

**Montana Association of Planners
Regular and Special Session Final Report
May 21, 2007**

Annexation

SB 339 (Murphy) – Revise laws governing annexation and expansion of municipalities (The City of Helena vs. Jefferson County bill). This legislation prohibits a city from annexing property in a county different from the county in which the city is located unless it meets certain conditions. The conditions are that an interlocal agreement be executed and that the interlocal agreement provide for jurisdictional equality. The bill became effective immediately.

Appropriations – Coal tax grant and loan programs – Appropriations of interest to planners were passed in both the regular and the special legislative sessions. The regular legislative session saw the passage of the following renewable resource grant and loan projects:

HB 6 (Kasten) – Renewable resource grants. Approximately \$5 million is appropriated to DNRC for mostly water and wastewater projects throughout the state. A complete list of the projects and their respective ranking can be found within the legislation.

HB 7 (Kasten) – Reclamation and development grants. Reclamation projects are funded with \$5 million through HB 7.

HB 8 (Kasten) – Renewable resource bonds and loans. Over \$26 million in coal tax bonds are authorized in HB 8 for the payment of the state's share of regional drinking water systems and renewable resource projects.

HB 9 (Kasten)-Cultural and aesthetic grants. Cultural and aesthetic arts programs are funded with about \$700,000 in HB 9.

HB 512 (Llew Jones) – Fund certain local government infrastructure projects – Also known as the “TSEP bill”, HB 512 was the version of funding the TSEP projects that finally was allowed to live. Planners who have TSEP projects should be advised that a fundamental change was made resulting in the need to have a project ready. Having the project ready to go now is more important than ranking because projects will be funded on a “first come-first served” basis.

The special session passed the general state government appropriations bill (HB 2) in which the **Community Technical Assistance Program (CTAP)** was funded for approximately \$367,000.

Eminent Domain – The I-154 initiative activity (what I may have referred to in previous legislative reports as the “Kelo-frenzy”) spurred the introduction of several eminent domain bills, two of which could have an impact on urban renewal efforts. Another eminent domain bill (SB 536) which prohibits local governments from using eminent domain to acquire telephone or electric energy lines also passed.

SB 41 (Elliott) – Narrow uses for eminent domain. Cities and towns are prohibited from acting as a “pass through” entity for the purposes of acquiring property

that it may otherwise have intended to sell or lease to a private entity. Any use of eminent domain by cities and towns must serve a public purpose only. The legislation became effective immediately.

SB 363 (Kaufmann) – Revise eminent domain law. Further restrictions on the use of eminent domain and its relationship to urban renewal projects are placed within the statutes by the passage of SB 363. It restricts the use of eminent domain acquisitions only to areas that have been determined to be “blighted” and cannot be used for the sole purpose of increasing tax revenues. The effective date of this law is October 1, 2007.

Growth Policy – See discussion under “Subdivision and Platting Act Changes” for SB 201 and SB 51.

Planning Boards –

HB 265 (Ebinger) Clarifying the voting requirements for planning boards is the purpose behind this legislation. As passed, the bill requires that a quorum is required for all planning board actions and that a majority of members constitutes a quorum. This bill became effective on April 10.

HB 400 (Villa) – HB 400 designates a change in the requirement of conservation district supervisor appointments for both city-county planning boards and for county planning boards. City-county planning boards now have approval authority (where there used to be appointment authority) for the CD supervisor. The CD board of supervisors is responsible for selecting its own representative (which can now include “associate” (non-elected) members in addition to the elected supervisors) to the city-county planning board. If there are no supervisors or associate supervisors available or willing to serve, a process is provided for selecting another member.

In the case of county planning boards, the conservation district supervisor requirement now allows for the requirement to be fulfilled by an associate member (designated by the board of conservation district supervisors) or a member of a grazing district (where applicable). The new law is effective immediately; however, any current conservation district members of planning boards are allowed to be seated for the remainder of their respective terms.

Subdivision and Platting Act Changes –

HB 415 (Reinhart) – Parkland dedication for minor subdivisions. Although parkland dedication for minor subdivisions had been part of the original Montana Subdivision and Platting Act (MSPA), this requirement was eliminated in the mid-1990s. Efforts to re-establish this dedication had been made for several succeeding legislative sessions and this time it passed. The most important thing to understand about the new law is that, if the governing body chooses to require such dedication, it must amend its subdivision regulations in order to do so. The law is effective October 1, 2007.

HB 425 (Sesso) – Revise subdivision and platting act. In the end, this bill represented a simple, one-word change to the MSPA. It started out by being MAPs “non-consensus” bill from the SJR 11 working group meetings but fell afoul of Senator McGee

and the bankers and was tabled in Senate Local Government. However, it ultimately was used as a vehicle by which the word “require” was used with regard to the pre-application conferences. By way of background, many jurisdictions were requiring pre-app conferences for years prior to the introduction of SB 116 in the '05 legislative session. SB 116 supporters thought they had thus statutorily required these pre-app conferences only to find out later that the law encouraged, but did not require them and, in fact could have been viewed as being optional to the developer. Sen. McGee played a large role in getting this bill off of the table and amended so as to make this change (which he strongly supported).

SB 51 (Hawks) – Revise land use laws concerning fire and wildland fire. The effective date of SB 51 is not until October of 2009. The reason for this is to grant local governments, the Montana Department of Natural Resources and Conservation (DNRC), local fire authorities and other interested parties to come together for the purpose of agreeing on rules that are required to be written by both the DNRC and the Dept. of Labor and Industry (DOLI) respectively. However, there are important parts of this legislation that local governments can (and should) be doing now if they haven't done so already. For example, the legislation requires that growth policies contain an evaluation of the potential fire and wildland fire danger within the jurisdiction and whether or not there is a need to delineate the wildland-urban interface. In cases where the interfaces exist, SB 51 further directs counties to include defensible space, and other, requirements in its subdivision regulations. SB 51 proposes to change the mitigation language (construction techniques) currently contained in 76-3-504 and instead refer to DOLI rule-making for what are appropriate construction technique requirements in interface areas. All of this will be the subject of much discussion over the interim, so stay tuned to get a “heads up” on what is likely to happen in the '09 legislative session with regard to the subject of wildland-urban interface and its role in both the growth policy act and the MSPA.

SB 527 (Gillan) – Revise condominium exemption from subdivision review. Effective immediately is the “condo fix” issue raised with the Liberty Cove lawsuit. I'm basically re-stating here what most thought was the law but SB 527 clarifies that condominium developments are exempt from review under MSPA when one of two (or, I suppose, two of two) circumstances exist: 1) if a division of land contemplated condominiums (and that division was reviewed) and/or, 2) if zoning exists and the condominium proposal complies with the zoning. Post Liberty Cove activity saw many condominium units (hundreds, if not thousands) established without local review.

SB 201 (Laible) – Revise subdivision laws. Although optional, this legislation exempts certain subdivisions from environmental analysis, public hearings and review under the 608 criteria if the local government has adopted a specific “infrastructure plan” within its growth policy and has zoned the area in which the subdivision is being proposed. The requirements of the identified “infrastructure plan”, necessary to implement this automatic subdivision siting legislation, are extensive. The bill also provides for additional planning fees should the local government decide to pursue this land development option.

Special District Legislation

HB 102 (Jacobson) – Revise laws on public financing for special districts. This bill was introduced at the request of the DNRC and was described as “housekeeping” legislation necessary to accommodate requirements associated with renewable resources grant and loan programs. Among other things, it modifies protest provisions for city properties located within a proposed rural special improvement district.

HB 510 (Stahl) – Revise assessment costs for special improvement districts. This bill is very simple and only affects lighting districts. It allows county commissioners the same ability currently granted to city commissioners to use an assessment method that provides for equal treatment for each lot or parcel within the district.

HB 49 (See Study Bills) – Study local government special purpose districts.

Interim study legislation

HB 49 (Hamilton) – Study local government special purpose districts. Inconsistent statutory references frame the rationale behind this study bill. Unlike many study bills, this one will assuredly be conducted because it was legislation (rather than a resolution) and it contained an appropriation. This means that it will not go through the selection process that other study bills (contained in resolution) will need to endure.

Protest provisions, creation and dissolution language, the operation and the funding of special purpose districts will all be examined, and it looks as if there is an interest in making special purpose district statutory provisions more uniform. The subcommittee will consist of a minimum of ten members (see legislation for breakdown), the appointment of whom and oversight will be performed by the Local Government and Education Interim Committee. While there are no planner positions identified for the subcommittee, MAP should visit with the legislative leadership and try to get a member appointed. Unlike past “working groups” in which MAP has participated, this has a much more formal structure. Planners have a strong interest in zoning districts and planning districts (at the very least), both of which could be studied (and legislation proposed) by this subcommittee.

Sanitation in Subdivisions

HB 259 (Reinhart) – Create gray water permit. Water conservation promoters sought this measure to allow for gray water systems in Montana. The bill limits the locations and the applicability of gray water systems and requires DEQ to engage in rule-making and to establish a permit process. This legislation becomes effective on October 1, 2007.

HB 662 (Villa) – Revise sanitations in subdivision law – This legislation attempts to clarify when an exemption from review under the Sanitation in Subdivision act may apply to a remainder of an original tract. This bill was described by the EQC as a “housekeeping” bill. I found the language change a bit confusing but the health officers (and sanitarians) reviewed it and advised to let it go.