



Education and Local Government Interim Committee

56th Montana Legislature

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SENATE MEMBERS

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JOAN ANDERSEN
TOM FACEY
JEFF MANGAN
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JOE McKENNEY

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STAFF ATTORNEY
JOANN JONES
SECRETARY
SANDY WHITNEY
FISCAL ANALYST

MINUTES

LOCAL GOVERNMENT SUBCOMMITTEE

JULY 28, 2000
CAPITOL BUILDING
HELENA, MONTANA

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

COMMITTEE MEMBERS PRESENT

Sen. Mike Sprague, Presiding Officer
Rep. Jeff Mangan, Vice Presiding Officer

Sen. Jon Tester

COMMITTEE MEMBERS EXCUSED

Rep. Joe McKenney

STAFF PRESENT

Connie Erickson, Research Analyst
Leanne Kurtz, Research Analyst
Jo Ann Jones, Secretary

VISITORS

Visitors' list, Attachment #1.

Draft

COMMITTEE ACTION

- C Passed a motion to delete the cost-of-living-adjustment language in LC 8001
- C Approved the insertion of language in LC 8001 that would create a pool of state funds for county reimbursement of juvenile probation officer salaries
- C Approved the extension of time in the standard notice provision, leaving the protest period provision as is, in LC 000A

CALL TO ORDER AND ROLL CALL

Sen. Sprague called the meeting to order at 9:05 a.m. Roll call was noted. The minutes from the June 22, 2000, meeting were adopted as distributed.

HJR 38: JUVENILE PROBATION OFFICERS' SALARIES

Exhibit #1: Committee progress to date and decisions to make, copy of memorandum from Judy Paynter, Department of Revenue, to Court Funding and Structure Committee, dated July 13, 2000

Exhibit #2: Minutes from Court Funding and Structure Committee, dated July 13, 2000

Exhibit #3: Summary of LC 8001

Exhibit #4: LC 8001

Exhibit #5: Summary and copy of LC 8000, predecessor to LC 8001

Exhibit #6: MJPOA Recommendations for Changes to LC 8000

Leanne Kurtz, Research Analyst, discussed Exhibits #1 through #5, inclusively.

Sandy Oitzinger, Director, Montana Juvenile Probation Officers Association (MJPOA), discussed Exhibit #6, recommending that salaries for Chief and Deputy Probation Officers (JPO) be set at a percentage of the District Judge's annual salary, depending on years of service, and that the state's share of the Chief JPOS' salaries be placed in a pool administered by the Supreme Court Administrator's office.

Joe Connell, Chief JPO of the 5th Judicial District, suggested deleting the counties' requirement to be responsible for all cost-of-living adjustments for JPO salaries because, under the new plan, the JPO salaries would be on a 2-year review, making the COLA unnecessary.

Rep. Mangan moved to instruct staff to remove the COLA provision from LC 8001; seconded by Sen. Sprague. The motion passed.

Rep. Mangan asked if Ms. Oitzinger could estimate costs for the year after the implementation year. Ms. Oitzinger said she did not have the calculations now, but could obtain it. Rep. Mangan said that would be satisfactory and commented that he would like to be able to explain the second year costs to the full Committee when the bill is presented to them.

Sen. Sprague asked Jani McCall if she was representing cities or counties. Ms. McCall said she was representing the Youth Justice Council, and asked for clarification of the pooling of funds and whether it is within the body of LC 8001. Ms. Oitzinger said the mechanics of such a provision have yet to be worked out and it is not yet within the bill itself. Sen. Sprague said the Subcommittee has approved the concept. Rep. Mangan said he would make a motion approving the pool of funds before the discussion is finished.

Ms. Kurtz said the final section of LC 8001 is a savings clause to prevent a probation officer's salary from being decreased as a result of the bill. Ms. Oitzinger said the MJPOA did not want any JPOs to suffer a salary decrease (as could happen in a couple of cases) because of the bill's enactment.

Sen. Sprague asked Ms. Kurtz to clarify the section dealing with the event the reimbursement requests from counties exceed the amount in the fund. Ms. Kurtz said,

for instance, if the fund contains \$400,000 and the county requests total \$500,000, the counties are reimbursed for 80% of their requests.

Sen. Sprague summarized the staff instructions for LC 8001 as deleting the provision for COLAs and inserting language to create the pool for the state's contributions. He recommended checking with the Governor's budget office to determine if pooling the funds may decrease the cost of administration.

Ms. Oitzinger said other questions for consideration include whether the fund pool will bear interest and whether the state would continue to contribute 50% of salaries so that the principal will grow.

Rep. Mangan asked Ms. McCall if the counties use a pool for reimbursement of the county attorney salaries. Ms. McCall said the money is collected at the local level from fees, fines, and assessments. The funds are transmitted directly into the general fund, creating difficulties in tracking what had actually been spent. The Local Government Funding Committee has discussed changing the money flow.

Mr. Connell suggested that Pat Chenovick be involved in discussions because the Supreme Court Administrator's Office would be administering the process.

Sen. Sprague asked if there was objection to using the word "may" instead of "shall" in LC 8001 so other funding sources are not precluded. There was no objection.

Rep. Mangan said to make sure when deleting the language providing for the COLA that the longevity provision is still transferable from district to district.

Ms. Oitzinger said that in regard to years of service, it should include all years of service, not just those as a Chief JPO.

Sen. Sprague asked if Ms. Kurtz would have adequate time to work on the bill draft if it were to be presented at the meeting on September 8. Ms. Kurtz said a meeting on September 7 would be more conducive to her workload for her own committee. Rep. Mangan said it would be desirable to have the financial information presented at the September 7 meeting.

Sen. Sprague asked Connie Erickson, Research Analyst, how the Subcommittee's work connects with the Local Government Funding and Structure Committee. Ms. Erickson said that she is not aware that it has met since April. Ms. McCall said that committee has met nearly every month. She said that Judy Paynter had been asked at a meeting if she had been sharing information with the Local Government Subcommittee, and Ms. Paynter replied that she had not. Ms. Erickson said she has requested to be put on their mailing list two or three times but yet has not received any information. Sen. Sprague said the Subcommittee will make a formal request to Judy Paynter for her or someone else from the Department of Revenue to provide an update at the September 7 meeting.

HJR 29: LOCAL GOVERNMENT LAWS

Exhibit #7: Road Map to Bill Draft LC 000A

Exhibit #8: Bill draft standardizing public notice provisions in Title 7

Ms. Erickson discussed Exhibit #7, explaining that the meat of the bill is in Sections 5 through 69 in regard to notification by local governments for public hearings as described in Sections 3 and 4. Section 70 is a repealer, and Section 71 contains codification instructions for the new sections.

Ms. Erickson said the issues contained within Exhibit #8 must be resolved today, and include the time period for protest and whether re-notification will be required in the event a hearing is canceled or adjourned to a later date.

Sen. Sprague asked for public comment on LC 000A.

Alec Hansen, Montana League of Cities and Towns, said the standardization of public notice statutes is an important step forward.

Jani McCall, representing the city of Billings, said they believe that standardization is important and asked about the timeline for further development of LC 000A. Sen. Sprague said there is only one meeting left and the Subcommittee has had little or no participation during the interim from the Montana Association of Counties (MACo) and other interested entities. He said he doesn't want to get into a situation where the Education and Local Government Committee moves forward with a bill and then finds in session hearings that there are valid reasons why a certain provision is not workable.

Rep. Mangan said the bill will be reviewed again at the September meeting.

Ms. Erickson said she has been in contact with Gordon Morris, MACo, on the bill. Mr. Morris has circulated the bill for comment and, although he has not attended the Subcommittee meetings, he has participated in the development of the bill. She said that parts of LC 000A actually increase the number of notifications for some purposes.

Sen. Sprague said he did not think local governments would welcome an increase of their workload.

Mr. Hansen said that standardization is desirable and local governments will cope with increased numbers of notification if that is a part of standardization.

Ms. Erickson said issues involving protest periods and the cancellation or adjournment of a hearing and subsequent re-notice arose at the previous meeting. (See Exhibit #8.) She said the problem with the 20-day protest period provision is in the annexation statutes (Sections 8, 9, 10, and 11 of LC 000A). Robin Sullivan, city of Bozeman, said that the law states the 20-day protest period begins after publication of the first notice, but the protest periods are not uniform throughout Title 7. The problem is that, in some cases, the protest period could end at 5:00 p.m. on the day of the scheduled hearing. Ms. Erickson said the Subcommittee's options could include: reduce the 20-day protest period to 15 days for annexation statutes, make no mention of a specific protest period, require the protest to be filed no later than one day before the scheduled action, or leave current law as it is.

Sen. Sprague said he would like to standardize the protest period but does not want to lessen anyone's ability to protest. He asked for input on a workable period for filing of protests.

Rep. Mangan asked for clarification on the issue. Ms. Erickson said with a 21-day notice period, a 20-day protest period could result in protests being filed at the end of business on the day of the scheduled action.

Sen. Sprague asked about a 30-day publication period with a 20-day protest period, requiring that protests be filed 10 days before the hearing. Ms. Erickson said the standard notice provision could be changed to 30 days

Mr. Hansen said he did not believe the protest provisions should be changed, and said he did not know whether the standard notice provision should be changed, either. He said the annexation statutes are different from any other statutes that include notification of the public.

Ms. Erickson said Ms. Sullivan's first recommendation was to change the protest period to 15 days. Mr. Hansen said that would be very unpopular.

Rep. Mangan asked if the 21-day notice/20-day protest period is a uniform problem because only one city has been heard from on the issue. Mr. Hansen said all general government cities would have that problem and there are 110 of them in Montana. He suggested stretching out the notice provision, leave the protest provisions as they are now, and leave a gap at the end.

Gordon Morris, MACo, arrived and introduced Harold Blattie, MACo president and Stillwater County Commissioner, and Janet Kelly, MACo past president and Custer County Commissioner. Mr. Morris said he has been in direct communication with Ms. Erickson in regard to LC 000A.

Sen. Sprague said the notice provision will be extended and the protest periods will be left as is.

Rep. Mangan clarified that the standard notice provision will be extended, not just those of the annexation statutes.

Sen. Sprague said if any further comment arises, to be sure and contact Ms. Erickson. Mr. Hansen agreed to discuss this issue with city officials and report back to the Subcommittee by September 7.

Ms. Erickson said the second issue involves subsequent notice of a canceled hearing or one adjourned to a later date. She said that, again, there is wide variation throughout Title 7. Some statutes require a 5-day notice but some require no notice. This issue was brought to Ms. Erickson's attention by Ken Weaver, Local Government Center, Bozeman. She said Subcommittee options include: application of the standard

notice provisions, but that means that the meeting can't be rescheduled for 21 days; require a 5-day notice period; or have no notice.

Mr. Blattie said that the people who are interested in a certain issue are the ones who attend the meetings, so they have immediate notice if the hearing is rescheduled or cancelled. Requiring a notice period would slow down government and increase the costs of publication. If the community has a weekly publication, a 5-day notice period would not work for them.

Sen. Sprague asked if changing the notice provision to read "if available" would solve the problem. Ms. Erickson said the other option is to require no notice at all, which is what already occurs in much of Title 7. Mr. Blattie said no notice is required because the hearing is actually being recessed, not adjourned and then re-scheduled.

Sen. Sprague said the Subcommittee wants to avoid unintended consequences.

Ms. Erickson said another issue involves posting notices. There is no consistency within Title 7 because it states that notice must be published or it may be posted at a specified number of places within that jurisdiction if a newspaper is not available. Some places state that both publishing and posting must be done. She said the options include: publish, post, or both.

Sen. Tester asked what triggers both publishing and posting. Ms. Erickson said that it is pretty random throughout Title 7 and it may occur because there is no newspaper in the county or in the adjoining county. The standard provision is that notice is published in the newspaper and describes the criteria for a newspaper.

Ms. Kelly said the counties would appreciate standardization of this portion of law because it creates confusion as to what is legally required for public notice.

Ms. McCall said a re-examination of Sections 3 and 4 to provide a solution would be appreciated. Rep. Mangan said the provisions would apply to publication and posting sections, and then a line item cleanup of Title 7 could be done.

Sen. Sprague asked if the internet could be considered as a component of public notice. He asked for input of solutions if it is desired that the full Committee sponsor the bill.

Sen. Tester recommended changing the language to publish or post, leaving it to the discretion of the county as to how important the issue is, and then see what the reaction is from local governments.

Mr. Blattie said he appreciated Sen. Tester's comment because, in the real world, notice is given in direct proportion to the importance of the issue. He said he would recommend electronic posting as an alternative. He said that in one case, a landowner who was not being serviced by his fire district because of an inaccessible bridge, requested transfer to another fire district. The provision requiring notice by certified mail (Title 7, part 33) was very costly, approximately several thousand dollars.

Sen. Tester asked why certified mail was required. Sen. Sprague said he thought it originated with a "hold harmless" concept, establishing a record of notification. Mr. Morris said it also arose from attempts to notify absentee landowners.

Rep. Mangan said any concerns arising from the language of whether to publish or post, or both, can be addressed in separate legislation. He said that LC 000A reads publish and post on the Internet, which may require clarification.

OPTIMAL SIZE OF COUNTIES

Exhibit #9: Table 1-1, Local Governments in the United States, 1992, and Table of Montana counties, indicating population and size

Exhibit #10: Summary Report: The Feasibility of Adjusting County Boundaries in Minnesota

Exhibit #11: Consolidation and Cooperation in Local Government Service Delivery

Sen. Sprague asked for public comment.

Gary Baden, Phillips County Superintendent of Schools, said he was there for informational purposes and asked what the intention of bringing forward the issue. Sen. Sprague said part of the reason was to get local governments involved with the Subcommittee. He said the initiation of e-commerce has created a trend toward consolidation for more efficiency, and the question is whether the consolidation or amalgamation of county governments would result in a better system.

Ms. Erickson said the historical trend has been to create more counties and the consolidation that has occurred is mostly between cities and counties.

Sen. Sprague asked if there have been studies to indicate economy of scale for size of jurisdictions. Ms. Erickson said she had not been able to locate any.

Sen. Sprague asked what the procedure is for consolidation of counties. Ms. Erickson said there must be the filing of a petition, followed by an election. There must be agreement from the second county.

Rep. Mangan said the information presented by Ms. Erickson also demonstrates how local governments can work together without consolidation, and quoted from pages 10-11 of Exhibit #11, "...additional statutory authority will [not] result in expanded cooperative service delivery."

Sen. Sprague asked why would it be in the best interest of two counties to consolidate when one probably does not have the financial resources to support its own government. He suggested that there is economy of scale for size of both counties and cities. He said it's possible that the Subcommittee can recommend that local governments look at consolidation of functions again.

Rep. Mangan said the reasons most counties don't explore consolidation probably includes lack of education of what is already available in current law and the lack of professional managers.

Ms. Erickson said the legal process for consolidation of counties begins with a petition that states the county or counties of attachment. The signatures on the petition are verified, and the county commissions pass a resolution for elections. The elections must then occur in all counties that are involved, and there has to be majority approval before abandonment can take place.

Sen. Sprague asked if the statute mentions contiguous counties. Ms. Erickson said no, but the statute specifies the mechanics involved in making the transition.

Sen. Sprague said that because county finances are tied to property tax revenue, some counties cannot survive on their own. He said that counties may be able to find other avenues of sharing resources other than utilizing the antiquated statutes that Ms. Erickson referred to.

Ms. Oitzinger said consolidation is an interesting concept, but it's a moving target because effecting such a big change would be very difficult when the environment is already fluid and complex.

Bill Rappold, ex-president of MACo and Pondera County Commissioner, said there could be sharing of staff, agencies, and enhanced 911 service between counties, but there isn't any.

Rep. Mangan said the 1972 Constitution is progressive and gives lots of freedom and abilities to local governments. He said they have had the ability all along to make their governments operate more efficiently but, judging from the comments from discussion participants, have chosen not to utilize those tools. He said if counties want to consolidate, the residents of those counties will proceed with the process and it is wrong for the Legislative Branch to step in.

Ms. McCall said she agreed with Rep. Mangan. She said that local governments are moving toward more local authority than they have now. Local residents are elected to make changes at the local level. She said that local governments could probably have more cost effective operations, but that must be done through education and awareness.

Sen. Sprague said the agenda item was for discussion purposes only.

OTHER BUSINESS

Ms. Erickson confirmed that the Subcommittee will meet for the last time on September 7, 2000.

ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 1:30 p.m.

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