

MINUTES

MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By VICE CHAIRMAN MIKE SPRAGUE, on February 6,  
1997, at 3:05 p.m., in Room 405.

ROLL CALL

**Members Present:**

Sen. Thomas A. "Tom" Beck, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dorothy Eck (D)  
Sen. Sharon Estrada (R)  
Sen. Wm. E. "Bill" Glaser (R)  
Sen. Don Hargrove (R)  
Sen. John "J.D." Lynch (D)  
Sen. Walter L. McNutt (R)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Martha Colhoun, Legislative Services Division  
Jodi Jones, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 252 & SB 221  
Posted on: 1/31/97

Executive Action: None

HEARING ON SB 252

Sponsor: SENATOR J.D. LYNCH, SD 19, Butte

Proponents:

Bob Gilbert, Montana Tow Truck Assoc.  
Milo Casagrando, MT Tow Truck Assoc.  
Myran Mackey, MT Tow Truck Assoc.  
Jerry William, Montana Police Protective Assoc.  
Kathy McGowan, MT Sheriffs and Peace Officers Assoc.  
Bill Sparr, MT Tow Truck Assoc.  
Jan Sensibaugh, Department of Environmental Quality  
Art Bundtrock, MT Tow Truck Assoc.

Don Cerovski, MT Tow Truck Assoc.  
Dennis Frountelter, MT Tow Truck Assoc.  
Terry Morrison, MT Tow Truck Assoc.  
Dan Allen, MT Tow Truck Assoc.  
Gordon Morris, MT Assoc. of Counties

Opponents: None

Opening Statement by Sponsor:

SENATOR J.D. LYNCH, SD 19, Butte spoke in favor of SB 252. This bill is an attempt to revise the abandoned vehicle law to provide for a source of funding for vehicles. Currently, if a Highway Patrol sees an abandoned vehicle he can call a tower and the sheriff will pay for the ticket. However, often times the counties don't have the money to pay for the ticket. As a result, the tower has to pay for the cost of the towing. Fergus county is one of the only counties that is in compliance with the law. He said if enough of the towers decide they don't want to tow these abandoned vehicles, the program will not work. The abandoned vehicle program is one of the finest and most successful programs that has been implemented into the State of Montana. He said 35 years ago there were abandoned vehicles everywhere and now they are cleaned up. This bill provides for payment for the towing of abandoned vehicles and they will be declared junk vehicles. A junk vehicle is one that has a value of less than \$500. As an option, if a tower feels there is some salvage value then he can continue to do what is already happening under current law. The money to pay for this towing will come from the junk vehicle program.

Proponents' Testimony:

Bob Gilbert, Montana Tow Truck Assoc., spoke in favor of SB 252. He passed out a proposed amendment (EXHIBIT 1). He said during the interim they tried to figure out what to do with abandoned vehicles. The current law is the 1987 Attorney General's opinion. If a highway patrol reports an abandoned vehicle it will be delivered to the county yard and the sheriff will pay the tower. In reality it is an unfunded mandate the counties got stuck with from the state, but it is not working that way. The idea is money in the junk vehicle fund could cover towing costs.

Milo Casagrario, MT Tow Truck Assoc. spoke in favor of SB 252. He passed out testimony (EXHIBIT 2).

Myran Mackey, MT Tow Truck Assoc. said this is a constant problem around the state. He said they feel they have come up with a program that is both feasible for the state and the towers involved.

Jerry Williams, MT Police Protective Assoc. said their organization stands in support of SB 252.

**Kathy McGowan, MT Sheriffs and Peace Officers Assoc.** said they helped draft this bill and stand in support of it.

**Bill Sparr, MT Tow Truck Assoc.** said they are proponents of this bill.

**Jan Sensibaugh, Department of Environmental Quality** passed out testimony to her support of this bill (EXHIBIT 3).

**Art Bundtrock, MT Tow Truck Assoc.** said he is a proponent to this bill.

**Don Cerovski, MT Tow Truck Assoc.** said he is having a hard time supporting the state and taking care of their abandoned vehicles.

**Dennis Frountelter, MT Tow Truck Assoc.** said he is in favor of this bill.

**Terry Morrison, MT Tow Truck Assoc.** said this bill is long overdue and they support SB 252.

**Dan Allen, MT Tow Truck Assoc.** said he is a proponent to SB 252.

**Gordon Morris, MACo** said their organization would like to go on record of supporting this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SENATOR SHARON ESTRADA** asked if on page one, line 18 and 19 if the language was correct and how do they justify going in on private property. How do they know if a vehicle is abandoned and they are not just restoring it? **SENATOR LYNCH** said this is present law and not a new section. He said law enforcement will only take action when it has been reported and has been there for 5 days.

**SENATOR TOM BECK** asked if counties make contracts with wrecker services. **Milo Casagrarido** said the junk vehicle program is different in every county. Sometimes it is contracted, or the county does their own. The program itself does fine, but the abandoned vehicles are the problem, because they aren't considered junk vehicles.

**SENATOR BECK** asked if the counties ever call the person that has the contract with the junk vehicle program to remove the vehicle. **Mr. Casagrarido** said yes they do.

**SENATOR BECK** said they go pick up the abandoned vehicle that is not considered a junk vehicle and place it in storage. Will the junk vehicle program have to pay the storage fee also? **Mr. Casagrarido** said no they would not. He said there would be a common fee paid in all counties across the state. More than

likely no storage would be involved, the abandoned car would go from that site to the abandoned storage yard.

**SENATOR BECK** said the intent of the bill is to simply get paid for the removal of the car, but not to include the storage of that automobile. **Mr. Casagrarido** said if a vehicle is picked up, they can hold it ten days and if no one claims the vehicle, they take it to the abandoned car lot. No storage is accumulated at this time. Once it gets to the abandoned car lot they can set the rate of storage they want in each county. If the car sits for 30 days and is not claimed, the sheriff will run a sheriff's sale and it becomes property of the county.

**SENATOR BECK** asked if the junk vehicle program would be paying storage. **Mr. Casagrarido** said no they would not pay storage.

Closing by Sponsor:

**SENATOR LYNCH** said these people have been doing a good job and deserve this bill.

HEARING ON SB 221

Sponsor: **SENATOR JOHN HERTEL, SD 47, Moore**

Proponents:

Paul Stahl, Lewis and Clark Deputy Co. Attorney  
Horace Brown, Missoula Co. Surveyor  
Gordon Morris, MT Assoc. of Counties  
Vern Peterson, Fergus Co. Commissioner  
Eric Griffin, Lewis and Clark Co. Public Works  
Mike Mathew, Yellowstone Co. Commissioner  
Mike Murray, Lewis and Clark Co. Commissioner

Opponents:

William Spilker, MT Assoc. of Realtors  
Tom Hardin, Teton Co.  
Dan Geer, Glacier Co. Commissioner  
Tim Reardon, Department of Transportation  
John Bloomquist, MT Stockgrowers  
John Youngberg, MT Farm Bureau  
Don Allen, MT Wood Products Assoc.  
Larry Brown, AG Preservation Assoc.  
Dave and Patty Wood, Self  
John Barbagello, Self  
Doug Abelin, MT Vehicle Recreation Assoc.  
Don Nance, Self

Opening Statement by Sponsor:

**SENATOR JOHN HERTEL, SD 47, Moore** spoke in favor of SB 221. This bill deals with county roads and the duties and requirements

county commissioners have in dealing with public roads. The enactment of this bill will require counties to adopt a resolution when accepting newly petitioned roads under Title 7. Public roads that have never been legally adopted by a county may be accepted following public notice and hearing to adopt the resolution. Decisions to discontinue or abandon county roads will require public notice and a public hearing by the commissioners to abandon county roads. This bill is revising county road laws. It allows county commissioners to create a county rural improvement district for building and maintaining county roads. It clarifies the duties of county commissioners concerning the abandonment of county roads and revises certain definitions and further defines city streets, county roads, public highways and roads. The bill eliminates the use of road improvement districts. This act does repeal five sections of law, and they all deal with the rural improvement districts. SB 221 doesn't affect eminent domain, public private rights for ownership, private property, liability for accidents on public, private, county, or state roads, highways and easements. It doesn't change existing county roads for public easements and it doesn't allow for access. It clarifies the statutes and places other statutes in more appropriate places.

*{Tape: 1; Side: A; Approx. Time Count: 3:36 p.m.; Comments: .}*

Proponents' Testimony:

Paul Stahl, Lewis and Clark Co. Deputy Attorney said he put this bill together for MACo. The problem is there are city streets, federal, state, and county roads, but it is the public roads, that need to be more accurately defined. The question is who has authority over these roads, who may close them, set the speed limits, and whether improvement districts can be put on them. The bill is almost identical to the bill that passed the Senate last session and was tabled in the House. In Yellowstone Co. since 1937 all the roads that have been created and have public use, are in this issue and no one knows who has control over them. County commissioners and citizens have the right to place improvement districts on their roads if they wish and allow for improvements even if it is not a 60 foot right away or 24 foot base. He said the language that new roads have to be petitioned for has been taken out. County commissioners need to have the ability to establish roads without having someone come in and petition for it first. Line 27 is new language and allows county commissioners to abandon roads if there is safety considerations. Often times a county does not have the money to improve a road and it needs to be closed for safety matters, however a hearing is required before a road can be abandoned. He said a county road is considered a public road if it was classified a county road effective to the date of this act. If this act is passed something can be done with these questionable or public roads. County commissioners can accept those roads in question as county roads by resolution. In current statutes a speed limit cannot be set on county roads, but in several areas the speed limit signs

are posted illegally. He said lines 3 and 4, page 6 is new language and without it the seat belt law cannot be enforced on these roads. Page 7, lines 4 and 5 defines a state highway and how it is maintained. This language was put there because Fish and Game has highways it maintains that are not under the Department of Transportation. There are allegations that if the state doesn't appropriate funds, these state roads that don't have funds will automatically become county roads. He said this is wrong because state roads can't become county roads without affirmative action of the county commissioners. He said this bill was proposed at the County Attorney's Convention in December and they were in favor of it as well as the county commissioners supporting this bill. He said there are roads that are dangerous and if he drove off of one of these public roads and his wife gets killed, the question is, who is he going to sue. He wouldn't sue the city, state or federal government but the county would get sued. Counties need the ability to protect the tax-payers money from lawsuits by being able to control these public roads.

**Horace Brown, Missoula Co. Surveyor**, handed out testimony in favor of SB 221 (EXHIBIT 4).

**Gordon Morris, MACo**, spoke in favor of SB 221 (EXHIBIT 5).

*{Tape: 1; Side: B; Approx. Time Count: 3:54 p.m.; Comments: .}*

**Vern Peterson, Fergus Co. Commissioner**, said this is serious language concerning roads. Roads are one of the most important aspects concerning land next to water and this bill does not undo good laws.

**Eric Griffin, Lewis and Clark Co. Public Works**, said his organization provides services to people but it also limits the liability of the county. Under present law, it is difficult, if not impossible, to maintain all public roads in the county. Many of the roads in Lewis and Clark Co. that have the highest daily trips are not county roads under the definition of the statutes. These roads, however, are maintained because of safety purposes, but the **Public Works** budget is too small to maintain all roads. He used the example of the Marysville road which is a high recreational use road and is used by many residents, but does not fit the statutes of a county road. A number of years ago their organization made the decision to maintain this road because of the high level of travel. Because they chose to maintain the Marysville road this has created a dilemma. There are hundreds of miles of public roads in Lewis and Clark Co. and people who live on these roads request maintenance. This bill will not solve the problem entirely, but it will take a step in the right direction to give county commissioners the authority to declare certain public right-of-way as county roads. This will give County Commissioners the ability to establish improvement districts. He said they presently maintain 1300 miles of county roads and counties need this bill to limit their liability.

**Mike Mathew, Yellowstone Co. Commissioner,** said Commissioner Kennedy from Billings did fax the committee some amendments to the bill which the committee had not received and he no longer wants to offer those amendments. He said Yellowstone Co. does support SB 221.

**Mike Murray, Lewis and Clark Co. Commissioner,** said he is in favor of SB 221.

{Tape: 1; Side: B; Approx. Time Count: 4:01 p.m.; Comments: .}

Opponents' Testimony:

**William Spilker, MT Assoc. of Realtors,** said this bill was not a good piece of legislation last session and is not this session either. It gives too much power to county commissioners in respect to closing roads by doing away with the petition process and also the open ended feature of closing the road for safety reasons. This could cut off access to parcels of land if the roads are closed. When counties try to generate money for road maintenance one of the things that happens with RSIDs is neighborhoods will go against one another concerning maintenance. It greatly expands the county's jurisdiction with respect to road maintenance districts on page 2, line 9, by letting the counties start assessing these roads. He urged a no vote on SB 221.

**Tom Hardin, Teton Co.,** urged a do not pass on SB 221 (EXHIBIT 6).

**Dan Geer, Glacier Co. Commissioner,** urged a do not pass on SB 221 (EXHIBIT 7 & 8).

**Tim Reardon, Department of Transportation,** said he would like to go on record as his testimony being informational rather than opposing the bill. He said there are literally hundreds of references to roads throughout the Montana Codes. Their department agrees something needs to be done with roads in Montana. He said page 7 deals with appropriated funds and the state. This bill has the potential of putting all secondary roads onto the state. Secondary road funds are part of the department of transportation appropriated process. Money is allocated by the legislature and the commission establishes the amounts that go to the systems throughout the state. If these highways are not constructed or maintained with appropriated funds from the state, they are county roads. But if they are constructed with funds from the state they are state roads and this could encompass 53,000 miles of roads that are not on any system and 4400 miles of secondary roads that are maintained by the county but constructed by the state. This issue needs to be addressed by the committee.

**John Bloomquist, MT Stockgrowers,** said the bill is consolidating a lot of definitions in many areas of the codes. He said you could take any law and start flipping around code sections and completely change the effect of the law. On page 6, the

definition of a public road causes some concerns. The wording "adapted and fitted for public vehicular travel and is not a private road" literally fits any kind of road. He said who decides what adverse use means, because usually it is a judicial determination. Under this definition, if jurisdiction is assumed by a political subdivision in a county by resolution, then suddenly we have a public road. The definition of a public road is too narrow and does not clarify anything, making the statutes even more confusing. Right now there is a petition process to clarify county roads, and if the right people petition, the county commissioners can create those county roads.

*{Tape: 1; Side: B; Approx. Time Count: 4:26 p.m.; Comments: .}*

**John Youngberg, MT Farm Bureau,** said under the RID section on page 2, where is land directly benefiting? He said if his house is on that land, does this remove his home from solely agriculture and make it partly residential? He said there needs to be some clarification on this matter. The bill also takes away the petition process especially if added to adverse use. He said if he was to get adverse use to go through somebody's land and even if somebody else purchases the property he can still continue to get permission by adverse use. Under this bill, they acquire adverse use and a resolution process can be started. He used the example of having a great fishing hole on his property and a number of people drive up his road without permission. These people using his fishing hole decide they want to make his road a public road and they go to the county commissioners and ask for a resolution. They hold a hearing and his land is the only one that will be affected. He will also be the only one opposed to this resolution versus 50 fisherman who have been using his road. He said the petition process should not be done away with as it is effective and allows people to create county roads.

**Don Allen, MT Wood Products Assoc.** said there are some problems with liability under this bill. This problem should be a separate piece of legislation and not included with a RID. The whole county benefits from timber harvesting in an area. Timber is classified as a crop and the definition and direct benefits of land are not included in this bill. Many of the definitions and points regarding resolutions are missing. One key element is who makes the decision of abandonment on these roads, and when is safety not in balance?

**Larry Brown, AG Preservation Assoc.** said every line of this bill has some concern. The ability is given to the county to access these RID's and to be accountable for that money and how it is spent. He used the example of an RID collected in 1990, and the area the money was collected from will never realize the benefits until the year 2020. This money has to be looked at very carefully to see where the money goes in the county. Being accountable for the budget is something everyone looks at and where and how it is spent in the county.

Dave and Patty Wood, Self, spoke against SB 221 (EXHIBIT 9 & 10).

John Barbagello, Self, opposed SB 221 (EXHIBIT 11).

Doug Abelin, Motorized Recreation Vehicle Assoc. said this bill could remove a lot of public access. Abandonment of roads could result in loss of access to the forest, state and federal lands.

Don Nance, Self, opposed SB 221 (EXHIBIT 12).

{Tape: 2; Side: A; Approx. Time Count: 4:40 p.m.; Comments: .}

Questions From Committee Members and Responses:

SENATOR DON HARGROVE asked why don't we want to use the petition process? Gordon Morris said on page 3, line 25, where this language has been struck could be put back in. The thought would be to have a hearing process and adopt a resolution following that hearing. However the petition process could be put back in.

SENATOR HARGROVE asked if this bill would reduce liability for the counties? Gordon Morris said in order to clarify the liability issue, the question will be eliminated of who has ownership and liability on these roads. Public county roads and non-county public roads need to be clarified. This section says the counties accept the responsibility for maintenance and the liabilities that go with it.

SENATOR FRED VAN VALKENBURG asked why MACo is against life, liberty, and the pursuit of happiness. Vern Peterson said this is not the intent of the bill. Originally, the idea came as to what to do with roads no one would claim. The RSID issue came up and this was a good way to address this issue by putting it in the bill. There are a lot of sections in this bill and it is complicated. He didn't understand the opposition to unlimited tax authority, because to have an RID, it has to be a public road. If an RSID is established then it can be done on private roads and this would give people the ability to establish an RSID and do bonding.

SENATOR VAN VALKENBURG said you can't just go out and create an RSID over the protests of the property owner. Mr. Peterson said no, that has to come from the people.

SENATOR VAN VALKENBURG asked if Mr. Peterson could respond to the concerns of the Agriculture and Wood Products People's interest, that the definition of exclusion of taxing land used solely for agriculture purposes is not sufficiently defined. Mr. Peterson said this language was added as a request of the Farm Bureau in 1995. The counties thought the language should say principally or a less defined word so if a person was hunting birds it would not be defined as solely agriculture. When the RSID is requested there would not be a section of farm ground, that would have to

belong, but wouldn't benefit from curb and gutter if they are simply hauling out logs or grain.

**SENATOR MIKE SPRAGUE** asked **Tim Reardon** if he was consulted when this bill was being drafted? **Tim Reardon** said he was not, but the department was consulted. The amendment offered by the Fish, Wildlife and Parks is the biggest concern with the Department of Transportation.

**SENATOR SPRAGUE** asked if these roads create such a liability for the county, yet the county has no authority when the state abandons the road, is it possible to put a disclaimer on these roads. **Mike Mathew** said one of the things that drove the need for this bill was requests from the public for help. If a county does not have a clear definition of how that road was created then they can't help the public with their concerns. This bill is driven by commissioners to get help they can't respond to.

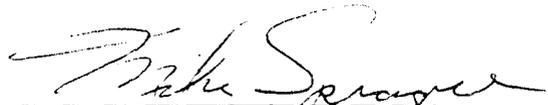
**SENATOR SPRAGUE** asked if there is a simpler way of posting the road that says the road is not maintained? **Mike Mathew** said this is not what the public wants, they want the road maintained. Yes, a sign could be put up, but that is not what the public is telling the counties.

Closing by Sponsor:

**SENATOR HERTEL** said there needs to be some language changes in this bill to make it a necessary piece of legislation to satisfy everyone. County roads need to be identified for safety and liability sake. County commissioners work with these issues everyday and they feel there are some things that need to be done.

ADJOURNMENT

Adjournment: 4:55 p.m.

  
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SEN. MIKE SPRAGUE, Vice Chairman

  
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JODI JONES, Secretary

MS/jj