

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION
COMMITTEE
MONTANA STATE SENATE

January 13, 1983

The meeting of the Highways and Transportation Committee was called to order by Chairman Mark Etchart on January 13, 1983 at 1:02 p.m. in Room 410, State Capitol.

ROLL CALL: Roll was called with all Senators present.

SENATE BILL NO. 55: Hearing commenced on Senate Bill No. 55. Senator Tom Hager of Yellowstone County, sponsor of the bill, gave background information. By law, wrecking yards must be screened from public view. The department decided, several years ago, that a yard could not be screened if a fence had to be higher than 12 feet, and so it adopted rules saying that new yards could not be licensed if the fence had to be higher than 12 feet. The Department then decided that it did not have the authority to enforce such a rule, and two sessions ago it had legislation introduced to give it such powers. The Wrecking Yards Association got that bill amended to say that the rule would not apply to any yard that had been used as such within the preceeding 18 months. The problem arose when everyone assumed that the 18-month exclusion applied only to licensed yards. However, a case has come up where a yard was not licensed, and not screened, but had operated illegally for more than 18 months, and the owner's lawyer is arguing that his client comes within the exclusion, and does not have to be properly screened to get licensed.

Senator Hager told the committee Senate Bill No. 55 merely clarifies the law, and makes it clear that the exclusion to fully screened yards applies only to those yards which were licensed at any time within 18 months prior to the date an application for a new license is made. A grandfather clause protecting existing licensed yards is absolutely necessary. When a yard was first licensed, it would have been properly screened; however, a new road might be built later, which could be in such a position that the yard could no longer be fully screened. This would not affect the existing owner, but if he decided to sell his business, or if he accidentally let his license lapse, the Department could consider this a new license application and deny it because it could not now be fully screened. This bill will both clarify the law and keep in existence the present protection already approved by the Legislature.

Senator Etchart asked if there were any proponents to Senate Bill No. 55.

W. L. Romine, representing the Wrecking Yards, told the committee under present law, a new wrecking facility cannot

be licensed if it cannot be screened from public view. There is an exception which applies to any yard which was used as such at anytime within 18 months. This is a grandfather type of exception and protects the purchaser of an existing yard. This bill will merely make it clear that the exception only applies to yards which had been licensed at any time within 18 months prior to an application for a new license. The present law implies this, but has been construed to mean if the yard was in existence, even if in violation of the law, it could be licensed even if it is not screened. This interpretation was not the reason for the law in the first place.

Senator Etchart asked if there were any other proponents.

Larry Mitchell, Department of Health and Environmental Sciences, told the committee they are in support of this legislation. It is an important issue that we fully support.

Senator Etchart asked if there were any other proponents. There were none. Senator Etchart asked if there were any opponents to Senate Bill No. 55. There were none. Questions from the committee.

Senator Etchart asked Mr. Romine if this legislation would affect a wrecking yard in Glasgow.

Mr. Romine indicated this bill was drafted as a direct result of the wrecking yard in Glasgow. He told the committee if this wrecking yard would go ahead and finish the screening, the department would issue a license. He gave the committee background information on the wrecking yard. The bill would not affect this wrecking yard.

Larry Mitchell told the committee everyone had 18 months to screen their yards. They all had a free license for that period of time. Finally to resolve the issue, we talked the Highway Department into surveying the property in 1976. They told him exactly what is required to screen the property. Twelve feet fence is all we have ever asked for. This bill will not affect him at all.

Senator Etchart said the wrecking yard contends he had worked out an agreement for an eight foot fence and they have now changed their mind and are asking for a twelve foot fence.

Larry Mitchell, Department of Health and Environmental Sciences said the 1976 survey recommended a tapered fence, going from eight feet to twelve feet. He knew that in 1976 and refused to go along with the department. He put an eight foot fence all along the highway. The east fence is not an issue at all. The issue is the west fence. There have been

extensive hearings on this issue. For \$1,000, he could finish the fencing.

Senator Hager asked Mr. Mitchell if wrecking yards are permitted to screen with trees.

Mr. Mitchell said yes, as long as they do the job. We accept natural vegetation.

Senator Hager asked Mr. Mitchell about the trees that the Highway Department planted along the highway by the wrecking yard.

Mr. Mitchell, said yes, at one time there were trees planted by the Highway Department, but that it never did the job adequately.

Senator Hager asked if this was part of an agreement, that the Department of Highways would screen this wrecking yard with trees.

Mr. Mitchell said no.

There being no further questions, the hearing on Senate Bill No. 55 was closed.

SENATE BILL NO. 10: Senator J. D. Lynch, told the committee this bill was by request of the Joint Subcommittee on Highways. It is one of a package of ten bills proposed by the Joint Subcommittee on Highways as the outcome of its interim study. This bill gives the Highway Commission power to establish priorities and to designate projects to be planned or constructed. Under the present law, the commission has no authority to request or require the Highway Department to implement any project.

Senator Lynch introduced Mr. George Vucanovich to the Committee.

George Vucanovich, proponent of Senate Bill No. 10, told the committee he represents himself. He served on the Highway Commission eleven years and eight months. During that time, all powers were within the commission. In December of 1972, during Governor Anderson's reorganization, the powers of the commission were done away with and it became a dictatorship. The executive branch had the power, and not the commission. We had no power over personnel. I think that power should be given back to the commission in certain phases.

Senator Etchart asked if there were any other proponents to Senate Bill No. 10.

Sam Hubbard, Department of Highways, told the committee Gary Wicks wanted me to inform the committee, both the Highway Commission and the Director have discussed this legislation and are supportive of it. They want to appear before this committee at a later time and answer questions that the committee members might have. Because of a conflict of scheduling, they were not able to appear today.

Senator Etchart asked if there were any other proponents to Senate Bill No. 10.

Larry A. Tobiason, representing the Montana Automobile Association and the Montana Highway Users, said they support the bill.

Senator Elliott, removed himself from the committee, for the purpose of testifying on Senate Bill No. 10. He is in support of the bill.

Senator Tveit, removed himself from the committee, for the purpose of testifying on Senate Bill No. 10. He told the committee he is in support of the bill. He said the Highway Commission attended one of their Joint Subcommittee meetings and discussed problems with the lack of authority they have. He supports the bill.

Senator Stimatz, removed himself from the committee, for the purpose of testifying on Senate Bill No. 10, and told the committee he is in favor of the legislation.

Senator Etchart told the committee we will hold the bill and hear further testimony on Tuesday, January 18th at 1:00, so that the Highway Department and Commission can testify, and any other interested persons.

There being no further testimony or questions, the hearing on Senate Bill No. 10 was closed until Tuesday, January 18th.

SENATE BILL NO. 91: Senator Graham told the committee Senate Bill No. 91 was introduced at the request of the Department of Highways. This bill would allow the Montana Highway Commission to delegate its authority to award contracts to either the Department or units of local government.

At the present time, Section 60-2-111 provides in part: "All contracts for work on state and federal-aid highways, including those portions in cities and towns *** shall be let by the commission." This language is extremely broad and has created problems for both the Department and units of local government.

For example, the Department cannot enter into minor contracts for repair or maintenance work on a highway without having the Commission let or award the contract. The Commission meets once a month and many times the work must be done prior to their meeting. In addition, the Commission should not and does not want to be handling minor contracts.

This bill would also allow the Commission to delegate its authority to award a contract to units of local government. At the present time, a county for example, cannot finance and let the contract for a bridge or work which is to be constructed as a state or federal-aid highway. Such contracts have be let by the Highway Commission. The Montana Supreme Court has ruled that cities cannot let contracts for the erection of street lights on federal-aid highways or state highways.

This bill would not require the Commission to delegate its contracting authority, but would allow them to do so.

Jim Beck, Department of Highways, proponent to Senate Bill No. 91, told the committee this bill was introduced by my request because of problems I face on a day to day basis. We want to do minor contracts and the way the law reads not we cannot do any without consulting the commission.

Senator Elliott asked Mr. Beck if he thought a dollar limit should be worked into the bill.

Mr. Beck said he did not think it was necessary.

Senator Hager asked Mr. Beck if it would be up to the commission to decide in each case.

Mr. Beck said yes, it would be up to the Commission and the Department.

There being no further questions or testimony, the hearing on Senate Bill No. 91 was closed for the day, and further testimony and questions will be heard on Tuesday, January 18th.

ACTION ON SENATE BILL NO. 55: Senator Hager asked the Chairman to hold off taking any action on Senate Bill No. 55, until he had a chance to study the bill further.

Highways and Transportation Committee
January 13, 1983
Page 6

ADJOURN: There being no further business before the
Committee, the meeting was adjourned at 1:50 p.m.

Mark Etchart

Senator Mark Etchart
Chairman
Highways and Transportation

ME/cdf

ROLL CALL

SENATE HIGHWAYS AND TRANSPORTATION COMMITTEE

48 ~~47~~th LEGISLATIVE SESSION -- ~~1982~~ 1983

Date 1/13/83

NAME	PRESENT	ABSENT	EXCUSED
Senator Mark Etchart, Chairman	✓		
Senator Hager, Vice Chairman	✓		
Senator Elliott	✓		
Senator Shaw	✓		
Senator Tveit	✓		
Senator Graham	✓		
Senator D. Manning	✓		
Senator Stimatz	✓		
Senator Daniels			
Paul Verdon, Leg. Council	✓		
Carol Doyle Frasier, Secretary	✓		

1/13/83

Highways

[illegible]

(Please leave prepared statement with Secretary)

HIGHWAYS AND TRANSPORTATION
January 11, 1983

SUMMARY OF SB55:

Senate Bill 55 was introduced by Senator Hager.

This bill amends the "Grandfather" Clause privilege against requiring fencing of a new motor vehicle wrecking yard to extend the right to any site that was licensed in the 18 months preceding application instead of one that had been in use for that purpose.

HIGHWAYS AND TRANSPORTATION
SENATE
January 11, 1983

SUMMARY OF SB10:

Senate Bill No. 10 - introduced by Senator Lynch and others
by request of Joint Subcommittee on Highways.

This is one of a package of ten bills proposed by the Joint
Subcommittee on Highways as the outcome of its interim study.
This bill gives the Highway Commission power to establish
priorities and to designate projects to be planned or constructed.
Under present law, the commission has no authority to request
or require the Highway Department to implement any project.

HIGHWAYS AND TRANSPORTATION
January 13, 1983

SUMMARY FOR SB91:

Senate Bill 91 was introduced by Senator Graham.

This bill was requested by the Department of Highways and would allow the Highway Commission to authorize the department or a local government to award a contract that under present law only the commission can award.

TO: SENATOR TOM HAGER.

SUBJECT: S. B. 55.

FROM: BILL ROMINE, WRECKING YARDS ASSOCIATION.

BACKGROUND: By law, wrecking yards must be screened from public view. The Department decided, several years ago, that a yard could not be screened if a fence had to be higher than 12 feet, and so it adopted rules saying that new yards could not be licensed if the fence had to be higher than 12 feet. The Department then decided that it did not have the authority to enforce such a rule, and two sessions ago it had legislation introduced to give it such powers. The wrecking yards Association got that bill amended to say that the rule would not apply to any yard that had been used as such within the preceeding 18 months.

PROBLEM THAT AROSE: Everyone assumed that the 18-month exclusion applied only to licensed yards. However, a case has come up where a yard was not licensed, and not screened, but had operated illegally for more than 18 months, and the owner's lawyer is arguing that his client comes within the exclusion, and does not have to be properly screened to get licensed.

WHAT THIS BILL DOES: S.B. 55 merely clarifies the law, and makes it clear that the exclusion to fully screened yards applies only to those yards which were licensed at any time within 18 months prior to the date an application for a new license is made.

REASON FOR EXCLUSION: A grandfather clause protecting existing licensed yards is absolutely necessary. When a yard was first licensed, it would have been properly screened; however, a new road might be built later,

which could be in such a position that the yard could no longer be fully screened. This would not affect the existing owner, but if he decided to sell his business, or if he accidentally let his license lapse, the Department could consider this a new license application, and deny it because it could not now be fully screened. This Bill will both clarify the law and keep in existence the present protection already approved by the Legislature.

Thank you for your help.

Bill Romine

NAME: W. L. Romine DATE: 1-13-83

ADDRESS: Helena

PHONE: 442-2220

REPRESENTING WHOM? wrecking yards

APPEARING ON WHICH PROPOSAL: S. B 55

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Under present law, a new wrecking facility cannot be licensed if it can not be screened from public view. there is an exception which applies to any yard which was used as such at any time within 18 months. this is a grandfather type of exception & protects the purchaser of an existing yard. This bill will merely make it clear that the exception only applies to yards which had been licensed at any time within 18 months prior to an application for a new license. The present Law implies this, but has been construed to mean if the yard was in existence, even if in violation of the law, it could be licensed even if it ~~was~~ is not screened. This interpretation was not the reason for the Law in the first place.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Senate Bill 91 was introduced at the request of the Department of Highways. This bill would allow the Montana Highway Commission to delegate its authority to award contracts to either the Department or units of local government.

At the present time, Section 60-2-111 provides in part: "All contracts for work on state and federal-aid highways, including those portions in cities and towns *** shall be let by the commission." This language is extremely broad and has created problems for both the Department and units of local government.

For example, the Department cannot enter into minor contracts for repair or maintenance work on a highway without having the Commission let or award the contract. The Commission meets once a month and many times the work must be done prior to their meeting. In addition, the Commission should not and does not want to be handling minor contracts.

This bill would also allow the Commission to delegate its authority to award a contract to units of local government. At the present time, a county for example, cannot finance and let the contract for a bridge or work which is to be constructed as a state or federal-aid highway. Such contracts have to be let by the Highway Commission. The Montana Supreme Court has ruled that cities cannot let contracts for the erection of street lights on federal-aid highways or state highways.

This bill would not require the Commission to delegate its contracting authority, but would allow them to do so.