

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JEFF MANGAN**, on February 1, 2005 at 3:14 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

Staff Present: Jennifer Kirby, Committee Secretary
Leanne Kurtz, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: SB 262, 1/21/2005; SB 255,
1/21/2005
Executive Action: None

SEN. JEFF MANGAN, SD 12, GREAT FALLS told the committee that **SEN. SAM KITZENBERG, SD 18, GLASGOW**, had asked to speak to the committee regarding his bill, **SB 157**. The Committee had decided to table the bill and **SEN. KITZENBERG** wanted the committee to consider requesting an interim study.

SEN. KITZENBERG thanked the committee and told them he wanted them to write a committee bill to deal with the issues he presented. **SEN. KITZENBERG** gave the committee his proposed joint resolution.

EXHIBIT(1os25a01)

SEN. KITZENBERG introduced **Larry Fasbender, Deputy Director of Montana Department of Justice**.

Mr. Fasbender encouraged the committee to consider a study. He said that they should take a look at both the public defense and prosecution attorneys in Montana. He noted that the Department of Justice was trying to resolve compensation for county attorneys. He said that the issue could be looked at under **SEN. KITZENBERG's** proposal.

SEN. MICHAEL WHEAT, SD 32, BOZEMAN asked whether the goal of this study was to promote a district attorney system in Montana.

Mr. Fasbender said that it was something they should take a look at.

SEN. MANGAN noted that it was a three-quarter vote to have a committee bill. He promised to vote on the bill that week and thanked **SEN. KITZENBERG** for bringing the issue to the committee's attention.

SEN. CAROLYN SQUIRES, SD 48, MISSOULA asked if the legislation covered public defenders. **Mr. Fasbender** said that it did. **SEN. SQUIRES**, noting that it would be two years before the interim committee finished, wanted to know what could be done in the meantime. **Mr. Fasbender** said the public defender issue was being addressed with other bills this session.

SEN. MANGAN explained to the Senators that arrived late what was happening.

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS asked if the committee bill would be more appropriate in front of the Judiciary Committee. **SEN. MANGAN** said that it might be but that it was in front of the Local Government Committee at the time.

{Tape: 1; Side: A; Approx. Time Counter: 4.9}

HEARING ON SB 262

Opening Statement by Sponsor:

SEN. AUBYN CURTISS (R), SD 1, opened the hearing on **SB 262**, Compensation for takings.

{Tape: 1; Side: A; Approx. Time Counter: 5 - 6.8}

SEN. CURTISS explained her bill's purpose. She wanted to adopt a law that prevents the government from unlawful takings. **SEN. CURTISS** alleged that the government, rather than paying for the land that it wants, adopts a law that makes it impossible for a landowner to use his or her land. Than the government buys the land for pennies on the dollar. **SB 262** guarantees compensation for takings. **SEN. CURTISS** explained that the bill mandates that the government compensate a property owner when land is affected by new government regulations.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 6.8 - 10.4}

John Youngberg, **Montana Farm Bureau**, supported **SB 262**. He called property rights the foundation of Montana society. **Mr. Youngberg** was upset that government laws prevent property owners from using their land.

Russell Crowder, **American Dream Montana**, stood in support of the bill. **Mr. Crowder** stated that it was crucial to force local governments to think before they enact restrictive land use laws. He felt that it was important to protect property rights.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 10.4 - 18.5}

Harold Blattie, **Montana Association of Counties**, said that **SB 262** would shut down subdivision and zoning laws. **Mr. Blattie** noted that when the governments were busy protecting one property owner's rights, they would hurt someone else. He felt it was important for governments to be able to step in and settle property disputes with zoning and other laws. **Mr. Blattie** called the bill a "pandora's box" and declared that there was not enough money for local governments to enact the bill. **Mr. Blattie** said that **SB 262** would just increase unnecessary litigation.

Chris Tweeten, Montana Attorney General's Office, explained why the Attorney General's Office opposed **SB 262**. In December 1922, the United States Supreme Court issued a decision that recognized the necessity for government compensation for takings that did not involve the physical taking or occupation of property. **Mr. Tweeten** said that regulatory takings law already exists and **SB 262** would make the government pay for every legal change that it made. **Mr. Tweeten** stated that balance was necessary and **SB 262** broadened the law and increased the amount of money that would be paid out. **SB 262** would upset the existing balance. **Mr. Tweeten** contended that the purpose of **SB 262** was not compensation but that its goal was to provide disinclination to enacting land use laws. **Mr. Tweeten** felt that the bill, if passed, would amend the Constitution and therefore would require a two-thirds vote of the legislature. He suggested that the bill should require a fiscal note because there would be an increase in lawsuits against the government.

SEN. CURTISS informed the committee that **REP. KOOPMAN** had arrived and would like to speak as a proponent. **SEN. MANGAN** allowed him to speak without objection.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 18.5 - 22.3}

REP. ROGER KOOPMAN, HD 70, BOZEMAN, supported **SB 262**. He said that the bill was only fair and equitable. **REP. KOOPMAN** felt that when government regulations take away property value than the property owners should be compensated. He noted that the Constitution allowed regulatory takings and it should be applied to land use policies. **REP. KOOPMAN** suggested that when regulations reduce the ability to use land as the owner wishes, the Constitution requires just compensation.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 22.3 - end of tape}

{Tape: 1; Side: B; Approx. Time Counter: 2.3 - 5.1}

Jani McCall, City of Billings, opposed **SB 262**. She maintained that current laws and land use regulations do not decrease property values, they encourage citizens to be good neighbors. **Ms. McCall** declared that **SB 262** would not allow any new development or land-use policies. **Ms. McCall** said the bill would allow for compensation for any land-use decision, either the proponent or the opponent would sue the local government because

its decision reduced the value of their property. **Ms. McCall** called it a "no-win situation."

Stan Frasier stood in opposition to the bill. **Mr. Frasier** called **SB 262** "anarchy." He said it would decrease predictability and stability of property values. He told the committee that the biggest drop in property value resulted from incompatible development on neighboring lots. **Mr. Frasier** felt that **SB 262** would increase the occurrence of incompatible development.

Tim Davis, Montana Smart Growth Coalition, noted that "my rights end where my fist hits your nose." **Mr. Davis** compared this adage to property rights. He opposed **SB 262** because it takes the fairness out of the law. He believed that the bill would throw out local control of "where the fist hits the nose." **Mr. Davis** said regulations are in place to protect property values for everyone.

Anne Hedges, Montana Environmental Information Center, said that she looked at the definitions first on the bill and found them to be misleading and confusing. She noted the definition of "family" was through four generations but later the bill contradicted the definition and all the language was misleading and bad.

Don Judge, Teamsters Local 190 and Montana Chapter of the Sierra Club, opposed the bill. He directed the committee to look at the sections of the bill that dealt with past compensation. He noted that with any regulations enacted over the past two years affecting property values the owner can file for damages. **Mr. Judge** called **SB 262** a bad bill and encouraged the committee to oppose it.

Ed Tinsley, Lewis & Clark County and Montana Association of Counties, stood in opposition to **SB 262**. He stated that the bill would have a disastrous effect on every governmental entity that attempted to regulate land use in Montana.

Janet Ellis, Montana Audubon, brought up some state regulations that the bill would effect, such as streamside management and the quarantine laws. She noted that **SB 262** would effect more than just local government regulations. If **SB 262** passed, the state would have to compensate people for the regulations.

Michele Reinhart, Northern Plains Conservation and Agriculture Group, stated that they support normal takings but **SB 262** went too far. She felt that land use regulations would be jeopardized if **SB 262** passed. **Ms. Reinhart** agreed that people do need to be fairly compensated but **SB 262** went beyond equity.

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 5.1 - 7.7}

SEN. CURTISS said that the opponents were reading too much into the bill. She stated that the bill addresses public health and safety but is designed to protect land rights. **SEN. CURTISS** told the committee that she was not averse to amending out the retroactive clauses of the bill. She pointed out that the voters of Oregon had approved similar legislation. **SEN. CURTISS** noted that the fiscal note was being processed. **SEN. CURTISS** read Article II, Section 3 of the Montana Constitution in closing.

{Tape: 1; Side: B; Approx. Time Counter: 8.1}

HEARING ON SB 255

Opening Statement by Sponsor:

SEN. KELLY GEBHARDT (R), SD 23, opened the hearing on **SB 255**, Revise airport zoning laws.

{Tape: 1; Side: B; Approx. Time Counter: 8.2 - 9.2}

SEN. GEBHARDT stated that his bill's purpose was to set up a model for regulations of land-use around airports. He reserved the right to close.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 9.2 - 26.1}

Myra Shults, Montana Association of Counties, passed out informational packets.

EXHIBIT(1os25a02)

Ms. Shults said that she had been asked by the Montana Association of Counties to make Chapters 4, 5, and 6 of Title 67 workable for counties. That was what **SB 255** did. Previously, there was not a zoning mechanism for counties and counties do not like zoning anyway. The Montana Association of Counties felt that there was too much bureaucracy in Chapter six and so **Ms. Shults** was supposed to design a model for airport regulations based on

Chapter four only. **Ms. Shults** said the problem was county attorneys were supposed to sign a federal certificate of compliance with all three chapters in order to get money. **Ms. Shults** explained that new regulations were needed so she pulled together the three chapters and adapted them into comparable statutes to **SB 255**. **Ms. Shults** went over the informational packet and compared current regulations with the regulations provided in **SB 255**. **Ms. Shults** noted that the Federal Aviation Administration (FAA) would not fund airports that did not do some land planning and Montana needed **SB 255** in order to maintain funding for county airports. **Ms. Shults** suspected that the changes would be minimal for large jurisdictions but would very positively affect small communities. **Ms. Shults** said that the important effect of these regulations was safety. She stated that airports needed to have space around them to protect people living around the airport and people who used the airport.

Debbie Alke, Montana Department of Transportation - Aeronautics Division, supported the bill because it replaces outdated law and protects people.

Ted Coffman, Madison County Commissioner, stood in support of the bill and handed out a letter of support from his county planner.

EXHIBIT(1os25a03)

Harold Blattie, Montana Association of Counties, said that current law was unworkable. He told the committee that county attorneys were being forced to "close their eyes and hold their noses" while they signed the sponsor assurance, when they knew that the airports were not in compliance with Title 67. He noted that the counties simply could not comply with the chapters. **Mr. Blattie** felt that **SB 255** would provide newer, clearer, more concise, and less confusing law. **Mr. Blattie** said there was consensus that **SB 255** would solve the problem and would work for Montana.

Bill Burkland, Robert Peccia and Associates, informed the committee that Montana had seventy-three airports that were currently not meeting Federal Aviation Administration Regulations. This non-compliance could affect funding as the FAA provided ninety-five percent of airport funding. The FAA cannot enforce their regulations but they can take away funding. **Mr. Burkland** contended that **SB 255** would provide flexibility in conforming to FAA regulations and still protect Montana airports.

Doug Kaercher, Hill County Commissioner, stated that airport funding was at risk and encouraged a do pass on **SB 255**.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 26.1 - 29.5}

Glen Oppel, Montana Association of Realtors, opposed **SB 255** reluctantly. He was concerned about property rights and hoped that his concerns could be worked out through amendments. **Mr. Oppel** understood that safety was important and appreciated that land use regulations were necessary to garner FAA funding but said that the Realtors had a few problems to work out with the legislation. He felt that the scope of the affected area was too much and there was a lack of flexibility in the clause. **Mr. Oppel** was afraid that **SB 255** was too much like statewide zoning and local governments should be in charge. He noted that there was no reference in **SB 255** to federal code in reference to height restrictions. **Mr. Oppel** felt that **SB 255** was good but the scope was too large and the bill should reference federal code.

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 0.1 - 27.3}

SEN. BOB HAWKS, SD 33, BOZEMAN asked **Ms. Shults** if **SB 255** met federal guidelines. **Ms. Shults** answered that the bill met all federal standards. She stated there was flexibility in the bill to allow any additional standards.

SEN. MICHAEL WHEAT, SD 32, BOZEMAN wanted to know if **Ms. Shults** had consulted any other state's regulations in writing **SB 255**. **Ms. Shults** said that she had looked at Texas's and Washington's laws. She used an old FAA model ordinances document as well. **Ms. Shults** told the committee that her main goal was to consolidate chapters 4, 5, and 6 into one working model.

SEN. WHEAT asked whether **Ms. Shults** had looked into the Texas jurisdiction and how much of it had been litigated. **Ms. Shults** answered that she had not, she had merely reviewed the concepts in the Texas law.

SEN. WHEAT questioned whether the proponents intended to amend the bill to address **Mr. Oppel's** concerns. **Ms. Shults** promised they would discuss it and try to work out the problems.

SEN. WHEAT wanted to know if **Ms. Shults** was happy with the bill as it was drafted and whether the concerns were significant. **Ms. Shults** felt that they had not made any major changes to current state law. She thought that **Mr. Oppel** was concerned about the local regulations and **Ms. Shults** said that the bill would have to be passed before they could consider drafting local regulations.

SEN. WHEAT referred a question to **Mr. Burkland**. He asked if the scope was too broad as **Mr. Oppel** alleged. **Mr. Burkland** answered that the bill was a little daunting but necessary. It affected many people living in the area and needed the whole area to be regulated.

SEN. JOHN ESP, SD 31, BIG TIMBER wanted to know what the restrictions were on building density in the area. **Mr. Burkland** answered that there were not land use restrictions on density, merely height.

SEN. JIM SHOCKLEY, SD 45, VICTOR noted that he was from Ravalli County and asked **Ms. Shults** if she had talked to anyone from the county. **Ms. Shults** answered that she had not. **SEN. SHOCKLEY** wanted to know if **SB 255** made it easier for county commissioners to zone or zone bigger. **Ms. Shults** agreed that it did, slightly. She commented that they must justify zoning beyond the airport influence area.

SEN. SHOCKLEY asked **Mr. Oppel** if he represented Realtors in Ravalli County. **Mr. Oppel** answered that they represented Realtors all over the state but they had not had comments on the bill from Ravalli County Realtors.

SEN. SHOCKLEY wanted to know if the people that lived near airports favored the bill. **Mr. Oppel** speculated that they wanted their due process rights and wanted to be allowed to protest.

SEN. RICK LAIBLE, SD 44, VICTOR questioned **Michael Kakuk, Montana Association of Realtors**, about the airport's sphere of influence. He felt that property owners could do anything with their property under the height restriction. **Mr. Kakuk** answered that, according to Page 12, Line 13, the owners needed a permit. He felt that they needed to fix the one sentence and the problems would be resolved.

SEN. LAIBLE wanted to know if consensus could be reached with an amendment. **Mr. Kakuk** said that they would meet and work on an amendment.

SEN. LAIBLE asked **Ms. Shults** if consensus could be reached. **Ms. Shults** assured him that they could.

SEN. HAWKS wanted to know about the noise pollution of airports. **Mr. Burkland** answered that it was a significant problem but airplanes were getting quieter. He noted that there were things people could do, such as insulate their homes, for noise.

SEN. HAWKS asked if **SB 255** prepared people for the noise. **Mr. Burkland** answered that out of the 73 airports in Montana, eight airports have planes that exceed the noise signature beyond airport property. He gave the example of Roundup verses Great Falls.

SEN. CAROLYN SQUIRES, SD 48, MISSOULA questioned **SEN. LAIBLE** and **SEN. SHOCKLEY** whether Stevensville airport was a problem. **SEN. SHOCKLEY** was unsure as to whether Stevensville also had problems. **SEN. LAIBLE** asked **Mr. Oppel** to consult local residents and ask them how they felt about **SB 255**.

SEN. SQUIRES asked **Mr. Oppel** how much land was "enough" for the airport zone. **Mr. Oppel** admitted that he may have not expressed himself well. His concern was not with how much land but with the land use regulations.

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, questioned **Mr. Burkland** about how **SB 255** affected property owner's abilities to erect yard lights or galvanized steel buildings in the area. **Mr. Burkland** answered that his reading was that if the light was not on the end of the runway and not directed up, it was acceptable. **Mr. Burkland** said that a simple solution was to screen the light and that the local governments would be responsible for making those regulations.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 27.3 - 30.6}

SEN. GEBHARDT said that some small concessions and adaptations were needed for safety, such as hooding yard lights. He felt that airports just needed some space. **SEN. GEBHARDT** addressed **Mr. Kakuk's** concern. He thought that no one would care about the permit process unless whatever the property owner was doing would affect the airport. **SEN. GEBHARDT** assured the committee he would work on re-wording that section and other minor amendments.

ADJOURNMENT

Adjournment: 4:48 P.M.

SEN. JEFF MANGAN, Chairman

JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT ([los25aad0.PDF](#))