

MINUTES

MONTANA SENATE  
52nd LEGISLATURE - REGULAR SESSION  
COMMITTEE ON JUDICIARY

**Call to Order:** By Chairman Dick Pinsoneault, on March 21, 1991, at 10:05 a.m.

ROLL CALL

**Members Present:**

Dick Pinsoneault, Chairman (D)  
Bill Yellowtail, Vice Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Steve Doherty (D)  
Lorents Grosfield (R)  
Mike Halligan (D)  
John Harp (R)  
Joseph Mazurek (D)  
David Rye (R)  
Paul Svrcek (D)  
Thomas Towe (D)

**Members Excused:** none

**Staff Present:** Valencia Lane (Legislative Council).

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

**Announcements/Discussion:** none

HEARING ON HOUSE BILL 847

Presentation and Opening Statement by Sponsor:

Representative Tom Lee, District 49, told the Committee that, as a result of gambling legislation passes last session, there is no exemption for non-commercial activity such as games played in senior citizen service centers. He explained that HB 847 allows these games, but other limits remain in effect.

Representative Lee provided a technical amendment (Exhibit #1).

Proponents' Testimony:

There were no proponents of the bill.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Mazurek asked for comments from the Gambling Control Division. Lois Menzies said she spoke with the sponsor, who objected to the exclusion of card games and bingo. She said the bill was amended in the House, and that the Division had no problem with those amendments. Mr. Menzies stated that Representative Lee's amendment clears up a technical problem.

Closing by Sponsor:

Representative Lee made no closing comments.

HEARING ON HOUSE BILL 839Presentation and Opening Statement by Sponsor:

Representative Tom Lee, District 49, told the Committee HB 839 is a House Judiciary Committee bill, resulting from a number of requests to increase misdemeanor sentences. He explained that judges can't sentence people to enough time to complete treatment programs. He said the House Judiciary Committee recognized this need, addressed in language at the bottom of page 4 and the top of page 5 in the bill.

Proponents' Testimony:

There were no proponents.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Chairman Pinsoneault commented that the bill would extend from one to three years, the amount of time over which a judge has control over a defendant. He said this would be a problem with limited jurisdiction courts.

Senator Towe asked what "if otherwise prohibited by law" means. Representative Lee replied he could not answer, and said Representative Toole has the legal information on this bill.

Senator Towe asked Representative Lee how he would respond to Chairman Pinsoneault's question. Representative Lee replied the primary thrust is the justice of the peace courts who want to be able to sentence people to treatment programs. He explained that some of these programs go beyond one year (such as those for sex offenders).

Senator Mazurek asked if the House Judiciary Committee considered DUI offenders which must be disposed of within 1809

days. He commented that the whole purpose of the bill may be lost if it is extended out too far. Representative Lee replied they did, but his memory fails him on the details of the discussion. He said there are programs where sentencing is appropriate.

Chairman Pinsoneault stated the person being sentenced must sometimes be put on a waiting list for a treatment program. He asked if most treatment programs don't run for at least 30 days. Representative Lee said he could not answer, and suggested that Patricia Bradley, Montana Magistrates Association might have an answer. Ms. Bradley said it is her understanding that justice courts have no authority to sentence beyond one year. She stated that some extended jurisdiction was for DUI (60 days) and per se (10 days). Ms. Bradley further stated that a bill for six-month jurisdiction (carried by Representative Fagg), was defeated.

Chairman Pinsoneault asked if the bill addresses counseling or treatment, and what the maximum life of treatment is. Patricia Bradley replied it is normally a four-week course. She said disorderly conduct jurisdiction is only for ten days, and that there is no way to deal with rehabilitation for repeat offenders right now.

Senator Halligan suggested striking "three years" on line 13, and giving the court the ability to sentence for one year. He said the rest may have to be addressed in the next legislative session. He commented that three years is a red flag to him. Patricia Bradley replied that would be very helpful, as, to her knowledge, justice of the peace courts do not have jurisdiction over sex offenders. She stated that "where otherwise prohibited by law" was put in the bill because DUI sentences can't be deferred.

**Closing by Sponsor:**

Representative Lee said he had no objection to reducing the language to one year, and asked that the bill be kept alive.

**HEARING ON HOUSE BILL 173**

**Presentation and Opening Statement by Sponsor:**

Representative Bob Pavlovich, District 70, said the bill was requested by Judge Sullivan, Butte, who is ill and cannot be present for the hearing. He explained that it clears up language on Part 4 concerning judicial standards, and that he believed the attorneys on the Committee would find the bill to be in good shape.

Representative Pavlovich said the bill originally proposed to delete 3-1-1121, MCA, but was amended instead. He said Senator Stimatzi would carry HB 173.

**Proponents' Testimony:**

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Mike Voeller, Lee Enterprises, said he supported the Section 3 amendment. He told the Committee that Steve Brown, who wrote this legislation, disagreed with Judge Green, and that the amendment clarifies two opposing sections of law.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Pavlovich made no closing comments, but thanked the Committee for the hearing.

EXECUTIVE ACTION ON HOUSE BILL 847

Motion:

There was no motion on the bill.

Discussion:

Senator Grosfield asked if the intent were to allow games to be played at senior citizen centers, and said he didn't believe the bill allows poker unless there is a licensed gambling operator, (pages 6-7).

Valencia Lane reported that the bill was amended by Lois Menzies, so the section numbers have to be changed. She said 309 is coming out of the bill.

Senator Mazurek said 408 pertains to hours of play.

Senator Grosfield asked Representative Lee if the intent was to eliminate licensing fees for senior citizen centers or to allow poker. Representative Lee replied that senior citizen centers are exempt from application, licensing, permits, and tax, but all other gaming regulations apply. He said it was not his intent that they play poker.

Senator Towe referred to Section 2, page 7, lines 6-7, exempting senior citizen centers if they limit live card games to their facilities. Representative Lee replied he would have to ask the gaming people, and said he did not have the expertise to answer.

Senator Towe asked Representative Lee to state exactly what he did want. Representative Lee replied he wanted the bill to exempt

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senior citizen center from applications, permits, licensing, and taxes.

Senator Towe asked if he intended to limit "pots". Representative Lee replied that everything in current gaming statutes applies to this bill.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

No further action was taken on HB 847 this date.

HEARING ON HOUSE BILL 494

Presentation and Opening Statement by Sponsor:

Representative Mark O'Keefe, District 45, said the bill started with the statewide DUI Task Force, which is about to lose federal dollars for community services. He explained that the Task Force would be funded by an increase (from \$50 to \$100) in the drivers' license reinstatement fee.

Representative O'Keefe reported that Representative Dave Brown amended the bill in the House (57-43) to state that these funds would go to county treasurers, and that county commissioners would distribute them to a variety of programs, such as alcohol treatment, DARE, and law enforcement education. Representative O'Keefe recommended striking that amendment.

Proponents' Testimony:

Albert Goke, Administrator, Highway Safety Division, DOH, advised the Committee that federal incentive dollars were made available to the states for DUI task forces, but cease on July 1, 1991. He said the bill keeps the DUI Task Force as it is, and that 61-2-106, MCA, makes clear the intent of the law (Exhibit #2). Mr. Goke stated there was a 39 percent decrease in alcohol-related accidents in Montana in 1989. He stated that 70 percent of that decrease comes from DUI Task Force counties, and that if 61-2-106, remains in the law, but there is no money, there is no way to carry it out.

Mike Ruppert, President, Chemical Dependency Programs of Montana, and Director, Body Andrew Center, said he is also a member of the DUI Task Force, and supports HB 494 with the amendment proposed by Representative O'Keefe. He provided a graph of DUIs referred to Body Andrew Center court school (Exhibit #4), and said this means spending money for equipment.

Mr. Ruppert stated that the House amendment will decimate the Task Force, as funding could be affected by local political

decisions. He commented that there is more focus toward multiple offenders right now.

Addison Clark, Chief of Police, City of Kalispell, said he is a member of the DUI Task Force, and that Kalispell depends heavily on the Force for assistance. He commented that the burden should be on the offender, and said the reduction in alcohol-related accidents referred to by Mr. Goke is important (Exhibit #5). Mr. Clark further commented that, without arrests, there won't be reinstatement fees.

Leonard Wortman, Jefferson County Assessor, and DUI Task Force member, said the Force works to prevent people from driving drunk, and to save lives. He said he recently watched a 30-year-old in Anaconda cry and say he was sorry for killing someone in a drunk driving accident.

Mr. Wortman stated that the goal of the DUI task force is to prevent drunk driving. He stated that more than twice as many people were killed by drunk drivers during the four days of the ground war in Kuwait, than in the war itself. He further stated that 4600 Americans died at the hands of drunk drivers during the 72 days of the entire Mideast war. Mr. Wortman said this bill would be funded by the people violating the law, and asked the Committee to support the people at home as much as they supported U.S. troops in the Mideast.

Ken Anderson, Director, Flathead Valley Chemical Dependency Treatment Center, and DUI Task Force member, read from a prepared statement in support of Representative O'Keefe's request to amend the bill (Exhibit #6).

George McCauley, Helena Area DUI Task Force volunteer, stated his support of the bill, and his adamant opposition to the amendments of Representative Dave Brown. He read from testimony stating his concern that DUI Task Force people are valuable, and that some Task Force dollars go to overtime for law enforcement during peak DUI hours.

Carol Habets, DUI Task Force Coordinator, Cascade County, said the Task Force involves judges, treatment centers, law enforcement and citizens who work to address DUI problems in Cascade County. She said she supports the bill without the House amendments.

Lonie Parson, Missoula Traffic Safety Task Force, said volunteers have been working together in Missoula since 1983, and have seen a dramatic reduction in alcohol-related accidents (542 fewer than the 1983 base level). She explained that Missoula still has an average of 700 arrests annually, and that blood alcohol levels average 1.8 to 2.0 (Exhibits #7 and #8).

Representative Dave Brown, District 72, said his first instinct was to kill HB 494, and then he decided to amend it. He told the Committee he called members of the Congressional

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Appropriations Committee who said it is now up to the states to fund DUI Task Forces. Representative Brown said lines 17-22, page 2, state that up to 50 percent of fees will go to adult chemical dependency treatment and to law enforcement. He further stated that lines 12-16, page 2, say the balance of fees collected can be used by counties to address concerns relating to minors, such as substance abuse.

Representative Brown advised the Committee that the DARE program is winding down, and that there is a need to get at kids in fourth through eighth grades to stem potential problems. He further advised the Committee there will be a bill before the Senate next week to raise the standards of alcoholism counselors to provide for treatment than has been available in the past.

Representative Brown stated that jurisdiction needs to be at the local level for program funding, and that keeping it within the Department of Justice will make addressing local problems more difficult. He said the Legislature does try to give as much responsibility to local governments as possible, and asked that the Committee amend page 2 to include "city governments". Representative Brown told the Committee that most of the pleas to return the bill to its original form are not valid, and that there are other motives.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Mazurek asked why drivers' license fees would go to recreation, and why the language is so broad. Representative Dave brown replied that the amendment was hastily drawn on the House floor, and that he had no objection to striking this language. He said his intent was primarily for adult chemical dependency treatment, but he would not want to see alcohol-free teen centers eliminated.

Chairman Pinsoneault commented that Lake County has the highest percentage of DUI arrests in the state. He asked Representative Brown if he would object to providing 10 percent of fees to kids and leaving 90 percent to the DUI Task Force. Representative Brown replied it is clear that there is a need to emphasize education for young people, but he is concerned that the DUI Task Force may not be using these funds in the best manner to treat alcohol abuse. He stated he was also trying to enhance law enforcement education in this area.

Senator Towe asked why this needs to be changed when it appears the DUI Task Force is working effectively. Representative Brown replied that some programs are working very well, and some aren't. He said he believes counties would be able to make the

decision to provide money to competitive programs, and to juvenile education.

Senator Towe asked if he was concerned that some communities were not doing well with the funds they get. Representative Brown replied that within six months he could see and feel the positive effects of the DARE program on his own children.

Senator Towe commented that language could authorize counties to overrule programs where spending is not effective. Representative Brown replied he would rather that the state not dictate this.

Senator Svrcik asked who is responsible for juvenile education. Mike Ruppert relied that the Task Force is hassling with the Lewis and Clark County Commissioners right now, because it is entirely up to them to decide how Task Force funds are spent.

Senator Mazurek asked if this were true of all counties. Mike Ruppert replied it is, and said the Task Force is strictly advisory in its nature.

Senator Mazurek asked how the dollars flow. Mr. Goke replied there is local control in all cases. He said 61-2-106, MCA, helps to clarify this, and that he appreciates what the County Commissioners want to do as long as their decisions go along with this program.

Representative Brown advised the Committee that local governments are submitting plans to the state. He said the Home Free program in Great Falls was kept out of these funds by Mr. Goke's decisions, that he believes local governments don't know where they dollars belong. He commented that the difficulty now is that the state is totally dominating the process. Representative Brown said he supports the DARE program as it helps children to develop a rapport with police officers.

Chairman Pinsoneault asked if this was strictly a federal match before. Mr. Goke replied that the percentage was based on eligible states, and that Montana received one-thirteenth of the funds.

Closing by Sponsor:

Representative O'Keefe said Representative Brown doesn't like state control of these dollars. He said Mr. Goke controlled the federal dollars and they are gone, but the counties have total control over reinstatement fee dollars. He further stated that he didn't even know if Mr. Goke would be involved if HB 494 passes. Representative O'Keefe stated the fee dollars would be well-spent in education, identifying problems in the state, and in treatment. He said these are good goals, but the Committee needs to decide who will get funds.

Representative O'Keefe said the increased reinstatement fees have already been put into the budget for DUI, and that Appropriations will be \$200,000 in the hole if HB 494 does not pass.

#### HEARING ON HOUSE BILL 110

##### Presentation and Opening Statement by Sponsor:

Representative Bob Gilbert, District 22, said HB 110 is a drug-testing bill for Montana employees of motor carriers, and brings Montana into compliance with federal regulations. He explained that, right now, motor carriers are in violation of state law if they follow federal law, and vice versa. Representative Gilbert provided an amended to correct a conflict with SB 31 (Exhibit #8).

##### Proponents' Testimony:

Representative Dave Wanzenried, District 7, said the bill was very carefully drafted, and requested that it do pass.

Curt Laingen, Montana Motor Carriers Association, said he represents 300 Motor Carrier members, 200 logging truck carriers, and 150 livestock carriers who are responsible for 90 percent of intrastate commerce. He stated the drug-testing program is important, and read from prepared testimony in support of the bill (Exhibits #9 and #10).

Dan Edwards, International Representative, Oil, Coal, and Atomic Workers (OCAW), read from a prepared statement (Exhibit #11). He also provided supporting testimony from Jeffrey Renz, American Civil Liberties Union (ACLU) (Exhibit #12).

Mr. Edwards told the Committee he assumed that Exxon would be present asking for special consideration, and that they may be tempted to allow a proposed amendment. He asked the Committee to resist an Exxon amendment, and said he did not want all the work in SB 31 to be for naught.

Byron Roberts, Transportation Division, Montana Department of Commerce, said the bill allocates funds, and assists the transit system in the state via drug-testing rules. He explained that there are no drug testing rules now, and that a rule was enacted applying to the 14 largest cities in Montana, allowing them to do five kinds of drug tests. He said sanctions would be through administrative rule.

Mr. Roberts stated that Montana could have lost \$5.7 million in federal dollars, but a federal court declared the UMPTA rules void. He said bills were introduced in both Houses of Congress, but were defeated, and that the U.S. Department of Transportation is now trying to provide rules for this same authority the appellate courts said they did not have. Mr. Roberts said he feels

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March 21, 1991

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it is essential that the bill be amended on page 3, line 21, as requested by Representative Gilbert. He explained that he did not want to be in the same situation as before.

Dan \_\_\_\_\_, representing the Montana Transit Association, state his support of HB 110 (Exhibit #14).

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

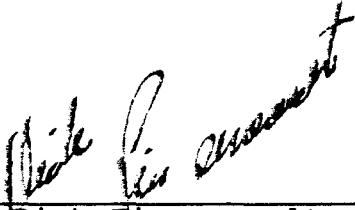
Senator Halligan asked if the OCAW supported the Department of Commerce amendment. Dan Edwards replied they did not, but supported Representative Gilbert's amendment.

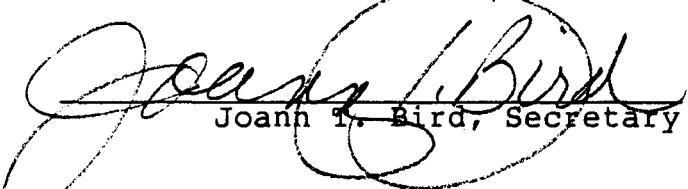
Closing by Sponsor:

Representative Gilbert asked the Committee to please support HB 110 and his amendment, but not take the other two amendments proposed.

ADJOURNMENT

Adjournment At: 12 noon.

  
Senator Dick Pinsoneault, Chairman

  
Joann T. Bird, Secretary

DP/jtb

**ROLL CALL**

SENATE JUDICIARY

## COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1991

Date 21 Mar 91

Each day attach to minutes.

SPONSOR AMENDMENTS TO HOUSE BILL NO. 847

Ex #1  
21 Mar 91  
HB847

(Third Reading Copy -- Blue)

1. Page 7, line 12.

Strike: "23-5-306" through "23-5-309"

Insert: ""23-5-406, 23-5-407, and 23-5-409"

1949  
July 10  
1949

**MONTANA**

YEAR	TOTAL ACCIDENTS			FATAL ACCIDENTS			FATALITIES			INJURIES		
	ALL	ALC	NONALC	ALL	ALC	NONALC	ALL	ALC	NONALC	ALL	ALC	NONALC
1978	24138	4194	19944	17.4%	234	139	95	59.4%	271	154	117	56.8%
1979	22476	4320	18156	19.2%	275	137	138	49.8%	332	164	168	49.4%
1980	20812	4400	16412	21.1%	276	163	113	59.1%	325	187	138	57.5%
1981	21310	4711	16599	22.1%	289	182	107	63.0%	338	211	127	62.4%
1982	19382	4301	15081	22.2%	215	136	79	63.3%	254	159	95	62.6%
1983	18670	4172	14498	22.3%	253	148	105	58.5%	286	165	121	57.7%
1984	18779	3597	15182	19.2%	204	99	105	48.5%	238	111	127	46.6%
1985	17938	3055	14883	17.0%	194	105	89	54.1%	223	118	105	52.9%
1986	17226	2794	14432	16.2%	193	94	99	48.7%	222	106	116	47.7%
1987	15242	2531	12711	16.6%	198	105	93	53.0%	234	128	106	54.7%
1988	16059	2597	13462	16.2%	183	89	94	48.6%	198	95	103	48.0%
1989	17663	2536	15127	14.4%	163	76	87	46.6%	181	87	94	48.1%

Highway Traffic Safety  
Department of Justice  
State of Montana  
Capitol Station  
Helena, MT. 59620

X #3  
21 Mar 91  
HB 494

**61-2-106. County drinking and driving prevention program.** (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

- (a) prevent driving while under the influence of alcohol;
- (b) reduce alcohol-related traffic accidents; and
- (c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The chairman of the task force shall submit to the county governing body:

- (a) a budget and a financial report for each fiscal year; and
- (b) an annual report containing but not limited to:
  - (i) an evaluation of the effectiveness of the program;
  - (ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;
  - (iii) the number of alcohol-related traffic accidents in the county; and
  - (iv) any other information requested by the county governing body or the department or considered appropriate by the task force.

(5) A copy of the annual report must be submitted to the department.

History: En. Sec. 1, Ch. 643, L. 1987.

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387

HIGHWAY SAFETY

61-2-201

**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$50 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit the fees collected under subsection (1) in the general fund.

History: En. Sec. 2, Ch. 643, L. 1987; amd. Sec. 1, Ch. 55, L. 1989.

**Compiler's Comments**

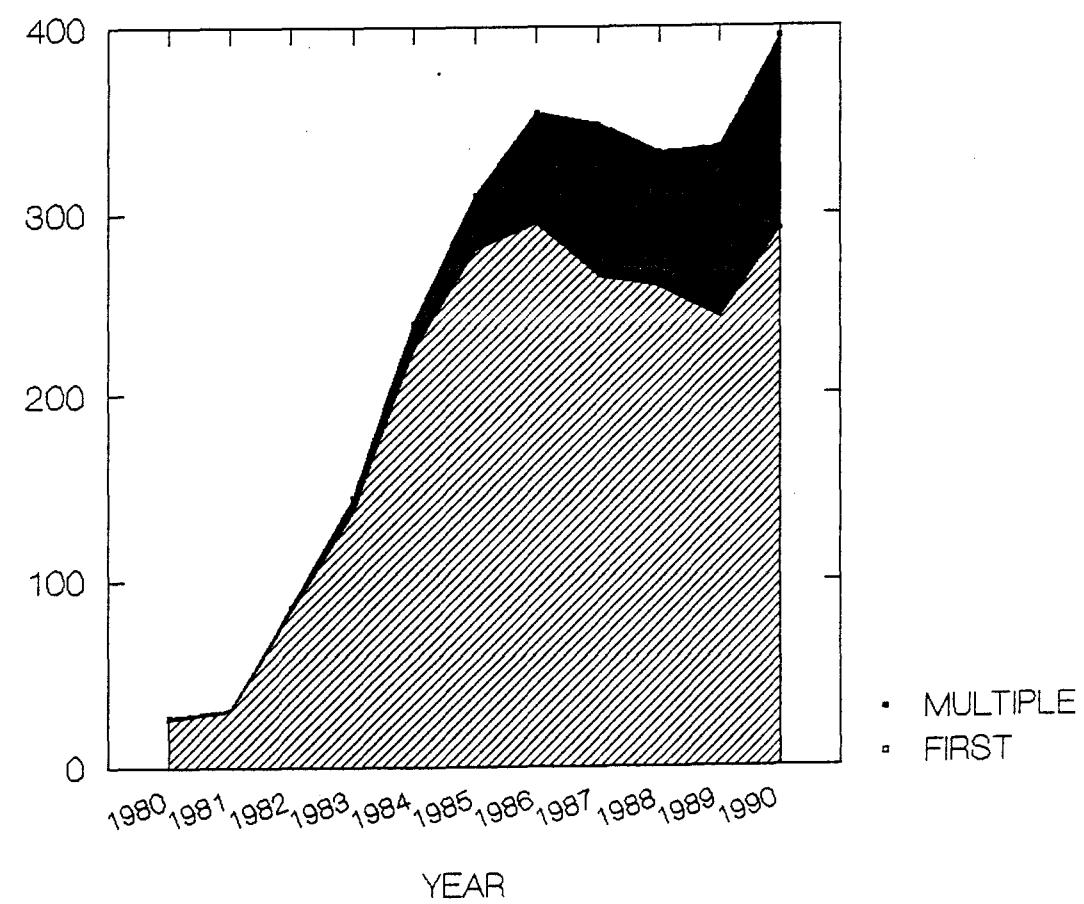
1989 Amendment: Near middle of (1), after "61-8-402", substituted "must remain suspended or revoked" for "may not be restored".

**61-2-108. Funding allocation for programs to prevent or reduce drinking and driving.** If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the proceeds of the license reinstatement fees collected in that county to the county treasurer at the end of each quarter.

History: En. Sec. 3, Ch. 643, L. 1987.

CX#4  
21 Mar 91  
KB 494

Boyd Andrew - Dui Admissions - Lewis & Clark County - 1980-1990



EX #5  
21 Mar 91  
HB 494

Flathead County  
Board of Commissioners

800 SOUTH MAIN STREET • KALISPELL, MONTANA 59901 • (406) 752-5300

February 27, 1991

TO: Senator John Harp  
Senator John "Ed" Kennedy Jr.  
Senator Robert (Bob) Brown

FROM: Flathead County Commissioners  
RE: H.B. 494

It is our understanding that an amendment was placed on H.B. 494 which completely decimates the original intent of the introduced bill.

As you are aware, Flathead County has been quite active in the DUI Task Force along with the three incorporated cities. A great deal of time and effort have been expended on this program to aid in the reduction of drunk drivers upon the highways.

Also, as you are aware, Federal funding for the DUI Task Force is in the process of drying up, leaving this activity vulnerable to complete shutdown. The original intent of H.B. 494 was to allow an increase from \$50.00 to \$100.00 in the DUI Reinstatement charge for the purpose of replacing the Federal funding and to allow a continuation of the DUI Task Force program.

The amendment allows much discretion to the County Commissioners for the placement and use of these funds as well as indicates various other areas where these funds can be used, other than the original intent. While we agree that these other areas need to be addressed we certainly do not feel that this is the correct avenue to take to address them.

We urgently request that you return the intent of this bill back to the original and do all you can to remove the amendment.

Thank you for your consideration and concern.

Sincerely,  
FLATHEAD COUNTY BOARD OF COMMISSIONERS

Mary E. Adkins  
Mary E. Adkins - Chairperson  
Not Available for Signature (Medical)  
Howard W. Gipe - Member

Sharon L. Stratton  
Sharon L. Stratton - Member

cc: Ad Clark, Kalispell Chief of Police

Ex #6  
21 Mar 91  
HB 494

HOUSE BILL NO. 494

The original intent of the \$ 50.00 reinstatement fee was to provide a sustaining revenue source for the DUI Task Force organizations throughout Montana. This year you have recognized the importance of those organizations by the preliminary approval of an increase to \$ 100.00. As you know, the Federal Grant used for the Task Force activities has run out. With this increase, the Task Forces' of Montana are assured of continued success.

As a program Director and a member of the Flathead County DUI Task force, I strongly oppose the amendment to House Bill 494, for the following reasons.

1. The original intent was to support DUI Task Force Organizations. The amendments significantly reduce that intent.
2. Those citizens of Montana who are effected by Chemical Dependency and the Adult and Adolescent Chemical Dependency Treatment Centers, such as ourselves, would not benefit by the distribution of those fees. In Flathead County alone we have 40 to 50 counselor who counsel all human behaviors. The amount of dollars made available to Flathead County could easily be used up within 30 days or so, thereby leaving a 10 to 11 month dry spell.
3. Distributing funds to a number of organizations would not provide a single organization with any meaningful help. A good example could best be described by the Alcohol Tax which was originally designed to support treatment and rehabilitation for Alcoholism. Each year more money goes toward State sponsored activities and less toward Treatment & Rehabilitation.
4. Counties are not equipped to hold all those potential applicants accountable. The DUI task force organizations have built in checks and balances and methods of measuring their activities.
5. The private entities such as community prevention organizations in Butte, Kalispell, Missoula, etc. are supported by Federal Grants and community involvement. These organizations would continue regardless of outside funding, maybe to a lesser degree, but never the less, they would continue to function at a high level. They are grass roots organizations with excellent community support.
6. Myself, as program director of one of the largest out-patient treatment programs in Montana, one that is very capable of spending the Task Force money, ask you to delete the amendments on HB 494. Please keep the original intent of the legislation and remove the amendments.

Ex. 6  
3-21-91  
HB 494

7. My final point-The DUI Task Forces and Law Enforcement are the organizations who directly generate the reinstatement fees. They do this by enforcing the DUI laws through special programs funded by the reinstatement fees. They enforce the laws, save lives by doing so, and it does not cost the state a penny. Should their funding decline, so shall the fees. The amendments made to HB 494 creates a loss to everyone.



Ex #7  
21 Mar 91  
HD 494

March 21, 1991

Senator Dick Pinsoneault, Chairman  
Senate Judiciary Committee  
Montana State Senate  
State Capital  
Helena, MT 59620

Dear Senator Pinsoneault:

I am writing to urge you to pass HB494 "AN ACT INCREASING THE DRIVER'S LICENSE REINSTATEMENT FEE; AND AMENDING SECTION 61-2-107, MCA" as originally written, WITHOUT the amendment.

I have worked as the coordinator of the Missoula Traffic Safety Task Force for the past four years. The task force had it's origin in November 1982 and focused solely on DUI related issues. The success of this community partnership approach caused the Task Force to be expanded in subsequent years to address a variety of traffic safety concerns.

The DUI component of the Task Force provides a coordinated drinking and driving prevention program consisting of extensive education and enforcement activities. We believe that these efforts have resulted in a dramatic reduction in alcohol-related motor vehicle crashes in Missoula County.

The task force is a community action group of over 50 volunteers representing community leaders, interested citizens, law enforcement, city and county government, the medical community, insurance industry, tavern owners, alcohol wholesalers, schools, social services and legal counsel. It has employed various strategies to reduce the incidence of drinking and driving, including support of local law enforcement efforts with training programs in DUI detection and overtime reimbursements to fund safety spot checks and a DUI Enforcement Team, alcohol server training, free taxi service for impaired drivers, and providing information to target audiences about the consequences and costs related to a DUI conviction.

Ex. 7

3-21-91

HB 494

During the 7 years of Task Force operation, Missoula has had 549 fewer alcohol-related crashes than we would have expected if we had maintained the rate established in 1983. In 1989 alone, we had a 70% reduction in alcohol-related crashes from our 1983 base year. In spite of this accomplishment, alcohol- and other drug-impaired driving continues to be a serious problem. Since 1983, Missoula DUI arrests have averaged 700 per year. The average blood alcohol concentration of persons arrested for driving under the influence is .18 -- nearly twice the legal limit.

Federal grants and revenue generated by the \$50 driver's license reinstatement fee assessed to persons who lose their license for an alcohol-related traffic offense have sustained Missoula's DUI reduction efforts for the past eight years. Federal funding for DUI countermeasure programs is being systematically reduced and will result in less proactive DUI enforcement and public information and education endeavors. Therefore, we need a funding mechanism to sustain these valuable efforts at their present level.

An increase in the driver's license reinstatement fee from \$50 to \$100 would accomplish that end. The increased reinstatement fee would place the cost of program support on program users rather than on taxpayers and maintain the ability of local community partnerships to contend with the complex challenge of reducing the incidence of impaired driving and related motor vehicle crashes. Dividing the revenue generated from the increased fee among a number of recipients would result in many ineffectual programs as opposed the continuation of a program which has already proven itself.

Sincere regards,



Lonie Parson, Coordinator  
Missoula Traffic Safety Task Force

Ex #8  
21 Mar 91  
HB 494  
10:00 AM

## Fax Transmittal Memo

To: Sen. R. J. Pinsoncault

Company:

Location:

Fax # 2144-41169

Telephone #

Comments:

7672 No. of Pages

From:

Company:

Location:

Fax # 3144-41169

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## County of Yellowstone

BILLINGS, MONTANA 59101

COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 608  
(406) 256-2870

Criminal Division  
 Civil Division  
 Deferred Prosecution

Victim/Witness Assistance  
 Child Support Enforcement

March 21, 1991

Senator Richard J. Pinsoncault  
 Chairman, Judiciary Committee  
 Montana State Senate  
 Helena, MT 59620

Attn: Al Goke

RE: House Bill 494

Dear Senator Pinsoncault,

I am writing on behalf of the Yellowstone County DUI Task Force which I serve as chairman. I am unable to travel to Helena to address your committee regarding HB 494 and the amendments which have been proposed in the Senate. Therefore, I hope you will allow me to offer my comments by letter.

I have spoken with alcohol abuse treatment professionals in Billings regarding the proposed Senate amendments to HB 494. Specifically, I asked about the effect of money for treatment programs which could come from proposed increases in drivers' license reinstatement fees. The responses I received show that, from a treatment perspective, the Senate amendments proposed to HB 494 would be counterproductive and could actually undermine alcohol abuse treatment efforts in Yellowstone County.

I have heard two basic concerns which have been repeatedly expressed. First, any money which might come to treatment programs from HB 494 as amended would have a minimal effect on those programs. This problem is exacerbated because the proposed amendments also require distribution of money to programs which are not related to alcohol abuse treatment.

Second, alcohol abuse treatment professionals are fiercely proud of the services currently provided, many of which are paid by those who need help for alcohol abuse and receive the benefits of treatment programs. However, those professionals resist any effort to undermine DUI detection in the county which helps identify persons in need.

HB 494 as amended would provide less money for DUI Task Forces than they have received in the past. In Yellowstone County that will mean

Ex. 8

21 Mar 91

HB 494

fewer DUI overtime police patrols in the city and county which in turn will mean a reduction in our efforts to detect DUI drivers and thereby identify persons who could benefit from alcohol abuse treatment.

The proposed Senate amendments to HB 494 will not serve the interests of individuals in Yellowstone County who need alcohol abuse treatment. Nor will the proposed allotments to alcohol abuse treatment programs provide the best use of increased license reinstatement fees. Therefore, Yellowstone County DUI Task Force urges the Senate Judiciary Committee to adapt HB 494 without amendments proposed in the Senate.

Thank you for this opportunity to offer my comments. If you have question or need further information, do not hesitate to write or call.

Sincerely,

*Dale R. Mrkich*

Dale R. Mrkich  
Chairman  
Yellowstone County DUI Task Force

PRM:mlo

Ex #8a  
27 Mar 91  
HB 113

Amendments to House Bill No. 110  
Third Reading Copy (BLUE)

Requested by Rep. Gilbert  
For the Committee on Judiciary

Prepared by Valencia Lane  
March 19, 1991

1. Page 4, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Coordination instruction. If

Senate Bill No. 31 is passed and approved and if it includes a section that amends 39-2-304, then 39-2-304 as it appears in [this act] is amended by adding a new subsection (6) that reads:

"(6) Intrastate commercial motor carriers involved in the transportation of persons or commodities are exempt from the provisions of [subsections (2) through (4) of 39-2-304 as they appear in Senate Bill No. 31] and are exempt from [sections 2 through 4 and 6 of Senate Bill No. 31]. Prior to the administration of a drug or alcohol test, an intrastate commercial motor carrier involved in the transportation of persons or commodities shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing. ""

CX #4  
31 Mar 91  
HB 110

Date submitted: 3-21-91

HB 110

Curt Laingen

Mister Chairman.....Members of the Committee, for the record, my name is Curt Laingen, Director of Safety for the Montana Motor Carriers Association.

A very important part of the commercial trucking industry's safety program is the drug testing program and MMCA strongly supports the passage of HB 110. Without its passage, the intrastate motor carrier industry cannot carry out the mandated federal transportation drug testing program in Montana.

MMCA has some 300 motor carrier members, 90% of whom operate in interstate commerce; some 200 log trucking members and some 150 livestock haulers, 90% of whom operate solely in intrastate commerce.

Many of the interstate motor carrier members operate in both interstate and intrastate commerce. As of December 21, 1990, all interstate carriers and single owner operators must comply with federal drug testing requirements. Since early 1989, Montana Motor Carriers Association has been active in the formation and implementation of motor carrier drug testing programs.

Under current Federal Department of Transportation Motor Carrier Safety Regulations, all operators...employee drivers and independent owner-operators...of interstate commercial motor vehicles, those over 26,000 pounds gross weight and those under 26,000 pounds transporting people and/or hazardous materials, must be subject to a qualified drug testing program. The Federal rules stipulate that the motor carrier employer, must institute a drug testing program under the strict parameters set out in federal rules (CFR Part 40).

For the information and benefit of the committee, I have attached a copy of the federal rules to this statement.

The rules spell out specific requirements for a drug testing policy to be adopted by the carrier, the drugs to be tested for, collection site procedures, testing and reporting procedures, and under what circumstances tests are to be performed.

Montana has adopted most all the Federal DOT Motor Carrier Safety Regulations for operation by intrastate motor carriers of commodities and passengers except the regulations dealing with drug testing.

Ex. 9

21 Mar 91  
HB 110

Under Montana law, intrastate carriers are precluded from requesting urine samples as a condition for employment and continuous employment. Only probable cause is grounds for testing under the current law.

Motor carriers in Montana are faced with a serious problem of how to establish and comply with a drug-free operation when their drivers operating in Montana cannot be tested. HB 110 is attempting to change a present law that mandates a policy to which the Legislature and our Courts must adhere that says, in effect, that all drug user drivers, weeded out of interstate motor carriage, can operate freely in Montana's intrastate motor carriage industry. Is this what we want?

Under this policy, the transportation industry and the federal government are mandating a drug-free transportation system to protect the public, while it would appear that Montana's transportation slogan is, "Come drive in Montana, where a driver can rest....cause we don't test."

Intrastate bus drivers can transport passengers without being tested and worse, "contracted for" school bus drivers do not have to be tested. It is hard to imagine that anyone can feel comfortable with that kind of policy.

A Montana carrier is concerned enough about his business and the well-being of his employees to conduct strict interviews, employee background checks and maintain a high standard for employment, but cannot complete the driver screening process to include drug testing.

HB 110 does not allow for random testing nor post accident testing, which may be addressed by opponents to this bill. HB110 will only allow drug testing for pre-employment, biennial (periodic) and reasonable cause.

Statistics show a low percentage of positive test results. Why the low percentage of positive results? Simple. The Federal mandated testing program is bringing a new awareness to substance abuse and people are either abstaining from drug use or in some cases are simply "cleaning up their act" prior to their scheduled test.

HB 110, allowing the drug testing of commercial transportation employees, is a needed and necessary piece of legislation in Montana. With its adoption, Montana can be free to consider the adoption, by reference, of the Federal DOT Controlled Substances Testing rules. I strongly urge your do pass recommendation for HB110. I'd be happy to answer any questions the committee may have. Thank you.

Senate  
Judiciary

Ex #10  
21 Mar 91  
HB 110

## EMPLOYER'S GUIDE TO 49 CFR PART 40

### PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS

FINAL RULE DECEMBER 1, 1989

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation

400 Seventh St., S.W.  
Washington, D.C. 20590  
(202)366-DRUG

October 1990

# OC AW

Oil, Chemical & Atomic Workers  
International Union, AFL-CIO



Dan C. Edwards  
International Representative  
P.O. Box 21635  
Billings, MT 59104

406 / 669-3253 (Home)

EX H 11  
21 Mar 91  
HB 110

H. B. 110

Testimony of:

Dan C. Edwards, International Representative  
Oil, Chemical and Atomic workers Int'l Union, AFL-CIO  
P.O. Box 21635  
Billings, MT 59104

Testifying March 21, 1991, before the Senate Judiciary Committee  
in SUPPORT of HB 110.

My message to this Committee is short and to the point:  
PASS THIS BILL WITH NO AMENDMENTS!!

I don't need to tell this Committee about all the hard work that went into the discussions regarding SB-31 and SB-138, and the resulting compromise that came out of committee as SB-31. Thanks to the attempts to further amend SB-31 by Exxon and the Montana Department of Commerce, that Bill is in serious trouble in the House Labor Committee.

I can only assume that Exxon will be here today to attempt to again get the special consideration it believes is its God given right. You have heard from Exxon before and nothing has changed. PLEASE CONTINUE TO RESIST EXXON'S AMENDMENTS.

I also assume that the Montana Department of Commerce will be here today as well. They were at House Labor with a cock and bull story that sent at least a couple of the committee members into a panic that the State was about to lose millions of dollars in federal money. As Senator Towe so eloquently explained to the House Labor Committee, their concerns are simply unfounded. I will provide the Committee with testimony from Jeff Renz on this issue prepared for the Hearing on SB-31. The same comments are applicable here today.

I also give you more details why you shouldn't buy the State's arguments here:

DEPARTMENT OF COMMERCE AMENDMENT:

I think it is important to go into more detail why this Committee should not buy the arguments of the State Department of Commerce.

First, the State should take the lead and stand up to the Federal government and defend Montana's citizens constitutional right to privacy when there is a question regarding the federal government's rights to require urine drug testing. The State should be urging your support of SB 31, not bowing to the federal government.

If the Department of Commerce language should be adopted, it will shift the burden of standing up to the federal government from State and Local government to the individual employee. Which, unfortunately, is exactly what this federal government wants

A situation very similar to that which the State Department of Commerce raises has already occurred in Montana. In 1990 the Research and Special Programs Administration of the federal Department of Transportation (RS/PA/DOT) advised the Montana Public Service Commission that they were required to adopt RS/PA/DOT's regulation covering interstate pipelines to apply to intrastate pipelines. This Union and the Montana ACLU challenged that action. After a hearing before the Montana Public Service Commission and legal briefing, the Montana Public Service Commission appropriately ruled that certain provisions of the RS/PA/DOT proposed rules were inconsistent with Montana statutory and constitutional law. The PSC's eight page decision of October 1, 1990, concluded.

"The Commission is of the opinion that the types of testing adopted herein (reasonable cause, pre-employment and nonrandom return to duty) are consistent with Montana statutory and constitutional law. The Commission also considers the revised drug-testing rules to be reasonable and appropriate in view of the important governmental interest in assuring public safety in the pipeline industry."

I have a copy of the complete decision if the Committee wishes same.

The important thing to remember here is that even though the same threats to the State were made in the case of RS/PA, no federal funds have been withheld. Another important point to remember is that, as there was with the RS/PA edict, there is a serious question whether UMTA has the authority to force the State to act. The question of this lack of authority applies in the case of UMTA, even more than in the case of RS/PA.

Ex. 11

3-21-91

HB 110

UMTA has previously tried, unsuccessfully, to impose such regulations. The U.S. Court of Appeals for the District of Columbia ruled that UMTA did not have the rule making authority to impose its rules. UMTA then attempted to get a law through Congress to give it authority to implement its desired regulations. This too was unsuccessful.

Two things are clear regarding UMTA. (1) UMTA is not about to pull federal funding until Congress gives it clear authority to impose its urine drug testing requirements on states. (2) Even if in the future Congress should give clear authority, the State legislature has to have an opportunity to change any conflicting State law that isn't preempted, after that authority has been given. In other words, we don't have to cross that bridge until we come to it. It should be noted that Congress has yet to expressly authorized urine drug testing.

If, in fact, UMTA should be given a clear mandate by Congress, then the State law, current law or as amended by SB 31, would be preempted. SB 31 was specifically worded to take such preemption into consideration.

I urge you give SB 31 a "Do Pass" with NO AMENDMENTS.

Thank you. I'll be glad to take questions at the conclusion of the hearing.

7X #16  
21 Mar 91  
HB110

# ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1085

March 20, 1991

State Office  
335 Stapleton Building  
Billings, Montana 59101

Labor Committee  
Montana House of Representatives

BOB ROWE  
President

SCOTT CRICHTON  
Executive Director

JEFFREY T. RENZ  
Litigation Director

TESTIMONY OF JEFFREY T. RENZ  
Legal Director, ACLU of Montana

**I. Proposed Changes Regarding Federal Pre-emption.**

Last year, the Montana Public Service Commission courageously refused to implement urine-testing requirements for intra-state pipeline workers demanded by the Department of Transportation. Those requirements would have trampled upon the right of privacy in the Montana Constitution.

I presented testimony at the hearing on those proposed regulations. My research convinced me of several important points:

1. Although asked repeatedly, and although various pieces of legislation had been offered, Congress has never enacted legislation expressly authorizing urine testing, with the exception of criminal law.

2. In the absence of such express authorization, the Bush Administration cannot compel the States to implement urine-testing policies, especially where such policies would violate the State's organic law, e.g. Montana's right to privacy.

3. The Bush Administration has attempted to force urine testing upon the states by including words in their regulations that say that the regulations preempt state law. These words are meaningless in the absence of express Congressional authorization.

The P.S.C. decision is a good case in point. There the P.S.C. essentially assumed the burden of standing up to pushy federal bureaucrats.

The proposed amendments to SB 31 would shift the burden of challenging the federal government from the State to the worker. That's unfair.

## II. Pre-employment Drug Testing.

Because of the risks of abuse, the Committee should amend SB 31 to delete expanded pre-employment testing.

JEFFREY T. RENZ

HOUSE BILL 110  
TESTIMONY

TX #13  
21 Mar 91  
HB 110

Before the Senate Judiciary Committee  
by the Montana Department of Commerce

On November 1, 1988, the Urban Mass Transportation Administration (UMTA) of the U.S. Department of Transportation published Regulation 49 CFR, Part 653 establishing mandatory drug testing of employees of public bus systems receiving Federal funding. This rule applied to transportation systems in 14 Montana communities, including city bus systems in Billings, Great Falls, Missoula, Butte, Helena and Kalispell. The UMTA rule mandated that local transit systems implement five categories of drug testing including pre-employment, reasonable cause, following an accident, on a random basis, and returning to duty following a positive test.

Sanctions for not complying with this rule included termination of Federal funding for transit. Montana was in the position of losing up to 5.7 million annually in transportation funding to Montana communities. Rules were to have gone into effect on December 21, 1990.

Fortunately, on January 19, 1990, the U.S. Court of Appeals for the District of Columbia issued a decision stating that UMTA did not have rule making authority in the area of public safety necessary to impose these requirements, and thereby, invalidating mandatory drug testing within the transit industry.

To remedy this situation, bills were introduced in both houses of Congress to reestablish these regulations in the form of law. These proposals would have preempted state law; however, the proposals were defeated.

The U.S. Department of Transportation is now proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

For this reason, it is essential that House Bill 110 be amended to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to House Bill 110 is proposed:

Page 3, Line 21

(4) THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U.S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS.

We respectfully urge your inclusion of this amendment and passage of House Bill 110.



EX #14-  
21 Mar 91  
HB 110

Montana Transit Association

House Bill 110

~~SECRET~~  
TESTIMONY

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

Fourteen Montana public bus systems are affected by this bill, including urbanized public transit systems in Billings, Butte, Helena, Great Falls, Missoula, and Kalispell. A loss of federal funds through UMTA will surely jeopardize the future of transportation in these communities and will affect transit passengers who may lose the service upon which they rely.

For this reason it is essential that ~~SECRET~~ be amended in the House to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to ~~SECRET~~ is proposed:

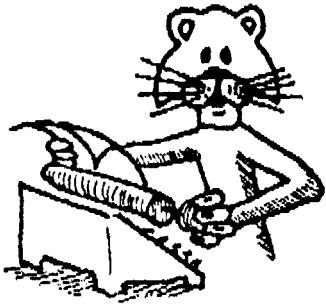
3 2/  
Page 3, Line 3

(4) ~~SECRET~~ THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U. S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. ~~SECRET~~ FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.

The officers and members of the Montana Transit Association respectfully urge your inclusion of this amendment and passage of ~~SECRET~~ HOUSE BILL 110.

Respectfully Submitted,

*Mary G. Plumley*  
Mary G. Plumley  
Officer  
Montana Transit Association



# mountain line

Missoula Urban Transportation District  
1221 Shakespeare, Missoula, Montana 59802 (406) 543-8386

ZX #15-  
21 Mar 91  
HB 110

HOUSE BILL 110

## TESTIMONY

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

The Missoula Urban Transportation District (MUTD) could not maintain its current level of service if federal funds were withheld. The MUTD currently receives \$322,000 in federal annual operating assistance. Additionally, up to 80% of the MUTD's capital needs are funded with federal assistance. A loss of these funds will surely jeopardize the MUTD's future and will have an immediate negative impact upon the system's passengers and to the Missoula community.

For this reason it is essential that ~~HOUSE BILL 110~~ be amended in the House to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to ~~HOUSE BILL 110~~ is proposed:

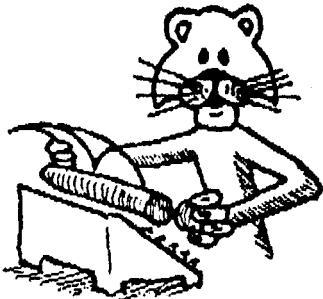
Page ~~1~~ Line ~~2~~

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We respectfully urge your inclusion of this amendment and passage of ~~HOUSE BILL 110~~.

Respectfully Submitted,

Mary G. Blumley  
General Manager



# mountain line

Missoula Urban Transportation District  
1221 Shakespeare, Missoula, Montana 59802 (406) 543-8386

31 Mar 91  
HB 110

HOUSE BILL 110

## TESTIMONY

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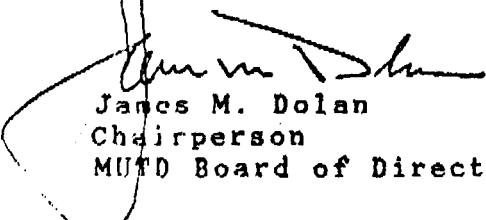
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3 2/  
Page 3, Line 3

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We respectfully urge your inclusion of this amendment and passage of HOUSE BILL 110.

Respectfully Submitted,

  
James M. Dolan  
Chairperson  
MUTD Board of Directors

DATE

3-21-91

**COMMITTEE ON**

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Walter Weller	MNA	173		
Mike Nadler	Bo Enterprise	173	✓	
George McPherson	DVL	HB 494	✓	AMEND
Donald Wottrup	DUI Task Force	494	✓	
DEAN SCHANZ	OCAW	HB 110	✓	
ED LOGAN	OCAW	HB 110	✓	
Ken Anderson	CASTLE Cty DUI	494	✓	AMEND
Mike Ruppert	COPM	494	✓	
Bart May	Lewis & Clark DUI Task Force	494	✓	
CURT LAINGEN	MT MOTOR CARRIERS ASSN	110	✓	
RONIE PARSON	Missouri DUI Task Force	494	✓	
Carol Habets	Pasco County DUI Task Force	494	✓	Amendment
Steve Browning	IBM - Montana For a Drug Free Society	110	✓	
Glenys Whitman - Obie	ATA Montana ? L/C DUI Task Force	494	✓	Oppose Amend.
Pat Bradley	MT Magistrates Assn	839	✓	