

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION  
COMMITTEE ON HIGHWAY AND TRANSPORTATION

Call to Order: By CHAIRMAN TVEIT, on JANUARY 17, 1989, at 1:00 p.m. in Room 410 of the State Capitol.

ROLL CALL

Members Present: SENATORS: Larry Tveit, Darryl Meyer, Hubert Abrams, William Farrell, Cecil Weeding, Jerry Noble, Lawrence Stimatz, John Harp, Bob Williams

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council

Announcements/Discussion: CHAIRMAN TVEIT announced the hearings on Senate Bills 62, 72 and 73.

HEARING ON SENATE BILL 62

Presentation and Opening Statement by Sponsor: SENATOR FARRELL, District #31 gave his presentation. SEE EXHIBIT 1.

List of Testifying Proponents and What Group they Represent:

Jesse Munro, Acting Director for the Department of Highways  
Ben Havdahl, Montana Motor Carriers Association  
Keith Olson, Montana Logging Association  
Lloyd Lockley, Montana Contractors Association  
Bonnie Tippy, Montana Manufactured Housing and Recreational Vehicle Association  
Ray Brandewie, Montana Manufactured Housing and Recreational Vehicle Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

JESSE MUNRO, Acting Director for the Department of Highways

stated this bill is to legalize what they have done for years and not for the purpose of expanding. It is to give the authority for the Gross Vehicle Weight Division to develop rules and interpret Title 61, Chapter 10. SEE EXHIBIT 2. Jesse referred the Committee to paragraph 2 of Exhibit 2. He also stated that the bill needed a Statement of Intent. SEE EXHIBIT 3.

LLOYD LOCKLEY, Montana Contractors Association stated that his association supports SB 62. For the past two years a liaison has been working with the GVW Department trying to identify problems in revising rules and regulations.

KEITH OLSON, Montana Logging Association expressed appreciation in having the opportunity to support SB 62.

BONNIE TIPPY, Montana Manufactured Housing and Recreational Vehicle Association stated that they agree with the Administrative Code interpretation, but do disagree with treating all types of wide loads the same. SEE EXHIBIT 3A and EXHIBIT 3B. She also distributed their proposed language for Statement of Intent for SB 62 which Jesse Munro referred to earlier. SEE EXHIBIT 3.

RAY BRANDEWIE, Manufactured Housing and Recreational Vehicle Association stated that the Statement of Intent (Exhibit 3) asks the GVW Department to recognize differences in loads. He stated that the extra cost that is added to the cost of the mobile home is past onto people who can least afford it. The average cost of a mobile home is \$22,400. When you take a \$1,000. extra fee added on for the pilot car, you have added approximately 5% to the cost of that home.

Questions From Committee Members: SENATOR WILLIAMS asked if the rules still stand on weekends for no wide loads.

JESSE MUNRO stated that presently there is an administrative rule providing that wide loads can travel during daylight hours on the weekends, excluding certain red routes.

SENATOR WILLIAMS asked if the red routes stay that way for the year.

JESSE MUNRO further explained that they are currently studying the red routes to determine whether some could be made seasonal.

Closing by Sponsor: Senator Farrell announced the hearing on Senate Bill 62 to be closed.

DISPOSITION OF SENATE BILL 62

Discussion: Lee Heiman, Legislative Staff pointed out that there was a Statement of Intent from the Legislative Council attached to Senate Bill 62. SEE EXHIBIT 3C. He also explained that their Statement of Intent is identical to the one the Highway Department had, except that the Highway Department had added an extra paragraph at the end. SEE EXHIBIT 3D. This paragraph would provide that the legislature intends this rule making authority to apply to the existing provisions of Chapter 10, as well as, to any legislation passed this session amending chapter 10.

SENATOR WILLIAMS asked if the Statement of Intent from Bonnie Tippy (Exhibit 3) is asking to use their discretion or if it is related to the manufactured houses.

BONNIE TIPPY stated that it the Legislators' intent that the Department can take into account the different types of loads.

SENATOR FARRELL stated that since 1973 the trucking industry as promoted uniformity nationwide. He asked Bonnie Tippy if they are suggesting not to promote uniformity.

BONNIE TIPPY stated that they are suggesting that with certain types of loads, uniformity is not in the best interest of either the person who is hauling the load or the ultimate consumer.

SENATOR FARRELL asked Jesse Munro about the uniform rule.

JESSE MUNRO stated that there are two groups who are working on uniformity. One is the multi state group of which Montana is a member and also the Western Association of State Highway and Transportation of which there are 17 states who are members.

SENATOR FARRELL asked if the 17 states are proposing rules that will affect each one of the loads.

JESSE MUNRO stated that they have a subcommittee that is looking at uniform flag cars for all states. Then all 17 states would operate under the same flag car requirements. He continued to explain that two years ago the Department looked at their Administrative Rules. They drafted a proposed rule which they are currently operating under. It treats all segments of the industry the same. The way it stands is if you are over 12 feet you need one flag car and if you are over 14-15 feet, you need two flag cars.

Amendments and Votes: None

Recommendation and Vote: SENATOR HARP MOVED to adopt the "Original Statement of Intent" including the paragraph from the Highway Department. (See Exhibits 3C & 3D)

MOTION PASSED UNANIMOUSLY.

SENATOR HARP MOVED to accept the "additional Statement of Intent" submitted by Bonnie Tippy. (See Exhibit 3)

ROLL CALL VOTE was taken, MOTION FAILED 6-3 with Vice Chairman Meyer, Senator Noble and Senator Harp opposing.

SENATOR HARP MOVED that SENATE BILL 62 DO PASS with Original Statement of Intent.

MOTION PASSED UNANIMOUSLY.

HEARING ON SENATE BILL 72

Presentation and Opening Statement by Sponsor:

SENATOR MEYER, District #16 introduced Senate Bill 72. SEE EXHIBIT 4. There are also amendments suggested for this bill. SEE EXHIBIT 5.

List of Testifying Proponents and What Group they Represent:

Jesse Munro, Acting Director for the Department of Highways  
Ben Havdahl, Montana Motor Carriers Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

JESSE MUNRO informed the Committee that the bill would bring the Highway Department into line with the Federal rulemaking and would correct their law, which has become more restrictive. Senate Bill 72 allows any fifty-three foot trailer to operate on any road in the State of Montana without a permit. It would also allow the triple-saddle mount to operate where their law has restricted them to use dual-saddle mounts. This bill will also provide for stinger steered boat transporters and stinger steered automobile transporters. The amendments are to cover the stinger steered transporters.

BEN HAVDAHL, Montana Housing Manufacturers and Recreational Vehicle Association expressed their support for the bill. He stated that the triple-saddle mount is used for the transportation of new truck tractors from the manufacturers to the point of distribution. These are stack two to three one on top of the other. They also support the auto carrier amendment, which is the 3 foot front and 4 foot rear overhang.

Questions From Committee Members: SENATOR WILLIAMS requested more information on the stinger steered transporters.

JESSE MUNRO deferred the question to BEATE GALDA, Attorney for the Highway Department.

BEATE GALDA explained that the definition the Department had been using came out of the Federal Regulations, Page 2, Line 9. It allows better turning for a fifth wheeler. She then drew a diagram of the different mounts for the Committee Members.

Closing by Sponsor: Senator Meyer announced the hearing on Senate Bill 72 to be closed.

DISPOSITION OF SENATE BILL 72

Discussion: NONE

Amendments and Votes: SEE STANDING COMMITTEE REPORT  
For Amendments

Recommendation and Vote: SENATOR FARRELL MOVED that the AMENDMENTS for SB 72 DO PASS.

MOTION PASSED UNANIMOUSLY.

SENATOR FARRELL MOVED that SENATE BILL 72 DO PASS AS AMENDED.

MOTION PASSED UNANIMOUSLY.

HEARING ON SENATE BILL 73

Presentation and Opening Statement by Sponsor:  
SENATOR MEYER, District #16 introduced Senate Bill 73. SEE EXHIBIT 6.

List of Testifying Proponents and What Group they Represent:

Bill Gosnell, Assistant Executive for the Department of Highways

List of Testifying Opponents and What Group They Represent:

None

Testimony:

BILL GOSNELL stated that SB 73 occurred because the formula was initially codifying. SEE EXHIBIT 7. In the mean time the lower courts have agreed to interpret the law the way it was supposed to be, with the understanding that it would be fixed during the next legislature. This will also allow them to repeal a rule that was drafted to interpret this mistake.

Questions From Committee Members: None

Closing by Sponsor: Senator Meyer announced the hearing on Senate Bill 73 to be closed.

DISPOSITION OF SENATE BILL 73

Discussion: None

Amendments and Votes: None

Recommendation and Vote: SENATOR WEEDING MOVED that SENATE BILL 73 DO PASS.

MOTION PASSED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 1:55 p.m.

  
\_\_\_\_\_  
SENATOR LARRY TVEIT, Chairman

LT/PB

SENMIN.117

ROLL CALL

HIGHWAY

COMMITTEE

DATE January, 17 1989

51st

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
CHAIRMAN TVEIT	✓		
VICE CHAIRMAN MEYER	✓		
SENATOR ABRAMS	✓		
SENATOR FARRELL	✓		
SENATOR WEEDING	✓		
SENATOR NOBLE	✓		
SENATOR STIMATZ	✓		
SENATOR HARP	✓		
SENATOR WILLIAMS	✓		

Each day attach to minutes.



STANDING COMMITTEE REPORT

January 17, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration SB 62 (first reading copy -- white), respectfully report that SB 62 do pass.

DO PASS

Signed: *Larry J. Tveit*

Larry J. Tveit, Chairman

Statement of Intent attached.

Statement of Intent  
Senate Bill No. 62

A statement of intent is required for this bill because it grants rulemaking authority to the department of highways to implement, interpret, and carry out MCA provisions relating to vehicle size and weight, licensing requirements, and special permits.

The legislature intends that the department have discretion to adopt rules or to amend existing rules in a manner that will promote the enforcement of provisions regulating vehicles pursuant to Title 61, chapter 10. It is intended that the department, with its expertise and experience in the administration and enforcement of gross vehicle weight laws, supplement the statutory provisions with enforceable rules necessary to further the administration and regulation of vehicles under chapter 10.

It is contemplated that the rules supplement and interpret the provisions of chapter 10 by, among other things, providing:

- (1) guidance and direction for the administration and collection of gross vehicle weight fees;
- (2) implementation and regulation of the permit systems authorized by statute; and
- (3) regulation of the movement of vehicles with oversize or overweight loads for the purposes of ensuring highway safety and protecting the state highway system.

The legislature intends this rulemaking authority to apply to the existing provisions of chapter 10 as well as to any legislation passed in this session amending chapter 10.

STANDING COMMITTEE REPORT

January 17, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration SB 72 (first reading copy -- white), respectfully report that SB 72 be amended and as so amended do pass:

1. Title, line 9.

Following: "AUTOMOBILE"

Insert: "OR BOAT"

2. Page 2, line 6.

Following: "automobile"

Insert: "or boat"

3. Page 2, line 9.

Following: "automobile"

Insert: "or boat"

4. Page 2, line 13.

Following: "vehicles"

Insert: "or assembled boats or boat hulls"

AND AS SO AMENDED DO PASS

Signed: Larry J. Tveit  
Larry J. Tveit, Chairman

J.C.  
1/18/89  
12:07  
P.M.

STANDING COMMITTEE REPORT

January 17, 1989

MR. PRESIDENT:

We, your committee on Highways and Transportation, having had under consideration SB 73 (first reading copy -- white), respectfully report that SB 73 do pass.

DO PASS

Signed: *Larry J. Tveit*  
Larry J. Tveit, Chairman

*YJC*  
*11/18/89*  
*12:07*  
*P.M.*

SENATE HIGHWAYS  
EXHIBIT NO. 1  
DATE 1-17-89  
BILL NO. SB 62

Suggested testimony for Senator Bill Farrell on SB 62

I am sponsoring this bill at the request of the Department of Highways. This bill would provide explicit rule making authority for the Department of Highways regarding Chapter 10, Title 61, the Gross Vehicle Weight Statutes.

During 1988 the department began revising certain rules under the assumption that because the department has the discretion to determine necessary conditions under its permitting authority, the department believed that that discretion provided it with implied rulemaking authority. The Administrative Code Committee disagreed, and contends that the rulemaking goes beyond merely interpreting the statutes. The Code Committee recommended that the department seek explicit rule making authority.

I believe the department needs the flexibility to develop rules in the GVW area, rather than the legislature being required to constantly change the statutes to meet changing conditions.

I recommend approval of SB 62.

EXHIBIT NO. 2DATE 1-17-89BILL NO. SB62

department's dependence on implied rulemaking authority, can only be corrected by a bill granting explicit rulemaking authority. Even the cited implied authority is doubtful in many cases. The current and former ACC staff attorney have both informed the department of this in the past. Yet the department has failed to seek, in the past few regular sessions of the legislature, what would be a simple and noncontroversial clean-up bill granting specific and explicit Title 61, Chapter 10 rulemaking authority. It is probable that the same problem exists with other Title 61 chapters and parts of chapters, and the bill should grant rulemaking authority as to them also.

✓ The committee should consider writing the department a letter informing it that if such a bill is not sought by the department, and passed, during the 1989 Regular Session, the committee will begin to formally object to every proposed rule change in areas in which implied rulemaking authority is depended on by the department.

Department of Labor and Industry

Human Rights Commission

Declaratory Rulings Procedures. Page 1117. MAR Notice No.

24-9-26. Proposes to Repeal Current Rules Relating to

Declaratory Rulings and Adopt 14 New Rules on the Subject. The

Human Rights Commission proposes to repeal and replace its rules setting forth the procedure for commission declaratory rulings. The new rules state who may obtain a ruling and for what; specify the form and contents of a petition; provide for filing and docketing; provide for appointment of a hearing examiner; state what notice is required; regulate parties, prehearing conferences, and hearings; and provide for orders and for the effect or rulings. The proposal is part of an overall commission review and amendment of its various types of procedural rules and eliminates redundant and unnecessary procedures and material, provides clearer guidance to involved persons, and clarifies rules. Authority is 49-2-204 and 49-3-106, MCA, and the

**PROPOSED LANGUAGE FOR STATEMENT OF INTENT  
SENATE BILL 62**

**Proposed by: The Montana Manufactured Housing and  
Recreational Vehicle Association**

**Contact: Bonnie L. Tippy, Executive Director  
442-2164**

Legislative approval of ARM 18.8.511A (new flag car rule) is not to be inferred from passage of this bill. GVW is encouraged to recognize differences between various industries and types of loads and is not to pursue uniformity to the economic detriment of some industries and consumers more than others.

## Reasons Why Different Types of Loads Should be Treated Differently in the Rule Making Process

Submitted by: The Montana Manufactured Housing and Recreational Vehicle Association

Contact: Bonnie Tippy  
442-2164

SEPARATE HIGHWAYS  
PERMIT NO. 3A  
DATE 1-17-89  
NO. SB62

A mobile home is a large, boxlike structure which is exactly the same width and height from one end to the other. It differs greatly from other types of wide loads, including: Plate steel, which increases greatly in width for only about a six inch span--this can be a dangerous load, because drivers behind the load may not be able to negotiate the sudden change. Another example is pipe, which can also be very wide at just one point.

There are many examples in rules of how different types of loads are treated differently. All liquid loads are most certainly not treated the same; i.e. milk and gasoline. Another example is haystack movers, which can be up to 20' wide by statute.

Another point which must be made when considering various rules is who the ultimate consumer is, and how additional costs can be passed on. The people who buy mobile homes are not a wealthy class of people. 27% of buyers have an income of less than \$10,000 per year. Another 37% have incomes of from \$10,000 to \$20,000. Still another 22% have incomes between \$20,000 and \$30,000. The average price of a manufactured home in 1986 was \$22,400.00.

We argue that the price of uniformity in rules may be too great a price to pay, both for the consumers and the people who sell to consumers. The flag car rules changes which GVW enacted last summer (without proper authority), served to make uniform flag car requirements for all types of loads. They also served to add between \$700 and \$1000 to the price of mobile homes, unnecessarily. Safety arguments which could be made for some types of wide loads simply do not hold true with the movement of mobile homes, which have an excellent safety record in the state.



SENATE HIGHWAYS  
EXHIBIT NO. 3-B  
DATE 1-17-89  
BILL NO. SB 62

**ROGER TIPPY**

*Attorney At Law*

BOX 543  
CAPITOL 1 CENTER  
208 N. MONTANA  
HELENA, MONTANA 59624

(406) 442-4451

**M E M O R A N D U M**

DATE: January 16, 1989  
TO: Montana Manufactured Housing & R.V. Association  
FROM: Roger Tippy *RT*  
RE: Rulemaking/GVW oversize permits/SB 62

The Montana Administrative Procedure Act recognizes several types of rules. In MAPA's definitions at 2-4-102, MCA, rules are either substantive or procedural. MAPA authorizes state agencies to adopt procedural rules (2-4-201) but specifies that it does not grant authority to adopt substantive rules (2-4-301).

Substantive rules are further divided into legislative rules or interpretive rules [2-4-102(11)]. Legislative rules are those rules issued to implement a statute and to have the same force of law as the statute. Typically, they set standards, quantify how much of something is allowed or prohibited, etc. Interpretive rules are those statements published to codify an agency's interpretation of its statute, an interpretation which does not have the force of law.

When an agency wishes to promulgate legislative rules it must have specific authority such as SB 62 would give the Department of Highways in the GVW area. Lacking such specific authority the Department could only issue statements interpreting the statute.

The rules of the GVW division, both before and after the changes last summer, were distinctly legislative in nature, but the statute gave the agency no authority to make such legislative rules. Thus the rules were published as interpretations. The statute does not contain terms which could be interpreted down to the level of saying a 12' wide load does not need to be followed by a flag car but a 16' wide load does. All the statute says is that "the department has the discretion to issue permits for the movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-110. This permit shall be issued in the public interest." There is nothing to interpret in such general language as this. It means the GVW authorities could issue permits on a purely case-by-case basis as long as they act in the public interest.

MEMORANDUM

Montana Manufactured Housing & R.V. Association

January 16, 1989

Page 2

All haulers of oversize loads would be better off with a set of rules that were binding on all permit-issuing clerks, so that one could plan the movement of an oversized load in advance. Your problem is that certain of the rules adopted last summer are burdensome on your industry, as they added new flag car requirements. Since the legislature is the court of appeal from an agency's decision to promulgate legislative-type rules, you would want to urge that SB 62 reflect your concerns.

A bill such as SB 62 must be accompanied by a statement of intent, for it specifically delegates new rulemaking authority. 5-4-404, MCA, and proposed Joint Rule 70-30 (SJR 1). Any statement of intent approved for SB 62 would address your concerns if it included statements that legislative approval of ARM 18.8.511A (the new flag car rule) was not to be inferred from passage of this bill, and that the department was encouraged to recognize differences between various industries and not to pursue uniformity to the economic detriment of some industries more than others.

RT:ah

# Unproofed Draft

Printed 11:58 am on December 30, 1988

SENATE HIGHWAYS  
EXHIBIT NO. 3C  
DATE 1-17-89  
BILL NO. SB62

LC0293si

## Statement of Intent

\*\*\* Bill No. \*\*\*\*\*

A statement of intent is required for this bill because it grants rulemaking authority to the department of highways to implement, interpret, and carry out MCA provisions relating to vehicle size and weight, licensing requirements, and special permits.

The legislature intends that the department have discretion to adopt rules or to amend existing rules in a manner that will promote the enforcement of provisions regulating vehicles pursuant to Title 61, chapter 10. It is intended that the department, with its expertise and experience in the administration and enforcement of gross vehicle weight laws, supplement the statutory provisions with enforceable rules necessary to further the administration and regulation of vehicles under chapter 10.

It is contemplated that the rules supplement and interpret the provisions of chapter 10 by, among other things, providing:

- (1) guidance and direction for the administration and collection of gross vehicle weight fees;
- (2) implementation and regulation of the permit systems authorized by statute; and
- (3) regulation of the movement of vehicles with oversize or overweight loads for the purposes of ensuring highway safety and

# Unproofed Draft

Printed 11:58 am on December 30, 1988

protecting the state highway system.

-END-

LC0293si

Machine ID xt06

SENATE HIGHWAYS  
EXHIBIT NO. 3D  
DATE 1-17-89  
BILL NO. SB62

STATEMENT OF INTENT

         BILL         

A statement of intent is required for this bill because it grants rulemaking authority to the department of highways to implement, interpret, and carry out the provisions relating to vehicle size and weight, special permits, and gross vehicle weight licensing requirements.

The legislature intends that the department have discretion to adopt rules or to amend existing rules in such manner as will promote the enforcement of provisions regulating vehicles pursuant to Title 61, chapter 10, MCA, for the protection of the public and the state highways. It is intended that the department, with its expertise and experience in the administration and enforcement of gross vehicle weight laws, supplement the statutory provisions with such enforceable rules as are necessary to further the administration and regulation of vehicles under this chapter.

It is contemplated that such rules should supplement and interpret the provisions of chapter 10, by providing:

(1) guidance and direction for the administration and collection of gross vehicle weight fees;

(2) implementation and regulation of the permit systems authorized by statute; and

(3) regulation of the movement of vehicles with oversized or overweight loads for the purpose of insuring highway safety for the protection of the traveling public and the state highway system.

The legislature intends this rulemaking authority to apply to the existing provisions of Chapter 10 as well as to any legislation passed in this session amending Chapter 10.

Suggested Testimony for Senator Meyer on SB 72.

SENATE HIGHWAYS  
EXHIBIT NO. 4  
DATE 1-17-89  
BILL NO. SB72

I am sponsoring this bill at the request of the Department of Highways.

This bill is in response to changes at the federal level. The 1982 Surface Transportation Assistance Act provided authority to the Federal Highway Administration (FHWA) to adopt rules regarding the operation of certain sized vehicles. The FHWA has since adopted rules that put our statutes in conflict with the federal statutes. Our current statutes, 61-10-104, MCA, have become more restrictive than the 1982 Act intends. Further, because we are not in compliance with federal rules, we could be penalized up to 5% of the federal-aid funds we currently receive until such time we come into compliance.

The department also has an amendment to offer regarding boat transporters that came to their attention after this bill was drafted.

I urge your approval of the bill and the proposed amendment.

AMENDMENTS TO SENATE BILL NO. 72

Requested by the Department of Highways

Title, line 9.

Following: "STINGER-STEERED AUTOMOBILE TRANSPORTERS"

Insert: "AND BOAT TRANSPORTERS"

Page 2, line 6.

Following: "transporter"

Insert: "or a stinger-steered boat transporter"

Page 2, line 9.

Following: "automobile"

Insert: "or boat"

Page 2, line 13

Following: "vehicles"

Insert: "or assembled boats or boat hulls"

SENATE HIGHWAYS

EXHIBIT NO. 6

DATE 1-17-89

BILL NO. SB73

Suggested Testimony for Senator Meyer on SB 73.

I am sponsoring this bill at the request of the Department of Highways.

This bill is being introduced to correct an error that occurred when the Federal Bridge Formula was codified into law. The weights that motor carriers may haul is based on axle spacings, and is reflected in the federal bridge formula. The formula was codified incorrectly, and results in incorrect calculations. The Commission on Lower Courts has agreed to interpret the law the way it is supposed to be through the 1989 legislature with the understanding that the Department of Highways would seek legislation to correct the problem.

The department spokesman will explain the difference and answer any technical questions you may have.

I urge your support and approval of the proposed bill.







