MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

February 17, 1977

The eleventh 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: Senator Etchart arrived at 9:50, Senator Graham was excused and Senator Healy was absent. All other members were present.

Those present to testify included the following:

James Beck	Department of Highways
S. G. Gilliatt	General Motors Corporation
J.C. Purcell	" " "
Geoffrey L. Brazier	Consumer Counsel
Roland D. Pratt	Montana Optometric Association
John B. Rigg, Jr.	Motor Vehicle Manufacturers Assoc.
Larry Majerus	Administration of Motor Vehicles
William S. Gosnell	Legislative Fiscal Analyst
Tom Crowley	City Engineer, Missoula
Bill Murray	Senator
Dan Murray	Self
Gerald F. Raunig	Montana Auto Dealers Association
Larry Huss	" " " "
Thomas E. Schneider	Montana Public Emplyees Assoc.
Ted Stofffuss	Montana Highway Patrol
E.J. Bowlds	State Commission on Local Government

Chairman Manning called upon the subcommittee to report on the bills that were under consideration dealing with the PSC.

REPORT ON SENATE BILL 391: Mr. Jack Burke of the Montana Power Company told the committee that the subcommittee had agreed that SB 391 was a housekeeping measure that provided for a 30 day filing time limit. the subcommittee was in agreement that this bill should be recommended do pass.

REPORT ON SENATE BILL 392: Mr. Jack Burke continued his report noting that there had been an error in the title of this bill and that the last two words of the title should be amended by striking "PUBLIC UTILITIES" and inserting "MOTOR CARRIERS". The public utilities were not in opposition to this bill as amended, but Mr. Burke noted that he could not speak for the motor carriers.

REPORT ON SENATE BILL 374: Mr. Burke commented that the subcommittee was in agreement that this bill constituted a tax and that therefore it should either be killed or sent to the Finance and Claims Committee. The utilities were in opposition to the bill.

REPORT ON SENATE BILL 367: Mr. Rob Smith of the Public Service Commission legal staff reported that the subcommittee meeting decided upon some amendments to this bill. On page 1, section 1, line 25, the words "24 hours" should be striken and the words "two business days" should be inserted.

REPORT ON SENATE BILL 375: Mr. Smith noted that the witnesses seemed to be in agreement with the amendments that had been submitted to the secretary by the PSC on February 15.

REPORT ON SENATE BILLS 366 & 390: Mr. Smith commented that these bills were acceptable to the subcommittee as introduced.

REPORT ON SENATE BILL 362: Mr. Smith told the committee that the Brazier amendments were acceptable to the subcommittee and the PSC.

Mr. Brazier testified that the subcommittee got together on the language and had agreed on several amendments. (See Attached #1) These amendments would make sure that the protestants would file their testimony and exhibits only after the applicants had filed the same.

CONSIDERATION OF SB 426 & SB 386: Senator William Murray, chief sponsor of the legislation testified that SB 386 proposes the regulation of the relations between the new car dealers and the factory. The bill covers a number of different areas such as licensing, liability, appeals, etc. Sen. Murray turned the testimony over to Mr. Jerry Raunig of the Montana Auto Dealers Association.

Mr. Raunig said that he would address his comments to both SB 386 and to SB 426. These bills were introduced as a result of the problems created because the dealers do not own the franchises. The manufacturers are able to weild economic power over the dealers. They make decisions for the dealers on such things as the ads they are required to buy, expantion of facilities, etc., and when the dealers refuse to comply, the manufacturers threaten to cancel the franchise and in some cases they have done so. SB 386 and SB 426 would give the Montana new car dealers added protection against the undo hardships that the manufacturers can perpetrate. 37 states now have such protecting laws. With the difference in the economic power positions, the state must arbitrate.

Mr. Dan Murray, a former new car dealer from Lewistown, testified as to a personal experience in which the manufacturer required him to build a new facility which he could not afford at the time. When he was unable to complete the new facility due to the lack of funds, the manufacturer cancelled the franchise as of December 31, 1976.

Mr. George Vucanovich, a Helena auto dealer, testified that he had also had a personal experience with the manufacturers concerning product liability in which he was required to pay one-half of the damages in a law suit over some latent defects in a vehicle he handled. (Attached #2)

Mr. Larry Huss, representing the Montana Auto Dealers Association testified that he too was appearing in support of both SB 386 and SB 426. As an example of the type of actions that the manufacturers take against the auto dealers, Mr. Huss gave the history behind a case that he has taken over for a client. The case involved the problems of handing a dealership down to another relative at the time of retirement of the currect dealer. The manufacturer refused to allow the dealership to remain in the family, thus depriving the dealer of the ability to transfer his business.

Mr. Huss continued his testimony by explaining that the purpose of the legislation is to have the state intervene where economic interests are such that the small Montana dealer cannot get a fair settlement from some of the largest corporations in the world. By adjusting the economic interests, the two parties will be put on equal footing.

Mr. Huss then explained SB 386 section by section. In covering SB 426, Mr. Huss commented that it had been copied from Wisconsin statutes, while SB 386 was copied from Arizona where that law has been in effect for four years.

Appearing as an opponent, Mr. Jack Rigg, representing the Motor Vehicle Manufacturers Association, said that the Association had taken no position on the bills, but that in the absense of a representative of the Chrysler Corporation, he had been asked to present a written statement from that Corporation and comment on their position. (See Attached #3) In conclusion to the written testimony of Chrysler, Mr. Rigg told the committee that there would be serious questions raised concerning the constitutionality of the two bills in that they would alter existing contracts between the dealers and the manufacturers.

Mr. Sid Gilliatt, representing General Motors Corporation, testified that GM objected to these bills for several reasons. 1) SB 386 does not permit the termination of a franchise when it is in the public interest to do so. Three examples of when it might be in the public interest to do so would include: a) when the dealer was closed for seven consecutive days, something now forbidden by contract; b) when the dealer is convicted of a felony; c) if the license of the dealer is revoked by the state. The state of Florida is currently experiencing a serious situation with dealerships because of a large fraud that has been uncovered. But state law forbids GM from terminating the franchises of those involved without 90 day notice.

2) As a second reason why GM objects to the bills, Mr. Gilliatt said that the bill contains no way to disqualify a person applying for dealership through the passing down of a dealership as outline in SB 426. The manufacturers might be forced to take on a felon, a person with whom the company had had a previous unsatisfactory relationship, or a person who already had most of the dealerships in a town, thereby creating a monopoly in a certain area.

3) The third reason why GM objects to the bills as explained to the committee by Mr. Gilliatt was that the dealer would be able to

initiate an automatic restraining order on the manufacturers. It has been the experience of GM that restraining orders can be frivolous, especially if they are not required to show harm in order to obtain one. This constitutes the denial of due process of law and GM has moved against such laws in four states for the same reason and the laws are currently under review. In Georgia the law was declared unconstitutional.

Mr. Gilliatt noted that GM was not opposed to reasonable regulation, but that they should not be denied due process. GM is in agreement with Chrysler's statement that these bills would interfere with existing contracts and are therefore unconstitutional.

In conclusion to his testimony on SB 386, Mr. Gilliatt read through SB 386 section by section noting GM's objections to the specific language. (See Attached #4)

In commenting on SB 426, Mr. Gilliatt stated that there was a conflict between SB 386 and SB 426. In addition, GM has a successor clause in their contract in which GM is obliged to give the dealership to the successor for two years to see if it will work out all right. This provision has been in the contracts since 1955 and in every instance the nominee has qualified to keep the franchise after two years. GM has terminated only two dealerships in Montana in the last five years and in both cases, the dealer died.

Mr. John Pursell, also of General Motors, testified to the committee on the warranty aspects of the bill. He noted that page 8, section 4, lines 16 to 20 were not included in the Arizona law that SB 386 was supposedly taken from. He further commented that this was anti-consumer because the dealer can raise the customer retail rate to get a higher warranty rate. GM's method of reimbursement for warranty work pays the dealer the cost of mechanic's wages plus 120% for the cost of doing business, reimburses 100% of the fringe benefits to the mechanics plus 50% of the fringe benefits to the dealer for the cost of administrating the fringe benefits. This system is appled the same way to all dealers to be certain of the fairness of the system. GM also pays the dealers a claims advance so that they do not have to operate on their own capital waiting for the return of their costs. 61% have warranty rates equal to the retail rate and 86% are within $1 of retail, based on the stated rate of the dealer.

This formula for warranty work, Mr. Pursell testified, is based on the operating report that all the dealers must file with the manufacturers. The dealer gross profit for warranty repair is 52% and the dealer goross profit for customer repair is 52.2%. The dealers' retail rate is in continual variance as they may give breaks to special customers, they may run specials, all reducing the stated retail rates.

Mr. Pursell stated that the only litigation that has ever taken place on the GM formula was in Tennessee in which a federal court ruled that the GM formula was the same as the retail rate. GM has been operating on that decree since it was handed down in 1971. Eight states have similar laws and no state has challenged the Tennessee consent decree.

Mr. Purcell suggested that SB 386 should be amended on page 8, lines 19 and 20 so that the bill would indicate that the rates would be established on a fair and reasonable basis. This language could be taken from Maryland law. (See Attached #5)

Chairman Manning opened the meeting for questions. Senator Hazelbaker asked if product liability is removed from the dealer in all cases. Mr. Huss answered that the law holds the dealer liable if the work is done negligently.

Senator Smith asked if the bill changes the liability to the manufacturer, when a consumer comes in with warranty work on a car that was bought out of state, would the consumer be forced to go back to the person from whom the car was purchased. Mr. Huss said that this bill does not change that. The dealers are required to do all warranty work. This bill only says that the manufacturer is responsible for latent defects in a vehicle. Senator Smith asked that the question be answered by a representative from GM also. Mr. Gilliatt responded that the general practice with dealers is to require them to perform all warranty work regardless of where the vehicle was pruchased. Mr. Huss added that if a dealer refused to do warranty work then the manufacturer could cancel the franchise. This bill does not affect the manufacturers' ability to do that.

Senator Lockrem asked if the GM representatives had a copy of their master franchise contract. Mr. Gilliatt said that he did not have one with him at the time but would send one when he arrived back in Detroit.

Senator Lockrem asked why there were no dealers here at the hearing. Mr. Raunig answered that they could not get them here to testify because they feared economic retribution if the bill does not pass.

Senator Hager asked about the definition of the designated family member in SB 426 and whether or not it disinheritted adopted children. Mr. Huss answered that it did not as adopted children have all the rights of blood relatives in Montana.

In closing Mr. Huss commented that the Chrysler statement was misleading and that Chrysler was opposed to the general principles of the bill. Chrysler had just cancelled a dealership in Cut Bank and had threatened to do the same to a dealer in Kalispell. As to the constitutionality of the proposal, the Arizona law was tested in court and the Supreme Court of the state upheld its constitutionality. The proof of public interest section was nothing new, as it applied to the motor carriers today; no new precedents were being set.

Mr. Huss said that as for the cost of attorney's fees, Montana statute requires that if one side can sue for treble damages, then the other side can, too. As for the successors' act, the manufacturers now have the right to approve the successor, thereby necessitating this act. Mr. Huss commented that GM does not want to pay the going rate for warranty work and that it has nothing to do with the consumer or GM's concern for them. The accusation that local dealers would raise the rates was rediculous.

Mr. Huss said that the GM advancements for warranty work were misleading the committee, for there was a dealer in Billings who right now had $1200 worth of warranty work done that GM refuses to pay. The definition of gross profits includes all of the normal business costs, not just labor. In conclusion, Mr. Huss said that he agreed that SB 386 was identical to the Arizona law except that the warranty provision was not included in Arizona. Everywhere the representatives traveled in Montana, they were asked for that specific provision.

Chairman Manning allowed the GM representatives to close with their comments being that they had traveled such long distances to come to this meeting. Mr. Gilliatt thanked the chairman and the committee for that opportunity. He said that GM was not opposing the rights of succession bill (SB 426) for they had been abiding by the same types of provisions in their own contracts since 1955. GM does not approve the successors, they are given a two year trial period, and in no case were any of the franchises cancelled after the trial. As to the warranty provisions, GM had no objection to paying the going rate to the dealer if it is justified by what the mechanic is paid and by the fringe benefits given to the mechanics.

CONSIDERATION OF SENATE BILL 420: Mr. Tom Crowley, the city engineer in Missoula, testified to the committee that he had a letter from the originator of the bill indicating that some of the wording had been changed in drafting and could lead to problems later in implementing the bill. (See Attached #6) The bill is not controversial and the Department of Highways Director is a proponent of the bill. The letter offers some of the sentiments as well as suggested amendments to the bill. There is reasonable cause for the bill because Bozeman had been sued and lost their case and Missoula had been sued and won their case. It would really be a shame to spend all of the time in court before a project could be started. If the city wanted to widen the sidewalks, if the Highway Department approved the project, the city would be allowed to let the contracts.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:05 a.m.

Dave Manning

DAVE MANNING, CHAIRMAN

ROLL CALL

HIGHWAYS AND TRANSPORTATION COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 2/17

NAME	PRESENT	ABSENT	EXCUSED
Dave Manning, Chairman	✓		
Larry Aber, Vice Chairman	✓		
Tom Hager	✓		
Frank Hazelbaker	✓		
Lloyd Lockrem	✓		
Mark Etchart	9:50 ✓		
Carroll Graham			✓
John Healy		✓	
Richard Smith	✓		
Russell Bergren	✓		

SENATE Highways & Transpo COMMITTEE

BILL SB411, 412, 426, 386, 420 VISITORS' REGISTER DATE 2/17

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
[illegible]	DOH	420	✓	
[illegible]	[illegible]	386	✓	
S. G. GILLIATT	GENERAL MOTORS CORP	386		✓
[illegible]	[illegible]	426		✓
J C Pyncall	General Motors Corp	386		✓
Geoffrey L. Brazier	Consumer Counsel	362	Cnsmr	
Rolland D Platt	Mont. Optometric Assn.	411		✓
John B Rigg Jr	Motor Vehicle Mfg Assn	386		
Larry Majerus	Admin. Motor Vehicles - DOJ	411/412		✓
[illegible]	LFC Fiscal Analyst Office	411/412	✓	
TOM Crowley	City Engr - Missoula	420	✓	
BILL MURRAY	SENATOR SPONSOR	386 & 426	✓	
DAN MURRAY	SELF	386 & 426	✓	
Gerald F. RADNIG	Montana Auto Dealers Assoc.	386 & 426	✓	
[illegible]	Montana Auto Dealers Assoc	386 & 426	✓	
[illegible]	Mt. Cab. Engr. Assn.	411 412		X
[illegible]	Mont. Hwy Patrol	411		X
[illegible]	MHP	411		X
[illegible]	Justice	411		X
[illegible]	State Compensation Mutual Ins.	420	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Attachment #1

GEOFFREY L. BRAZIER
CONSUMER COUNSEL
TELEPHONE (406)
449-2771

MONTANA CONSUMER COUNSEL

34 W. SIXTH AVENUE
HELENA, MONTANA 59601

February 15, 1977

TO: Senator Carroll Graham
Senator Larry Aber
Senator Richard Smith
Members of the Senate Highway and
Transportation Committee's
Subcommittee for Senate Bill 362

FROM: Geoffrey L. Brazier
Montana Consumer Counsel

Dear Chairman and Members of the Subcommittee:

This is to advise that the Montana Consumer Counsel and the Montana Public Service Commission have discussed the matter of amending Senate Bill 362 and have agreed that the following amendments could be made which would speak to the Consumer Counsel's problems.

The bill should be amended by:

1. Reinserting the words "No changes" and "revisions" on line 22, page 1 of the bill and deleting the word "changes" from the same line and the word "revisions" from line 23, page 1 of the bill.

2. Reinserting the following language commencing at line 25, page 1 of the bill and ending at line 1, page 2 of the bill:

> "any railroad without first obtaining approval therefor from the board. Such changes or revisions shall be made by"

(These deletions were made by the Legislative Council and are substantive in nature.)

3. Rewriting paragraph (3) beginning at line 16, page 4 of the bill to read as follows:

> "(3) Protestants of any rate changes shall file with the board such prepared testimony and exhibits as they will introduce at the public hearing. Such testimony and exhibits shall be filed with the board not later than 30 days after the suspension of proposed tariff revisions, or not later than 30 days after the railroad has filed sufficient prepared testimony and exhibits, whichever occurs first."

(The above amendment assures that railroads will file testimony and exhibits first and that protestants will then file testimony and exhibits in response thereto.)

Attachment # 2

STATEMENT OF GEORGE VUCANOVICH

I appear in support of Senate Bill No. 386, pending before this committee which among other things proposes to limit dealer's liability where a defect in the product has originated with the manufacture and exists at the time the product is resold to the general public.

These defects, for the most part, are not readily apparent but are latent defects.

In November of 1972, I sold a 1973 Cheyenne 1/2 ton 4-wheel drive pick-up to a party not residing in Helena. The truck was warranted as free from certain defects by General Motors Corporation.

Very shortly after the truck was delivered, the owner noted a defect in the truck which was diagnosed as "a bent and sprung frame". I called that fact to the attention of the representative of the manufacturer and he, in turn, notified me not to work on the vehicle. The manufacturer's representative had offered to repair the defect but the purchaser would not accept a repair and demanded a new vehicle.

The purchaser then filed a complaint in the District Court alleging that the vehicle had been purchased from me and was warranted from defects by General Motors and that immediately thereafter the defect was noticed and diagnosed as "a bent and sprung frame". Both my company and General Motors Corporation were named as Defendants in the suit.

The matter proceeded to trial and judgment was entered against both myself and General Motors for the defect.

General Motors paid one-half of the judgment and I was required to pay the other one-half, although my company had nothing to do with the defect and it originated before it

was received by me and sold to the purchaser.

It is patently unfair and unjust that the dealer should be responsible for latent defects of which he can have no possible knowledge prior to selling the same, and certainly a product that he did not help manufacture.

In the event that this bill is passed, the dealer would not be held responsible for the latent defects and the burden placed where it should be, upon the manufacturer.

Respectfully,

GEORGE VUCANOVICH

Maryland

Attachment #5

ment to the Baltimore City Court or the circuit court of the county as the case may be, wherein the dealer, manufacturer, distributor or factory branch resides.

(5) To resort to or use any advertisement in connection with his or its business which contains an insertion, representation or statement of fact which is false, deceptive, or misleading.

(6) To prevent or attempt to prevent by contract or otherwise any dealer or any owner, partner, or stockholder of any dealer from selling or transferring any part of the ownership interest of any of them to any other person or persons or party or parties; but no dealer, owner, partner, or stockholder may sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer, distributor, or factory branch, which consent shall not be unreasonably withheld.

(b) Violation of any provisions of this section subjects any violator to whom the licensing provisions of this part apply to the administrative sanctions of this part; and to criminal prosecution. (1972, ch. 544, § 3.)

§ 5-707. When license may be refused, suspended or revoked; hearing; contempt; appeal.

(a) The Administration may refuse, suspend, or revoke any license issued under this part if the Department finds that any manufacturer, distributor, or factory branch which is licensed or required to be licensed under this part has:

(1) Violated any provision of this Part VII or is performing or attempting to perform any act prohibited by this Part VII.

(2) Failed to comply with any written warranty agreement.

(3) Failed to reasonably compensate any authorized motor vehicle dealer who performs work to rectify the licensee's product or warranty defects, or delivery and preparation obligations. In the determination of what constitutes reasonable compensation under this law, the factors to be given consideration shall include, among others, the compensation being paid by other licensees to their dealers, the prevailing wage rate being paid by the dealers, and the prevailing labor rate being charged by the dealers, in the city or community in which the dealer is doing business.

(b) The Administration shall suspend or revoke any license issued under this part only after a hearing. At least ten (10) days prior to the date set for the hearing, the Department shall notify the licensee in writing of any charge made and afford the licensee an opportunity to be heard in person and by counsel in reference thereto. The written notice shall be served by delivery to the licensee by registered mail to the business address of the licensee of record with the Department. The hearing on the charges shall be at a time and place the Administration prescribes. The Administration may subpoena and bring before it any person or documents, and take the testimony of any person under oath in the manner prescribed in judicial procedure in the courts of this State in civil cases, with the same fees and allowance as provided by law in civil cases.

Attachment #6

Missoula, Montana 59801

THE GARDEN CITY
HUB OF FIVE VALLEYS

City Engineering Department
201 West Spruce
Phone 728-2817
Letter No. E-77-68

February 14, 1977

TO: Senate Highway and Transportation Committee

SUBJECT: S.B. 420

I have reviewed S.B. 420 and support the intent of the bill. However, key words were eliminated from the originator's request. Starting with line 20, suggest it be amended to read:

> "The department may review and approve projects for improvement districts, sidewalk, curbing or other public works projects on state highway right-of-way and authorize a county or municipality to let contracts related to such improvements" or
>
> if the Committee prefers, the words "Public Works Construction Projects" or "Construction Projects" may be used to be more general. The present wording of improvement district refers to only one form of construction project.

It is important that the present draft extend beyond just improvement districts. Cities and counties use improvement district only about 30% of the time. The use of curb and sidewalk assessments, general funds, gas tax or revenue sharing may be used the other 70% of the time.

Sincerely,

Fred Root
City Attorney

FR/pb