

MINUTES OF THE MEETING  
HIGHWAYS AND TRANSPORTATION COMMITTEE  
MONTANA STATE SENATE

February 15, 1977

The tenth meeting of the Highways and Transportation Committee was called to order by Chairman Manning on the above date in Room 404 of the State Capitol Building at 9:30 a.m.

ROLL CALL: Senators Bergren and Healy arrived at 9:35 and Senators Lockrem and Etchart were absent. All other members were present.

Those present to testify included the following:

William Scribner	Montana Motor Carriers Association
Les Loble	General Telephone of the NW, Inc.
Geoffrey L. Brazier	Consumer Counsel
James P. Dwyr	Public Service Commission
James Hughes	Mountain Bell
Duane A. Olson	Con-Agra Montana, Inc.
Gorham E. Swanberg	Montana Railroad Association
Rob Smith	Public Service Commission
Gordon Bollinger	" " "
Jack Burke	Montana Power Company

Senator Devine, chief sponsor of all of the legislation scheduled for hearing this day, stated that he had introduced this legislation at the request of the Public Service Commission. Senator Devine introduced Mr. Gordon Bollinger, chairman of the PSC to explain the bills.

Mr. Bollinger stated that most of these bills were merely housekeeping measures, some of which had been requested by the auditor. Mr. Bollinger introduced Mr. Rob Smith, staff attorney for the PSC who would explain the rationale for the bills.

CONSIDERATION OF SENATE BILL 362: Mr. Rob Smith, PSC attorney, testified that SB 362 had been recommended by the transportation staff to bring Montana's filing time periods into conformity with those of the Interstate Commerce Commission and thus make it easier for the railroads. The other substantive change in the present law can be found on page 4 of the bill, concerning the applicant and the protestant filings. Subsection 3 would require the protestants to file with the board before the hearing, all of the prepared testimony and exhibits to be used at the hearing. This would put the applicants and the protestants on the same footing.

CONSIDERATION OF SENATE BILL 366: Mr. Smith testified that SB 366 would change the penalty for violation of motor carriers to conform with the jurisdiction of justice courts. The 1972 Constitution allowed the JP's to enforce up to a \$500 fine or 6 months in jail. Being that the PSC enforcement bureau has no

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desire for jail sentences, this bill would change the crime from a misdemeanor to a civil penalty with fines up to \$1000. The PSC believes this will be a better deterrent than jail would be.

CONSIDERATION OF SENATE BILL 367: Mr. Rob Smith testified that SB 367 would change the reporting procedure for accidents involving public utilities. The legislative auditor recommended that this amendment be introduced in this session because it has never been enforced by PSC. SB 367 would change the nature of the statutes to require only major accidents involving public utilities to be reported and investigated.

Senator R. Smith asked if this bill would require the reporting of broken limbs if the accident did not require three days of hospitalization. Mr. Rob Smith answered that it would all be dependent on the hospitalization involved with the accident.

CONSIDERATION OF SENATE BILL 375: Mr. Rob Smith explained that SB 375 would prohibit railroads from establishing discriminatory rates, charging more for short hauls than for long hauls. The ICC now prohibits discriminatory pricing for interstate commerce. Mr. Smith submitted an amendment to the committee that had been requested by the railroad. The amendment would allow competition in situations where competition now exists. (See attached #1 - a copy of proposed amendments.)

Mr. Duane Olson, representing Con-Agra of Montana, Incorporated, testified that since the 1972 constitution and the removal of the prohibition for charging more for the short haul than for the long haul, Burlington Northern started charging more for the short haul. This prohibition has long been included in the Interstate Commerce Act on the federal level.

Mr. Olson referred to a map that explained the situation that his company now faces with BN. He explained that the BN has charged 31 cents per hundred weight which was the interstate rate. But about one year ago the BN started charging 48 cents on a particular short haul route. Con-Agra responded by paying only the 31 cents which resulted in a law suit filed by BN for the amount past due. Mr. Olson commented that there are a number of situations in which this type of discriminatory pricing could occur.

CONSIDERATION OF SENATE BILL 390: Mr. Rob Smith commented that presently the law requires the PSC to make an annual report on the implementation of the Railroad Act. The PSC does not do that now; there is no need for that report. The legislative auditor has recommended that this requirement be abolished.

CONSIDERATION OF SENATE BILL 391: Mr. Smith testified that SB 391 would make the statutes under which the PSC operates conform with the Montana Administrative Procedures Act. Three things are accomplished with the passage of the bill: 1) it changes the time of appeal from 90 days to 30 days to conform with the time limits of the Administrative

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Procedures Act; 2) it changes the date to answer filed complaints from 30 days to 20 days; 3) it repeals a section of the code that deals with transmittal of records to the district court for review, an action already covered by the Administrative Procedures Act.

Senator Graham asked if there were problems with the time running out before appeals could be filed now. Mr. Smith answered that most state agencies now operated under the 30 day limit, thus most of the companies believed that 30 days is the operating limit. There seems to be no hardship caused with that limit.

Chairman Manning asked if there was any discussion of the package of bills from the opposition.

CONSIDERATION OF SENATE BILL 362: Mr. Geoffrey Brazier of the Montana Consumer Counsel stated that he opposed the bill and would offer amendments. He testified that SB 362 was not consistent with the Interstate Commerce Act in that the protections of §15(7) were not included in this bill. Some of the reasons the Consumer Counsel opposes this bill include: 1) there is no reason for the bill and there have been no problems with this area except that the Burlington Northern refuses to grant intra-inter state rates; 2) what is recommended by this bill can already be done by rule by the board. Mr. Brazier referred to examples in which the applicant for the rate increase was not required to file testimony while the Consumer Counsel was required to do so. This amounted to answering arguments not yet made.

Mr. Brazier recommended that the bill either be killed or amended on lines 1 and 2 of page 2; line 25 of page 1; lines 8, 9, and 10 of page 3. He suggested that the bill be amended on page 4, line 18, after the word "or", insert the following: "within 30 days after the railroad has filed sufficient testimony or exhibits, or which ever comes first,".

Senator Graham asked for clarification of how extensive the testimony required before the hearing was. Mr. Bollinger responded that transportation cases have been a problem in this area. The larger transportation cases and all the utility cases have prehearing conferences. The PSC does not have stiff regulations on prefilings now and every time they have tried to strengthen them, the railroads say that they can't "break out" Montana. The railroads turn to §13 of the Interstate Commerce Act and the PSC loses the case. Mr. Bollinger also commented that he would be in agreement with the amendments submitted by Mr. Brazier.

Mr. Rob Smith clarified that the intention of the bill was to have the applicant for the rate increase prefile the testimony and exhibits with the application, and to have the competitors, not necessarily the Consumer Counsel, file the opposing arguments within the allowed time limit set up by this bill. It is not the intent of the bill to allow the carrier to refuse to file such testimony before the hearing.

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Mr. William Scribner representing the Montana Motor Carriers Association stated that he did not want the committee to be left with the impression that there were not elaborate filings made before the Consumer Counsel filed their statements. It is not required by any rules of the PSC, but with their sanction the Motor Carriers file justifications sworn to by all the carriers showing the statistics that justify the increases sought. These statements are filed at the time of the application or shortly thereafter. The carriers do not go there frivolously.

CONSIDERATION OF SENATE BILL 367: Mr. Les Loble representing General Telephones of the Northwest testified that SB 367 was an improvement over the existing law. However, an amendment was needed: page 1, section 1, line 25, Strike "24 hours", insert "the next two business days". The problem is that the PSC does not work on weekends so that when an accident happens on the weekend, there is no way to notify the PSC within 24 hours. In response to the previous question about this bill including broken limbs in the definition of major accidents, Mr. Loble said that §70-129, subsection 2 requires that the utility report that kind of accident, but the law would no longer require the PSC to go out and investigate the accident. With that proposed amendment, the Motor Carriers would support the bill.

Mr. Jim Hughes representing Mountain Bell stated that they were in support of the bill and in concurrence with the amendment.

Chairman Manning suggested that the proponents and the opponents of the various bills should get together with the subcommittee of Senators Graham, Smith and Aber. Senator Healy moved that such a subcommittee be appointed; Senator Bergren seconded the motion. The committee voted unanimously to appoint the subcommittee. Chairman Manning advised the committee that they could look beyond the specific bills to others of the same nature.

CONSIDERATION OF SENATE BILL 375: Mr. Gorham Swanberg, representing the Montana Railroad Association, stated that as drafted he was opposed to SB 375. Several amendments were proposed by Mr. Swanberg that were handed out to the committee. (Attached #2) These amendments would make the bill acceptable to the Railroad Association. Mr. Swanberg stated that there were two specific points to be considered when viewing the bill as amended: 1) There are cases when it is easier for the railroad to run the long haul where at either end there is automatic loading and unloading as is the case with the unit coal trains. It is more efficient and economical for these runs to be uninterrupted by the shorter hauls. 2) The second point is more of a value judgement involving the competitive system. Using the map, Mr. Swanberg showed the committee what happens on the circuitous routes and the branch lines. If the railroad were not allowed to set the prices as they have been, the trucking industry would have all the grain business in a certain area or the small businesses would go out of business. The specific example used was Glasgow, Opheim, but the same situation could happen any place in which the tracks go in different directions. There was no objection from the Railroad Association with the PSC amendment.

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CONSIDERATION OF SB 392 & SB 374: Mr. Jim Dwyr, the fiscal consultant for the PSC, testified that the fiscal note attached to SB 374 was based on several assumptions: 1) that the current rate of inflation would continue; 2) that requests for rate increases would remain the same as the current years'; 3) that applications for rate increases were directly proportional to inflation and that the requests will increase, not decrease; 4) that alternate energy sources were not now perfected, nor would they be for the foreseeable future. The first two of these assumptions are also used in the legislative fiscal note and the last two assumptions are used only by the PSC fiscal analysis.

Mr. Dwyr testified that if this filing fee had been in effect in 1977, \$465,000 would have been collected. The PSC needs more funds on which to operate; the governor's position is that he will not raise taxes; the proposed budget shows a non increasing level of funding for the PSC. SB 374 would be a method of obtaining the needed funds.

Senator Graham asked if the PSC felt that this bill was necessary instead of further appropriations. Mr. Bollinger, chairman of the PSC, commented that with the increased number of cases each year there is no way to pay for the staff that is needed to provide the commissioners with the information that is needed. SB 374 would supply the supplemental appropriations needed because the budget proposed to the legislature is \$60,000 less this year than it was last biennium.

The committee discussed amongst themselves the propriety of placing SB 374 and SB 392 into the Finance and Claims Committee being that they dealt with budgetary and fiscal matters. No decision was reached.

Mr. Jack Burke, an officer of the Montana Power Company responsible for handling all the regulatory affairs before the PSC, testified that SB 392 does not affect public utilities, only motor carriers. The problem of writing an open ended check for the publication of hearing was pointed out by the example of a proceeding that started in March of 1975 in which the Montana Power Company was billed over \$3000 for notices that were printed in the papers. The matter was submitted to Chairman Bollinger and the result was SB 392.

Mr. Burke commented that SB 374 provides that the filing fees be paid to the Treasurer which doesn't mean that the funds would necessarily go to the PSC. It is just another tax related to the dollar amount of the rate increase. Mr. Burke questioned the \$250,000 fiscal note figure as Montana Power alone paid \$194,000 for one case. If the fees are related to the dollar amount of the rate increase, they will raise a lot more revenue than the fiscal note indicates.

Mr. Rob Smith noted that SB 374 provides that the fees would go to the Treasurer because the fees would vary from one year to the next. If the funds were earmarked, the budget of the PSC could drop tremendously depending on the number of filings in a particular year.

For clarification purposes, Mr. Smith commented that SB 392 was intended to apply only to the motor carriers and not to the utilities.

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Mr. Scribner of the Motor Carriers Association again noted that the motor carriers do not engage in frivolous filings. There are cases in which the application has been dropped, but they are made in all good faith. The larger truckers are not opposed to this bill, but the smaller truckers would be affected by the passage of this bill. The increase in the filing fees could discourage those applications which could mean a great deal more money to small communities and where the truckers do not have the ample funds at their disposal to file whenever they need the rate increases. Mr. Scribner also stated that he did not favor giving the PSC the right to publish notices that may not be needed and then passing the costs on to the carriers. If limitations on the type of notices required by law were drawn up, then that would be acceptable, but the type of notices given today would not be acceptable. Presently the notices are too elaborate and the mailings of notice are too numerous.

Chairman Manning reminded the subcommittee that they would be working with all of the PSC bills brought before the committee today.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:00 a.m.

  
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DAVE MANNING, CHAIRMAN



## COMMITTEE

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## REGISTER

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OPPOSITE

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Amendment

## Consumer Counsel

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# Mountain Bell

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PSC 362, 366, 367, 375, 390, 391



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Mr. Pender

374,390.391

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY



## AMENDMENTS TO SENATE BILL 375.

Amend Section 1, line 19 as follows:

following: "rates"

delete: "."

insert: "; provided that upon application to the public service commission and after investigation, such carrier, in special cases, may be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed."