

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By CHAIRMAN ROBERT C. CLARK, on February 5, 1993,
at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Karyl Winslow, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Joe Barnett (R)
Rep. Bill Endy (D)
Rep. Pat Galvin (D)
Rep. Marian Hanson (R)
Rep. Vern Keller (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Ryan (D)
Rep. Wayne Stanford (D)
Rep. Bill Tash (R)
Rep. Randy Vogel (R)
Rep. Tim Whalen (D)

Members Excused: David Ewer (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Kimberlee Greenough, Committee Secretary

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

Committee Business Summary:

Hearing: SB 185, HB 356
Executive Action: HB 356, SB 185

HEARING ON SB 185

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, SD 37, Dillon, stated SB 185 was introduced at the request of the Department of Transportation. Under current law, an overweight truck must unload at the weigh facility. SB 185 provides that if the excess weight is not over 10,000 pounds, an excess weight permit may be issued by the GVW.

The truck may then proceed to the next weigh facility. Fines will be increased for the excess weight.

Proponents' Testimony:

Ben Havdahl, Montana Motor Carriers' Association, expressed support for the bill. Current law allows a tolerance of up to five-percent, and seven-percent for hauling livestock. This bill solves many of the problems that exist in Montana.

David Galt, Montana Department of Transportation, stated the Department supports SB 185. The mission of the Motor Carrier Service Division is to protect the highways in the state by insuring that the trucks are legal. Current law requires that the load be reduced at the weigh point prior to movement. Several times people have been injured trying to reduce overweight loads. Workers' compensation laws state that once a vehicle is loaded it cannot be unloaded until it reaches the point of destination. This bill would allow the Department of Transportation the option of issuing an overweight permit allowing the truck to proceed to a place where it can safely adjust the load if the excess weight does not exceed 10,000 pounds. The bill will increase the fine for trucks 2,000 to 10,000 pounds overweight.

Keith Olson, Montana Logging Association, stated the Montana Logging Association supports SB 185.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

CHAIRMAN CLARK asked if there should be a time limit for unloaded overweight commodities or materials to stand on the highway. **Mr. Galt** said excess commodities will be off-loaded and left for a reasonable amount of time. A reasonable amount of time has been defined as 72 hours. In some cases commodities are just abandoned at the owner's expense. The bill seeks to correct that problem.

REP. KELLER inquired about trucks continuing on to a destination. **SEN. SWYSGOOD** stated if the Department of Transportation issued the permit the truck would probably continue to go to the nearest facility, which would be considered an unloading destination.

Closing by Sponsor:

SEN. SWYSGOOD stated this is the first time he has ever carried a fee increase bill. This bill addresses a situation that needs improving. He felt these provisions are workable and won't be abused.

HEARING ON HB 356

Opening Statement by Sponsor:

REP. BOB GILBERT, HD 22, Sidney, stated HB 356 is introduced by request of the Public Service Commission. This bill clarifies the Public Service Commission's authority to regulate motor carrier fitness and to investigate and hear complaints concerning violations of Title 69. The major point of becoming a regulated motor carrier is fitness. The problem is that the authority to hear complaints is not clearly defined.

Proponents' Testimony:

Tim Sweeney, Staff Attorney, Public Service Commission (PSC), stated the PSC supports HB 356. EXHIBIT 1

Ben Havdahl, Montana Motor Carriers' Association, expressed the Association's support of HB 356.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. LARSON said the House Business Committee heard HB 305 which eliminates the requirement for a showing of public need by an applicant for a limousine service certificate. He asked if the provisions of HB 305 are in any way inconsistent with HB 356. Mr. Sweeney replied it is not.

CHAIRMAN CLARK asked if the effective date is necessary. Mr. Sweeney said it is not a necessity.

REP. GILBERT said he agreed to the effective date because if the PSC received a complaint before the bill was effective, they would be unable to act on it.

Closing by Sponsor:

REP. GILBERT, stated that this is a good bill which clarifies the authority of the Public Service Commission to regulate motor carrier fitness.

EXECUTIVE ACTION ON HB 356

Motion: REP. VOGEL MOVED HB 356 DO PASS.

Discussion: REP. BARNETT asked if the effective date cost the state anything. Ms. Lane replied there would be no additional expense.

REP. WHALEN stated if an effective date is going to cost the

state any money or extra work he would oppose it. The Public Service Commission needs immediate applicability because they are conducting hearings on some of these cases now and they need this clarification. He stated the bill should be left as it is.

Motion/Vote: HB 356 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 185

Motion: REP. HANSON MOVED SB 185 BE CONCURRED IN.

Discussion: REP. MASON expressed support for SB 185. He has been involved in trucking cattle and has had the problem of having to unload.

REP. GALVIN spoke in favor of SB 185. He said it is a good idea to get the load to its destination and off the highway before it breaks down because of the overweight load.

CHAIRMAN CLARK stated that the destination would be the nearest safe place to unload. Otherwise, the carrier would still will have to come and get the overload later.

Vote: SB 185 BE CONCURRED IN. Motion carried unanimously.

ADJOURNMENT

Adjournment: 3:40 p.m.

Robert C. Clark

ROBERT C. CLARK, Chair

Kimberlee Greenough

KIMBERLEE GREENOUGH, Secretary

RC/kg

HOUSE OF REPRESENTATIVES
HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL

DATE *Feb. 5, 1993*

NAME	PRESENT	ABSENT	EXCUSED
REP. KARYL WINSLOW - VICE CHAIR	✓		
REP. SHIELL ANDERSON	✓		
REP. JOE BARNETT	✓		
REP. BILL ENDY	✓		
REP. DAVID EWER			✓
REP. PAT GALVIN - VICE CHAIR	✓		
REP. MARIAN HANSON	✓		
REP. VERN KELLER	✓		
REP. DON LARSON	✓		
REP. GARY MASON	✓		
REP. BILL RYAN	✓		
REP. WAYNE STANFORD	✓		
REP. BILL TASH	✓		
REP. RANDY VOGEL	✓		
REP. TIM WHALEN	✓		
CHAIR BOB CLARK	✓		

HOUSE STANDING COMMITTEE REPORT

February 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Highways and Transportation report that Senate Bill 185 (third reading copy -- blue) be concurred in .

Signed: Robert C. Clark
Robert C. Clark, Chair

Carried by: Rep. Gilbert

HOUSE STANDING COMMITTEE REPORT

February 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Highways and Transportation report that House Bill 356 (first reading copy -- white) do pass .

Signed: *Robert C. Clark*
Robert C. Clark, Chair

EXHIBIT 1
DATE 2-5-93
RB 356

HOUSE BILL 356

Tim Sweeney, Staff Attorney
Montana Public Service Commission

The Montana Public Service Commission (Commission) considers carrier fitness to be an integral component of motor carrier regulation in this State. The term "carrier fitness" refers to the Commission's determination of whether a carrier is actually fit, willing and able to provide service to the public. In making this determination the Commission considers a carrier's experience and past operations, its financial condition and equipment base, and whether the carrier truly intends to provide service. If a carrier cannot demonstrate that it is qualified to provide service to the public, then the Commission will not grant a certificate of operating authority.

While the requirement that a carrier be fit, willing and able to provide service is axiomatic to the granting of operating authority, this requirement was successfully challenged in state district court. In Wilson v. Department of Public Service Regulation, CDV-92-972 (First Judicial District, Oct. 20, 1992), the court held that the Commission could not proceed with an enforcement action based on carrier fitness because there was no statute requiring a carrier to be fit, willing and able to provide service.

Section 69-12-323, MCA, permits the Commission to grant a certificate of operating authority only when a carrier's service is required by public convenience and necessity. Though the Commission believes that a determination of carrier fitness is

necessary to a determination of public convenience and necessity, it would request a clarification of its authority in order to resolve any ambiguity. Similarly, the Commission would request a clarification of its authority to hear and investigate complaints regarding regulated motor carrier service. Though apparent from the regulatory framework established by Chapter 12 of Title 69, this authority is not clearly set forth and a clarification would be beneficial.

The Commission urges a do pass on House Bill 356.

