort of information. **Mr. Marquand** responded in that particular instance, if they were looking at spouses of elected officials, they would be able to get that information from the Motor Vehicle Division directly because they already knew enough personal information. An example he used in drafting the amendments involved a story about extremely elderly Montanans, aged 90 or over, who had valid drivers' licenses. The media would make a request, examine the records for research purposes, then based on the findings, they would go to other public records to produce a story.

SEN. O'NEIL said the bill stated the information was not to be used to contact individuals. In the example presented, would the information be used to lead the reporter to other information to obtain the address? Would that information not be used to contact the person? **Mr. Marquand** replied there was a linkage, but other public records would be used to identify the individual. He noted an address was not as important to the media as a name. The name and city/town/county of residence was the most valuable information. They weren't as interested in identifying the exact address.

SEN. O'NEIL said if the media was happy with it, then he would be too. However, it seemed to him that when a person was identified, that information would lead to contacting them. **Mr. Marquand** said he understood the comment, but in using other public records to identify that name, they would be immune to civil liability the law prescribed.

CHAIRMAN LORENTS GROSFIELD followed up. If other public records could be used to find the information, why wasn't it done in the first place. **Mr. Marquand** replied it was the linkage. When looking specifically at drivers' licenses, it was the driving record the media was interested in. Unless they could identify the person initially, they received a driver record without a name attached. It was the linkage between identity and the driving record that was important. They were trying to craft a way to allow them to do their job of reporting without violating federal provisions, which the proposed bill would implement.

CHAIRMAN GROSFIELD understood that, but **SEN. O'NEIL** made a point. Without this, they wouldn't know which public record to use, so they really were using this to contact the individual or publish the personal information. **Mr. Marquand** argued at one point he was willing to put in language that would address that, but for simplicity, they determined it was not necessary. He suggested **Ms. Nordlund** could provide a legal opinion on it. **Brenda Nordlund, Attorney General's Office,** said they did discuss the media obtaining motor vehicle driver record information from the Department of Justice, and the possibility that they could then notify the subject of the record prior to any disclosure. She felt it didn't comport to the DPPA. In reality, motor vehicle record information regarding a conviction was contained in other public records. She noted personal information could be accessed in some instances and not others. In order for the media to obtain information from original sources, they would have to go to 56 counties then to every justice and municipal court where the public record resided. The Motor Vehicle Division was the centralized repository to show them where the public record was.

CHAIRMAN GROSFIELD clarified that they were asked to make things easier for the media. **Ms. Nordlund** said if the press had an individual's name, they already had access to conviction records because it was public record.

CHAIRMAN GROSFIELD said yes, if they had the name. However, in the scenario presented, they probably didn't have the name without getting them from the Motor Vehicle record first. **Ms. Nordlund** said he was right.

CHAIRMAN GROSFIELD asked if **Mr. Marquand** had anything further to add. **Mr. Marquand** said he would be working at the Capitol on a short-term basis and would be happy to meet with the committee again.

CHAIRMAN GROSFIELD urged the committee and others to carefully consider the discussion.

Mr. Marquand noted he anticipated a response from the attorney for the hotline by the next time they'd meet.

CHAIRMAN GROSFIELD closed discussion on SB 293 until another day.

EXECUTIVE ACTION ON SB 25

Motion/Vote: SEN. HOLDEN moved **SB 25 BE REMOVED FROM THE TABLE. Motion carried 7-2 with Doherty and Halligan voting no.**

Motion: SEN. HOLDEN moved that **SB 25 DO PASS.**

Discussion:

SEN. MIKE HALLIGAN said concerns were raised about broader impacts on individuals beyond the flag burning issue. He felt that hadn't been addressed. By removing the knowingly issue, it covered conduct by groups protesting whether it was Right to Life, peace marchers, or veterans who might incite others to do conduct or violence. He felt that wasn't addressed. He noted **SEN. McNUTT** raised the point that existing statute covered the issue already. When looking at a compelling state interest argument, it hadn't happened in the last 20 years. He felt the courts would find Constitutional problems with limiting symbolic speech by creating a criminal violation for conduct creating a riot. He felt it was a rare crime when an individual's conduct didn't prompt trouble, but another person's actions did. If somebody else decided to riot, then another person could be convicted. For other crimes, if an individual broke the law, that person served the sentence, not someone else. He didn't think that made sense. Clearly, the court in the Texas case said symbolic speech was

protected. If the conduct caused a serious disturbance, which wasn't defined, the court said just because people disagreed, it was not a breech of the peace. When someone burned a flag over disagreement of a governmental policy and not because they didn't like the flag, it was the expression that was protected. He thought the drafting had some severe problems and wouldn't really address the intent.

SEN. JERRY O'NEIL believed the statute in its totality was unconstitutional. By adding some respect for the flag wouldn't change that; it simply made a statement to the public that the flag was respected in Montana.

SEN. RIC HOLDEN closed on his motion saying **SEN. HALLIGAN** made the arguments for free speech. This bill was a perspective bill on safety and how free speech affected safety. Burning a U.S. flag on Main Street would affect safety of the citizens. The bill tried to anticipate that. He noted the bill would be discussed on the floor and urged a Do Pass motion.

Vote: Motion to **pass SB 25 carried 7-2 with Doherty and Halligan voting no.**

ADJOURNMENT

Adjournment: 11:55 A.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT(jus27bad)