

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

January 24, 1985

The fourth meeting of the Highways and Transportation was called to order at 1 p.m. on January 24, 1985 by Chairman Lawrence G. Stimatz in Room 410 of the Capitol Building.

ROLL CALL: All members were present.

There were visitors in attendance. (SEE ATTACHMENT)

CONSIDERATION OF HOUSE BILL 21: Representative Quilici, District 71, is the sponsor of this bill. He was asked to introduce this bill at the request of the Department of Highways. This bill specifically does one thing, repeals section 60-2-101, MCA, which requires that the Highway Commission meet at least once every month. The reason for the repealer is that there are some months when the Highway Commission does not have to meet. If there is no business to take care of it is foolish to bring commissioners in from all over the state for a meeting when it is not necessary. The chairman from the Montana Highway Commission, Ilert Hellebust, elaborated on the issue by stating that traditionally the Highway Commission met on the last day of one month and the first day of the next month in order to meet the requirement of law. This repealing section that was requested was basically to use the commission's time and money more frugally. He felt that there would be times when the commission would not have to stay over a second day. He also felt the commission could use their time and funds more effectively if there wasn't the requirement of meeting once a month. The commission felt that this bill was an economy measure as well as an efficiency measure. The general summary of this bill is attached as EXHIBIT 1B.

PROPOSERS: Representative Quilici, District 71, spoke in support of HB 21.

Ilert Hellebust, Chairman of the Montana Highway Commission, spoke in support of HB 21.

OPPOSERS: There were no opponents to HB 21.

Representative Quilici closed by stating that this bill would make the Highway Commission more efficient.

Questions from the committee were called for.

Senator Williams asked Ilert Hellebust what the approximate cost would be for a two month meeting? Mr. Hellebust could not answer him, therefore Gary Wicks answered him by giving him an approximation of \$1000 for the two month meeting, which would include per diem and salaries for 5 members.

Senator Shaw asked Ilert Hellebust what the duties or guidelines of the commission are? Mr. Hellebust answered him by saying that

the commission's duties have increased since July 1st. The commission is basically a judicial body, hearing complaints concerning roads, establishing interstate routes, approving secondary routes, approving bridge levies, and awarding contracts. They also do a lot of minor duties, such as setting speed limits.

The hearing was closed on HB 21.

CONSIDERATION OF SENATE BILL 113: Pete Story, Senate District 41, is the sponsor of this bill. The purpose of SB 113 is to give new duties and powers to the Highway Commission. Mainly to be the final arbiter when local communities or citizens and the Highway Department can't agree on a given matter. Prior to reorganization, the Highway Commission had control over the duties of the Highway Department. It was the wisdom of the executive reorganization staff, and the legislative committee agreed, that the commission should be limited to considering important highway decisions and the lesser matters and daily minutiae should be left to be handled internally within the department. He felt that it was time to reexamine the powers and duties of the highway commission. As the years went by, subsequent to reorganization, the Highway Department became more and more height bound by its own maze of rules and regulations and less capable of responding flexibly to local complaints in a positive and a useful way. Senator Story also added that if this bill passed, section 2-4-102, MCA, Administrative Procedures Act, should be amended to be put in a clearer and more positive manner, with an adequate effort, so that the Highway Commission would be empowered to take any problem, if it can't be solved within the department, and be the final arbiter of that problem. The general summary of this bill is attached as EXHIBIT 1A.

PROPOSERS: Pete Story, Senate District 41, spoke in support of SB 113.

OPPOSERS: Gerald Archambeault, representing the Highway commission, spoke against SB 113. In 1983 they were lucky enough to get a little expansion of their duties, and he felt they had a real input in the highway projects in the state of Montana, particularly with regard to the long-range planning. If the commission was required to do the things Senator Story wanted, then he felt they were looking at a great expansion of what their present duties are, and more responsibility means more time. He felt that at least four out of five commissioners, including himself, would probably have to resign because they couldn't make time to do the required duties suggested in SB 113, as they have additional jobs also.

Milan Foster, representing the Montana Highway Commission, spoke against SB 113. He felt that if the law was passed he would have to turn in his resignation.

Gary Wicks, Director of the Highway Department, spoke against SB 113. He felt that the wisdom of the past legislature in giving the Highway Commission the responsibilities it has and leaving to the department the day to day administrative functions of the Highway Department is an appropriate balance. The Highway Commission does have an influence on the department's decisions, and they pay

attention to them when they can. He stated that they do try to meet their responsibilities after they listen to the people's requests for whatever activities they want done.

In closing , Senator Story stated that the important thing to him is what the Highway Department could do with the power they have.

Chairman Stimatz pointed out to Senator Story that he had a rules power change as a part of his new section, page 2, lines 8 & 9, and it would require a statement of intent. Senator Story agreed and stated that he had overlooked that.

Questions from the committee were called for.

Senator Williams asked Senator Story if his bill was asking the commission to be a little more responsive to the problems of the people in a given area? He was told that the only issue he wanted was for the commission to be the final arbiter where there is an intersection problem, a sign problem, etc.

Senator Williams asked any one of the commissioners if they were attending their meetings to put input in from all over the State and not just to approve what has been proposed to them? Mr. Hellebust answered him by stating that the Highway Commission has bent over backwards to be accomodating to the oublic. We are in the sane position as the Highway Department in regards to saying "no" to some requests.

Senator Williams asked Mr. Hellebust if the proposed expansion will conflict with the times they meet and the business they have to take care of? He answered by stating that whatever the legislature decides, they will work with that. He also stated that they felt they are at the present time, a solving board for the public. They have delegations come in and if they have legitimate concerns the commission will try to hear those concerns.

Senator Tveit asked Mr. Hellebust to address the expanded authorities given to the commission in 1983. Mr. Hellebust said the two major authorities given to them were project selection and setting up projection priorities.

Senator Tveit asked Senator Story if he wanted to expand the commission's authority further? He was told that this bill would not expand the time required, only give the commission the final say instead of recommending to Gary Wicks.

Senator Bengston asked Senator Story how the appeal process would work? He said he would want the people to go to a hearing and have the commission make the final decision on the matter. We would adopt rules to provide for the appeals.

Senator Bengston asked Senator Story if he would go through the Administrative Procedures Act or would the Highway Department recommend those rules? She was told that the Administrative Procedures Act does apply to the Highway Department now.

Senator Hager asked Gary Wicks if there was an appeal process now?

He was told yes, that the commission always has the power to appeal to district court, but right now the commission has some appeal responsibility that is specifically identified in the statutes.

Senator Farrell asked any of the commissioners if they felt they could gather all the information they need in regards to long-range planning, priorities on contracts, and construction projects, in one day a month, and make a reasonable assumption on the matter? He was told that they do have a lot of homework to do and they rely on their experts.

Senator Farrell asked Milan Foster the same question asked above, and was told that he gets a lot of feedback from other sources than the Highway Department and the department excepts that feedback as to the projects and priorities being worked on.

Senator Lybeck asked the commissioner from his district, Roy Duff, how he felt hearing appeals would affect his job as a commissioner? He felt he did not see how there would be enough time to tend to added responsibilities.

Senator Williams asked Gary Wicks how many employees there are in the Highway Department? He was told that the FTE level, permanent and temporary, was 1,970 employees.

Jim Beck, Chief Counselor for the Department of Highways, made a statement concerning SB 113. (SEE EXHIBIT 2)

Further questions from the committee were called for.

Chairman Stimatz asked Mr. Beck if the commission has the power to call themselves into meeting at any time? He was told yes, they do have that power.


The hearing was closed on SB 113.

ANNOUNCEMENTS:

There will be a meeting with an expert from the Northwest Traffic Institute at 3:30 today at the Highway Department.

ADJOURNED:

The meeting was adjourned at 2:45 p.m.



LAWRENCE G. STIMATZ
CHAIRMAN

ROLL CALL

HIGHWAY AND TRANSPORT. COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 1-24-85

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
#7 SENATOR STIMATZ	X		
#22 SENATOR KATON XXXXXXXXXXXX			
#27 SENATOR BENGTSON	X		
#8 SENATOR DANIELS	X		
#32 SENATOR FARRELL	X		
#42 SENATOR HAGER	X		
#48 SENATOR LYBECK	X		
#23 SENATOR SHAW	X		
#3 SENATOR TVEIT	X		
#39 SENATOR WILLIAMS	X		

Each day attach to minutes.

DATE January 24, 1985

COMMITTEE ON Highways and Transportation

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SUMMARIES OF BILLS TO BE HEARD BY

SENATE COMMITTEE ON HIGHWAYS AND TRANSPORTATION

THURSDAY, JANUARY 24, 1985

- 1A SB 113, introduced by Senator Story. This bill allows the Highway Commission to hear appeals from decisions of the Department of Highways. The Commission may adopt rules to impliment the bill upon passage and approval, but the rules will not be effective until October 1, 1985.
- 1B HB 21, Introduced by Representative Quilici, at the request of the Department of Highways. This bill repeals the requirement that the Highway Commission meet once each month. In practice, the commission has been avoiding this requirement by meeting the last day of one month and the first day of the next month.

Background on Senate Bill 113:

Senate Bill 113 provides for an appeal by any individual regarding any Department of Highway decision that the individual believes

- (1) is unfair or otherwise objectionable and;
- (2) has resulted or would result in unnecessary inconvenience or harm to one or more members of the public.

The bill further states that appealable decisions include, but are not limited to contested case proceedings or declaratory rulings made by the Department under the Administrative Procedures Act.

Thus, under the provisions of this bill, virtually every decision that is made by the Department is appealable by anyone to the Highway Commission. The following list provides some examples of the types of decisions that the Commission could, under the very loose language, be called upon to review:

- (1) Personnel decisions of every kind by employees and job applicants, including hiring, firing, promotions, selection of both temporary and permanent employees, transfer of existing employees, labor contract decisions, etc.
- (2) Maintenance decisions on signing, approach permits, and pothole repairs, etc.
- (3) Preconstruction decisions regarding the alignment of roads, the materials to be used, etc.
- (4) Right-of-way^s decisions regarding acquisition of right-of-way, such as the need to acquire, the amount to be acquired, the price paid, condemnation orders, etc.

- (5) Construction decisions made by the Project Managers during the course of constructing projects, such as whether certain contract days should be charged to the contractor, etc.
- (6) Traffic decisions regarding the necessity for and location of traffic control signs and devices, the type of devices, etc.
- (7) Design decisions. For instance, the use of concrete rather than pavement, a design decision, could certainly be appealed under the "otherwise objectionable" provision.
- (8) Environmental decisions, for example the adequacy of environmental impact statements, archaeological protection, and stream bank preservation questions, etc.

It is important to point out that the Department makes thousands of these kinds of decisions on a daily basis. While no one is suggesting that all of these decisions would be appealed to the Commission, it would only take a very small percentage of appeals to clog up the decision-making process. There are two results that would occur - first, delays - not only in getting projects to contract, but delays in hiring, maintenance, design, and other day-to-day activities critical to the operation of the Department. Secondly, there would be confusion. The confusion would result from conflict with existing laws and procedures, with duplication of appeal procedures already in place. For example, Department employees already have the statutory right to appeal to the Board of Personnel Appeals. Would this bill supersede all those other statutes, duplicate or overlap? Under this proposal, over the long term more and more of the day-to-day operating decisions would be going to the Commission because individuals would realize they don't have to deal with the Department.

The Commission would either have to be made full-time, spending almost all of its time hearing appeals or would have to act on appeals with no time for meaningful review, or time to meet its other statutory responsibilities.

Past experience is that in 1971 the Commission did have administrative responsibilities. However, there was a routine blanket delegation to the Department because a part-time Commission did not have the desire or time to get involved in details. The current Commission is no different.

The 1983 Legislature substantially increased the responsibilities of the Highway Commission. The responsibility to select projects and set priorities for the construction program has been added to the other responsibilities of awarding contract, (\$177 million last year), approving location decisions, setting speed limits and serving as a sounding board for the public on major issues. The new responsibilities are becoming more significant as time goes on. The changes seem to be working well. We believe it should be given a good test before any drastic changes are made in the Commission responsibilities.

Thank you.