

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN BOB BACHINI, on January 16, 1991, at 9:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chair (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council; and Jo Lahti, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HOUSE BILL 53

Presentation and Opening Statement by Sponsor:

REP. JERRY NISBET, House District 55, sponsored HB 53 at the request of the Department of Commerce. It would increase the

license fees for petroleum and liquefied petroleum dealers, and clarify the status of licenses upon change of ownership of measuring devices. It amends 82-15-105, MCA, to provide a delayed effective date and applicability date. Equipment costs need to be funded by means other than putting a greater demand on the

already troubled General Fund. The Weights and Measures Bureau of the Department of Commerce has a substantial inventory of older equipment that is constantly breaking down, causing loss of productive time. Lack of finances to repair equipment is negatively impacting the Bureau's ability to perform the statutory policing as required.

Proponents' Testimony:

W. JAMES KEMBEL, Administrator, Public Safety Division and Weights and Measures Bureau, Department of Commerce, echoed statements by REP. NISBET concerning weights and measures and the purpose for the amendment. Written testimony provided. EXHIBIT 1

Opponents' Testimony:

Ronna Alexander, Executive Director, Montana Petroleum Marketers Association, (wholesalers and distributors of petroleum products), explained of the one hundred current members in the Association, a large majority of them own their own refill locations in addition to bulk tanks and trucks. She has received many calls from them. She spoke in opposition to the bill in its current form. It arbitrarily doubles the business license fees, which are rather exorbitant. Equipment should be considered and applied for in the regular budget. She suggested the Department could reduce expenses by combining inspections in certain areas. Another option might be to conduct inspections and issue licenses on an eighteen-month basis instead of annually. It is quite possible to be rated on that. HB 53 proposal would cost all members a considerable increase. She asked the Committee to consider that before a decision is made.

REP. DON STEPPLER, HD 21, said several people working with petroleum in his district asked him to present a letter to the Committee. Exhibit 2.

Questions From Committee Members:

REP. WALLIN asked if the Bureau's expenditures could be spread over a longer period of time. Mr. Kembel said that is a possibility as long as they generate enough funds to cover the cost of equipment for this biennium, but they will probably be back next session requesting more equipment.

REP. CROMLEY asked when the current funding structure was set. Mr. Kembel answered in 1983.

REP. SCOTT inquired about current figures. The fiscal note set forth the revenue projection figures.

REP. BENEDICT asked if the Department could have foreseen this problem and tried to find adequate funding within the Department.

Mr. Kembel said they knew equipment would need to be replaced

this year and next year. The program, although it generates fees, is totally General Funded. There are few General Funded operations in the Department of Commerce. The only way to fund it this year was to ask for a major increase in the General Fund. It was decided that was not a good idea.

REP. KILPATRICK asked for fiscal information about an average station, with pumps under or over 2", 3". Mr. Kembel answered gas pump licenses for service stations would increase from \$5 to \$10 per pump. The meters referred to with the 2" and over are bulk trucks delivering to service stations or to farms.

REP. STELLA JEAN HANSEN asked if the \$80,000 being doubled was for equipment being used now. Mr. Kembel explained the money they now have is money for equipment asked for during budget sessions. REP. HANSEN asked how equipment now being used was paid for. Was it through license fees? Mr. Kembel explained this particular program is different from building codes or professional licenses because it has always been a General Funded agency. Money collected goes into the General Fund.

REP. WALLIN asked if in addition to the pump fee, there is a licensing fee and how much it is. Mr. Kembel answered that is all based on the number of pumps to be charged on that basis. Five pumps would be \$25 now and \$50 under HB 53.

REP. WALLIN thought it was excessive to double the fees.

REP. ELLIS asked how often the devices are checked for certification. Mr. Kembel said their goal is 90% checked every year. REP. ELLIS asked if figures in the analysis of the cost included depreciation and equipment, or are equipment costs only for new equipment, and just the expenses and labor are estimated for old equipment. Mr. Kembel said that is all included in the budget. The fees related are basically collected by us. The total budget is in the neighborhood of \$400,000. They currently generate only about \$219,000, and expenditures are \$400,000.

REP. ELLIS asked Ronna Alexander for examples of outlets that would agree to the increase. What is the total dollar amount? Ms. Alexander said larger marketers may own 10 or 12 locations. The average is eight pumps to a station. Most members own at least four or five retail locations. Increasing from \$5 to \$10 is a large increase.

REP. STELLA JEAN HANSEN asked if this bill passes and you raise the \$160,000, does that money then go into the General Fund? Mr. Kembel said the bill as drafted would raise income to the Bureau by \$76,000 which would go to the General Fund. REP. HANSEN asked if there would be an appropriation from the General Fund based on this increase. Mr. Kembel said equipment is requested during the Legislative session. REP. HANSEN asked if that figure would be

included in the appropriation. Mr. Kembel said not if this bill

is not passed.

REP. BACHINI asked if during the budget process the Governor endorsed the fee increases. Mr. Kembel answered yes.

Closing by Sponsor:

REP. NISBET pointed out that the 1988 legislative audit was very limited. The level of activity in some areas in the responsibility of the Weights and Measures Bureau was much less. It diminished protection the Bureau was able to ensure the consumer. There is a need for replacement of old deteriorating equipment and a need for new equipment to perform functions statutorily assigned to this Bureau. There are some alternative methods of funding or restructuring that might be looked at for funding to those levels.

DISPOSITION OF HOUSE BILL 53

REP. BACHINI wants to discuss HB 53 with his constituents .

REP. LARSON wants to discuss this fee increase with his constituents. This fee increase is difficult for the smaller marketer. Ten dollars for a gas pump pumping 200,000 gallons might not have a big impact, but a rural marketer might only pump 1,000 to 1,500 gallons a month, but would have to pay the same fee. Possibilities of distributing this fee more evenly need to be explored.

REP. ELLIS said he favors user fees which this is but there are two users here; the dealer needs this device to be accurate in selling and the public needs the device for protection. What portion of the use goes where? The second thing is the holder of a weighing device pays more in relation to cost to the Bureau than the people who have measuring devices. There is an equality problem there. Why are people who are holding measuring devices paying licenses that produce more revenue out of proportion for this Department than are other people? He asked why it was set up as it was in '83.

REP. HANSEN questioned if licenses are user fees. When the State of Montana operated a program like Weights and Measures for consumer protection it was never the understanding that the complete responsibility for everything they used should be paid by the license fee. That license fee is really a fee that allows you to practice your business in the State. It should be the responsibility of the General Fund to buy the equipment and not the license fees.

REP. PAVLOVICH advised this is the first bill of many this session providing for an increase in fees. The Committee should realize if fees are raised for one, it will have to be done for

others. Everybody should be treated equally.

REP. HANSEN thought this was different. If the cost of a license is raised, the cost of doing the bookkeeping and the amount of electricity used etc. also increases. This is the cost of having a board issue licenses, but the board doesn't buy equipment. She asked for clarification.

REP. KILPATRICK said this is a new tax which seems to hit the little man hardest. He would like to explore alternatives. Five dollars isn't much, but these small businesses get nailed often.

REP. CROMLEY said the increase would be almost 1-1/2 times.

REP. BACHINI asked REP. NISBET for alternative examples.

REP. NISBET said Scott Seacat, Legislative Auditor, does not take a position on this bill. He would put this in a subcommittee to review the concept of the Department setting fees commensurate with costs. Most functions are set on a fee basis. There is a possible alternative.

REP. BACHINI asked if he had an alternative. Mr. Kembel said he was not sure. Board money is generated to buy equipment for the office staff for whatever is involved. The same is true for this program. The current fees would generate \$290,000 plus. The budget is over \$400,000. They could amend to make the fees commensurate with costs, but the cost of doing business is buying equipment. It is part of the process. If fees are to be commensurate with costs, then they need to set fees to equal the \$400,000 budget. That is an alternative.

REP. LARSON thought this is a consumer issue since the device would accurately measure gasoline out of a retailer's pump. It is a General Fund issue from the leadership position in the House.

REP. BENEDICT proposed a small increase of 25%. Instead of sunsetting it after one biennium, carry it over for two bienniums and phase in purchase of equipment as it can be afforded.

REP. WALLIN said this is an industry issue and is another cost bill. The industry is faced with underground storage tank problems. Unless they dig those tanks up and have them certified, EPA can assess them up to one million dollars. They cannot be covered by an insurance policy. Owners cannot sell their business because whoever buys it has the same obligation and problem. They can't borrow the money at the bank, and a small business doesn't have that kind of money. They can't walk away because they are still responsible. If this industry can be helped by killing this bill, it would be good move.

REP. HANSON said a great change in conditions has occurred. His

family used to be in the service station business, and in those days it wasn't beyond normal operations to cut the gas tank with a little diesel to stretch it out and get a little more! He also remembers that there was a station that sold ethyl as well as regular at two pumps. A purchaser paid 3 cents more for ethyl and it all came out of the same tank in the ground in standard

operations, so it became necessary to check. There were also stealing problems. In that process conditions of society change. The liability for a station to engage in those kind of practices and a change in measuring was necessary, so instead of getting .99 of a gallon you get 1 gallon measure. The liability is greater than the potential savings, so the conditions that generated that Department have modified somewhat. Consequently, as you said you did 90% of the stations, could not you buy the equipment if you dropped it to 50% and only hit 40%? Rather than one year for 90% set up for three years for 100% because we have a different society? Would that not work? Then redo the existing budget and have enough revenue to start picking up the equipment?

Mr. Kembel said that is a possibility. They have talked about the feasibility of inspection, but if anything like that is done, there would have to be some input from the Legislature. Part of the problem they have been faced with for years has been equipment that has been baling wired together for years because the former staff that was in charge did not want to go and ask for new equipment. He is talking about hoists from the 1940s that are worn out. They just don't hold together. Some of the equipment on the list is necessary because of the federal standards required to maintain lab certification. Standards have changed; society has changed. Because of those changes they are faced with trying to keep the lab certification up to federal standards. Other equipment such as trucks have 150,000 miles. If a truck drives 50 miles one way on a dirt road with no one around, a breakdown is a major problem.

REP. WALLIN said many small towns have only one station. This increase in tax is discriminatory. There will be a day when small towns won't have any stations then it will be a burden on the consumer to drive longer distances to get gas. This industry is sick and has problems; it is not a good time to increase fees.

Mr. Kembel remarked equipment can fail even after it is certified.

REP. BENEDICT asked Ms. Alexander that since these fees were set in 1983 and the industry is changing because of mandates, would she oppose a 25% increase. Ms. Alexander said it could be considered, but doubling it was too much.

REP. BACHINI asked Ms. Alexander if she would work with a subcommittee and the sponsor on this issue. She agreed to work with a subcommittee and would bring a couple of marketers.

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

January 16, 1991

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REP. BACHINI appointed REP. STEPPLER, Chairman, REP. CROMLEY and REP. HANSON as subcommittee members to work with the researcher, sponsor, and marketers.

ADJOURNMENT

Adjournment: 10:05 a.m.

Bob Bachini

REP. BOB BACHINI, CHAIRMAN

Jo Lahti

JO LAHTI, SECRETARY

BB/jl

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE 1/16/91

[illegible]

Ex. 1
1-16-91
HB 53

WITNESS STATEMENT

NAME W. JAMES KEMBEL BILL NO. HB 53

ADDRESS PUBLIC SAFETY DIV / DOC

WHOM DO YOU REPRESENT? DOC

SUPPORT ✓ OPPOSE AMEND

COMMENTS: ATTACHED

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



WEIGHTS & MEASURES BUREAU
PUBLIC SAFETY DIVISION
DEPARTMENT OF COMMERCE

Exhibit 1
EXHIBIT 1
DATE 1-16-91
HB 53

TESTIMONY ON HOUSE BILL NO. 53

House Bill No. 53 is at the request of the Department. The proposed bill increases the license fees for the petroleum licensing program and also clarifies the status of licenses for measuring devices upon a change in ownership of such devices.

The reason for the proposed bill is to offset the cost of equipment, for the Weights & Measures Bureau, to the general fund. The decision was made during the budget process that equipment costs needed to be covered by some other means than simply putting a greater demand on the already troubled general fund monies.

The decision was made to increase the fees for petroleum devices because currently even though there are 6,939 weighing devices generating \$138,781 there are 10,343 measuring devices generating only \$76,863. In other words 40% of the devices licensed (weighing devices) are currently generating 64% of the revenue, while 60% of the devices licensed (measuring devices) are currently generating 36% of the revenue. As proposed by the bill the ratio would be (weighing devices) still equal 40% of the licensed devices would generate 48% of the revenue and (measuring devices) still equal 60% of the licensed devices would generate 52% of the revenue.

In addition the licenses for weighing and measuring devices have been handled differently when there was a change in ownership. As proposed both types of devices would be handled in the same manner. If there is a change in ownership, of the measuring devices, and the devices remain at the same location the existing license will continue to remain in force. If however ownership changes and the measuring devices change location a new license will be required. The reason for the method of operation is that as long as the measuring devices remain in the same location the Bureau does not have to do additional testing. If the equipment is moved new testing is required and thus more expenses for the Bureau need to be addressed.

The Bureau has a substantial inventory of older equipment that is constantly breaking down. The loss in productive time and finances to cover repair of equipment is negatively impacting the Bureau's ability to perform the statutory duties.

2x. 1
1-16-91
HB 53

The equipment purchases scheduled in the budget is as follows:

Item	FY92	FY93	Reason
Package Scales	7,000	0	Need 7 to do inspections
Cable Hoists	15,000	0	Need 5 replace worn out ones
25 gal LPG Pro	5,000	0	Need to do small meters
2t Trk.(M4160)	24,000	0	Current truck 150,000 mi. plus
1/2t Pu(M4434)	11,386	0	Current truck 135,000 mi. plus
1/2t Pu(M4419)	0	11,700	Current truck 111,000 mi. plus
3/4t Pu(M5841)	0	12,653	Current truck 123,000 mi. plus
Micro Balance	10,000	0	Need to keep lab. certified
100 gal. Prover	2,500	0	Need to keep lab. certified
100 gal. Prover	2,500	0	Need to replace worn out
Computer	5,000	0	To automate laboratory
TOTAL	82,386	24,353	

In the future the equipment needs of the Bureau will continue, thus requiring the need for additional funding. As an example in 1994 the Bureau will need to replace a 1/2 ton pickup and a 2&1/2 ton truck and in 1995 will need to replace a semi-truck. In addition in 1994 there is going to be a change in the weighing device testing requirements and the Bureau will need to increase the amount of weights they have available by 10,000 pounds at a cost of approximately \$1.20 to \$1.50 per pound, for a total cost of \$12,000 to \$15,000.

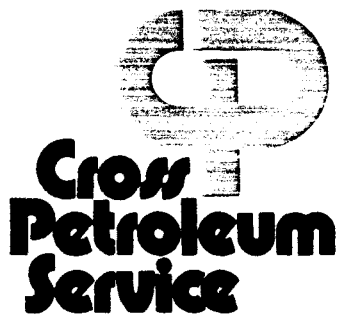


Exhibit 2
EXHIBIT 2
DATE 1-16-91
HB 53

January 11, 1991

Business Committee
Capitol Station
Helena, Mt. 59620

Re: HB 53

To Whom It May Concern:

We strongly object to the proposed raise in license fees for fuel and LPG dealers. This seems to be the decade for bashing fuel dealers with the additional UST regulations, state and federal; DOT rules; OSHA requirements and the like. And then to compound the problem with additional license fees is adding insult to injury.

We ask you to please consider the future for fuel dealers as you deliberate this issue. Thank you.

Sincerely,

Larry Garman

Brad Carroll

Office Managers

Cross Petroleum

PO Box 727

Sidney, Mt. 59270

VISITORS' REGISTER

Business & Econ Dev.

COMMITTEE

BILL NO. HB 53

DATE Jan. 16, 1991

SPONSOR Hisbet

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.