

MONTANA

Policy Review

A Publication of the Local Government Center

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Policy Review

REFLECTIONS ON LOCAL GOVERNANCE

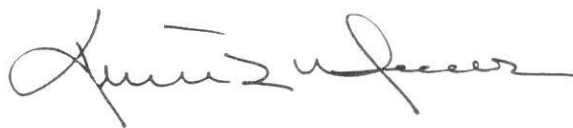
It's not often that a mayor of a Montana city, or any American city for that matter, writes a book that lays out his or her philosophy of community citizenship and government. Dan Kemmis of Missoula does just that in his recent book *Community and the Politics of Place*. It could well have been subtitled "How Montana Communities Can Survive the Nineties".

Mostly, Dan makes a powerful argument that the Montana style of "rugged individualism" too often drives the reality of our community problem solving. What Montana mayor, council member or county commissioner would disagree with Dan; especially after he or she has served even one or two years in the elected hot-seat refereeing community feuds over zoning, water rates, or alternative landfill sites? Recollect your last three hour "public hearing" when very little "public listening" occurred. Afterwards, the council or commission was ultimately in the position of having to choose sides between vocal and usually angry groups of "rugged individualists". Who among us would not have wished for a lot less "me first" and a lot more "community first"?

If, at bottom, politics is nothing less than the process of deciding the future of our towns, cities and counties, then the way a community does its politics is critical to its survival. Dan Kemmis argues for the restoration of the "politics of place", rooted in each community's unique sense of itself. A sense of place - of community - does seem to nurture both trust and cooperation. Yet, without the leadership to mobilize these wonderfully enabling human capacities, a community's problems go unsolved and its future prospects remain uncertain.

Dan doesn't write much about community leadership in his new book. If he had, it would not be the leadership of the rugged individualist, struggling heroically but alone, to save the community. What he hints at is a new kind of leadership role for those elected to make the community's tough decisions for the nineties. We suspect this means that the elected leader can't be cooped up inside the courthouse or city hall. If community trust and cooperation are the building blocks of a new kind of local politics, then elected officials probably need to polish up their "barn-building" people-skills and apply them often, working with other elected and non-elected community leaders.

During the past five or six years, we at the Local Government Center have focused on strengthening the self-governing capacities of Montana's local governments. We have done this by focusing most of our education programs on budgeting, personnel management, computers, and the like. Perhaps its time that we too reexamined our role in assisting local officials to practice the "politics of place" in each unique community.



Kenneth L. Weaver, Director
Local Government Center

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WELCOME TO THE MONTANA POLICY REVIEW

The Local Government Center has long been concerned with the vitality of the "body politic" at the grassroots. Through educational programs focused primarily on direct technical assistance and systematic training, Center staff respond to local leaders' needs with practicable solutions. But the changing seasons which characterize our common economic and political life prompt periodic reflection. Like the international marketplace, and national priorities, Montanans' needs are ever changing. The Local Government Center exists to help local government officials adapt to the challenges of the future. This fact inspired the creation of the *Montana Policy Review*.

The publication of this periodical marks a new effort by the Local Government Center to address the needs of Montana policymakers. The Montana Policy Review offers timely analyses of critical issues affecting the well-being of communities and their local governments. No single, widely disseminated and *accessible* mechanism for policy analysis has heretofore been available. The Review hopes to fill this void.

Being careful not to overstate our case, however, we acknowledge that important policy analysis of issues of critical concern to Montana's local government leaders and legislators does exist. But too frequently such information is scattered among diffuse sources which may be inaccessible to those who need it most. Relevant and useful policy analysis is, for example, aired in academic journals, in-house government reports, and think-tank analyzes from far-flung settings. Thus, a secondary goal of this publication is to connect these resources to Montana policy makers. The Review will serve as a "bulletin board" for applied research, reporting work related to community and local government issues undertaken in a variety of settings--from state and local governments, to universities, to the private sector.

The 1991 Local Government Policy Series which comprises the bulk of this first edition addresses four concerns given priority by the Montana Local Government Policy Council, newly established last year. Each of the four articles of this series adds additional substance to policy debates already ensuing in towns and cities across the state, and in some cases, across the nation.

Cooperation among the several layers of government, sometimes reflected in debates regarding local government consolidation, is an issue of persistent concern. In the first article, Ken Weaver and Judy Mathre investigate the statutory framework which now structures policy responses available to county and municipal governments in Montana that seek to respond cooperatively to common problems.

The second issue addressed in the series, solid waste disposal, has risen to the top of state and local political agendas in the face of more stringent federal environmental regulations and diminishing federal financial assistance. Similarly, the third issue--maintaining and upgrading water and wastewater infrastructures--looms as an imposing challenge for local governments in this age of financial austerity. James Goehring deals with the first concern at some length in his discussion of "Solid Waste Management Options for Montana". Richard Haines expands our understanding of the second topic in his article "The Impact of Interest Rates on the Affordability of Water and Wastewater System Improvements in Small Montana Municipalities".

The fourth and final subject of the policy series reflects the policy council members' concerns about the existing complexities which sometimes make Montana county compensation problematic. In "Compensation of Montana County Officials" George Minder surveys four neighboring states' county compensation structures, and offers a comparative frame of reference for decision makers considering policy alternatives to the existing compensation system.

In sum, each of the articles of the 1991 Local Government Policy Series is a response to policy makers' requests for substantive research to help them develop policy responses to changing economic, political and demographic circumstances.

The "*Regular Features*" section of the Review--*Reflections on Local Governance, Local Government News, the Local Government Calendar, Publications* and the *Ask Us Column*--will diverge from the themes of the feature articles, by offering philosophical reflections of noted leaders, short articles of timely interest, dates and events of note to local and state officials, current publications available, and "most-asked inquiries" addressed to the staff of the Local Government Center.

We welcome readers and hope you find the *Montana Policy Review* a useful addition to existing regional policy exchange. Please drop us a note, tell us your thoughts, and freely offer your suggestions. We like to think that our readers will be our best compass--guiding us towards community and local government issues warranting analysis and wider public dialogue.

Mary Ellen Wolfe, Editor

CONSOLIDATION AND COOPERATION IN LOCAL GOVERNMENT SERVICE DELIVERY

Kenneth L. Weaver and Judy Mathre,
Montana State University

Difficult economic circumstances in the largest and smallest of Montana's communities have lead local officials and their citizens to consider "consolidation" of local government services and structures as a way to achieve greater "efficiency" in service delivery. Even during prosperous times, as they struggle to minimize the eroding effects of inflation on local services, conscientious local officials seek ways, including consolidation, to stretch the tax dollar further. Yet each local government budget cycle, and certainly each state legislative session, seems to bring new urgency to this persistent question "Will consolidation of local governments yield greater efficiency and a lighter taxpayer burden?" The purpose of this report is to clarify the meaning of this question and to review the cooperative alternatives now

available under Montana law to achieve economies in the delivery of essential community services.

Thinking About Efficiency in Local Government

The impulse to consolidate local government structures and functions finds its origins in a felt need to improve governmental "efficiency". As public awareness of a need to improve local government efficiency increases, so too does the community's inclination to alter or even to abandon familiar local government institutions, and to experiment with new service delivery arrangements. In short, the issue of efficiency in local government is primarily a matter of community perception rather than some absolute measure of the

It is reasonably clear that, during the 1990's, should Montana's smaller units of county and municipal government fail to exploit existing law enabling cooperative service arrangements, they risk the imperative of structural consolidation by the end of this decade. Precisely because the stakes are so high we believe that such fundamental decisions can best be taken at the local level by local governments and by their voters.

actual performance of local government itself. Indeed, few, if any, practical measures of efficiency exist for any government, at any level.

In the private sector, the term "efficiency" has a clear and operative meaning. It is the ratio between the cost of input factors and the value of output product, both of which are measurable in terms of dollars. To increase efficiency, the entrepreneur finds ways to decrease the cost of the input factors (labor, materials, research, marketing, etc.) while holding output constant; or conversely, holding input costs constant and somehow finding ways to increase output production or value. The profit margin and, therefore, the relative success of a business in the market place, usually depends upon competitive efficiency measured in concrete dollar terms. However, the successful entrepreneur who seeks to serve the community in government soon discovers that the familiar concept of efficiency is illusory when applied to the production and distribution of public services.

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While it is easy enough to calculate the input cost of public services (precisely what the annual budget of a local government does), it is perversely difficult to place a dollar value on the public services delivered to the community at that budgeted cost. For example, if the annual operating budget for a small community's fire department is \$50,000 (the input cost of labor, equipment,

etc.), what is the dollar value of the public service delivered by the fire department, especially if the department was not actually required to respond to any fires? Similarly, how would we place a dollar value on local government operation of the community library, its police force, or the community cemetery? While it is conceptually possible to measure the output value of public services, independent of the delivery cost, few small governments are staffed to conduct the requisite "cost-benefit" analyses. As a result, both local governments and their taxpayers tend to value their public services simply in terms of the cost of producing them. Thus, because there are no market values to establish measurable efficiency ratios for these general public services, efforts to increase efficiency usually mean nothing more than cost-cutting, accompanied by the hope that service levels and quality won't be "too" badly eroded.

Thinking About Costs in Local Government

If the purpose of consolidating governmental structures and functions is not to increase governmental efficiency, but simply to cut the costs of local government, two critical questions must be addressed: "What in fact are the costs of local government?"; and "What are the cost-reduction consequences for service delivery?"

While the answers to these questions will no doubt vary in detail from community to community, several points are relevant to any Montana community contemplating consolidation as a strategy to reduce or contain the tax impacts of the costs of their local government.

1. Of the total property tax collected in Montana, only 30-40% is distributed to municipal and county governments combined.¹ While the share of property tax revenue claimed by local government varies, the costs of local government generally comprise the smallest fraction of the county-wide tax burden. Thus, even substantial cuts in local government costs will translate into relatively modest reductions in the total property tax burden.

2. Because the costs of local government in Montana are already low (averaging \$169.39 per capita per year for the 128 incorporated municipalities and \$314.51 per capita per year for the 56 counties), the opportunity for substantial cost reduction by whatever means appears quite narrow, especially in the smaller units of local government.² Moreover, given that personnel costs frequently comprise as much as 60% of a local government's budget, a significant reduction in budget will usually entail personnel cuts. Since two-thirds of Montana's 128 incorporated municipalities employ fewer than 7 persons and three-fourths of all 56 counties employ fewer than 75 persons, it is difficult to imagine how significant cost reductions can be effected through consolidating these smaller units without abolishing certain community services altogether.³ In the smaller units of local government typical of Montana, the "chiefs" are usually also workers. Consequently, consolidating supervisory functions may well entail an actual loss of service delivery capability. With respect to the possibility of cost savings through the

. . . in the smaller units of local government typical of Montana, the "chiefs" are usually also workers. Consequently, the consolidation of supervisory functions may well entail an actual loss of service delivery capability.

consolidation of elected offices of local government, this same circumstance may well be true in county government, where elected department heads (Treasurer, Clerk and Recorder, etc.) are typically service delivers as well as supervisors of small staffs. At the municipal level, we note that most elected officials are either unpaid or receive token compensation for their part-time public service. Many, if not most, are "citizen volunteers", whose compensation imposes little, if any, costs on the taxpayers.

3. Collaborative use of expensive equipment is often cited as an anticipated cost-savings to be realized through consolidation of local government services. While there is no doubt that two road graders cost more than one, there are good reasons to look carefully at the scheduling of big ticket capital equipment in estimating the potential for cost-savings. For example, will the increased use of capital equipment result in higher maintenance costs and/or shorter equipment lifespans? Does the combined workload, e.g., the total miles of road to be plowed by both jurisdictions, in fact require the same investment in capital equipment, irrespective of single point management and scheduling? Even without considering the imperatives of political responsiveness, or equitable access to public services, the potential for cost-savings through consolidated equipment utilization can be illusory if the goal is to maintain service levels while cutting costs.

4. Capital replacement costs are seldom recognized in local government accounting and budgeting procedures. As a result, most public facilities (such as water and waste water treatment plants) are funded by incurring long-term public debt, which then becomes a fixed cost of the government, irrespective of any subsequent organizational consolidation. However, opportunities to reduce the cost of acquiring new public facilities (through, for example, shared occupancy of city-county office buildings, confinement facilities, or emergency dispatch facilities) can provide substantial long-term savings in construction and interest costs and, perhaps, operating costs. This strategy would seem especially relevant in those smaller counties where the county seat is the only incorporated municipality.

5. Finally, the assumption that fewer and, therefore, larger units of local government can provide services at less cost than several smaller units is of doubtful validity, especially considering the effect of "cost shifting" to be borne by the taxpayer. Between the largest and the smallest towns in Montana, for example, we find relatively small differences in the per capita costs of municipal government. Of greater significance, our data show that the per capita costs of municipal government are in fact lower in the smaller cities and towns.⁴ (Although the reverse appears to be true in Montana counties.) In a 1987 study, the National Advisory Commission on Intergovernmental Relations concluded that "...the existence of a large number of local government entities was not necessarily inefficient".⁵ This seems particularly applicable to large and sparsely populated states like Montana, where the "cost of distance" in service delivery must inevitably be borne either indirectly through the local

government or by shifting the costs directly to the taxpayer.

Under Montana law, a wide array of local government consolidation and cooperative service delivery options are available and have been applied. . .

In summary, given the relatively frugal nature of most local government in Montana, especially the smaller units of county and municipal government, a strategy to reduce annual operating costs through consolidation of governmental structures or

functions probably entails erosion of service levels or quality. However, where significant cost reduction is never-the-less imperative, (as it was in Butte-Silver Bow and Anaconda-Deer Lodge), a consolidation strategy may serve to minimize adverse service impacts. Given the evidence of increasing financial difficulty in many Montana cities and counties during the 1980's, cost reduction has become an imperative. Consolidation is, therefore, increasingly viewed by local officials as a feasible alternative to help reestablish their government's fiscal equilibrium. Under Montana law, a wide array of local government consolidation and cooperative service delivery options are available and have been applied by local officials and their voters.

Consolidation and Cooperation

When applied to local government structures and functions, the term "consolidation" usually suggests the merger

of two or more agencies into a single governmental entity. The consolidation of city and county government into a single government exercising the powers of both, and the consolidation of elected offices of county government are relevant examples permitted by Montana law. However, the wide array and flexibility of service delivery options available under Montana law suggests that, with respect to local government, the term "consolidation" can best be thought of as but one among a number of methods to achieve cost reduction through the cooperative delivery of local services. Certainly this wider perspective seems to have been the intent of Article XI of the 1972 Montana State Constitution (as will be discussed below). A review of the various service consolidation options now available under Montana law will demonstrate why it is helpful to differentiate between *structural consolidation* and *functional consolidation*.

STRUCTURAL CONSOLIDATION

Narrowly defined, consolidation of local government structures literally means reducing the number of local government entities by combining the duties and powers of one or more governments or offices into a single governmental entity. Compared to most other states,⁶ Montana law provides wide latitude in structural consolidation to local jurisdictions, enabling them to reshape existing structures of local government to meet local needs. With voter approval:

1. Adjoining counties can "merge" into a single county government (7-2-2701, 7-3-185);
2. Municipal and county governments can be consolidated into a single unit of local

government with combined powers and responsibilities (7-3-1101, 7-3-1201, 7-3-185 and 7-11-229 MCA);

3. The form and powers of any unit of local government can be modified either by alteration of statutorily defined structures or by the voter adoption of a local government charter which may provide for virtually any structural forms, powers, or consolidated arrangements not denied by law or by the Constitution (Art. XI, Sec. 3, Montana State Constitution and 7-3-103, 7-3-123 and 7-3-185 MCA).

Additionally, and without voter approval, boards of county commissioners are empowered to consolidate, by resolution, any two or more of the elected or appointed offices of county government and to combine their duties and powers (Art. XI, Sec. 3 Montana State Constitution and 7-4-2301 MCA).

The process of structural consolidation or alteration of local governments can be set in motion by any of three alternative means:

1. The decennial Voter Review process (Art. XI, Sec. 9, Montana State Constitution, as amended and 7-3-171 MCA);
2. Petition of the electorate typically requiring signatures of 15% of the registered voters (7-2-2702, 7-3-103, 7-3-123, 7-3-173 and 7-3-1204 MCA); or
3. Resolution of the elected governing body (7-3-103, 7-3-173 and 7-11-204 MCA).

A review of the application of these structural consolidation options by local

governments and their voters since the adoption of the 1972 Constitution reveals a general disinclination to use structural reform, and especially governmental consolidation, as a strategy to achieve economies in Montana local government. For example, during the 1976 and 1986 rounds of the Voter Review process, a combined total of 210 separate proposals for restructuring county and/or municipal government were offered to the voters by the elected Study Commissions. Of that number, 47 alterations were adopted by the voters, only two of which involved actual governmental consolidation and four of which involved significant structural alteration of the local government.⁷

Montana law provides wide latitude in structural consolidation to local jurisdictions, enabling them to reshape existing structures of local government to meet local needs.

In summary, despite a wide grant of constitutional and statutory authority to effect structural consolidation of local government, few changes have, in fact, occurred. The notable exceptions (consolidation of the Butte-Silver Bow governments and the Anaconda-Deer Lodge

governments) seem to make the point that only the most drastic economic circumstances have been sufficient to cause the voters to abandon familiar structures of local government. Similarly, major structural reform of four local governments, all involving the adoption of the "commission-manager" form to replace the familiar "mayor-council" form, were also associated

with economic dislocation, which appears to have created an imperative to reduce the costs of municipal government in these four communities.

The evident disinclination to use structural consolidation to achieve economies in local government is not peculiar to Montana. The literature reports that of the approximately 3,000 counties and 75,000 municipalities in the United States, local voters have approved only seventeen city-county consolidations since 1921. In Montana, the explanation of voter reluctance to adopt local government consolidation proposals is almost certainly rooted in a fundamental trust of familiar local government institutions, and perhaps a fear of loss of access to local institutions and a perceived erosion of service responsiveness to local demands. This seems particularly evident in Montana with respect to proposed consolidations of municipal and county governments. Our survey research indicates that rural residents trust their county government officials. They are inclined to oppose consolidation, in part because they fear the loss of access to and control of "their" unit of local government to a consolidated government "dominated" by municipal voters (even when great care is taken to guarantee districted rural representation in the consolidated government).

We conclude that, even though the Montana Constitution and enabling statutes convey broad powers to the community and its government to employ structural consolidation to meet local needs, only the most drastic circumstances will serve to precipitate significant consolidation of local government structures. This circumstance seems to lead state policy makers, in

FUNCTIONAL CONSOLIDATION

A strategy of *functional consolidation* seeks to achieve local government economies through locally-negotiated, cooperative arrangements among existing units of government or between governments and the private sector.

Functional consolidation permits: (1) joint action by participating governments on problems of common concern; (2) possible economies of scale in the delivery of services or purchasing of supplies; (3) the establishment of community-wide, intergovernmental service priorities; and (4) the retention of control over the cooperatively-provided services by duly elected officials. Additionally, even modest service consolidation initiatives, such as the consolidation of city and county emergency dispatch facilities, may well lead to and enable the exploration of wider areas of intergovernmental cooperation. Certainly Montana law imposes few significant barriers to local cooperation in virtually any area of public service delivery or governmental function.

There are four mechanisms available under Montana law that enable functional consolidation through cooperative service delivery. Each of these alternative mechanisms enabling local cooperation in the delivery of services is highlighted below.

Montana and elsewhere, to consider ways to induce or even compel structural consolidation of the smaller units of local government. This well-intentioned inclination to "fix" local government structures by preempting local prerogative raises a fundamental policy dilemma inherent in the American Federal system: *Can a community, or even a state for that matter, be entrusted to fashion its own structures of government?*

In Montana, at least, it would seem that the answer to the question is set forth in Article XI of the 1972 Constitution and the implementing statutes, which provide for a decennial Voter Review of the structures and powers of local government, and which convey broad powers to the voters to fashion virtually any structures of government they may choose. Let us agree that local voters may unwisely choose to be locally governed by "too many, too costly" local governmental structures. The remedy to that problem would seem to be best administered by those who are governed, and who thus bear both the tax burden and the ultimate power of free decision at the voting booth. By analogy, we hunch that no matter how efficient it might seem from the national perspective to "consolidate" North and South Dakota, or Montana and Wyoming for that matter, the remedy would probably not be acceptable to the patients. However, structural consolidation is, fortunately, by no means the only alternative available under Montana law to address economies in service delivery.

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Interlocal Agreements

The "Interlocal Cooperation Act" (set forth in 7 - 11 - 1 MCA) implements the broad grant of constitutional authority to local governments, enabling them to cooperate in the delivery of public services.⁸ The purpose of the Act, and the scope of authority it confers upon local government, is as remarkably broad as the constitutional mandate from which the Act is derived. Since 1985, approximately 100 interlocal agreements have been negotiated by Montana local government units under this authority.⁹ What is perhaps most interesting about these agreements is the range of services they encompass. While more than half of the interlocal agreements deal with public safety, (including law enforcement, dispatch, confinement facilities and fire protection), the remainder deal with such diverse service functions as land-use planning, refuse disposal, financial accounting, recreation facilities and junk vehicle disposal. On the other hand, it is surprising that few of these 100 agreements deal with cooperative purchasing arrangements, and that few agreements have been negotiated between local governments and either public schools or state agencies. There appears to be far greater potential under existing statutes for mutually advantageous use of interlocal agreements than heretofore realized. Impediments to expanded local application of cooperative service agreements do not appear to be inherent in existing law.

For example, negotiation and implementation of interlocal agreements are not unduly burdensome, at least with respect to procedural compliance. The interlocal agreement takes the form of a contract between the cooperating local agencies of

government. The essential provisions of the contract are set forth clearly and adequately in statute (7-11-105 MCA) which also requires that the Attorney General review and approve the interlocal agreement as to form and

compliance with the laws of Montana (7-11-106 MCA). Some might argue that this review requirement is itself burdensome or even repugnant to the principle of local control of local affairs. However, it may reasonably be argued that the majority of Montana's cities and counties are quite small, and that external review of the service contract by state legal counsel, (well-versed in the complex and occasionally contradictory service delivery provisions of Title 7 and other civil law relating to local government), is a prudent precaution.

Given this wide grant of statutory authority to local governments to develop mutually advantageous service-delivery arrangements, it is difficult to explain the underutilization of that authority, especially in view of the cost-cutting imperatives lately confronted by Montana local governments. We are inclined to speculate that wider use of this authority has been impeded primarily as a result of inadequate understanding of the possibilities for economies through functional consolidation of service delivery. For example, at the municipal level of government, we note that most mayors and council members are "citizen volunteers"; they experience a 30% turnover rate in local office, and preside over a small staff of

Impediments to expanded local application of cooperative service agreements do not appear to be inherent in existing law.

employees, few of whom possess any professional preparation for public service. Similarly, few of Montana's 56 counties employ professional administrators to oversee the day-to-day operations and finances of county government. In short, the greatest impediment to economies through the use of interlocal agreements may simply be the limited "management innovation" capacity of small units of local government. Thus, we are disinclined to believe that additional statutory authority will result in expanded cooperative service delivery.

An appropriate strategy to enable wider application of existing interlocal agreement authority must include training of local officials in the potential cost advantages and implementing procedures. Additionally, modest state incentives encouraging cooperative service delivery could be incorporated into existing or new grant programs related to local service delivery.

Consolidation and Transfer of Services

State law (both Part 2 and Part 3 of Chapter 11, Title 7) enables local voters to mandate functional consolidation of local government services through the initiative process. For example, 7-11-204 authorizes the establishment of an "Interlocal Cooperation Commission" by petition, requiring the signatures of only 10% of the qualified voters in a county. The Commission, in turn, is appointed by the local governing bodies and has the power to

make recommendations back to its local government concerning a wide array of service consolidation possibilities. The local government may act on these recommendations directly, or refer the service consolidation recommendations to the electorate. We know of only one occasion wherein an "Interlocal Cooperation Commission" has been established.

Multijurisdictional Service Districts

The authority provided to local governments to create multijurisdictional service districts is set forth at Part 11, Chapter 11, Title 7 MCA. In essence, multijurisdictional service districts enable cooperating local governments to provide a service not presently provided or to offer a higher level of service to those residing within the defined district (as distinct from the service levels provided to the community at large). To finance the additional increment of service, local governments are authorized to levy additional property taxes within the district. Protest of the establishment of the district by

50% of the district voters or by the owners of more than 50% of the taxable value of the district property will void the action.

Multijurisdictional service districts created by local governments under this authority may serve only those purposes set forth in law (7-11-1102), presently limited to: recreation programs; road, street and highway maintenance; libraries; jails; and dog control programs. We know of only a

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few applications of this authority, even though it would seem to offer an appropriate mechanism to address the apparently urgent need to modernize and consolidate rural confinement facilities.

Additional authority for local governments to create what amounts to a multijurisdictional service district for solid waste disposal and management is found at 7-13-203 and 75-10-112(5).

...broadening the range of permitted services through multi-jurisdictional service districts and minimizing the requirement for additional administrative boards may be the single most important improvement to existing law enabling functional consolidation in the cooperative delivery of local services.

Pursuant to 7-13-203, county commissioners are empowered to create "refuse disposal districts" that may include city and town jurisdictions, with their concurrence. We note that the establishment of such districts necessarily entails the creation of another level of government, as the law requires the county commissioners to appoint a board of directors with fairly broad powers to administer the refuse district. This inflexible requirement

Act (7-11-101) and in the Multijurisdictional Service District statute (7-11-1106).

In contrast, Part 1 Chapter 10 of Title 75, simply empowers local governments to "...cooperate with and enter into agreements with any persons (defined at 75-10-103 to include county and municipal governments) in order to implement an effective solid waste management system". A multijurisdictional "solid waste management system" established under this authority is apparently not encumbered by statutory requirements for specific administrative structures.

In summary, the multijurisdictional mechanisms which enable local governments to achieve functional consolidation through the creation of defined special service districts, with distinct and augmented revenue authority, appear adequate to meet local needs. There is some inconsistency in the procedural requirements of the several statutes, especially with respect to the required administrative structures governing such districts. It would also be helpful to local government officials if the services that can be provided by a multijurisdictional district, as defined in 7-11-1102, were expanded to include, for example, solid waste management. Indeed, given the broad constitutional language incorporated in the "Interlocal Cooperation Act", it is difficult to understand why any limitations on multijurisdictional services are included in this statute. We believe that broadening the range of permitted services through multijurisdictional service districts and minimizing the requirement for additional administrative boards may be the single most important improvement to existing law enabling functional consolidation in the cooperative delivery of local services.

appears to be at variance with the inherent objectives of functional consolidation, and is a departure from the administrative flexibility of interlocal cooperative ventures found both in the Interlocal Cooperation

Privatization of Local Government Services

As previously stated, a strategy of *functional consolidation* seeks to achieve economies through locally negotiated, cooperative arrangements among existing governmental units or between local governments and the private sector. Thus far we have reviewed cooperative service delivery mechanisms that involve local governmental agencies. Logically, it is but a small step to include in our analysis the possibility of cooperative service delivery relationships between local governments and the private sector. The term "privatization" has apparently come into existence to describe this alternative service delivery strategy in which the government retains the responsibility for providing the service but engages non-governmental entities to actually deliver the service. While some argue that this strategy increases "governmental efficiency", others point out that the actual service cost to the customer may well increase.¹⁰

At bottom, it may be helpful to think about the concept of privatization in terms of the local government "shedding costs" by discontinuing direct service delivery. Cost-shedding through privatization does not mean that the service will no longer be available. That may be the result, especially in rural or remote communities where profit or growth opportunities for the private firm may be marginal and reinvestment in

delivery infrastructure and equipment by the local government may not be feasible.¹¹

A number of privatization strategies have been employed for years and are available to Montana local governments seeking to shed service delivery costs.¹² Perhaps the two most commonly used privatization strategies are "contracting for services" and "volunteer services".

The active development, support, encouragement and recognition of a community's corps of volunteers is perhaps the single most promising strategy that could be adopted by a local government to achieve and sustain economies in service delivery.

Contracting for Services:

Nationally, this is probably the most common form of privatization of services. Local government retains responsibility for definition of service delivery levels and standards, but contracts with a private firm or non-profit organization for the actual delivery of services to the community (e.g. garbage collection) or with the government itself (e.g. professional engineering services). An important characteristic of contracting for services is that the service deliverer is paid by the government, which may or may not result in an actual reduction in real governmental costs, when compared to the costs of direct service delivery by the government itself. Certainly, if the purpose of contracting is to reduce the cost of local government, a cost

comparison of in-house service delivery should be conducted incident and prior to the decision to contract for services. Additionally, the service delivery standards for the contractor should also be negotiated and incorporated into the contract, to assure responsiveness to community needs. Moreover, government oversight of and

public accountability for contracted service delivery may be especially important if the nature of the contracted service, such as solid or hazardous waste disposal, is such that the long-term or cumulative effects of improper service delivery can create adverse community impacts and unrecognized, deferred liability.¹³

We note that Montana law enables both counties and municipalities to enter into service contracts (7-1-2103, 7-1-4124 and 7-5-4301).

Volunteer Services: The role of volunteers, either as individuals or as non-profit organizations, in community service delivery has a long and admirable history in Montana. This form of privatization of service delivery is perhaps most commonly associated with rural volunteer fire departments, public libraries and community recreation programs. But, in fact, volunteer services are important cost-reducing contributions to local government, encompassing such diverse service areas as senior citizen centers and programs, nursing home and hospital services, animal control and protection services, counseling and family disorder programs, as well as direct delivery assistance programs for indigent transients and others in temporary distress. The active development, support, encouragement and recognition of a community's corps of volunteers is perhaps the single most promising strategy that could be adopted by a local government to achieve and sustain economies in service delivery. We wonder if enough attention has been focused by state and local policy makers on this long established and enormously valuable dimension of

"privatization" of local government service delivery.

CONCLUSIONS

The principal conclusion of this review of alternative approaches to local government consolidation and cooperation in the delivery of essential services is this: local officials and local voters are best positioned to make the hard decisions effecting the well

...local officials and local voters are best positioned to make the hard decisions effecting the well being and, perhaps, survival of their communities.

being and, perhaps, survival of their communities. The State Constitution and existing legislation provide local authorities and their voters ample authority to achieve economies in service delivery through either "structural or functional consolidation".

Greater use of already existing law that now enables cooperative service delivery through interlocal agreements, multijurisdictional districts and privatization will probably increase as a result of the cost-cutting imperatives imposed on local governments by declining local revenues. The greatest impediment to more extensive use of cooperative service delivery is not limiting statutes but, rather, the limited "management innovation capacity" inherent in the smaller units of local government. The most efficacious remedy to this situation is, therefore, not more enabling statutes but, rather, additional training of local officials combined with modest state incentives

encouraging local cooperation in service delivery.

It is reasonably clear that, during the 1990's, should Montana's smaller units of county and municipal government fail to exploit existing law enabling cooperative service arrangements, they risk the imperative of structural consolidation by the end of this decade. Precisely because the stakes are so high we believe that such fundamental decisions can best be taken at the local level by local governments and their voters.

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SOLID WASTE MANAGEMENT OPTIONS FOR MONTANA

James Goehring, Montana State University

A great deal of national attention is now being directed at a range of garbage disposal practices, from simple collection and transportation of waste to the complex public policy issues of recycling, landfilling and incineration.

The state of Montana is not immune from waste disposal controversies. Media stories that Montana is the "last best place" to dump garbage from other states have caused residents to question current policies and practices.

As a result, a number of communities in the state are considering possible responses

to the question: "How do we dispose of our solid waste in a way that is cost-effective and environmentally safe?" Three recent public opinion surveys in Montana indicate the direction that citizens think solid waste management should take.

Citizen Concerns

In a random poll conducted by the city of Bozeman in December of 1990, 350 residents serviced by city garbage collection were sent surveys, of which 244 (70%) were completed and returned. Forty percent of the respondents said they would be willing to pay 10% more than they are currently

A review of solid waste disposal concerns and management options for the collection, transportation, recycling, landfilling and incineration of wastes serves as a preface to the identification of critical problems that will face Montana policy makers in the coming decade. Four suggestions for policy action are identified, including 1) an expanded state leadership role; 2) improved funding levels for state solid waste management; 3) incentives to facilitate recycling; and 4) assistance to local governments for implementation of waste reduction programs. Finally, to augment existing knowledge, the implications of a proposed state policy shift towards private sector solid waste management are discussed in relation to several critical questions raised by such a change.

paying for garbage collection and disposal to enable the city to develop and operate a recycling program. Sixty-seven percent of those responding said they would be willing to pay 5% more.

The respondents identified a number of obstacles affecting their ability to recycle:

- a lack of outlets willing to accept recyclables (70%)
- a lack of information about what is recyclable and how to recycle it (50%)
- a lack of storage space (34%)
- the inconvenience of sorting and storing recyclables and putting them out for pick-up (33%)
- a lack of economic incentives (25%)

A more extensive study was conducted by A&A Research in September of 1989 for the Flathead County Solid Waste District. This survey consisted of 600 random telephone contacts, a systematic survey of 151 businesses owners or managers in Flathead County, 91 personal interviews with people at dumpster sites and 234 personal interviews at the county landfill.

Of those surveyed, 37% felt recycling should receive the highest priority in managing Flathead County solid waste. Waste-to-energy facilities were the highest priority to 34% of the respondents, and 20% identified new landfill sites as the priority county concern.

When asked to select a statement from a variety of alternatives which best described the waste disposal situation in Flathead County, thirty-six percent felt "Waste disposal is a minor problem at the present time and will become a major problem

during the next 12-15 years." Thirty-three percent selected, "Waste disposal is not a problem at the present time but it will become a problem during the next 12-15 years."

Considering that the expected life of the Flathead County landfill is 12-15 years, the results indicated that a large majority of those surveyed are aware of the growing importance of solid waste disposal practices for their county's future.

A third set of insights into citizen attitudes resulted from a day long policy conference sponsored by the Local Government Center at Montana State University on December 8, 1990. Fifty-six participants from local governments, interest groups, private industry and environmental groups met in small groups to discuss Montana Solid Waste Management Policy. The group was asked: "What issues, concerns, procedures or policies do you think need to be included in a comprehensive statewide solid waste management plan?"

In order of priority, the solid waste policy issues identified by the participants were:

- the need for education programs
- the need to develop markets for recyclables
- a move to volume-based rates for disposal
- the need for incentives (for those who do or do not recycle)
- the need for appropriate state involvement
- the need for public/private/business cooperation
- a move toward source reduction of garbage

- loans/grants available for recycling programs
- need for community training programs
- a need to close the recycling loops by using recycled products
- more rural collection and recycling programs
- a need to deal with household and hazardous wastes.

These citizen concerns, amplified by media attention, reflect the growing focus of public attention on two closely related issues: (1) the importation of wastes into the state for incineration or landfilling; and (2) new federal regulations regarding solid waste disposal.

Waste Importation

At least three companies have expressed interest in importing medical wastes into Montana for the purpose of incineration. Since Montana is one of a handful of states without comprehensive standards regulating the incineration of wastes or medical wastes, the intent of these firms is to import these wastes from states that have much more restrictive standards.

The importation of solid wastes for burial is a closely related concern. At least three inquiries have been received by the state to import wastes from urban areas in other states for final burial in Montana. Since the late 1940s and early 1950s landfilling has been the leading form of solid waste disposal; cost, convenience, and inexpensive, undeveloped land on the outskirts of cities have made it the preferred method.

According to the Environmental Protection Agency (EPA) at least 80% of all wastes are landfilled. However, urban areas are now running out of room and many urban states have been facing waste disposal problems for a number of years.

In addition to sheer volume, many states are identifying and working to address other problems caused by buried wastes. For example, high precipitation levels and high groundwater tables can lead to groundwater contamination problems from landfills caused by chemicals leaching from buried

garbage to underlying aquifers. Yet one EPA study found that only 25% of all municipalities have tested nearby waterways, even though nearly half of their landfills have drinking water wells within one mile. Nationwide investigations of groundwater problems and air quality problems (from methane gas released by garbage decomposing in landfills) are revealing the far-reaching implications of waste disposal practices.

...urban areas are now running out of room and many urban states have been facing waste disposal problems for a number of years.

Federal Regulations

A third category of concern involves changing Federal regulations regarding solid waste disposal. Federal government involvement in solid waste disposal goes back at least 25 years. In 1965, the Federal Solid Waste Disposal Act (SWDA) was passed to improve solid waste disposal methods. In 1970, SWDA was amended by the Resource Conservation and Recovery Act (RCRA). The most recent 1984 amendments to RCRA significantly expanded its scope and requirements. These revisions included measures for

municipal solid waste disposal under Subtitle D. Subtitle D, in particular, will have long-term impacts on the way that states and localities manage their solid wastes.

Past State Action

During the 1989 Montana legislative session, a joint resolution of the Senate and House (SJR 19) directed the Environmental Quality Council (EQC) to study the regulation and management of solid waste, and related effects on groundwater quality and air quality. The measure also instituted a two-year moratorium on the importation of wastes. The resolution required the EQC to report its findings and recommendations to the 1991 Legislative session.

To assist the Council with this study, in November of 1989 the EQC appointed a sixteen-member committee, made up of individuals interested or involved in solid waste management, to develop and analyze policy alternatives for solid waste regulation. This Solid Waste Management Advisory Committee worked actively in the state and, based on its investigation, prepared a number of legislative proposals for the EQC to present to the 1991 session of the Legislature. These proposals, along with others from citizen groups, environmental groups, local governments and private industry, have focused a great deal of attention on solid waste disposal issues during this legislative session.

To understand what an appropriate response by state policy makers might be, it is necessary to understand what Montanans must be prepared to respond to: new, federal Subtitle D regulations.

SUBTITLE D REGULATIONS

New regulations under Subtitle D of the Resource Conservation and Recovery Act (RCRA) are currently being promulgated in Washington, D.C.. These regulations are receiving a great deal of attention from state and local governments because of their long term implications for solid waste disposal. At this point, no one knows for sure what final form these regulations will take. If they ultimately resemble initial drafts, Subtitle D will mandate major changes in solid waste disposal practices.

Among the topics covered by the regulations are location of landfills, operating procedures for landfills and monitoring

requirements for operators. Two areas of the regulations with long-term impacts for landfill operators are the post-closure requirements and financial assurance requirements. The first requires an operator of a landfill to maintain and monitor the final cover and any gas or groundwater discharge for a minimum of thirty years after landfill closure. The second requires the landfill owner or operator, including local governments, to demonstrate the financial capacity necessary to perform closure and post-closure activities or remedial action. The dollar amount of financial assurance is to be calculated by estimating the cost of hiring a third party to conduct the required activity.

...60% of Montana's communities will be disproportionately and severely impacted by the new Subtitle D

Impact of Subtitle D on Montana

The economic impact of these regulations is currently unknown. The EPA estimates that costs will run between \$400 million to \$3 billion annually nationwide, depending on the final form of the rules. The actual economic impact on a given municipality will vary, but the preamble to Subtitle D acknowledges that economic impacts of compliance will be proportionally greater on smaller communities, with the most severe impacts being experienced by local governments serving less than 1,000 people.

A review of Montana communities gives an idea of the potential impact on the state. Montana has nine First Class Cities (10,000 or more), four Second Class Cities (5,000-10,000), thirty-eight Third Class Cities (1,000-5,000), and seventy-seven Towns (less than 1,000). These numbers show that 60% of Montana's communities will be disproportionately and severely impacted by the new Subtitle D regulations.

At this point, it appears communities will be unable to avoid additional landfill costs. The projected cost of siting a new landfill is expected to increase from a current average of \$100,000 to \$1.2 million. Even communities that decide to forego the expense of siting a new landfill will still bear increased transportation and disposal costs at new, state-of-the-art landfills that will be located at more distant sites.

In addition to costs for local governments, the state will experience other expenses. Subtitle D regulations call for a high degree of state involvement and oversight in solid waste disposal. States have always had the ability to enact requirements that are more restrictive than federal standards, but at a

minimum they must meet federal requirements. Currently the state Solid Waste Bureau has a field staff of 2.5 FTE to cover both solid and hazardous waste. As of January 1991, the department has 14 landfill applications pending and an annual budget of \$298,000 to cover 90 Class II landfills throughout the state.

According to Subtitle D regulations, states without a clearly defined solid waste plan will be subject to federal oversight regulation that offers little, if any, flexibility in interpretation. Some states have already implemented solid waste plans that define statewide goals. Montana has not.

The far-reaching nature of these regulations is revealed in these references to state responsibility under Subtitle D:

Landfill operators must also comply with any regulations developed under a State Implementation Plan for air emission control.

The [Subtitle D] regulations use a design performance standard to determine whether a landfill will require a liner, leachate collection system or an engineered final cover system. The state is required to establish a design goal for landfills...

A monitoring program must be established and the design standard must be achieved either at a point in the aquifer at the landfill boundary or at an alternative boundary specified by the state.

Corrective action for groundwater pollution from landfills will require first an assessment of the problem, the potential effectiveness of control measures, the time required to complete the corrective action and estimation of the cost of implementation and other

factors. Based on the assessment, the state will be required to select a remedy for implementation.

Future State Concerns Regarding Solid Waste

Based on these new federal standards, current solid waste disposal practices in Montana, and the desire of citizens and communities to deal with wastes, four problem areas must be addressed by the state. These are:

1. How will Montana achieve compliance with the new Subtitle D regulations?
2. How will the state fund mandated oversight and regulation of landfilling activities?
3. What state policy will be formulated to address current and future requests to import wastes into the state for burial or incineration?
4. What type of state direction will be provided for those communities attempting to comply with the new regulations and seeking to implement new programs that decrease the amount of waste generated in their locality?

STATE AND LOCAL GOVERNMENT COMPLIANCE WITH SUBTITLE D

A 1988 EPA report states that small cities will be particularly impacted by the significant costs of recent and future

environmental regulations. The report suggests that federal and state governments may have to consider new ways to help those communities affected by about 85 major rules (including new controls on pesticides, drinking water quality, sewage treatment and garbage disposal).

Federal budget deficits in the 1980s have dictated a downward trend in the amount of environmental grant money available to local governments. Consequently, local spending has risen dramatically, as those governments strive to meet higher regulatory standards.

It is always hard to budget for new regulatory costs. In the area of solid waste, the federal government may receive the blame for new regulations that communities will have to fund. State and local government leaders, however, should not overlook the fact that environmental awareness is at an all-time high. Rising expectations from citizens about what government can and

should do to protect the environment may help to take some of the sting out of cost increases.

State Funding for Solid Waste

Montana can expect a flurry of activity once the final version of the new federal regulations is released. Communities are allowed eighteen months to decide whether they want to close existing landfills or institute the necessary measures to continue

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operation under the new guidelines. Many community landfills will simply be closed. New landfills will require a more extensive state role in siting and monitoring once they are in operation.

New landfill proposals will require more extensive state review for siting and additional state monitoring once they are in operation.

Additional costs can be expected from reeducating landfill operators and communities regarding new solid waste practices. With these added responsibilities, more money will need to be

allocated to increase staffing levels at the appropriate state agencies.

Waste Importation

Montana's initial response to the proposals to import wastes into the state probably discouraged some of the applicants. Statewide surveys have shown there is a high level of public opposition to waste importation. Montana will probably not be inundated with garbage from outside the state. However, any discussion of the issue is certain to be emotionally charged.

On the other hand, a number of rural eastern communities have expressed interest in waste importation as a mechanism for economic development. At least one private company's proposal included a dollar per ton fee for buried or incinerated wastes, and an impact fee to offset adverse community impacts of development. Small communities' interest in such proposals is not surprising, considering that the volume of garbage proposed for some of these

projects would yield a sizable amount of revenue.

At a minimum, the state will need to establish standards for waste importation. The current importation moratorium is viewed by many as unconstitutional, due to interference with interstate commerce. The court's view at this point appears to be that states cannot require more of waste importers than they do of local waste generators.

Direction for Local Governments

Some communities have already started to implement recycling or composting programs to cope with the increasing volume of garbage and waning life of landfills. Many of these programs are voluntary, and have not gone through the formal licensing requirements required of garbage haulers. Licensing requirements by the Public Service Commission may limit the ability of communities to provide comprehensive collection of both garbage and recyclables.

Current solid waste district laws set forth in Title 7 (Montana Code Annotated, MCA) may also limit the ability of counties to institute multicounty districts. Also, Title 75 (MCA) may need revision in order to accommodate innovative local programs.

Policy Options

Public policy concerns regarding solid waste management and disposal in the coming decades are just beginning to emerge in Montana. A number of issues will need to be addressed if a comprehensive policy response is to be developed for the state. The foregoing

review of past, present, and future solid-waste management concerns suggests four options that might comprise a comprehensive, state policy response.

I. Take a strong leadership role in defining solid waste management practices including policy decisions which would:

- a. Establish long-term policy goals that include waste reduction goals.*
- b. Expand the governor's program to include the use of recycled products.*
- c. Revise siting criteria for state landfills.*
- d. Revise hauling standards and Public Service Commission regulations for garbage haulers and recycling haulers.*
- e. Establish standards concerning the importation of solid waste.*
- f. Establish standards to deal with special wastes and hazardous wastes. For the long term, a state-sponsored program for hazardous waste collection is badly needed.*
- g. Prepare siting guidelines for incinerators and ash disposal.*

II. Increase the level of funding for the Department of Solid and Hazardous Wastes.

III. Provide incentives for recycling activities, for using recycled products, and for reuse or added-value efforts for recyclables.

IV. Provide assistance, loans, or grants to local governments prepared to implement waste reduction or education programs.

A lengthy debate on solid waste policy is almost certain, considering the amount of attention this topic attracts and the nature of the options under consideration.

A comprehensive policy response would allow local governments to begin planning for long-term community needs, and would also help protect air and water quality in the state.

Many states across the country have laid a strong foundation with their solid waste disposal programs. Montana is in the fortunate position of being able to learn from other experiences, and to pick and choose accordingly for a program that will serve Montana for years to come.

THE NEXT GENERATION OF SOLID WASTE DISPOSAL: A PUBLIC OR PRIVATE TASK?

Current law states that solid waste management systems shall be developed, financed, planned, designed, constructed and operated for the benefit of the people of the Montana (75-10-102). The 1991 Legislature has been considering a number of proposals related to the manner in which solid waste collection, transportation and disposal will be accomplished in the future.

Solid waste disposal activities are the responsibility of local governments, who are legally obligated to provide for the health, safety and welfare of their citizens. Current practice allows a local government to

A comprehensive policy response would allow local governments to begin planning for their long term community needs.

determine whether solid waste services will be publicly operated or privatized.

Statutory provisions already in place encourage local governments to utilize the technical expertise of the private sector in establishing their solid waste practices. Current law under title 75-10-102 states: *"Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing and marketing functions related to solid waste management systems"*.

Draft legislation was proposed that would change the current balance of responsibility between the public and private sector. The legislation was an outgrowth of a recent analysis undertaken by the Environmental Quality Council (EQC), which was given the responsibility of reviewing existing solid waste practices by the 1989 Legislature.

As a part of its analysis, the Council recommended that the balance of preferred service delivery be changed. To institute this recommendation, the EQC prepared a bill that would establish a preference for privately operated solid waste management systems.

...some local government leaders have expressed reservations, because a "preference to private industry if costs and services are substantially equal to alternate publicly-operated services" raises a number of important questions.

Under the proposed legislation, local governments would retain primary responsibility for adequate solid waste management. The state would also maintain its authority to approve plans for proposed solid waste management systems submitted by a local government. The new legislation, however, would provide a procedure, outlined by the state solid waste management plan, for local governments to determine if solid waste management systems should be operated by local governments or by private industry. These procedures would determine the extent that private industry will be utilized in solid waste management systems, and according to the proposed legislative change, would provide "a preference to private industry if costs and services are substantially equal to alternate publicly-operated services".

No one denies that state and local governments should work closely with private industry to design optimal solutions for solid waste disposal. The private sector no doubt has the technical expertise and experience to help communities design the best possible plan. Nevertheless, some local government leaders have expressed reservations, because a *"preference to private industry if costs and services are substantially equal to alternate publicly-operated services"* raises a number of important questions.

Foremost, privatization of solid waste disposal services raises the critical issue of accountability. *Where private firms enter into contracts with governments to provide some measure of solid waste disposal services, who will be financially, legally and environmentally liable should problems occur?*

A second consideration relates to equitable service delivery. The primary citizen concern for solid waste management is likely to be that adequate service be provided at the least possible cost. *Under a private preference system could all communities in the state achieve an adequate level of service for their citizens? Will the private sector be able or willing to serve the needs of all communities in the state?* Although privatization of services has proven merit in communities with a larger population base to support a break-even level of service, concerns exist that smaller communities may not enjoy comparable access to private sector contracting at competitive rates.

A third concern is that new changes in federal regulation of solid waste practices under Subtitle D will push many communities to consider regional or multijurisdictional approaches to solid waste disposal. These cooperative approaches have the potential to allow communities to share the financing of new programs, and to provide a service area and customer base large enough to make these expenditures for services feasible. *Does current, and will proposed state law provide the needed flexibility for Montana communities to enter into multijurisdictional contractual agreements that will allow for the development of workable solid waste management systems?*

The balance of the discussion will explore the foregoing considerations in greater depth.

Accountability

Changes in current solid waste practices have come about because of environmental concerns linking solid waste disposal with

groundwater quality and air quality. Proposed policy changes supporting revised practices will not come cheap. In order to develop financing for the mandated program improvements, state and local governments will be pressured to explore a variety of possible solid waste disposal alternatives. Public-private contracts and multijurisdictional partnerships promise to be prominent among the alternatives considered. As these issues are discussed,

...local governments cannot wash their hands of the responsibilities and liabilities of contracted services.

legal concerns regarding accountability must be addressed. For example, how will new policies and programs prevent unsafe solid waste disposal practices from occurring? How will we assess the locus of

responsibility and liability, in the event accidents or mishaps occur after the fact?

In and of itself, private contracting offers no new protection to government. If the contractor errs, the government may share not only the blame but also the liability. Critics claim that private companies have little incentive to protect the environmental welfare of the local community. Others argue that public ownership results in only a perceived, but not necessarily genuine, level of protection or control.

Accountability then, must be addressed in order to assess public versus private preference. A best-case scenario for privatization of solid waste disposal services would be a program specifically designed to meet a community's needs. Such a program would be free of cumbersome procedures

that might inhibit competitive pressure to perform contractual obligations. It would allow private sector contractors to do their job, receive their share of the profits, and meet the needs of the community in the long term.

Regardless, local governments cannot wash their hands of the responsibilities and liabilities of contracted services. Public agencies must maintain control over service planning and quality assurance. It is likely that where solid waste disposal services are "contracted out" to private firms, governments (local and/or state) will bear the responsibility of defining the terms by which performance and proper environmental safeguards are guaranteed.

Local governments can improve their oversight through properly negotiated and administered contracts. Such agreements may include provisions to assure adequate monitoring, frequent on-site inspections, and public and media access. To minimize risks, such contracts may be framed as "strong" contracts with built-

...forethought is essential so that governments and their contractors may plan for their level of accountability.

in renewal procedures, performance bonds and possible buy-out options.

The risks involved in a public/private project are often spelled out in the contractual agreement upon which it is based. Items that generally fall under the vendor's control (the private contractor) and

for which it should bear the risk include technological concerns and related business risks. Such items might include:

- Constructing the facility for a fixed price.
- Operating the facility for a fixed operating charge subject to escalation and certain pass-through costs beyond the vendor's control, such as utilities, insurance, and property taxes.
- Processing a certain amount of waste.
- Operating the facility within the limitations established by the environmental permits.

Items that are generally beyond the vendor's control, and for which the public generally assumes responsibility, include:

- Future changes in regulatory requirements at either the state or federal level.
- Increases or decreases in the amount or type of wastes.

Other risks are often negotiated in the contract. But even when negotiated risks are assumed by the private sector, the public receiving the services can expect to pay for the increased costs associated with them. A measure of assurance can be obtained through public sector definition of the level of risk each party is willing to accept. Hence, forethought is essential so that governments and their contractors may plan for their level of accountability.

One advantage of public/private cooperation is that their combined resources can advance a solid waste disposal project through the various stages of development and implementation more efficiently. The public sector pays for the expertise of the

private sector, and in return, the private sector role is shaped and defined by public sector decisions controlling siting, permitting processes and, often times, financing.

Regardless of the forethought and precautionary measures taken, communities should be forewarned that even a signed contract in hand may not make the issue of who must pay when things go wrong "black and white".

Accountability may ultimately be resolved on a case-specific basis in the courts.

Service Delivery

Controlling Costs. Whether the public or a private company provides the solid waste disposal service, the consumer seeks an adequate level of service at the lowest possible cost.

Communities often turn to contracting services when they are faced with increasing costs and/or decreasing revenues. Currently, many communities see a rise in not only the amount but also the diversity of services expected by citizens. This is especially true in Montana, where a number of rural areas confront new development and an influx of citizens. Many of these new citizens come from more urban areas, and expect a level of service beyond that offered by the Montana community.

Such demands for services come at a cost compounded by the increased regulatory standards of the state and federal

governments. According to a bulletin published by the Environmental Protection Agency in October of 1988, the regulatory costs related to stronger federal standards for environmental regulation are expected to drive up the cost of water, wastewater and solid waste disposal anywhere from 50 to 400 percent.

With these and other changes on the horizon, it is logical to consider the capabilities that the private sector can offer to provide varying levels of solid waste disposal service to Montana communities. However, before a conscious or even a mandatory policy shift institutes a preference for private sector solid waste management, the public would be well-served by careful consideration of all of the related factors which may have implications for local governments' abilities to provide for the health, safety and welfare of their citizens now and in the future. Some important considerations follow

Assuring Equitable Distribution of Services.

Some of the foremost concerns related to private contracting of solid waste disposal services relate to disparities in geographic population distribution. The community of Billings for example, accounts for about 20% of all the solid waste disposed of in the state. Compare this level of service to other communities or even counties in the state. If a preference is given to the private sector for waste disposal, can smaller,

If a preference is given to the private sector for waste disposal, can smaller, geographically isolated communities be guaranteed the same level of service at a price comparable to that of the community with a smaller service area and a greater population base?

geographically isolated communities be guaranteed the same level of service at a price comparable to that of the community with a more compact service area and a greater population base?

This question is founded on an assumption which may or may not be true: private solid waste contractors will want only "the cream of the business". Because it is likely that collection and disposal of waste in larger urban communities reaches a scale of service where long-term investment and a guaranteed rate of return makes the venture a promising one, it might be assumed that urban communities would have no trouble receiving competitive bids for their solid waste disposal proposals. Smaller communities, however, may be expected to pay more, because they service smaller populations in more isolated regions. On the other hand, it is possible that smaller communities may be able to counteract this tendency by working with neighboring communities to develop appealing bid packages to attract the attention of private contractors.

Instituting Flexible Policies

The Decision-Makers Guide to Solid Waste Management, an EPA publication, states that a regional approach to landfilling allows communities to provide large-scale services not otherwise financially feasible. This approach allows communities to centralize waste processing and disposal, and to reduce the number of small, inefficient, environmentally suboptimal systems operating in an area.

If Montana decides to emphasize private sector management of solid waste, communities need to have as much latitude

as possible to allow for joint venturing. Some options are available for communities to cooperate financing or managing solid waste systems. They include legal structures such as authorities, special districts, nonprofit public corporations, multi-community cooperatives and inter-governmental agreements. (To learn the extent that these options are available in Montana, see the previous article: "Consolidation and Cooperation in Local Government Service Delivery".)

Regardless of the institutional mechanism, a variety of possible service provision options may increase the size of the "consumer pie". Private sector contracts would become more attractive to potential bidders and the service package would be large enough to optimize service levels. The key word is *choice*. Service users and their local governments must be given a range of options from which choose.

The key word is choice. Service users and their local governments must be given a range of options from which to choose.

An Ideal Scenario. One variable that can make privatization appear attractive is that, under ideal circumstances, competition for contracts pressures firms to propose least-cost services. Ideally this involves two, three, or more private firms who bid against each other for the same contract. The one who can provide the most service for the least cost wins.

What competitive bidding does, however, is to place a great deal of responsibility on the public entity charged with letting the

contract. If the kind of services expected are not explicitly defined and clarified, the community may end up with a program that falls short of meeting both community needs and statutory mandates. Furthermore, in reality the "purely" competitive selection process does not always exist.

In short, even after a public/private contract is signed, there is still a need for the community to maintain control over service planning and quality assurance. Several practical and institutional factors inhibit Montana communities' abilities to realize the foregoing "ideal competitive" privatization scenario.

The Real Setting. Montana communities are highly dependant on the Public Service Commission (PSC) to set rates and grant licenses. Currently the PSC has the authority to grant licenses for waste haulers. Past practice has been for the PSC to limit licenses to avoid costly duplication of services. In markets where competition is weak to begin with, competition may be further eroded over time as initial suppliers of services gain cumulative insider advantages. Despite a "hungry" firm's attempt to break into new markets or to take over markets from established contractors, costly licensing requirements characteristic of current practices may impede an emerging firm's ability to compete.

Solid waste disposal regulations are another area that may cause future problems under a new policy regime which

stresses "private preference". Communities providing solid waste services are required to comply with federal and state regulations, as are private contractors. However, unlike private contractors, public providers are not in direct competition with one another. If one community strives only to meet minimum standards, it will be of little concern to another community, as long as both enjoy the same latitude.

On the other hand, in the private sector, if one company is able to get around certain regulations or avoid them entirely, their margin of profit can be expected to increase, providing them with what might be termed "an unfair advantage".

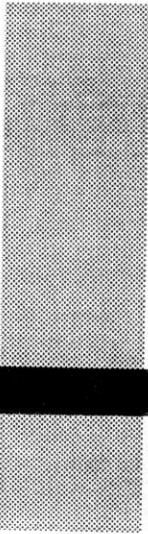
For this reason, private business may become the strongest voice for increased regulatory oversight, in order to maintain a level playing field among the competition. Private firms will be able to meet these increased regulatory costs by passing them on to their customers. If this occurs, public providers might see their costs increase, as environmental safeguards become even more highly refined.

One final component of community service by private contract is the issue of public participation in the critical policy making decisions which affect the public health and safety of a community. Montana law prescribes a relatively wide degree of information disclosure. Private firms have few such obligations. They are not required to conduct open proceedings, or to make

...one major concern raised by the privatization of solid waste disposal services is that of community participation. What might be the consequences of the removal of decisions regarding solid waste disposal from the public arena?

known the reasons for their decisions. Hence, one major concern raised by the privatization of solid waste disposal services is that of community participation. What might be the consequences of the removal of decisions regarding solid waste disposal from the public arena? Would it diminish individual and community participation? Since one main component of successful solid waste and recycling programs across the county is citizen involvement and participation, this issue will need to be addressed.

In conclusion, it may be possible to address the concern for open and responsive decision making through explicit terms set forth in a public/private contract. As regards the issues of accountability, liability and service delivery, the needs of the local government and the citizens will best be served if provisions are made for continued public involvement in solid waste disposal policy.



THE IMPACT OF INTEREST RATES ON THE AFFORDABILITY OF WATER AND WASTEWATER SYSTEM IMPROVEMENTS IN SMALL MONTANA MUNICIPALITIES

Dr. Richard L. Haines, Montana State University

Background

In October of 1990, the Local Government Assistance Division of the Montana Department of Commerce issued a special report concerning the degree to which small Montana communities could afford to service the debt entailed in borrowing or issuing bonds for new construction or major upgrading of wastewater treatment plants. Based on an in-depth analysis of the needs and financial condition of four unincorporated

communities, the report concluded that even with the maximum available grant subsidies and low-interest financing, not one of these communities could afford such a debt burden. Based on this analysis and review of related studies, it was expected that this conclusion would apply to many of Montana's smaller incorporated and unincorporated communities.

In view of the increasing difficulty small Montana communities will face in meeting current wastewater treatment standards,

This report assesses the extent to which municipalities in Montana can afford to service the anticipated long-term debt entailed in meeting state and federal mandates to build or upgrade their water and wastewater treatment systems. It extends a recent, related Montana Department of Commerce special report to the entire population of incorporated cities and towns in Montana, and supports the Department of Commerce's conclusion: a significant number of smaller cities and towns will not benefit from existing or proposed state programs that provide low interest loans, because, whatever the rate of interest, these communities lack the financial capacity to service such relatively large amounts of debt. It suggests that either drastic cost reduction measures should be devised, or a system of supplemental grants and other financial adjustments should be implemented for small communities, to avoid further deterioration of their water and wastewater systems, decline in community livability, and likely future construction costs and regulatory penalties.

several strategies for reducing the burden of project costs were discussed in the state report. They include subsidizing interest rates, extending the term of bonds, employing less expensive innovative technologies, and instituting a system of grants to augment small communities' financial capacity. The analysis at hand focuses on the first issue: would providing lower-than-market price interest rates, by itself, make a significant difference in the degree to which Montana communities can afford to meet wastewater treatment standards?

For the purpose of this analysis, the specific question asked is: *How many of Montana's 128 cities and towns, with subsidized interest rates, could afford to borrow \$1,000,000 for new construction or upgrading of a water or wastewater treatment facility under existing financial and demographic conditions?* This extends the Department of Commerce's discussion of four small unincorporated communities to all incorporated cities and towns in Montana, focusing on those with 2,500 population and less.

Research Design

To assess affordability under current conditions, this analysis assumes that each Montana community must issue revenue bonds of \$1,000,000, to be amortized over twenty years. For communities of 500 population or less, this amount is assumed to cover the cost of a new water or sewer facility using conventional technology. In somewhat larger towns and cities, this amount can fund a major upgrade of an existing plant.

The criterion used to determine whether a community can meet the payments of principal and interest on this amount of debt is a measure of annual debt-service costs per household, as a percent of average annual household income. According to the Department of Commerce report, a common standard to assess affordability, set by Montana's Community Development Block Grant (CDBG) program, is that the combined debt service and operating expenses for a water or sewer project should not exceed 1% of the median family income of a community.

Rather than attempt to estimate the operating costs of the hypothesized newly constructed or upgraded wastewater treatment facility, which may range from \$10 to \$20 each month, this analysis deals only with debt service. As a consequence, the standard of affordability is less stringent than that used in the CDBG program, and one can expect that a few more communities will be found to have adequate financial capacity.

The second, less stringent stipulation is that only debt service on the face amount of the hypothetical bond will be considered. This omits the underwriting costs of bond issuance, which can run 3 to 4 percent for larger Montana cities, and presumably more for small towns. Debt service for a twenty year revenue bond of \$1,000,000 is calculated for three interest rate scenarios. Under a typical 7.5% commercial arrangement, the total debt service would be \$98,092 per year. An assumed subsidized interest rate of 3.5% would require an annual payment of \$70,361 for the life of the bond. Finally, under a proposed zero interest loan program the

community would be responsible for yearly debt service payments of \$50,000.

The analysis in this report is based on data collected from several sources for the years 1987 through 1990. Nineteen eighty-nine was the latest fiscal year when data on existing long-term debt was collected, for which a complete set of year-end municipal financial reports were available. The calculated estimate of the number of households in each community is derived from preliminary 1990 U.S. Census data on each incorporated community divided by 2.77, which, according to the 1980 U.S. Census, represents the average number of persons

per household in Montana. Finally, the estimate of household income is based on the above household data, Montana Department of Commerce estimates of 1987 per capita income, and a multiplier reflecting an estimated 3.5% inflation rate per year through 1990.

Analysis

Figure 1 arrays, for Montana towns and cities of different population sizes, the estimated average annual payment required per household to service a \$1,000,000, twenty-year bond. Payment schedules were

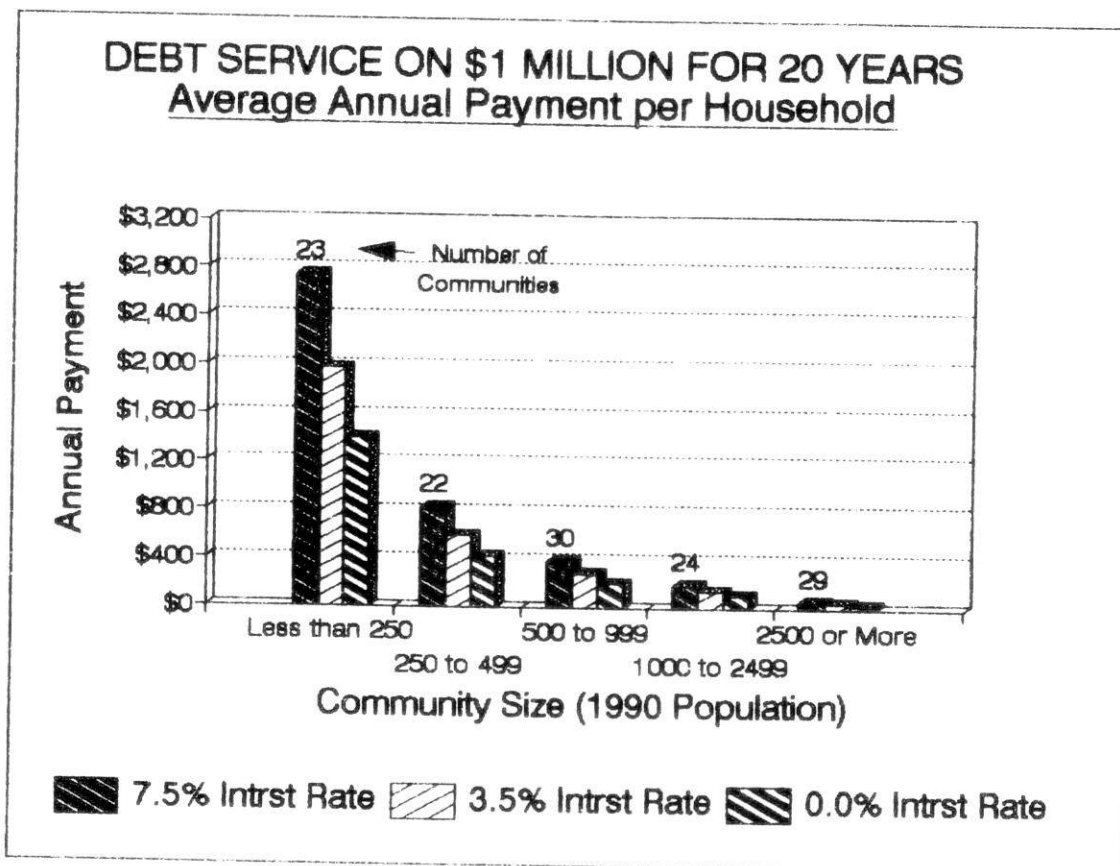


Figure 1

**Table 1 -- 1990 U.S. CENSUS
POPULATION ESTIMATES FOR MONTANA MUNICIPALITIES**

Less Than 250 Population

Bainville	Hobson	Opheim
Bear Creek	Ismay	Outlook
Broadview	Neihart	Plevna
Dodson	Kevin	Rexford
Flaxville	Lavina	Virginia City
Froid	Melstone	Winifred
Hingham	Moore	Winnett
Grass Range	Judith Gap	

Population 250 to 499

Alberton	Fromberg	Richey
Brockton	Geraldine	Ryegate
Clyde Park	Hot Springs	Saco
Denton	Hysham	Sunburst
Drummond	Jordan	Twin Bridges
Dutton	Lima	Westby
Ekalaka	Nashua	Fort Peck
Medicine Lake		

Population 500 to 999

Belt	Fairfield	Sheridan
Big Sandy	Fairview	Stanford
Bridger	Harlem	Superior
Broadus	Joliet	Terry
Cascade	Lodge Grass	Troy
Chester	Philipsburg	Valier
Circle	Pinesdale	Walkerville
Culbertson	Plains	West Yellowstone
Darby	Poplar	Wibaux
Ennis	Saint Ignatius	
White Sulphur Springs		

Population 1,000 to 2,499

Baker	Eureka	Ronan
Big Timber	Forsyth	Roundup
Boulder	Fort Benton	Scobey
Browning	Harlowtown	Stevensville
Chinook	Malta	Thompson Falls
Choteau	Manhattan	Three Forks
Columbus	Plentywood	Townsend
East Helena	Red Lodge	Whitehall

Population 2,500 and Over

Anaconda-Deer	Glasgow	Libby
Lodge	Belgrade	Glendive
Livingston	Billings	Great Falls
Miles City	Bozeman	Hamilton
Butte-Silver Bow	Missoula	Hardin
Polson	Dillon	Havre
Shelby	Conrad	Helena
Sidney	Cut Bank	Kalispell
Whitefish	Deer Lodge	Laurel
Wolf Point	Lewistown	
Columbia Falls		

calculated for each of three interest rate scenarios; 7.5%, 3.5% and 0.0%

It is evident that, on the average, households in the twenty-three smallest incorporated communities (listed in Table 1) will bear a debt service burden on the water or wastewater treatment facility ranging between \$1,400 and \$2,750 (Table 2), an amount that exceeds typical annual property tax levies for towns of this size by 300 to 700 percent, whatever the interest rate paid. No matter the level of income or wealth in

these communities, public acceptance of such an obligation is difficult to conceive.

For the next largest group of communities--twenty-two towns with populations from 250 to 499--the estimated average annual debt service per household, from roughly \$400 to \$800 under the three interest rate scenarios, is at least at the same scale as typical property tax levels. Though it is not likely that most residents of these communities will find doubling of the total cost of municipal public services

Annual Payment Per Household			
1990 Estimated Population	7.55 Interest Rate	3.5% Interest Rate	0.0% Interest Rate
Less than 250	\$2,744	\$2,968	\$1,399
200 to 499	\$823	\$590	\$419
500 to 999	\$382	\$274	\$196
1,000 to 2,499	\$189	\$136	\$96
2,500 or More	\$55	\$40	\$28
Payment as Percent of Average Annual Household Income			
1990 Estimated Population	7.5% Interest Rate	3.5% Interest Rate	0.05 Interest Rate
Less than 250	11.0%	7.9%	5.6%
200 to 499	3.4%	2.4%	1.7%
500 to 999	1.7%	1.2%	0.8%
1,000 to 2,499	0.8%	0.5%	0.4%
2,500 or more	0.25	0.1%	0.1%

Table 2
DEBT SERVICE ON \$1 MILLION FOR 20 YEARS
FOR MONTANA MUNICIPALITIES

acceptable, it does appear that in those towns that are facing a crisis, and are divided on the issue, the availability of subsidized interest rates can make a difference in public acceptance.

Examination of the remainder of the data arrayed in Figure 1 demonstrates that there are dramatic economies of scale with increases in population. As one moves from communities of 1,000 population to the largest of Montana's cities, the marginal impact of servicing a \$1,000,000 debt becomes relatively slight. The average payment is less than \$30 per year for households in the largest municipalities under the most agreeable financial arrangement.

What the data suggest is that the smallest Montana communities, less than 250 population, will not be affected by policies to reduce the rate of interest on bonded indebtedness, since payments on the principal alone will be too heavy to bear. Similarly, differences in interest rates on a \$1,000,000 bond are not likely to make much of an impact on financial feasibility in communities exceeding 1,000 population. This is because the marginal financial relief per household by reducing interest rates is relatively small. Though interesting, this may not be a critical point, since the larger the community, the less likely that major improvements of the water/wastewater treatment facility can be accomplished for the hypothesized \$1,000,000.

In summary, it appears that communities in the 250 to 999 population range, particularly the larger ones, will be the main beneficiaries of a program of subsidized interest rates. Smaller towns, however, would not be assisted.

The conclusions drawn from Figure 1 are based on an impressionistic comparison with implicitly estimated property tax levies, and a consequent projection of possible public reactions. By contrast, the analysis in Figure 2 is based on a more objective notion of what communities can afford to pay. This sharpening of standards raises doubts over whether towns of 250 to 499, included among the potential beneficiaries above, could actually make practical use of the opportunity to borrow at the low rates proposed.

Assuming that any debt service on a water/wastewater utility that exceeds 1% of average household income makes a proposal unaffordable, as discussed above, the data suggest that, on the average, there is no proposed interest rate level (even at 0.0%) that makes for an affordable improvement for the least populated third of Montana's incorporated communities. The most favorable situation (in communities of 250 to 499 population, at 0.0% interest) is one in which debt service can be expected to amount to 1.7% of average annual household income, as noted in Table 2.

In answer to the initial question of affordability, it appears that, under the conditions stipulated, medium and larger population municipalities (perhaps two-thirds of Montana's total) will be materially benefitted by a program that addresses the issue solely by subsidizing interest rates, although the relative impact of subsidizing interest rates drops dramatically with increases in community population size, to a point at which interest rates are more a matter of managerial than of public concern.

Roughly one-third of the state's incorporated communities, especially those

with 500 residents or less, will not be benefitted by an interest rate subsidy program. This is in accord with the Montana Department of Commerce's summary findings that communities of less than 200 households, or roughly 500 population, cannot afford to pay for sewer system improvements.

Discussion

Both this report and the analysis performed by the Montana Department of Commerce support the position that a policy of making low or no-interest borrowing capacity available for communities attempt-

ing to bring their water or wastewater treatment facility up to contemporary performance standards will be of little assistance to small town officials. The state report notes, however, that a policy decision to extend the term of bonds beyond the twenty year limit imposed by the existing state loan fund program can have a substantial positive impact on the capacity to service debt, and thereby partially resolve the problem posed here.

With this in mind, one can expect that replicating the analysis at hand, using a longer hypothetical term of perhaps twenty-five or thirty years, will clear away many if

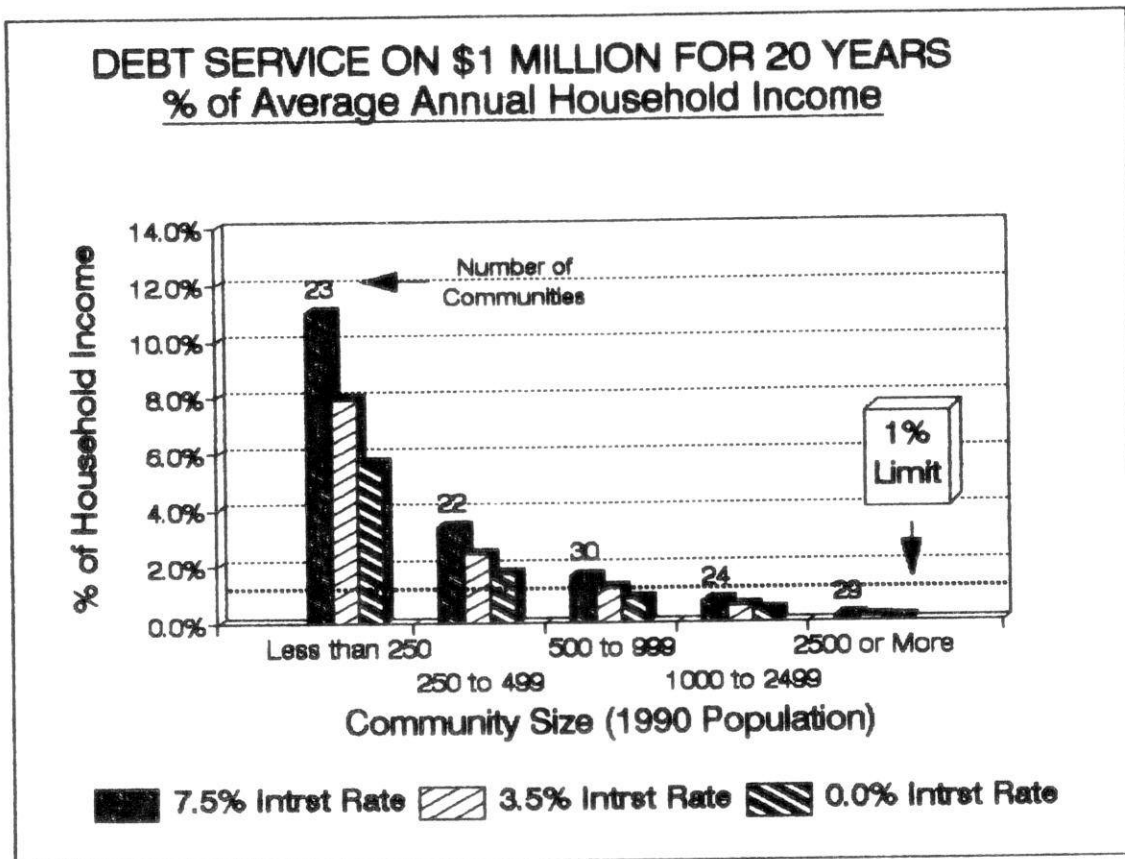


Figure 2

not most of the apparent obstacles to affordability. Unfortunately, even if the 1% barrier is mooted by such a change in policy, there remains a related, though distinct, criterion that may be brought into play: the measure of community credit worthiness established by private sector bonding companies.

D.A. Davidson and Company, an important municipal bond underwriter in Montana, has established a standard for assessing whether a community should incur debt: total debt on a water/sewer utility should not exceed \$1,000 to \$2,000 per household, without regard to the length of

term of the bonds. Using this standard--the amount of total debt per household--small Montana communities are back where they started, as illustrated by Figure 3.

By allocating the total debt burden of the hypothesized \$1,000,000 in long-term debt per household, it appears that according to private industry standards, even using the more generous dollar limit of \$2,000, few small municipalities could afford the needed improvements.

Of course, this point is neither conclusive nor necessarily compelling, since state government is not directly bound by

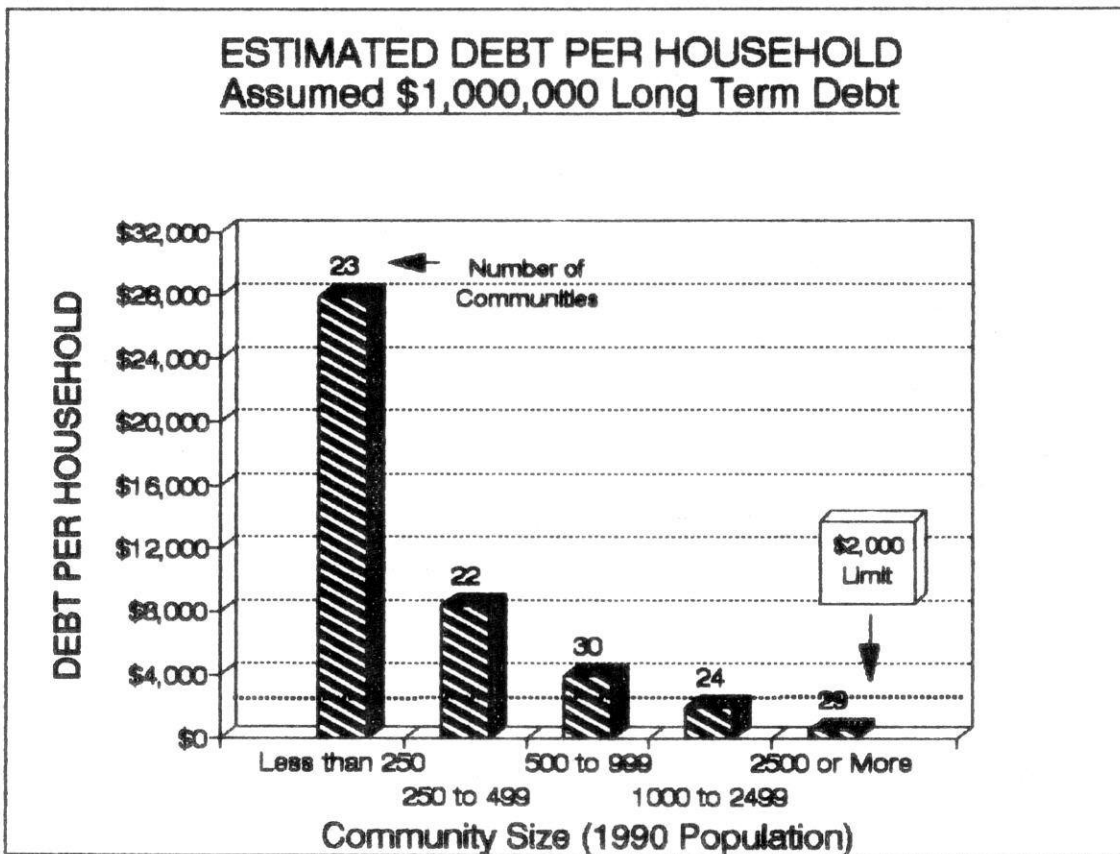


Figure 3

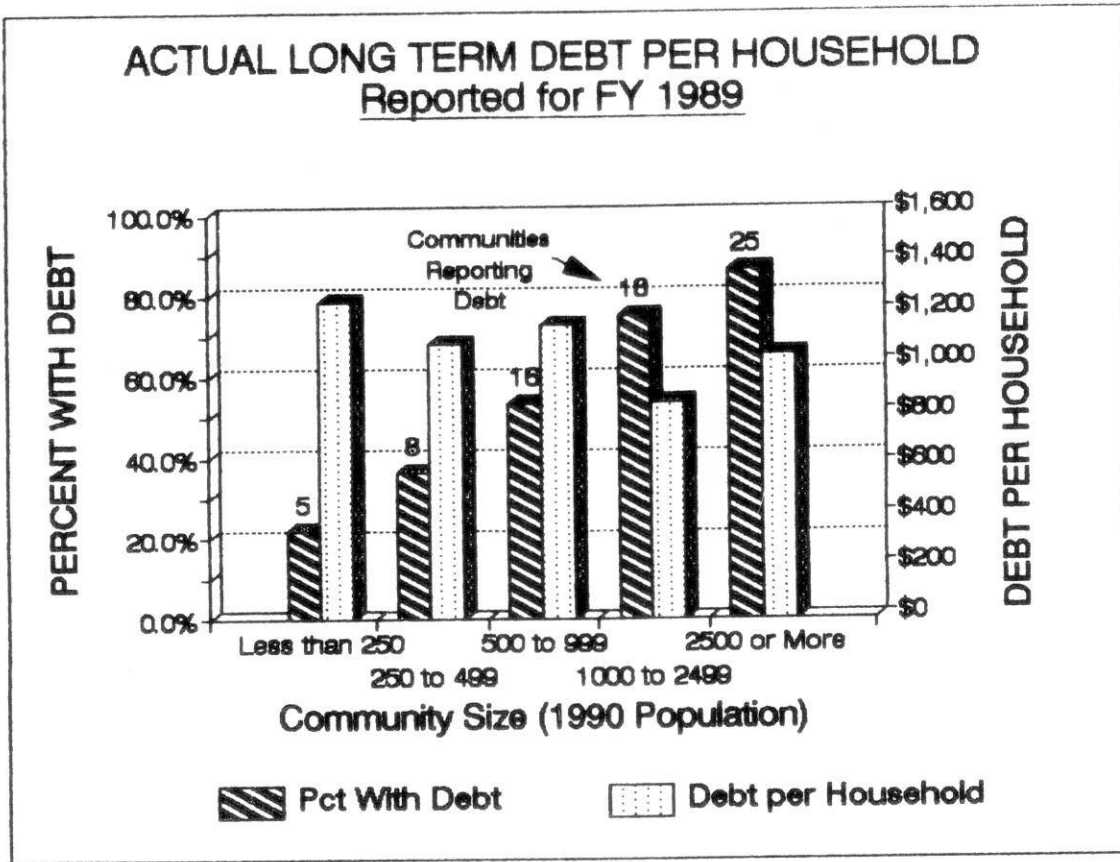


Figure 4

private sector practices and standards. Nevertheless, resolving the issue of affordability by extending the term of already subsidized bonds has the potential to place state practice at extreme variance with industry standards, calling into question the state's managerial capacity.

The final point is that none of the discussion thus far has taken into account existing debt, which may affect decisions on affordability. Figure 4 arrays two items of significance; the number of communities in each population size grouping that currently have debt service responsibilities, and, for these communities, the current average debt

service burden per household. Data tabulations not included in this report indicate a combined long-term debt for Montana's municipal governments (reported at the end of FY 1989), in excess of \$133 million. Seventy-two percent of this debt is in the form of revenue bonds, almost all of which are in support of water and sewer systems. This suggests that policies to deal with the affordability problem, whether through subsidized interest rates, bond term extensions, or supplemental grants will have to accommodate the fact that some communities that must upgrade their existing wastewater treatment systems may already be bearing a significant debt burden.

Conclusions

The analysis reported here supports the assumption that a policy of subsidized bonding authority will not significantly enhance the affordability of water or wastewater treatment system improvements for incorporated communities of 500 residents or less, approximately one-third of all Montana municipalities. This suggests that a policy of manipulated interest rates must be accompanied by other new or amended policies if these communities are to remain livable, economically viable entities.

This report does not address the full range of strategies for making infrastructure improvements more affordable to small Montana communities. Reference to extending the term of bonds--one of the proposed alternatives--does highlight an important question: *What criteria and standards should actually be used to assess affordability?*

The Montana Department of Commerce report notes that the Community Development Block Grant program, the U.S. Farmers Home Administration, and the U.S. Environmental Protection Agency

assess a community's ability to pay by reference to the expected annual debt service cost for each household as a percent of median household income. At least one private sector bond underwriter, on the other hand, looks primarily at the total debt load per household. Neither of these criteria, as noted in the report, takes into account the full cost per household of current municipal services, including that of serving existing debt. As with personal or family finances, "affordability" is a function of the impact of a new expense *on top of* all of the rest of one's financial obligations. A more valid criterion is one that weighs the impact of the *added* cost of infrastructure debt service. Economists call this the "marginal cost" of an expenditure. The state report makes recommendations on this matter that should begin to resolve the apparent inadequacy in current affordability measures.

References

Affordability of Major Wastewater Systems Improvements for Small Montana Communities: A Special Report (1990). Montana Department of Commerce, Local Government Assistance Division.



A COMPENSATION COMPARISON FOR ELECTED COUNTY OFFICIALS IN MONTANA AND ADJACENT STATES

George Minder, Montana State University

Compensation for county officials is established by state law in sections 7-4-2501 through 7-4-2525 of the Montana Code Annotated. The law specifies how compensation is determined and the level of compensation for county officials. Accurately calculating salaries for Montana's county officials requires a careful reading, a thorough understanding, and concomitant adherence to the law. Unfortunately, the statutory language itself is sometimes perplexing to the local government officials who are expected to comply with its provisions. Furthermore, because the statutory language can be difficult to comprehend and apply, salaries can be miscalculated.

State law specifically establishes compensation levels for the county treasurer, clerk and recorder, clerk of district court, assessor, superintendent of schools, county attorney, and the sheriff. County surveyors' and auditors' salaries are also set by state statute, provided they meet certain conditions.

In general, compensation of county officials is based upon county classification and population. Counties are classified as first through seventh class counties based upon the assessed property value within the county. (7-1-2111 MCA)

Two salary surveys were conducted in 1990 to determine and compare current compensation levels of county officials in Montana with one another as well as with those of county employees in adjacent states. The findings demonstrate that, in general, Montana county officials are compensated at lower levels than comparable officials in the neighboring states of Idaho, North and South Dakota and Wyoming. Furthermore, in contrast to adjacent states, Montana alone relies upon a relatively complicated method of determining county compensation. These comparisons can be instructive to policy makers considering alternative means to define Montana compensation strategy.

County classification and population are the two basic factors used to determine compensation. Both of these factors are subject to change which leads to the main problem with the existing compensation strategy--*unpredictability*. When the county's assessed property value goes up or down, the county's classification is changed, as are statutorily defined compensation levels. The result is *uncertainty*--concerning long-term compensation levels and compliance with statutory requirements.

Statutory language makes the correct determination of salaries even more complex. The language is especially difficult to understand and apply, for example, when determining the correct compensation levels for county attorneys, sheriffs and their deputies. This complexity can lead to improperly calculated compensation levels for these positions.

Another layer of complication is added by the law granting county commissioners the authority to freeze and unfreeze salaries. In particular, correctly determining compensation becomes very complicated when salaries are unfrozen. The law is unclear in its explanation of how to factor years with frozen salaries into current salary levels, and how longevity pay is determined for county attorneys and sheriffs.

The existing law also appears to be inequitable. Only certain county officials are granted longevity pay: sheriffs, county attorneys and their deputies. In awarding longevity pay to certain county officials and not to others, the statute may cause internal pay inequity. County officials who do not receive longevity pay may feel unfairly treated and be resentful towards those officials who do.

Current Compensation Levels in Montana

Table 1 displays the results of a comprehensive salary survey conducted by the Local Government Center in 1990 to determine current compensation levels of county officials in Montana. The impetus for this work came from several associations of county officials. The Treasurer's Association played an important role in collecting the data, which was statistically analyzed, and arrayed into the following salary surveys. We believe this work represents the first comprehensive effort to gather state-wide county salary information.

According to Montana statutes, county officials in first through fifth class counties are paid a base salary of \$14,000, plus \$10.00 for every 100 persons living in the county. Officials in sixth and seventh class counties receive a base salary of \$12,000, plus \$20.00 for every 100 persons living in the county. In addition, the County Commissioners may grant cost of living increases of up to 70% of the consumer price index (as determined by the Bureau of Business and Economic Research at the University of Montana).

Fringe benefits, an important part of compensation, were also examined. The study found that fringe benefits comprise approximately 25 to 40 percent of a county's total compensation package. Furthermore, research revealed that most counties have not fully analyzed fringe benefits and their importance to overall compensation.

Regional Comparative Salary Study

The data in Table 1 describe and compare the salary levels and differences among

**TABLE 1
COMPARISON OF ELECTED COUNTY OFFICIALS' COMPENSATION
BY CLASSIFICATION OF COUNTY - 1990**

COUNTY CLASS	FIRST	SECOND	THIRD	FOURTH	FIFTH	SIXTH & SEVENTH
Commission	26,081.29	21,368.76	21,150.64	20,357.78	62.12/day	60.74/day
Clerk of District Court	24,081.63	19,368.74	19,150.68	18,817.67	17,566.54	15,684.33
Clerk & Recorder	24,284.32	19,154.71	19,150.68	18,817.67	17,566.54	15,584.33
Treasurer	23,627.24	19,368.74	19,150.68	18,858.28	17,700.25	15,501.45
Supt of School	24,846.91	19,554.73	19,585.38	19,368.71	17,700.00	15,467.25
County Attorney	22,753.18	25,517.02	23,014.16	22,693.91	21,918.00	
Part-time County Attorney	13,808.93	13,670.38	13,439.23	11,434.20	11,067.27	10,864.69
Sheriff	25,569.13	22,455.71	22,003.04	22,132.02	22,303.59	18,933.35
Sheriff & Coroner	36,672.76	26,063.91	25,328.38	24,804.51	21,464.71	19,274.21
Justice of Peace	26,406.40	19,291.79	19,280.86	18,955.11	17,676.07	16,171.94
Part-time Justice of Peace	6,399.07	11,511.03	10,041.84	12,851.60	7,591.37	6,826.38
Assessor	7,052.54	5,746.40	5,879.12	5,861.90	5,310.12	4,560.61

Source: Salary Survey, 1990

Note: This survey portrays compensation levels for those positions whose salaries are set by state law. In addition, salaries for positions common to all classifications are exhibited. Salaries are represented as the arithmetic mean.

Montana county officials. While this information is important, it is also useful to compare Montana's compensation levels to salaries earned by county officials in adjacent states. Table 2 shows this regional salary comparison.

To achieve data consistency between Montana and its sister states the following regional survey results were divided into two categories. These two categories are counties with more, and those with less, than 7,000 population. This was necessary because some of our sister states use county population, rather than county classification based upon taxable valuation, to determine county compensation levels.

Survey Interpretation

This regional survey demonstrates that most county officials in Montana receive less compensation than their regional counterparts. A quick review of the "Difference" column and the "Percent Difference" column reveals that the greatest pay differential exists in the offices of clerk of district court, clerk and recorder, treasurer, assessor, and sheriff.

These survey data expand existing frames of reference for addressing Montana county compensation issues to a broader, comparative, regional context. The data highlight those county positions which are undercompensated, and provides policy makers with information with which to make salary adjustments to achieve equity.

Determining County Compensation in Our Sister States

The following state by state reports describe how our sister states establish

compensation for their elected county officials. The purpose is to provide policy makers with a variety of alternative compensation strategies that could be employed to simplify existing statutes establishing county compensation in Montana.

North Dakota

North Dakota law establishes legislative *maximum* and *minimum* salaries for elected county officials. The most recent changes to the law were made during the 1985 North Dakota legislative session.

North Dakota statutes provide the following salaries as the *minimum* a county officer may receive:

The salary for county auditor, county treasurer, county superintendent of schools, register of deeds, county judge, clerk of district court and sheriff must be regulated by the population in the respective counties according to the last preceding official federal census... The county treasurer, county superintendent of schools, register of deeds, county auditor and clerk of district court shall receive the following annual salary:

- a. *\$15,100 in counties having a population of less than 8,000;*
- b. *\$15,500 in counties having a population of or exceeding 8,000 plus additional compensation of \$100.00 per year for each 1,000 additional population or major fraction thereof over 8,000.*

The board of county commissioners may increase the salary of any full-time county official, provided that in the judgment of the board, and because of the duties performed, the official merits the increase. The salary

**TABLE 2 -- COMPARATIVE COMPENSATION OF COUNTY OFFICIALS
SOUTH DAKOTA, IDAHO, WYOMING, NORTH DAKOTA and MONTANA --1990**

	<u>COUNTIES OVER 7,000 POPULATION</u>									
	<u>SOUTH DAKOTA</u>	<u>IDAHO</u>	<u>WYOMING</u>	<u>NORTH DAKOTA</u>	<u>MONTANA</u>	<u>AVERAGE SALARY</u>	<u>DIFFERENCE</u>	<u>% DIFFERENCE</u>		
COMMISSIONER	-----	27,899.73	25,000.00	7,190.73	22,512.24	20,650.68	+ 1,861.56	+ 8.2%		
CLERK AND RECORDER	20,612.96	25,575.77	36,700.00	22,781.74	20,355.08	25,205.11	- 4,850.03	- 19.3%		
CLERK OF DISTRICT COURT	-----	25,575.77	37,200.00	22,263.60	20,590.99	26,407.59	- 5,816.60	- 22%		
TREASURER	20,612.96	25,124.58	36,700.00	22,591.00	20,486.47	25,103.00	- 4,616.53	- 18.4%		
ASSESSOR	21,192.76	25,228.61	36,300.00	22,982.00	20,582.60	25,257.19	- 4,674.59	- 18.5%		
SHERIFF	27,471.96	27,166.35	37,200.00	25,412.10	23,986.93	28,247.47	- 4,260.54	- 15.1%		
COUNTY ATTORNEY	36,174.71	44,333.80	42,000.00	36,457.00	46,309.72	41,055.05	+ 5,254.67	+ 12.8%		
PART-TIME COUNTY ATT.	22,988.35	27,009.74	-----	-----	26,983.90	25,660.66	+ 1,323.24	+ 5.1%		
AUDITOR	20,612.90	25,575.77	-----	24,955.09	22,530.42	23,418.55	- 888.13	- 3.8%		
CORONER	-----	36,000.00	-----	-----	24,078.60	30,039.30	- 5,960.70	- 19.8%		
<u>COUNTIES UNDER 7,000 POPULATION</u>										
COMMISSIONER	-----	6,653.23	12,500.00	6,209.14	61.78/meeting	-----	-----	-----		
CLERK AND RECORDER	18,808.00	20,230.77	26,260.00	17,982.00	16,311.73	19,918.50	- 3,606.77	- 18.1%		
CLERK OF DISTRICT COURT	-----	20,230.00	26,260.00	18,648.00	16,311.73	20,362.43	- 4,050.70	- 19.9%		
TREASURER	18,808.00	19,881.62	26,260.00	18,892.00	16,234.38	20,015.20	- 3,780.82	- 18.8%		
ASSESSOR	17,874.92	19,881.62	26,260.00	17,758.00	16,274.17	19,609.74	- 3,335.57	- 17%		
SHERIFF	23,874.84	21,467.92	26,966.67	21,295.29	19,839.83	22,688.91	- 2,849.08	- 12.5%		
COUNTY ATTORNEY	-----	-----	45,000.00	22,255.00	43,846.94	37,033.98	+ 6,812.96	+ 18.4%		
PART-TIME COUNTY ATT.	19,795.00	18,238.00	26,260.00	-----	21,809.42	21,525.61	+ 283.81	+ 1.3%		
PART-TIME CORONER	-----	1,578.92	-----	-----	1,276.68	1,427.80	- 151.12	- 10.6%		

of a county official may not be reduced during an official's term of office.

County commissioners may receive an annual salary or per diem as provided by resolution of the board, with a maximum of \$8,200 in counties with a population in excess of 10,000 and a maximum of \$7,500 in counties with a population of 10,000 or less.

Sheriffs shall receive \$17,900 in counties with a population of less than 8,000, and \$18,000 in counties exceeding an 8,000 population, plus \$100 for each thousand additional population (or major fraction thereof) over 8000.

Again, the preceding salaries are the minimum a county officer may receive. Commissioners can also grant cost of living increases.

In summary, North Dakota bases county compensation upon the population of the county and a statutorily defined, minimum salary schedule.

South Dakota

The method used in South Dakota to set county compensation is similar to the method used in North Dakota.

South Dakota law states that the annual salaries of the county auditor, the county treasurer, and register of deeds shall be regulated and fixed by the population of the counties as shown by the last federal census.

South Dakota law further states that the salary payable to these officials shall be determined by the following salary schedule:

<u>County Population</u>	<u>Salary Schedule</u>
Below 4,000	\$13,770
4,000-5,999	14,040
6,000-9,999	14,310
10,000-14,999	14,688
15,000-24,999	15,390
25,000-69,999	17,280
70,000 and over	18,900

The maximum per diem salary of county commissioners shall be limited in amount in any one year, as follows:

- To \$6,200 in counties of 36,000 population or over
- To \$5,600 in counties of 15,000 and over and not more than 36,000 population.
- To \$4,600 in counties of 8,000 and over and not more than 15,000 population.
- To \$4,200 in counties of less than 8,000 population.

The state's attorney receives the following salary:

- Upon the first 2,000 population or less, the sum of \$14,040 yearly and \$325 for each additional 1,000 in population (or fraction thereof) up to 22,000 population;
- In counties over 22,000 but less than 40,000 in population, the sum of \$25,600 per year;

- In counties over 50,000 population, the sum of \$31,300 per year.

In conclusion, South Dakota determines compensation for county officials based upon the population of the county, and the corresponding salary schedule established by state law. It is important to remember that the preceding salaries are the *minimum* an elected official may receive.

Wyoming

Wyoming uses a relatively simple system to establish county compensation levels. It is easy to comprehend and provides a degree of state and local control over county compensation.

Wyoming legislatively sets minimum and maximum salaries for county officials. The minimum salary is \$10,000 and the maximum salary is \$40,000. Each county commission then negotiates a specific salary level for their elected officials, somewhere between the minimum and maximum salary established by state law.

Wyoming has no classification system and compensation is not based upon county population.

The Director of the Wyoming Association of Counties related that there have been fewer problems using this method of determining compensation than with the old method which was similar to Montana's existing county compensation strategy.

Idaho

County compensation in Idaho is purely a local issue; the state plays no role in setting county compensation levels. Each county's commissioners set the salaries for their elected officers. Thereafter, salaries are negotiated solely between county commissioners and other elected county officials.

Conclusions

This report demonstrates that Montana county officials are generally compensated at lower levels than similar county government positions in neighboring states. Some Montana county officials are significantly "under-compensated" based on this regional comparison.

This report also shows that Montana alone in this region relies upon a relatively complicated and legislatively-fixed method of determining county compensation.

Methods neighboring states use to set county compensation levels merit consideration. By picking and choosing the best elements of each state's compensation strategy, policy makers may be able to reformulate and simplify Montana's county compensation law.

LOCAL GOVERNMENT NEWS

REAPPORTIONMENT OF COUNTY COMMISSION DISTRICTS

Kenneth L. Weaver, Director, Local Government Center

The reapportionment of county commission districts following the federal census is another one of those legally mandated chores that most boards would just as soon put off indefinitely. Indeed, our hunch is that a fair number of Montana counties have done just that for the past several decades. Nevertheless, the law (7-4-2102 MCA) is clear.

Following each federal decennial census the board of county commissioners shall divide their respective counties into three commissioner districts, as compact and equal in population and area as possible.

Given the increasing complexity and costs of the public issues confronting counties and the apparent willingness of competing interests to use any procedural flaw to advance their cause, it may be timely to assure that the cornerstones of your county government are themselves solidly in place. As two different boards of commissioners discovered during the 1980's, the costs of defending a flawed districting system can be painfully high.

The appropriate beginning point for understanding the process of redistricting county commission seats is probably the "Statutory Basis for Elected County Official Government", set forth at 7-3-111 MCA. (Please note that only six of Montana's fifty-six counties have adopted an "alternative" form of government.¹ The remaining counties are, therefore, governed by the provisions of this statute). Specifically, 7-3-111(1)(c) requires that the selection of commission members conform to the procedures set forth at 7-3-412(3) which, in turn, requires that:

The Commission shall be elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for a majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside;

The key points here are that in counties which have not adopted an alternative or optional form of government, the county

commissioners are required to be elected at large and that the commission districts serve as nominating districts. The same point is made more directly and somewhat more clearly at 7-4-2104 which goes on to establish the residency requirement of a candidate for the commission from that district. In short, the boundary of a county commission district "...determines who is eligible to run for the office by virtue of residing in a given district".² Indeed, it would appear that an intended effect of establishing county commissioner districts in the first place was to enable some geographic distribution of the candidates for the board of county commissioners. Thus, it seems consistent that 7-4-2102 requires the board of county commissioners to redistrict their county after each federal census and that the resulting commissioner districts be as compact and equal in area and population as possible.³

In the process of redistricting their counties, the board of county commissioners has limited discretion to deviate from exact mathematical equality in the population and area of each district. While the Montana Supreme Court has noted that the overriding objective of redistricting is "substantial equality of population" in each district, it has also recently thrown out one county districting plan, implemented following the 1980 census, because the new districting plan did not consider the geographic area of each district.⁴ Our conclusion is that whoever is given the task of redistricting your county, he or she must not limit their focus just to the 1990 federal census data. In an effort to achieve mathematical exactness in the equality of population in each district, an attempt must

also be made and documented to balance each district's geographic area and to make each district reasonably compact. Where variation from mathematical exactness occurs, it must be justified in terms of "natural or historical boundary lines".

In sum, the Montana Supreme Court has identified four requirements that must be met in redistricting your county: (1) compactness; (2) equality of population; (3) equality of area; and finally, (4) review by the district court judge or judges of your county. Upon completion and judicial review of the districting plan, a certificate designating the "metes and bounds" of the boundary lines of each commissioner district must be dated and signed by the judge(s) and filed with the county clerk and recorder's office.

As to when the board of commissioners should implement a new districting plan, it is clear in the statute that it must be done following each federal decennial census and that a change in the boundaries of commissioner districts must not have the effect of unseating an elected commissioner before the expiration of term of office. Moreover, any change in district boundaries must be made at least six months prior to the next primary election. Thus, if you intend to redistrict your county for the 1992 election, your redistricting plan must be completed, reviewed by your district court judge(s) and filed with the county clerk and recorder by December 1, 1991, six months prior to the June 2, 1992 primary election.

Does the commission have the discretion to delay implementation of redistricting beyond the 1992 elections? While the language of

the statute does not include a deadline for compliance, nor are we aware of Montana case law or an Attorney General's opinion addressing the issue, at least some election administrators will prefer to deal with new county commission districts this year knowing that they will have to cope with the substantial workload of adjusting the precinct boundaries to accommodate the new state legislative districts in 1993. (Recall that a change in commissioner district boundaries will not entail a change in voting precincts because the commissioners are elected at-large in the county). However, if you are considering delaying the redistricting process, we urge consultation with your county election administrator to estimate workload impacts and with your county attorney to determine what, if any, latitude you may have in your implementation timing. In this regard, we note a March, 1991 memorandum from the Secretary of State's Office reminding all counties of their statutory obligation to reapportion their commissioner districts.

Finally, 1990 census maps and accompanying data sets are now available from the Census and Economic Information Center, Montana Department of Commerce, 1424 Ninth Avenue, Helena, MT. 59620, telephone 444-2896.

References

1. Anaconda-Deer Lodge, Butte-Silver Bow, Custer, Madison, Park, Petroleum and Ravalli counties have adopted alternative forms of

county government. Big Horn County has established districted county commissioner seats pursuant to Federal District Court order.

2. See *Barthelemess v. Bergerson*, 218 M 398 (1985).

3. Because county commissioners are generally elected at-large in Montana, the commissioner districts are not "electoral districts" and are not therefore subject to the "one person, one vote" principle established in *Baker v. Carr*, 369 U.S. 186 (1961) and *Reynolds v. Simms*, 377 U.S. 533 (1964). We note however that in *Janine Windy Boy v. County of Big Horn* (1986) the Federal District Court found that the at-large election of county commissioners in Big Horn County had the effect of diluting the voting strength of Native Americans who comprised an "insular minority" within the county and whose voting rights were protected under the Voting Rights Act. The Court's remedy was to order the creation of districted county commission seats in Big Horn County, which are now in place. Those Montana counties which include substantial Native American populations may wish to consider the adoption of districted county commission seats by amending their existing plan of county government by any one of the several means set forth in Title 7, Chapter. 3, MCA.

4. *Barthelemess v. Bergerson*.