

MINUTES

MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By CHAIRMAN ARNIE MOHL, on February 11, 1997, at  
Room 410, in Room 410

ROLL CALL

**Members Present:**

Sen. Arnie A. Mohl, Chairman (R)  
Sen. Mack Cole, Vice Chairman (R)  
Sen. Larry Baer (R)  
Sen. Bob DePratu (R)  
Sen. John R. Hertel (R)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Linda J. Nelson (D)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Connie Erickson, Legislative Services Division  
Phoebe Kenny, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 257, SB 293, SB 246,  
Posted 2-3-97  
Executive Action: HB 97

EXECUTIVE ACTION ON HB 97

Motion: SENATOR MACK COLE, moved HB 97 BE CONCURRED IN.

Vote: Motion to CONCUR in HB 97 CARRIED UNANIMOUSLY.

*{Tape: 1; Side: A; Approx. Time Count: 10 minutes*

HEARING ON SB 257

Sponsor: SENATOR BOB DEPRATU, SD 40, Whitefish

Proponents: Pat Saindon

Opponents: None

Opening Statement by Sponsor:

SENATOR BOB DEPRATU, SD 40, Whitefish, this bill is brought to you on behalf of the Department of Transportation. It is a bill for an act entitled "An act generally revising the disposition of gasoline taxes and Federal Highway Funds; Correctly identifying the local technical assistance transportation program; correctly identifying route designation in accordance with Federal Law; allowing the disbursement of gasoline taxes to consolidated City-County Governments; modifying funding allocation formulas to reflect the most recent census data; revising the definition of "Rural Population" and "Rural Road Mileage" amending sections 15-70-101 and 60-3-206, MCA; and providing and effective date." This is a bill that really is just a house cleaning bill in many senses of the word. It is actually combining two existing statutes, MCA 15-70-101 and 60-3-206, which deal with the enforcement of the funds for the secondary roads program in each of Montana's 56 counties. These funds are comprised approximately with 87% federal fuel tax funds and 13% percent state tax funds. The fuel tax statute was originally enacted in 1955. It was modified several times but the last time was 24 years ago. The secondary roads allocation statute was originally enacted in 1927, modified a few times, and the most recent being 44 years ago in 1953. Many things have changed since the last revisions and these statutes need to be updated. Some of the changes that effect these statutes involve changes in the form of local government, as we have seen city-county consolidations take place. Availability of information, reorganization of state government, and realignment of federal aid on the highway system. The Montana Department of Transportation is the responsible agent in charge of allocating these funds as per statute to local governments. Because of these changes that have occurred over the years it has become difficult and indeed impossible for the Montana Department of Transportation to comply with some facets of the statutes. Therefore they bring you this bill which brings it together and makes it workable to meet the needs of the city-county programs and to be able to allocate theses funds in a fair and equitable manner. There is a fiscal note with it. At this time I will refer you to Pat Saindon and reserve the right to close.

Proponents' Testimony:

Pat Saindon, MT Department of Transportation, this is a clean-up bill. All we are trying to do is make the statute comply with the law. Explained the sections of SB 257 thoroughly.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR LINDA NELSON, this is apparently a Department of Transportation bill that must have missed the deadline.

Pat Saindon, yes that is correct.

SENATOR BARRY "SPOOK" STANG, we do define consolidated city-county governments somewhere in the codes?

Pat Saindon, I am not sure, I believe so.

CHAIRMAN MOHL, on the fiscal note what do you mean by slight variation ranging from approximately plus or minus 3%?

Pat Saindon, the difference will come in how we actually calculate some of the calculations. Because what we are doing is cleaning up the way we calculate mileage and population in counties verses urban areas.

Closing by Sponsor: SENATOR DEPRATU, thank you for hearing this and I would appreciate your positive consideration of this bill.

*{Tape: 1; Side: A; Approx. Time Count: 40 minutes}*

HEARING ON SB 246

Sponsor: SENATOR TOM BECK, SD 28, Deerlodge.

Proponents:

Dave Brown, MT Independent Automobile Dealers Association  
Jim Robinson, MT Independent Automobile Dealers Association  
Brenda Nordland, MT Department of Justice  
Steve Turkiewitz, MT Auto Dealers

Opponents: None

Opening Statement by Sponsor:

SENATOR TOM BECK, SD 28, Deerlodge, written testimony, (EXHIBIT 1).

Proponents' Testimony:

Dave Brown, Montana Independent Auto Dealers Association, submitted written testimony, (EXHIBIT 2).

Jim Robinson, MT Independent Automobile Dealers Association, all we are trying to do with this bill is take small, careful and prudent steps in helping clean up the image of the car industry, because the car industry will never go away. We want a fair playing field for everyone who is legitimately involved in the

business. This is a small step towards ridding the industry of our infidels. We just recently revamped the Independent Automobile Association, we took our guidance from the Idaho association because they are one of the strongest in the U.S.. We are a slowly growing membership. We feel that there is a lot of people practicing illegally and we hope you support this bill.

**Brenda Nordland, Department of Justice,** we worked with the Independent Auto Dealers in crafting this measure. We hope this is a step in the right direction. It seems like every time we try to deal with the issue of curbstoning we end up with another loophole, but we hope to have closed the loopholes that we left last session. It is a small step in the right direction.

**Steve Turkiewitz, MT Auto Dealers,** we are in support of this bill and urge your passage.

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SENATOR RIC HOLDEN,** I would like more clarification on this because I have sold cars myself and you are saying that it is illegal. In small towns we take our vehicles into town and park them on lots here and there. These lots are customarily a place where people go to look for the next feed wagon. How will this bill affect that?

**Brenda Nordland,** The intent of this bill is as long as you display consent of the property owner that you are displaying your vehicle for sale in the rear or front window of the vehicle, that falls within the exceptions. You would not be subject to any type of action under the dealer laws.

**SENATOR HOLDEN,** what you are trying to do is make it illegal for people to sell vehicles illegally. Isn't illegal now?

**Brenda Nordland,** it is, but it is extremely difficult to discern who is and who isn't a dealer the way the law is currently crafted. There is a presumption that a person who sells more than three motor vehicles, if the vehicles are not titled in the sellers name, in any one calendar year, they are engaged in the business of dealing motor vehicles. Our intent here is to clarify when you are or are not a dealer, so it is more likely that people will understand when they cross the line.

**SENATOR HOLDEN,** you want to pass a law to address these people, but you start talking about all these pieces of paper they have to post on windows, people will say bologna on that.

**Brenda Nordland,** I agree that there is an education curb, but I will also say that in a local community as you are well aware, a vast amount of discretion lies in local law enforcement. I would be extremely surprised that a local law enforcement officer is

going to write a citation in a situation like that. More than likely they would just educate the individual about how the law works.

**SENATOR REINY JABS**, if you took a car and put it on KMarts parking lot, if you had permission from the KMart that would be legal?

**Brenda Nordland**, that is correct.

**SENATOR STANG**, this won't prohibit the type of sale that the local dealers have at the fairgrounds?

**Brenda Nordland**, no, those dealers are already licensed and operate under state law.

**SENATOR GREG JERGESON**, what if I have my car in my yard with a for sale sign on it, that is legal because it is on my property, but my wife takes it to the grocery store to get groceries, and has the for sale sign in it, has she broken the law if she doesn't have permission to park that vehicle in their lot.

**Brenda Nordland**, no, refer to line 21.

**SENATOR JABS**, suppose you work at KMart and they drive that vehicle and leave it parked there all day long.

**Brenda Nordland**, it would still be O.K. because their main purpose is to be at work and not to sell the vehicle. But if they wanted to be hassle free they could obtain consent from the employer to sell the vehicle on that property, or remove the "for sale" sign.

**SENATOR NELSON**, say the guy goes to an auction at the civic center, is this o.k..

**Brenda Nordland**, it is general household transportation. It will be a determination on how long a vehicle is parked at a particular location.

**CHAIRMAN MOHL**, I was always told that if you sell over three cars a year you are a dealer and you have to have a license, is that right?

**Brenda Nordland**, if the vehicles are not titled in your name, then you are presumed to be a dealer.

**CHAIRMAN MOHL**, so I could buy ten cars, have them registered in my name, and keep selling them forever and not have to have a license?

**Brenda Nordland**, that is correct.

SENATOR DEPRATU, you do run into the problem of these titles remaining an open title and never being run through the motor vehicle department.

Bud Shane, Motor Vehicle Division, we see that quite often and that is one of the things that we are trying to stop with this bill.

Closing by Sponsor: SENATOR TOM BECK, this is just being fair to the dealers that are buying a license. Those people that are selling vehicles illegally have to buy a license to be a dealer. I hope you would concur in this bill.

*{Tape: 1; Side: A; Approx. Time Count: 44 Minutes}*

HEARING ON SB 293

Sponsor: SENATOR SHARON ESTRADA, SD 7, Billings

Proponents:

Mike Brockie, self  
Zander Blewitt, self

Opponents:

Carl Schweitzer, MT Contractors Association

Opening Statement by Sponsor:

SENATOR SHARON ESTRADA, SD 7, Billings, SB 293 is a safety issue. This bill was brought to my attention two years ago by one of my constituents who had a tragic involvement with equipment left on a construction sight. SB 293 is a bill that would prohibit leaving construction vehicles and materials or equipment unattended in the highway recovery zone, defining a recovery zone, and providing a penalty. There are proponents here and I believe there are opponents. I would like to pass this information out to the committee, (EXHIBIT 3). I reserve the right to close.

*{Tape: 1; Side: B}*

Proponents' Testimony:

Mike Brockie, written testimony, (EXHIBIT 4).

Zander Blewett, I am an attorney from Great Falls that was hired by the Brockie family to assist them when their son was killed. I come here as a proponent of this bill, and I was just going to explain to you what the present law is and why I feel strongly this bill is needed. This legislature a number of years ago adopted what is called a manual for uniform traffic control devices. (EXHIBIT 5). It tells everyone in the state that they

should comply with the manual for a uniform system of traffic-control devices. Next page (**EXHIBIT 6**). In other words the MUTCP has stated, and all of the engineers from around the nation, if not the world, have decided, that this is a good rule, that contractors should not be placing things out in the median where a motorist can hit it. Next page, (**EXHIBIT 7**). This is why we ended up going to trial two times and to the Supreme Court two times to get this issue solved. What it gets down to is that if a contractor violates the MUTCD and tries to save a moments time and not remove equipment from the median, that is not negligence. And a jury is not told that is negligence, so you have to present this massive case to show why they left it there, when we all seem to agree that it shouldn't be left there, hence the bill. What the bill says is that you can't leave this equipment out in the median, which was designed to be safe and allow a car to come to a slow stop. This says that it is against the law to do this. That is if a contractor chooses to violate this, that is negligence "per se" and they are responsible for the deaths that they cause. That is the reason for this bill, as I say it is very simply set forth in these three documents that I provided to you. I urge you to give strong consideration to supporting this bill for safety purposes, so this type of incident doesn't happen again.

#### Opponents' Testimony:

**Carl Schweitzer, MT Contractors Association**, this bill would define a recovery zone as the center line to the fence of the property the Department of Transportation owns, so that basically no equipment could be left unattended on the property that the department owns at all. We think that this creates another hazard. For example if you have some rollers out there or a paving machine that only move as fast a person walks, if you can't get it off the property you will have to get to an exit which could be five or six miles away. You are going to drive this piece of equipment at the end of the day, down the road so that you can get it out of the recovery zone. It is going to be a hazard to the travelling public and it is going to take a lot of time to move that piece of equipment out of there. My understanding is that there is a clear zone, which is defined on the hand out, and the department has rules that you can't leave equipment in the clear zone, but that there was an area outside the clear zone where it was proper to leave equipment. We do not support people leaving equipment in an area where people are going to get hurt or killed. Our association tries to promote safety. We have several bills in this session that are aimed at safety. We have some concerns about this expanse of the recovery zone as defined in this bill. (**EXHIBIT 8**).

**Tim Reardon, Department of Transportation**, I can't say that I am an opponent of what this legislation is trying to do. Certainly no one can appreciate how severe and how traumatic the episode the Brockie's had. Our concerns with this legislation are not what it is attempting to do. But with the way we are trying to

get there. We have concerns. Our maintenance people, for example, often times are leaving materials within a relatively short distance 15 or 20 feet away. This bill does not tell us what an unattended vehicle is. I don't believe the department would have particular problems with trying to address equipment stored in the median of a divided highway in some fashion. We don't have a lot of divided highways in Montana, there is a lot of two lane roads, and when we buy right-of-way we try to buy 100 feet from the center line, but at times there may only be sixty feet. Rollers and pavers may not have an exit within five miles, they may have to put it on a lowboy which is going to take time but would certainly get it out of the area. Frankly it is hard to justify saying well that is a tremendous cost in terms of the circumstances that the Brockie's have told you about, but the fact of the matter is that it would increase our costs substantially. It would not affect the departments budget it would simply affect the available funds for other projects, so it would be the same amount of money its just that we are going to have to use it in different ways. I am not sure, for example on line 22 of the bill a person participating on a highway project, I don't know if that is the prime contractor or subcontractor. Right now when we have a contract on a major project, the prime contractor is responsible for traffic control. I have no problem with making contractors live up to specifications. I am not sure that the breath of this bill isn't to all encompassing. This would include county roads. This says a highway which is practically every public road you have out there. We don't oppose the concept of what is trying to be accomplished here. There is another factor that enters into it that is sort of a flip side of what Mr. Blewett is referencing. We put a lot of signs up during a construction project that are intended to be in place to warn unattended motorists. This doesn't exempt that. We have a question if the 5,000 dollar fine is one to be assessed by the county attorney. Is it a civil file or a criminal file. I don't know if the department can access that, if the department collects it. If we can work with this bill so that it would address their concerns without getting so broad that we have major cost increases, but still provides for public safety the department is more than willing to work with that. Again it is a safety bill, but it is more than that, it affects every project we have out there.

Questions From Committee Members and Responses:

**SENATOR JABS**, this was evidently a construction zone where this happened, is that correct?

**Tim Reardon**, yes.

**SENATOR JABS**, were there speed limit signs up?

**Tim Reardon**, I didn't investigate the specifics of this accident. I have to assume if this was an construction zone that there were

signs up warning people. The sign was not part of the protection precautions it was merely being stored.

**SENATOR JABS**, I can sympathize that they need to put this stuff some place. The bill says unattended, but I don't know if it is any safer with someone standing there or not standing there. I don't know that this will help matters much.

**Tim Reardon**, someone who runs off the road could hit the truck whether it was unattended or attended, obviously the closer the radiance to the paved surface the greater the risk.

**SENATOR JABS**, could you explain the different zones to us?

**Jim Walter**, I point out section 1, paragraph 1, part D, where it indicates recovery zone. Inside that there is also terminology that states this may consist of a shoulder a recoverable slope and non recoverable slope, or a clear runout area. The next line also says the width of the recovery zone is dependent on traffic volumes, speeds, and road side geometry. That language roughly indicates some guidelines we have. I would point out that there are inconsistencies in here that some could be taken care of very easily and others I am not so sure of. Recovery zone is defined in the bill, but in the language used in the industry there is no recovery zone, there is a recovery area. It gets fairly complicated. The basic unit that we use is a concept we call the clear zone. The clear zone is basically an area, depending on the speed and the geometry of the highway in which there shouldn't be any obstructions, or if there are, they should be protected by jersey rail or guard rail. The clear zone is a number that is calculated, and there is a table that talks about clear zones and the different distances in feet from the traveled way. Where this gets complicated for example, I have a vehicle that is going 60 miles an hour and there is a 6 to 1 slope which is a very safe slope off the highway, depending on the volume of traffic the number of feet from the traveled way or the edge of the traveled may be something like 30 to 32 feet for over 6,000 cars per day at 60 miles an hour. What happens if we are unable to do that, for example we are in a cut slope on rocky terrain, and to try and go out on a 6 to 1 for some 30 feet is impossible. We have to protect that by some guard rail or jersey barrier. This is where the terminology gets goofed up. We don't have enough room to have the clear zone, but what if we have a slope that is deemed recoverable, meaning that if you happen to get over on that slope, you can recover and get back on the roadway. If you have a recoverable slope then you are okay. If you have a non-recoverable slope that is steeper than four to one, if you go down that slope the likelihood of that vehicle being able to turn around or even coming to a stop is not very likely. You end up going down this non-recoverable slope, and there is a clear runout area at the bottom, that is referred to as the recovery area. Trying to define a clear zone or recovery area gets subject

to some interpretation and becomes difficult for us. I imagine that has made that fairly confusing.

**SENATOR STANG**, after listening to the fellow from the highway department if we take your bill and put their terminology into recovery zones and clear zones and what not, and say prohibit equipment into what they call there clear zone distance, look at lines 24 and 26 and take Jack Sands recommendation in his letter that say a person shall be fined up to \$5,000 and eliminate section 4 which says that they never can be in the highway construction business again, would that help you and would you still support the bill?

**SENATOR ESTRADA**, absolutely.

**SENATOR STANG**, I would like to ask Carl Schweitzer the same question.

**Carl Schweitzer**, I believe that is the way it currently is. The department requires a clear zone.

Closing by Sponsor:

**SENATOR ESTRADA**, I thank you very much for a very fair hearing on a very emotional bill. I would like to thank the department for working with me on this bill. I think that Senator Stang, your suggestions would work well. Thank you very much.

ADJOURNMENT

Adjournment: 4:12

  
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SEN. ARNIE MOHL, Chairman

  
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PHOEBE KENNY, Secretary

AM/PK