

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By SENATOR RIC HOLDEN, on March 13, 1997, at
3:18, in ROOM 108

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: HB 423, HB 462, Posted 3-5-97,
Executive Action: None

HEARING ON HB 423

Sponsor: REPRESENTATIVE BILLIE KRENZLER, HD 17, Billings

Proponents:

Tom Schneider, MT Public Employees Association
Darrel Holzer, MT Sate AFL-CIO
Russ Ritter, Washington Construction
John Blacker, MT Department of Transportation

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE BILLIE KRENZLER, HD 17, Billings, HB 423 is a bill that creates the offense of reckless endangerment of a highway workers in a highway work zone, and doubles the traffic violation fine for a violation in a highway work zone. The new sections include definitions of a highway worker and a highway work zone. When a highway work zone is created the Department of Transportation, a local authority or utility company or private contractor shall post signs to give motorists a notice of the provisions of sections 3 and 4. It then states what reckless endangerment of a highway worker is and the violation. The violation would be double what the fines would be in any other area.

Proponents' Testimony:

Tom Schneider, MT Public Employees Association, we represent highway workers that are involved in work zones. We support this bill. I would simply point out that we are having nothing but problems in work zones. We think that this is a good bill and ask for your support.

Darrel Holzer, MT State AFL-CIO, we also would like to offer our strong support for this bill. This is a serious problem and this is a hard hitting piece of legislation but it should be to deal with this. On a nationwide basis there is an upwards of anywhere between 800 and 1,000 workers killed or seriously injured in these type of work situations simply because people are not willing to slow down. There has to be something to deter that bad activity. We would certainly encourage this committee to give this bill a favorable recommendation.

Russ Ritter, Washington Construction, we stand in support of this bill. Last years records show that in the State of Montana we had fifteen incidents of a car or truck out of control in a construction area. For many reasons we stand in support of this legislation. Thank you.

John Blacker, MT Department of Transportation, we are here in support of this bill. In 1995, 833 workers were killed in construction zones in the United States. In 1996 there were over 900. The department understands it needs to work on cleaning up its operation, and we are here in support of that and will do anything we can. Thank you.

Opponents' Testimony:None

Questions From Committee Members and Responses:

SENATOR MACK COLE, I am looking at the fiscal note. My first question would be why you didn't sign it, but is there no monetary affects in this bill?

REPRESENTATIVE KRENZLER, there are no monetary affects for the state. I didn't sign it because I did not receive it before the bill was presented.

SENATOR ARNIE MOHL, do you have any problems with which bill gets tabled when we combine the two bills.

REPRESENTATIVE KRENZLER, I have no problems, I would just hope that the good parts of this get put in the other or vice versa.

SENATOR BOB DEPRATU, is there some particular points that you would just like to address in this bill that you feel are stronger than in the other bill.

REPRESENTATIVE KRENZLER, the area in section 1 specifically laying out a highway worker and what this means. The specific area of highway work zone and not mentioning construction zone to confuse it. On the back that a court may not waive, reduce or suspend fines imposed by this section.

Closing by Sponsor:

REPRESENTATIVE KRENZLER, I would just ask that you would give favorable consideration to this bill and if you do merge the two together you might consider us as a co-sponsor for either one. Thank you for your time.

HEARING ON HB 462

Sponsor: REPRESENTATIVE JAY STOVALL, HD 16, Billings

Proponents:

Charles Brooks, Yellowstone County Commissioners
Brent Brooks, MT County Attorneys Association
Jack Gunderson
Harry Wardell
Tom Harrison, AAA
Mike Lahr, Helena Gasamat
Bob Pashini
Ernie Tompkins
Neil Haight

Opponents:

Ronna Alexander
Greg Cross
Ron Leeland
Tim Harmon
Mike Robinson, Mikes Conoco
Steve Visocan
Mike Allen, Allen Oil
Sherry Armsrtong, City Service
Bob Harris, Independent Petroleum Dealer

Mark Olson

Doug Alexander, Story Distributing Company

Rex Woods

Barry Stang, Stang's Food Center and Conoco Gas Station

Buzz Berry, Classical Gas

Steve hanson, City Service

Mike Haines, Mini Mikes Market

Gordon Smith, Village Market

Ben Havdahl, MT Motor Carriers

Opening Statement by Sponsor:

REPRESENTATIVE JAY STOVALL, HD 16, Billings, I bring you a bill today that is a repealer. It repeals the Montana Retail Motor Fuels Marketing Act. This law stifles free enterprise and completely stops competition. The law now says that you can take your rack price add your transportation costs and business costs and then add six cents on top of that. In my view that is price fixing. When I introduced this bill in the House, fuel prices went down all over the state. Another thing that causes a problem is that one of the provisions of the law is that the county attorneys have to implement and enforce the law. They don't have time to enforce this law. I think that this bill has been lobbied more than any other bill this session. The people that don't like this bill are the people who profit from the current law. I want to repeal this statute in the name of the consumer. They should set price by supply and demand.

Proponents' Testimony:

Charles Brooks, Yellowstone County Commissioners, I have been involved in this issue since 1989. We took a strong position in 1991 to keep this legislation off of the books and out of the code in the State of Montana. I remember very clearly that no one at the state level wanted to be the enforcer of this particular bill. As a result the county attorneys ended up being the enforcer of this legislation. Why should a county attorney be involved in setting the price of gas and monitoring a free enterprise system. We think that this law should be removed from the books. The free marketplace and free enterprise system still is the best way to determine the price of goods and services and no other system has been able to equal that. We urge you to let the free market place work and protect the consumers of this state.

Brent Brooks, MT County Attorneys Association, we have worked with this bill for five or six years now. It is unenforceable and unworkable. The county attorneys should not be in the business of deciding what the cost of doing business is. We had 3,073 cases in Yellowstone County last year. We can not give this a high priority. We are not accountants, auditors, or economists. We run into the situation when the gas price goes down a penny or two, we have letter, phone calls, demands for meetings and conferences. Everybody is saying that everybody is undercutting

them. The fact of the matter is that the county attorney and the attorney general's office should not be involved in the enforcement of this statute. Is there anyone that there only source of income comes from gasoline sales? I suggest that is not the case. The county attorneys have tried to enforce this legislation, it is simply unworkable. I urge you to repeal this. Thank you.

Jack Gunderson, submitted written testimony, (EXHIBIT 1).

Harry Wardell, submitted written testimony, (EXHIBIT 2).

Tom Harrison, AAA, our organization in Montana has almost 100,000 members and we appear on their behalf today. A policy that was adopted to fuel pricing goes as follows: reliance on the principals of competitive free enterprise that have historically served this country well, should be the primary consideration in establishing long term government energy pricing policy. Premature government actions that would restructure any segment of the energy industry should be avoided and government control should be imposed only when the necessity is clearly demonstrated. We would urge you support of this bill. Thank you.

Mike Lahr, Helena Gasamat, submitted written testimony, (EXHIBIT 3)

Bob Pashini, I appear in support of HB 462. The theme today is deregulation and not regulation. This bill would definitely help the consumers. Thank you very much.

Ernie Tompkins, I am here in support of HB 462. I feel that in Billings we are victims of price fixing. Why do we want to keep a law on the books that we can't enforce? I can't think of a Ma and Pap station in Billings that would suffer. Pass HB 462 and let these guys fight it out among themselves. Vote for the people. Thank you.

Neil Haight, I am tired of price dogging by the distributors, hiding behind the marketing law. On two different occasions I have been told by service station attendants that they aren't about to lower prices because they might be prosecuted under current law. There has been no fluctuation to accommodate refinery prices. This is price fixing. Consumers should not be held hostage to the supposed problems of the Ma and Pop stations. I echo the others, give the market free reign.

Opponents' Testimony:

Ronna Alexander, MT Petroleum Marketers, just to give a brief history of the law, it was enacted in 1991. It came about from a study that was done in 1990 funded by the 1989 legislature to look at whether predatory pricing may be occurring in the fuel industry. The committee recommended two pieces of legislation.

The Motor Fuels Marketing Act being one. The act defines what cost is.

{Tape: 1; Side: 2}

There is two questions to answer. One, is the Motor Fuel Marketing Act artificially inflating prices. Two, should there be a law on the books that says that you cannot sell below cost with the intent to eliminate competition. Discussed OPIS handout, (EXHIBIT 4).

Greg Cross, I have thoughts and feelings on both sides of the issue. Whether or not a law is enforceable does not determine its worth. Most of the stations in Montana are locally owned. If free market was the end all, to all of our problems than we wouldn't have seen President Clinton step in when American Airlines threatened to strike. I think that we have to look at the people that are protected by this type of legislation, and it is the consumer in the long run.

Ron Leeland, I just want to bring up a couple facts. Two things I want to bring out in the bill. One thing that they are stating is the cost of doing business, if a dealer can prove that his cost of doing business is less that he can price accordingly. It also says that the department of Justice or the County attorney may bring an action for the violation, it does not say that they have to. It is not a bill that inflates cost of gasoline. Thank you.

Tim Harmon, submitted written testimony, (EXHIBIT 5).

Mike Robinson, **Mikes Conoco**, I would like to read a summary of section 2 of the Montana Retail Motor Fuels Marketing act. " The legislature recognizes that independent and small dealers that are distributors of retail motor fuel are vital to a healthy competitive market place, and are unable to survive financially in competition with subsidized below cost pricing at the retail level by dealers and distributors who have other sources of income. The legislature believes that subsidized below cost pricing is a predatory practice that is not conducive to fair trade. The legislature finds that below cost pricing laws are effective in protecting independent and small retailers and wholesalers in other jurisdictions in subsidized pricing which is inherently unfair and destructive, reduces competition of the motor fuel marketing industry as a form of predatory pricing." I highly urge you to keep this law on the books.

Steve Visocan, one thing that you need to understand is that the current legislation does not provide for any profit. The law says that you can't sell gas for less that what it costs you. It is fairly simple. There is no guaranteed profit in the bill. The law does not say that you can take your elements of cost and then add six percent. It says you can use six percent to define your cost of doing business in the absence of proof of a lesser cost. There

is no profit in the bill, it stops predatory pricing, it stops large chains from going into markets and selling gas under cost and driving their competition out of business. The reason for the six percent in the bill is to make it workable. In the city of Helena, there was a prosecution by the county attorney against a marketer in our city and he was able to bring that case to completion. As far as know there was a settlement reached concerning the price of gas from that time forward. Thank you for your time.

Mike Allen, Allen Oil Company, I think that the important thing to see here is that we can't compete with the big guys. I just don't have the resources to compete with them if they can sell below cost. In the short term everyone will be happy, in the long term everyone will be paying higher prices. I urge you not to support this bill.

Sherry Armstrong, City Service, we are distributors of gasoline and have sixty dealers that we deal with. Of these dealers almost all of them are small businessmen. I have not found any of them that support this bill. I am here to represent them. They would all like you to vote against this bill. Thank you.

Bob Harris, Independent Petroleum Dealer, there are two points that I would like to bring up. One is this notion of a lack of competition within the industry. I have been in this business for twelve years and we have experienced price wars. At one point we were with in 2/10 of 1 cent per gallon over our actual cost. That meant a cutting of staff for us. We lost three people. We replaced them when the price came back. It has made it difficult. Thank you.

Mark Olson. submitted written testimony, (EXHIBIT 6).

Doug Alexander, Story Distributing Company, handed out figures obtained from the Lundberg survey. (EXHIBIT 7) I urge you to vote against HB 462. Thank you.

Rex Woods, my concerns are gas wars. Any kind of wars are bad. I believe that this law has protected us in Montana. We do not need to be controlled but we do need a profit. Thank you.

Barry Stang, Stang's Food Center and Conoco Gas Station, there is a couple things that people didn't touch on. I am one of the towns that can prove that the culprit in this isn't the retailer. I can at many times during the year, buy gas delivered to me out of Spokane, Washington for 3 cents a gallon less than I can I can buy it delivered to me our of Missoula, Montana which is 70 miles closer. It is amazing that I can buy that gas out of Spokane Washington cheaper because the gas that they are selling out of Spokane comes from Billings, Montana. For those of you who think that the retailers are the real culprit here, you should have been in here with a bill to go after the real culprit in this and those are the Conoco's and Exxon, and Cenex's that are

arbitrarily keeping the price of gas in Montana high so that they can keep their prices low in other markets. The real culprit is the big guys who produce the gas not the retailers.

Buzz Berry, Classical Gas, I am a Mom and Pop operation. I have been on the same corner for 33 years. This bill scares me. I urge you to vote no. Thank you.

Steve Hanson, City Service, with any research you will find that our industry is probably one of the most regulated industries in regard to environmental concerns, tax collections and that type of thing. We are probably one of the largest sole tax collectors in the state. Research has shown we directly employ almost 10,000 people in the State of Montana. Our count is strictly the people in every small town in Montana who make their living by being in the petroleum business. This is an emotional issue. We are the only industry in the United States that is required to post our single largest product price for public view. A penny means a lot to a lot of people. It also means a lot to keeping employees, and keeping a successful business open. Thank you.

{Tape: 2; Side: 1.}

Mike Haines, Mini Mikes Market, my concerns have been expressed here, but I hope and pray that you vote no on this bill. Thank you.

Gordon Smith, Village Market, we are a Ma and Pa store. People have gone over my points and I am opposed to this bill.

Informational Testimony:

Ben Havdahl, submitted written testimony, (EXHIBIT 8).

Questions From Committee Members and Responses:

SENATOR BOB DEPRATU, I am sure you are aware that the rack prices appear to be higher in Montana from refineries in Montana than what it is from those same refineries when it is delivered to Spokane, Washington distributor. I am wondering how you would for see that affecting the pricing to the people at the retail level?

REPRESENTATIVE STOVALL, I don't know how the rack price is determined. This law does not have anything to do with the rack price.

SENATOR DEPRATU, don't you think there must be a pricing problem if the rack price is higher in Montana than it is in a neighboring state when it is coming from the same source?

REPRESENTATIVE STOVALL, the rack price doesn't have anything to do with this.

SENATOR DEPRATU, in my interpretation of this section of code, it does not say that they are guaranteed a price, they just say that you can't sell below cost.

REPRESENTATIVE STOVALL, the law is very unclear. I asked the department of commerce how they defined this law, and they didn't know. They leave it up to the county attorneys.

SENATOR JOHN HERTEL, I believe that you said in your opening that the possibility of the gas price to the consumer would probably go down. I am wondering if you really feel that they would stay down?

REPRESENTATIVE STOVALL, I don't know what the price will be if the law is repealed. What I want to do is put it on the free market and let the consumer set the price.

SENATOR HERTEL, there has been talk to day about chains. Do we see that the prices of the grocery chains to be considerably less than what Ma and Pop stores sell for?

REPRESENTATIVE STOVALL, I really don't know.

SENATOR ARNIE MOHL, why if the rack prices don't have any control, why is it that our Conoco and Exxon can deliver cheaper to Wyoming than they are selling it in Montana.

REPRESENTATIVE STOVALL, I don't know. That doesn't have anything to do with this law.

SENATOR MOHL, repealing this law, if the rack price doesn't have anything to do with it, at the very most you could save six cents, unless you want to sell it for less than cost. Aren't we going after the wrong people. Shouldn't we be deregulating the rack prices and leave the retailers alone.

REPRESENTATIVE STOVALL, as far as I know there is no regulation on rack prices.

SENATOR MOHL, the way I read the law, it is based on rack price and what their average price is.

SENATOR "SPOOK" STANG, **REPRESENTATIVE STOVALL** has it wrong. You don't take the cost of doing business and add six percent. You take the rack price plus one percent transportation and if you cannot figure out what your cost of doing business is, you then use the six percent instead of the actual cost of doing business. If you can prove what your cost of doing business is then they can use less than six percent. The cost of transportation varies.

SENATOR REINY JABS, if someone doesn't meet a certain volume they have to pay more for his bulk price, is that right?

Steve Hanson, he would pay more or lose his contract altogether. If he cannot meet the minimum volume requirements he would lose his contract and be out on his own.

Rack prices are set by each independent oil company for each terminal where they have petroleum products. They are required by federal law to post these prices to the public. There is different services that you can subscribe to. What these people do is collect individual rack prices and provide them back to dealers and jobbers. With those rack prices, the oil companies define themselves. The whole bill is written around rack pricing.

Closing by Sponsor: **REPRESENTATIVE STOVALL**, I think all this discussion on rack prices proves my point. This bill is unenforceable. No one really knows what it says. That in itself is a reason to get rid of it. Refereed to the handout from Rod Anderson, (**EXHIBIT 9**).

ADJOURNMENT

Adjournment: 5:00 PM



SEN. ARNIE MOHL, Chairman



PHOEBE KENNY, Secretary

AM/PK