

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By Senator Cecil Weeding, Chair, on April 6, 1993, at 3:11 p.m.

ROLL CALL

Members Present:

Sen. Cecil Weeding, Chair (D)
Sen. Betty Bruski-Maus, Vice Chair (D)
Sen. Francis Koehnke (D)
Sen. Doc Rea (D)
Sen. Spook Stang (D)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Daryl Toews (R)
Sen. Larry Tveit (R)

Members Excused: Sen. Harp

Members Absent: None.

Staff Present: Tom Gomez, Legislative Council
Beth Satre, Committee Secretary

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

Committee Business Summary:

Hearing: HB 483, HB 679
Executive Action: HB 483, HB 679

HEARING ON HOUSE BILL 483

Opening Statement by Sponsor:

Rep. Toole, House District 60, stated law enforcement has placed a high priority on the concept embodied in HB 483, which evolved as a result of a cooperative effort between local law enforcement and the crime lab in Missoula. He explained HB 483 would allow law enforcement officials to request that a driver submit to a drug test when that driver has less than a .10 blood alcohol count (BAC) but there is cause to suspect that person is under the influence of drugs. Since people with blood alcohol levels over .10 are already in violation of Montana's driving under the influence (DUI) statute, **Rep. Toole** said HB 483 would authorize this additional test be administered to only those people who evidence a legal BAC when drug-use is suspected. He said this

provision would limit the number of drug tests and thereby reduce the costs associated with HB 483.

Rep. Toole said that HB 483 would have no impact on the General Fund; in the usual case the drawing and preserving of the blood sample would be done by a hospital and those costs will be borne by local law enforcement. He said the crime lab in Missoula had clearly indicated its existing budget could absorb all the costs it expected to incur if HB 483 were adopted. He emphasized that the crime lab would request no additional funds in connection with HB 483. **Rep. Toole** stated officers currently have little recourse when obviously impaired motorists do not have an illegal BAC. He said such motorists are frequently released, even though they are driving erratically. He stated such cases occur often enough to pose a problem, and concluded that law enforcement had convinced him that the provisions contained in HB 483 would be a good way to address this problem.

Proponents' Testimony:

John Connor, Prosecutor, Department of Justice, said that law enforcement supports the concept embodied in HB 483 because MCA 61-8-401, the DUI offense statute, makes it a crime to drive a motor vehicle while under the influence of drugs as well as alcohol. He stated the Implied Consent Law contains provisions regarding testing for the presence of alcohol, but not for drugs. He said this leaves law enforcement without a means of statutorily addressing the offense of driving under the influence of drugs. According to **John Connor**, HB 483 would add only a "very limited type of testing" for drugs to the Implied Consent Law. He stated no one would be subjected to the drug test unless the officer involved had already had probable cause that the motorist was, in fact, driving under the influence of drugs. **Mr. Connor** reiterated **Rep. Toole's** assurances that the administrators of the state crime lab in Missoula believe the required testing can be done within existing appropriations. **Mr. Connor** concluded that HB 483 would give law enforcement a tool to address the DUI offense in both the forms proscribed in MCA 61-8-401 at no additional cost to the state.

Craig Hoppe, Montana Magistrates Association, expressed his organization's support of HB 483. He stated HB 483 represents an effort to close the loophole in the Implied Consent Law. He added that a mechanism is needed to test those drivers who are impaired but are not consuming alcohol.

Glenna Wortman-Obie, Public Relations & Traffic Safety Manager, AAA Montana, and Chair, Stop Montana DUI Task Force, expressed the support of both organizations for HB 483.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SEN. SWYSGOOD stated he found it hard to believe that law enforcement could absorb all the costs associated with HB 483 within their already tight budgets. **Rep. Toole** said he had received letter from the state crime lab in Missoula in which the maximum material costs associated with HB 483 were estimated at about \$2,500. He stated the crime lab had, in the same letter, clearly expressed its willingness to absorb those costs at its current level of funding. He offered to supply the Committee with copies of that correspondence at a later date.

SEN. SWYSGOOD expressed his concern that HB 483 might lead to the testing of most people who are pulled over on suspicion of drunk driving but are not legally drunk. **Rep. Toole** responded he did not believe that the authority granted in HB 483 would be abused. He outlined the two reasons why he thought HB 483 would be self-limiting. First, the officer would need to have probable cause to stop a car and place the driver under arrest. If no probable cause existed, **Rep. Toole** stated an officer who makes an arrest, administers a breath test and then requests a drug test which has negative results could possibly be charged with harassment. Second, under the provisions of HB 483, local law enforcement would assume the hospital costs associated with having the blood drawn and preserved for transportation to the state crime lab in Missoula. **Rep. Toole** said he believed that local law enforcement personnel would want to ensure that those costs are justified.

SEN. SWYSGOOD said, as a laymen, he would assume that an officer who had stopped a motorist would already have established probable cause. He explained the officer would have had grounds to suspect that something was wrong, and when an acceptable BAC test disproved the first possibility, the next logical step would be to request a drug test. **SEN. SWYSGOOD** stated under the provisions of HB 483, a drivers could be subjected to two tests whereby refusal of either would result in the suspension of their driver's licenses. He asked what would happen if a driver was on medication which would result in a positive test, but would not necessarily establish proof of DUI.

Rep. Toole responded that circumstances in which people are using drugs prescribed by a doctor are certainly different than circumstances in which people are using illegal and dangerous drugs. He stated, however, HB 483 and the statutory offense of DUI places emphasis on whether a motorist is driving impaired. He emphasized that drivers who are impaired by their prescribed medications are also guilty of the DUI offence. He explained that currently law enforcement has a problem obtaining proof in cases where the driving impairment is a result of drugs. He said in many such instances where prescription drugs are involved, people would voluntarily acknowledge that they were under medication so that additional testing would not be necessary.

John Connor reminded the Committee that submitting to a test under the Implied Consent Law was optional; people can refuse, an

action which could result in a suspension of their driver's licenses. He added that people who do refuse have the right to appeal the suspension of their driver's licenses in district court and a hearing must be held within 30 days on the issue of whether or not their license was properly suspended. Drawing on his six years of experience as a county attorney, **John Connor** said he did not believe that the authority to request a drug test would be abused. He stated that, in fact, the opposite would be true; the tests would not be routinely requested after a driver has not evidenced an illegal BAC because such tests would require a considerable amount of effort on the part of local law enforcement and would raise the specter of potential liability if an officer is acting inappropriately.

John Connor stated his belief that HB 483 would have only a limited application, for example, in instances where a driver has not been consuming alcohol but is driving in an erratic manner and acts very erratic when stopped by an officer. He said HB 483 would address such a situation and give the officer some legal recourse when the driver is obviously drug impaired. He explained that there is currently no way to pursue any legal action in such cases. He said he did not believe that the authority granted by HB 483 would be used in instances where there is a less than .10 intoxilizer result and the person is not acting in a very erratic fashion.

SEN. TVEIT cited HB 483, page five, lines seven through 15 where it reads a "positive test on drugs results in itself that a person is under the influence at the time, a person may not be convicted of a violation unless there is other competent evidence". He asked that the definition of "other competent evidence" be clarified.

John Connor said "other competent evidence" might be constituted by the presence of a marijuana or hash pipe in the car, by very erratic driving, crossing back and forth across the center line, and erratic behavior when the officer examines the situation, or perhaps possession of drugs.

SEN. KOEHNKE asked how long drugs remain in a person's blood system. He said in some instances it might take the officer quite a while to get the person to a hospital to have the blood drawn. **John Connor** said he thought it would depend on the drug and the dose. He explained if the drug involved is, for example, a methamphetamine and the dose is relatively small, that drug would wear off pretty quickly. He added that a hallucinogenic which had been used for a longer period of time would have a longer effect.

SEN. SWYSGOOD asked what would happen to a person who has been prescribed medication which should not be used in conjunction with alcohol, but who either forgets or does not believe the warning label, has a beer, gets stopped, and tests negative on the BAC test, but positive on the drug test. **John Connor** said,

in such a situation, a driver would probably inform the officer as to the nature of the drug. He said if the officer chooses to disregard that information and the driver submits to a drug test, the test would indicate the nature of the substance. Given such a situation as a prosecutor, **John Connor** indicated if such a person were issued a DUI ticket and the investigation showed or it was proven that the person had ingested a prescription drug, had a BAC of less than .10 and there was no further evidence of drugs, he would not prosecute.

SEN. TVEIT said the provisions in the Implied Consent Law include both alcohol and drugs and that a person could refuse to consent to either test. He asked what penalty that person would incur. **John Connor** said people lose their driver's license for 60 days if they refuse to take a test under the Implied Consent Law. He added that statute indicates that individuals have the right to appeal that suspension to district court and the case must be heard within 30 days of the filing date.

SEN. TVEIT stated if Governor Racicot signs HB 157, which would require drivers to forfeit their vehicle after their third DUI offense, people would not so readily consent to either the alcohol or drug test. **John Connor** replied that most people consent to the tests, but agreed the result of HB 157 becoming law might be an increase in the number of appeals submitted to district court.

CHAIRMAN WEEDING asked if the intent of HB 483 was to establish the policy that if drivers are over the legal limit of alcohol consumption they will be presumed to be driving under the influence of alcohol and not drugs regardless of other drug intake. **Rep. Toole** replied, yes, if sufficient evidence to convict a driver of the offense of driving under the influence of alcohol is present. He said most people plead guilty if they are above the legal limit, and those who do not, usually lose in court. **Rep. Toole** stated he believed the Implied Consent Law embodies a sort of challenge to the Fifth Amendment privilege against self incrimination, because people are compelled to do something which will prove or disprove their guilt of a particular offense. He said the courts have held that it is not, but added he still considers there to be some tension. He stated he shared **SEN. SWYSGOOD's** concerns when the concept behind HB 483 initially presented to him, and the language **CHAIRMAN WEEDING** had cited arose from those concerns.

CHAIRMAN WEEDING asked if he correctly understood that under HB 483 an individual could not be convicted of driving under the influence of both alcohol and drugs. **Rep. Toole** replied the possibility of proving drugs would still exist if that could be proven with independent means even when an individual is in excess of the .10 limit. He added that could pose a double jeopardy issue.

SEN. TVEIT said if people submit to a BAC test and test over the legal limit, but have drugs on their person, they would certainly be charged with possession. **John Connor** stated the possession charge would be a separate offense.

SEN. SWYSGOOD read from page two "if a test shows an alcohol concentration of higher than .10 or more, a test for drugs may not be given". He stated that language does not say the test will not be given. **Rep. Toole** replied if that section is ambiguous, it was not intentional. He stated the intent of HB 483 is to provide that if the alcohol concentration result is .10 or over, an additional test for drugs is not allowed. He said he would agree to an amendment in order to make that stipulation clear.

CHAIRMAN WEEDING stated the Legislative Council has defined "may" and "shall" and requested that **Tom Gomez** clarify the intent of the language in HB 483. **Tom Gomez** said the use of "may not" in the cited instance, means that an additional test would be prohibited in cases where a person has a BAC of .10 or more. **CHAIRMAN WEEDING** stated he also felt the "may" seems permissive, but added in legalese it was not.

SEN. SWYSGOOD asked which offense would carry the stiffer penalty, driving under the influence of alcohol or of drugs. **Rep. Toole** replied the two offenses are both considered DUI and not separate offenses.

SEN. SWYSGOOD asked if positive results of a drug test would give a law enforcement officer the right to search the vehicle for possible possession of drugs, an offense which carries a stiffer penalty than the DUI. **Rep. Toole** replied the standard for probable cause for a search is different than that for an arrest. He explained probable cause for a search is only established when there is reason to believe that contraband will be found at the location. He said a person who has ingested drugs at some other place and driven away would not have any drugs in the car, and added probable cause to search that vehicle would not exist because there would be no reason to assume that the drugs would be in the car.

SEN. SWYSGOOD said if a person were given a drug test and the result was positive, the officer would have no way of knowing where the person took those drugs. He asked if the officer would have just cause to search the vehicle. **John Connor** said practically speaking, the officer would not know the results of the test until some time after that person was stopped and the test was administered. He added that by that time the defendant would be probably long gone. He stated just the driving of the car itself and the test results would not provide in any way probable cause to search the car; there would have to be something more. As an example, **John Connor** said if a pipe which smelled as though it had been used for marijuana was found in the car, the person's behavior was very erratic, and the person had

less than a .10 BAC, the officer might want to see if that evidence would convince a judge to allow a search of the car.

Closing by Sponsor:

Rep. Toole reiterated that initially he had the same reservations about expanding mandatory testing in this area as expressed by members of the Committee. He stated there are people who operate vehicles in Montana under the influence of drugs, not because drugs other than alcohol are their particular choice, but because it is much more difficult for an officer to obtain a conviction for DUI. He said HB 483 presents a limited avenue to solving that problem.

HEARING ON HOUSE BILL 679

Opening Statement by Sponsor:

Rep. Clark, House District 31, explained HB 679 has two purposes, one of which is changing some of the rules regarding the operation of motor vehicles especially on Forest Service (FS) and Bureau of Land Management (BLM) lands. He stated HB 679's other purpose would provide a way to recover some of the federal highway funds Montana will lose as a result of the death of SB 365, the mandatory motorcycle helmet law. He said a substantial portion of that money will be recovered through the federal highway safety program which **Al Goke** administers. **Rep. Clark** said **Mr. Goke** was present to answer any questions the Committee might have about the money but did not intend to testify on HB 679.

Proponents' Testimony:

Doug Abelin, Capitol Trail Vehicle Riders Association (CTVRA) and Montana Trail Vehicle Riders Association (MTVRA), distributed a packet containing the documents his group had used in developing HB 679 and the concept embodied in the bill (Exhibit #1). He said HB 679 had evolved during the course of this legislative session, and mentioned he had presented the ideas incorporated into HB 679 to the Committee on February 20, 1993. He admitted HB 679 still needs some work but would ultimately be beneficial for both the users and the agencies involved. He stated his organization had spent a lot of time developing an agenda, had made a sincere effort to discuss the pertinent issues with the involved agencies, and had received much support from committees and members of the legislature. According to **Doug Abelin**, HB 679 would identify certain levels of forest road for off-highway vehicle (OHV) operation, would address OHV crossing of roadways in the safest possible manner, and would establish liability language making users responsible for their own actions in almost all cases. He stated HB 679 would create the groundwork for a "tremendous safety program" for OHV operators in Montana. He said **Fish, Wildlife & Parks (FWP)** would administer this program which would teach safety, riding courtesy to all users, environmental awareness and mitigation, and the use of all safety gear.

Dal Smilie, Chairman Montana Motorcycle Safety Advisory Committee, Vice Chairman, American Motorcycle Association, spoke from prepared testimony in support of HB 679 (Exhibit #2).

Pat Foley, Capitol Trail Vehicle Riders Association and Montana Trail Vehicle Riders Association, said he was responsible for helping to draft the language in section one of HB 679 and would confine his remarks to that section. According to **Pat Foley**, state law applies to forest development roads and needs to be changed; currently Montana statute mandates that "all existing traffic laws shall apply to all forest development roads in Montana". He explained that forest development roads are differentiated into five levels (Exhibit #1, pages 5 and 6). He said the lowest level is not maintained and is generally open to non-motorized vehicles. He said level two roads are comparable to level one roads but are maintained to a small extent. **Pat Foley** stated OHV users want to be able to ride level two roads without having to ride illegally in order to access these roads. He asserted illegal operation has always occurred and the FS ignores it in most cases. He explained that HB 679 would clarify the difference between statute and actual application.

Pat Foley emphasized that HB 679 is designed to address and foster family recreation. Although level three roads are open to street legal vehicles, **Pat Foley** explained that most OHVs are designed to operate properly on a trail network and are not street legal but need to use level three roads in order to access that trail network. He stated families cannot legally ride with their children to get from trailhead to trailhead. He stressed that safety was the primary issue motivating HB 679; since the FS does not acknowledge the fact that level three roads are being used for access purposes, there is neither proper signage nor speed restrictions which would introduce an element of safety into a currently hazardous situation. **Pat Foley** said the provisions in section one of HB 679 would enable OHV operators to use level three roads and higher only as a means to access level two roads. He added HB 679 would not establish a mandate for this use under all circumstances since only the forest supervisor has the authority to make the final decision. He emphasized that proper signage is necessary in those areas which are used for access. According to **Pat Foley**, proper signage would inform all users that a particular section is a plural-use road and would allow for the ability to restrict speeds where necessary.

Pat Foley informed the Committee that the user requirements listed in section one of HB 679 represent minimum standards. He said if the FS wanted to impose more restrictions, his group would not disagree. He stated the stipulation which would require unlicensed OHV users to complete the safety course included in HB 679 before they could ride on those sections of plural use road is very important. He said this requirement would also reinforce the strength of the safety program, which probably would not be successful unless it is made mandatory. **Pat Foley** emphasized HB 679 would not open any areas currently

closed to OHV use, only provide legal access to those trails OHVs can currently use. He stated the policy outlined in HB 679 is supported by national FS policy. In support of his assertion, **Pat Foley** cited a 1987 document entitled "Off-Road-Vehicle And Travel Management Activity Review", which was prepared and approved by the National Directors of Recreation and Engineering and the Deputy Chief of the FS (Exhibit #1, pages 10-12). He stated the report recommends that the FS recognize OHV use of forest development roads (FDRs) and "define the circumstances under which the use of unlicensed vehicles and drivers might be appropriated and how that use should be accommodated". He stated the report contains the recommendation that the FS provide for OHV use "in a manner consistent with state OHV laws". **Pat Foley** stated HB 679 would allow OHV users to begin a dialogue with the FS about their current inconsistent and unsafe policy on OHV use of level three roads. He then introduced **Liz Lodman, FWP**, who will be the administrator of the safety program should it become law.

Arnold Olsen, FWP, read from prepared testimony (Exhibit #3).

Linda Ellison, Land Use Coordinator, Montana Trail Vehicle Riders Association (MTVRA), said MTVRA has been working for the last several years to "get a handle on OHV management use" with the goal of providing increased opportunities for OHV recreation. She stated that most of the group's previous legislation has been directed toward gathering the ability to address resource protection. She said safety is also an essential consideration which, under current FS policy, is occasionally and unnecessarily forgotten. **Linda Ellison** illustrated this by explaining that in several instances rangers, for very legitimate reasons of resource protection, have closed trails and routed OHV recreation over roads which are comparatively busy. She stated the only way to address this issue would be to take proactive steps to mitigate the hazards to all users. She mentioned some examples of signs which have been used in such situations (Exhibit #1, pages 21 and 22), and added that HB 679 would give MTVRA the ability to insist on proper signage and speed limits where applicable, two things which are needed to protect all users.

Linda Ellison stated, in the long term, the most viable mitigation is probably the OHV safety program. She said the safety program would familiarize younger children with Montana traffic laws and teach them safe operation techniques, ethics, and environmental concerns. She said children, teenagers and other users are currently riding on FS and BLM roads and added it is imperative to educate these users about such topics at a younger age. She concluded HB 679 would hopefully provide the means to do exactly that.

Opponents' Testimony:

Ernie Nunn, Forest Supervisor, Helena National Forest, FS, Northern Region, United States Department of Agriculture, introduced **Chris Risbrudt, Deputy Regional Forester; Earl**

Applecamp, FS Engineer, and Denny Hart, Forest Ranger, Helena Ranger District. He then spoke from prepared testimony (Exhibit #4).

Informational Testimony: None.

Questions From Committee Members and Responses:

SEN. SWYSGOOD asked how much money HB 679 would actually appropriate to the OHV safety program. Doug Abelin replied the maximum amount of money projected to be available for all safety uses was about \$2.9 million. He stated the OHV safety program would receive only a portion of that money. Doug Abelin added since that sum is not fixed the fiscal note does not identify the exact dollar figure.

SEN. SWYSGOOD asked if HB 679 had been developed as a means to use the funds that will be diverted from Montana's highway construction fund into a safety fund October 1994 after the failure of the motorcycle helmet law. Doug Abelin said yes.

SEN. SWYSGOOD expressed his support of the OHV training program concept. He stated, however, HB 697 was going beyond safety issues and attempting to effect a statutorial change not directly connected to the funds that would be available for the OHV training program. He expressed his belief that neither the state nor OHV groups can tell the FS what to do. Doug Abelin responded that the intent of HB 679 is not to supersede federal law, but to correct state law so that agreements could be negotiated with the federal agencies. He added that OHV groups have a good relationship with the FS on the issue of trail maintenance. He explained FWP has money which is appropriated through OHV fees and some gas funds to address and do trail maintenance, mitigation, and other improvements.

SEN. SWYSGOOD asked why the provisions in HB 679 were not restricted to establishing the safety program. Doug Abelin stated his group had a number of concerns regarding FS land. He stated OHV users were originally allowed to use the roads addressed in HB 679, but the interpretation of the law had changed. According to Doug Abelin, this change has restricted and nearly eliminated the use of off-road unlicensed vehicles on "back forest roadways". He explained the original portion of HB 679 represented an attempt to clarify and reestablish the OHV users right to use the lower level roadways on FS land to access established OHV trails. He stated three states currently have working programs which address the problem of trailhead access through signage, reduced speed limits, and requiring non-licensed operators to be accompanied by licensed adult operators. Doug Abelin said these states, with FS cooperation, have largely resolved the safety concerns connected with OHV use of level three roads to access trails. He said HB 679 would allow the safety problems associated with OHV operation on plural-use roads to be addressed. He added that use is occurring even though it is illegal.

SEN. SWYSGOOD said he had no argument with anything **Doug Abelin** had said. He stated, however, he disapproved of one group circumventing the normal process of appealing FS policy as it relates to road usage by using a piece of legislation that supposedly addresses an entirely different situation. **SEN. SWYSGOOD** stated he did not think it was right for OHV users to interject their problems into HB 679, while the problems of other groups remain unaddressed. **Doug Abelin** stated HB 679 had not been altered to attack the FS; his group already had a bill addressing the issues contained in section one of HB 679. He assured the Committee that nothing had been added to that original bill except the safety program as the safety funds became available. He stated his group had tried to resolve their differences with the FS by going through the correct channels, but they had not succeeded.

SEN. SWYSGOOD stated he agreed with the safety aspect of HB 679, but was concerned about the bill's provisions regarding federal lands. He said the FS is a public land manager and has the authority to establish the rules and regulations on the lands it manages. He reminded the Committee that the Senate had suspended the rules for HB 679. He stated when he voted to suspend the rules, he had been under the impression the bill would address the use of those federal monies for safety programs. **Doug Abelin** stated the federal agencies would still have the ultimate authority to determine the use of land they manage, even if HB 679 were to become law. He said HB 679 would clarify state law so that the federal agencies would, in fact, be required to actively make the necessary determinations. **Doug Abelin** said the safety portion of HB 679 was a bonus that had come along during the process. He assured the Committee there had never been an intent to mislead, but simply to take advantage of that bonus.

SEN. TVEIT asked for a clarification of level three roads. **Ernie Nunn** explained that a level one road is nothing more than where there is a set of ruts or the ground has been stirred. He added level one roads are actually closed roads by regulation. He said a level two road is in better condition and may be a four-wheel drive road or used by all terrain vehicles (ATV) or bikers. He stated a level three road is a "maintenance level" road and often has funded maintenance program. He explained maintenance level roads are usually in better condition and used by many users of the public.

SEN. TVEIT asked if logging trucks and larger vehicles use level three roads. **Ernie Nunn** replied they do.

SEN. TVEIT asked if FS rules applying to maintenance level roads are usually consistent with state law. **Ernie Nunn** said yes. He added he hoped the good working relationship between state and federal law enforcement would not be jeopardized. He explained that currently an agreement exists between law enforcement which allows for efficient cooperation and exchange of assistance.

SEN. TVEIT stated that even though HB 679 stipulates in section four that "the unlicensed operator shall accept all legal responsibility", the FS would still be liable if they allowed OHV traffic on maintenance roads. Referring to Montana law, SEN. TVEIT stated the FS would be liable because they had permitted operation on plural-use roads which constitutes an unsafe condition. He asked about the FS stance on liability issues presented by HB 679, given the provisions of Montana law. Ernie Nunn replied SEN. TVEIT's comments were correct. He stated that the FS "owed it to the American people to provide a safe experience" on national forest lands and would not relieve itself of that responsibility. Given the amount of intermingled lands within the forest boundary, he noted that possible conflicts could arise if federal and state law differed. He explained there are a lot of mining claims, private and state lands within the forest boundary and most of the maintenance level roads were constructed to provide access to those lands. Ernie Nunn said the change in jurisdiction is rarely posted and a conflict between state and federal law would make it more difficult for the using public to determine what laws they needed to comply with on a certain stretch of road. He said the FS would need time to address those issues and resolve them for the users. He stressed the FS's main priority is the users.

SEN. TVEIT said HB 679 had a lot of good in it and added he thought most of his reservations with HB 679 could be resolved. He added, however, he did not believe the OHV safety training program would receive any federal money if the federal government were alienated by other portions of the bill. He stated the basic concern seemed to be the ability to use maintenance level roads to access OHV trails. Ernie Nunn replied SEN. TVEIT was correct, but that those and other issues could be resolved by working on a case by case basis. Ernie Nunn expressed the FS's unequivocal support of using federal dollars, if that money were available, for any program which would educate and train the youth of Montana to operate OHVs in a safe and environmentally sound manner. He stated the FS supported the safety training aspect of HB 679 and would provide "some leadership" for such a program.

SEN. TVEIT asked if Ernie Nunn testified on HB 679 when it was heard by the House Committee. Ernie Nunn replied he had testified before the House, because he believed the FS owed it to state legislators to inform them about the FS's position on issues. He stated his testimony at the House Hearing was about the same but had been changed to reflect the amendments the House Committee had added to HB 679.

SEN. MCCLERNAN expressed his surprise that the FS had opposed HB 679 primarily on the basis of safety problems. He stated he had expected opposition on the basis of a potential conflict arising from the state of Montana and the federal government administering the same thing. He asked if the FS had any concerns about HB 679 usurping some of the responsibilities of

the FS to administer public land. **Ernie Nunn** said perhaps an element of such concern exists. He added, however, the FS's working relationship with FWP is good; the two agencies have all kinds of agreements. Referring to the particular issue addressed by HB 679, **Ernie Nunn** said FWP would provide leadership for the OHV educational training program and the FS would most likely assume some leadership roles in helping to do some signing and other related things.

Chris Risbrudt, Deputy Regional Forester, stated the FS was concerned about any difference in federal and state regulations. He said the FS has entered into cooperative law enforcement agreements with Montana counties and those agreements would be removed under HB 679. He explained the FS currently pays counties to have their law enforcement agents to enforce state law on national forests.

SEN. MCCLERNAN commented that if the state is going to pick a fight with the federal government, he thought the issues ought to be more substantive than those contained in HB 679.

SEN. BRUSKI-MAUS asked **Bob Walker, Liz Lodman** and **Al Goke** if they wished to make any comments.

Liz Lodman, FWP introduced herself as the coordinator of the Department's OHV Safety and Education Training Program, and stated her concern regarded the safety training program HB 679 would establish. She said some safety training is available for adults, but there is no real safety education training for young riders. She stated HB 679 would provide an opportunity to reach the youth of Montana so they could grow up to be safe riders both off and on-road.

Bob Walker, Trails Coordinator, FWP said he had worked closely with the OHV community for several years and it has been a good relationship. He explained his job is to develop OHV trails, trail linkages and trail loops. He stated often the only access to some FS designated OHV trails was a level three maintenance roadway. He said many OHV users are forced into operating their vehicles illegally as a result. In just the last year, **Bob Walker** said he had been placed in that very position at least four times. He stated HB 679 would create a situation in which it is possible for the FWP to work more effectively with the FS to resolve access problems.

SEN. SWYSGOOD stated section one represents the actual intent of HB 679. He said the FS needs to address the issue of access to trailheads, but added, however, he did not believe that a piece of legislation could persuade or force the FS to change policy. He reminded the Committee that HB 679 was designed to appropriate funding made available to safety programs because of the failure of SB 365. He stated the end effect of HB 679 would probably be the same if all the language referring to the federal agencies

were stricken. He asked what HB 679's proponents hoped to accomplish with these two sections.

Bob Walker replied no room for discussion on this issue exists because the FS's usual response is simply that state law does not allow OHV use on maintenance level roads. He said HB 679 would adjust state law to allow for at least a dialogue on the issue, even though the FS would still make the final decision. He stated the FS may not open up many roadways to OHV use, but HB 679 would at least make that a possibility. **Bob Walker** also emphasized the connection between the safety program and the ability to use OHVs on level three roads; minors would be required to take the safety education class before they could operate on the particular roadways identified in HB 679. He said a voluntary program would currently attract only a small number of participants, but added if OHV users needed that safety training program to use designated FS roads to access trails the scope of the program would radically expand.

Closing by Sponsor:

Rep. Clark said HB 679 is not perfect and expressed the willingness of the bill's sponsors to work with any one concerned with any portion of the bill. He stated BLM supports HB 679 in its current form. He stressed that HB 679 would not suspend or mandate a change in federal policy but would alter state law so that negotiations could go forward with the FS. In response to the argument an unsafe situation would be created by allowing unlicensed operators to ride OHVs on the same roads as logging trucks, **Rep. Clark** replied that particular unsafe situation is already a reality. He said HB 679 would require unlicensed operators to pass a safety training course, be under direct adult supervision, and follow other general safety rules adapted from the snowmobile statute. He said HB 679 would also encourage and hopefully cause minors to wear helmets.

Rep. Clark stated he did not think HB 679 would jeopardize the current cooperative agreements between state and county law enforcement agencies and the FS. He informed the Committee that **Colonel Griffith, Montana Highway Patrol**, had attended the House hearing on HB 679 with the express purpose of answering any questions about HB 679's potential consequences for those cooperative agreements. **Rep. Clark** stated that **Colonel Griffith** had not expressed any concerns about HB 679. **Rep. Clark** closed by saying the safety issue addressed by HB 679 is paramount. He said the safety education training program contained in HB 679 would institute would reach young OHV riders in Montana and help them develop safety habits applicable to both off and on-road motoring.

EXECUTIVE ACTION ON HOUSE BILL 483

Motion:

SEN. TVEIT moved HB 483 BE CONCURRED IN.

Discussion:

SEN. SWYSGOOD said he understood the concept embodied in HB 483 and did not condone mixing either alcohol or drugs with driving. He disagreed, however, with the solution to the problem which HB 483 presented. He said the provisions in HB 483 allow for the potential of abuse on the part of law enforcement officers and would represent one more infringement upon an individual's rights. He said he wished HB 483 could be amended to remove that potential for abuse, but added he did not believe there was enough time given the "late stage in the game". He stated he did not understand how HB 483 had entered the Committee so late in the session, since it would neither generate nor expend any revenue.

SEN. REA requested clarification as to why HB 483 provided that the drug test could be used only to establish the offense of driving under the influence of drugs. **SEN. MCCLERNAN** explained the officer would need to have further evidence reinforcing the suggestion that the person was actually on illegal drugs for a charge to be made on that account.

SEN. SWYSGOOD added the possibility existed that the driver could be on medication and test positive. He stated a positive result would not positively prove that the driver was actually under the influence of the drug. He noted, however, some of the information which came out during the hearing indicated that the officer could still request the drug test even after being informed about the driver's medication. He said if the driver then tests positive, the case would have to be appealed to District Court or the officer would have to establish more substantial proof.

SEN. BRUSKI-MAUS said the testimony had indicated if drug paraphernalia were present, the officer would be more suspicious and more apt to want the test.

SEN. TVEIT commented that HB 483 would definitely broaden the authority of law enforcement officers. He said if the driver is erratic but does not exhibit an illegal BAC, the officer could immediately request a drug test.

SEN. SWYSGOOD stated that was his primary concern. He explained if a driver tests .08, which is just under the legal criteria for being DUI, that driver could be a little erratic. He stated HB 483 would give the law enforcement officer the option to take the driver in for a drug test. He stated if the drug test is positive, even if it is a prescription drug, the onus is on the driver to prove the nature of that drug at personal expense. He stated he believes HB 483 would increase the potential for harassment.

SEN. MCCLERNAN commented that operating a vehicle under the influence of drugs is currently against the law. He said that **Rep. Toole** had argued that HB 483 was necessary because law

enforcement officers do not have the authority to check for drugs. SEN. MCCLERNAN stated that although he could sympathize with law enforcement's need to have authority to check for drugs, he would be inclined to give them only limited authority.

SEN. TVEIT said HB 483 would give law enforcement officers the option to check drivers for drug use even though they are stopping them for a DUI, not for drugs on any public road.

SEN. KOEHNKE asked what kind of authority law enforcement officers currently have to check for drug use. SEN. SWYSGOOD explained that the employees of commercial motor carriers can be checked randomly for drug use and the driver of a vehicle involved in an accident must submit to a drug test within 32 hours. He stated that non-commercial drivers are not subject to any of the commercial restrictions. SEN. SWYSGOOD stated a drug test attached to the Informed Consent Law would be guaranteed to be used quite often. He concluded it would provide law enforcement officers with another option to harass private citizens.

SEN. TVEIT stated the more he considered the subject matter and possible consequences of HB 483, the less he liked the bill. He then WITHDREW his motion that HB 483 BE CONCURRED IN.

Motion/Vote:

SEN. SWYSGOOD moved TO TABLE HB 483. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HOUSE BILL 679

Discussion:

SEN. TVEIT cited page six, lines 3-8 and said he could not support amending Montana statute to grant OHV users permission to operate on all level three maintenance roads. He said the FS could probably adopt rules limiting the use to certain stretches, but added it would be better if state law also reflected that limitation.

SEN. SWYSGOOD said language tying section four, subsection five to section one was necessary because HB 679, in its current form, provides that OHV users can operate on a level three maintenance road without any FS interjection. He stated section one provides that exceptions to the regulations are permitted only at the determination and discretion of the United States FS when the following conditions are met: that use is authorized by the forest supervisor, that stretch of road is properly signed, the OHV has a valid registration.

SEN. TVEIT stated he believed the language suggested by SEN. SWYSGOOD was very important. He said the regulations should

reflect that operation on level three maintenance roads would be solely for access to OHV designated trails. **SEN. TVEIT** stated it was necessary to maintain a very tight criteria so that OHV users could not "run up and down those level three roads".

SEN. BRUSKI-MAUS said the account mentioned on page six, line 19 of HB 679 should be a "federal special revenue fund" instead of a "state special revenue fund". **SEN. SWYSGOOD** said he believed a "state" fund was necessary to administer the program.

Tom Gomez mentioned there was a technical note in the fiscal note pertaining to a "federal special revenue fund".

Al Goke, Administrator, said he believed the account should be a "federal special revenue fund". He said the federal money would be put toward the "402 safety program" which for years has helped to fund efforts in the Highway Patrol, city and county law enforcement, emergency medical care, and start the driver's education program. The money, which would have gone into the highway construction fund if SB 365 had passed, would be transferred to the 402 safety program.

SEN. SWYSGOOD asked if FWP would need a "federal" or "state" special revenue fund in order to use the funds they would receive from the 402 program. **Al Goke** replied the recipient would get federal funds and advised that FWP would need a "federal special revenue account". He said the money might reach the program by way of a state agency, but the account would remain federal.

SEN. REA asked how many full time employees (FTE) FWP estimated it would need to implement the safety education training program. **Bob Walker** said FWP have developed two scenarios, one in which the Department would run the program and one in which a private contractor would run the program. He said either way, the program would require about 1 FTE.

Tom Gomez proposed language for the amendment that **SEN. SWYSGOOD** had suggested. He suggested that on page 6, line 8, at the end of the clause regarding the use of OHVs on maintenance level three roads the following language be added: "provided that the U.S. FS has provided an exception under MCA 61-8-111 to permit use of the road for OHVs".

SEN. SWYSGOOD said the exceptions would be that the supervisor would have to authorize that use, the road was properly signed, and OHVs had a valid registration, etc. He asked if "appropriate federal agency" should be the reference used since HB 679 also addressed BLM lands.

Because people who were interested in the bill reentered the room, **SEN. SWYSGOOD** explained what the Committee was doing. He said HB 679 in its current form would allow OHV users to operate on a level three maintenance roads. He explained the Committee was currently drafting an amendment which would require that the

federal agency would have to grant the exceptions in section one before the road could be used by OHV operators.

Dave Abelin said section four, subsection five was amended into HB 679 by the House Committee. He commented his organization had been surprised by the amendment.

SEN. SWYSGOOD asked **Rep. Clark** what intent the House Committee had when they so amended HB 679. **Rep. Clark** responded subsection five was added primarily because HB 679 had not previously stipulated that unlicensed motorists must complete the OHV safety education training course before being allowed to operate on level three maintenance roads. He stated the House Committee had not noticed the need to cross reference section four, subsection five with the exceptions in section one.

SEN. SWYSGOOD cited section one, page three, line six which reads "each vehicle operator shall comply with the requirements of MCA 61-9-417". He asked that the "requirements" of MCA 61-9-417 be clarified. **Doug Abelin** said that section of HB 679 refers to the mandatory helmet law for individuals ages 18 and under.

SEN. SWYSGOOD asked why page three, section four was stricken from the bill. **Rep. Clark** said nobody could define the term "responsible adult". He added that section was replaced by the language in section four, subsection five.

SEN. SWYSGOOD asked whether it would not be more appropriate to reinstate the language in that section and replace the reference "responsible adult" with "licensed operator". **Rep. Clark** said the House Committee's staff thought the issues in that section were addressed in section four, subsection five.

SEN. SWYSGOOD suggested streamlining HB 679 by striking section four, subsection five and putting the language back in its original place. Since the House Committee had objected to the term "responsible adult", **SEN. SWYSGOOD** suggested those references be changed to "licensed adult". He added that change would be consistent with the language in the rest of HB 679.

Rep. Clark said he would like to be sure HB 679 specified that unlicensed OHV users are not allowed to use maintenance level roads without completing the safety education training program.

SEN. SWYSGOOD agreed with **Rep. Clark**, but added the safety program requirement would have to be cross referenced to section one. He stated he would feel uncomfortable if OHV operators were given unlimited use of level three maintenance roads.

Rep. Clark asked if **SEN. SWYSGOOD** would feel comfortable with just adding a reference to the safety education training program in place of the language that was struck on line four page three. He said doing so would effectively move subsection five to page three, line four.

SEN. SWYSGOOD agreed. He said the reference to the exceptions for OHV use of level three maintenance roads would be moved out of section four of HB 697 into section one and section two. Permission for OHV use would then come under the criteria that the federal agency granted the authority and the OHV operator complied with the exceptions to operate. **Rep. Clark** stated he would agree with that amendment.

Tom Gomez verified that **SEN. SWYSGOOD** was satisfied with the phrase "an unlicensed off-highway vehicle operator is accompanied by a licensed adult". **SEN. SWYSGOOD** stated that the language should be "an unlicensed operator who has successfully completed the off-highway vehicle safety education training program offered by the Department of FWP may operate an off-highway vehicle on a maintenance level 3 or greater FS road under the supervision of licensed adult". He emphasized this program would be only one of criteria that would have to be met if the FS granted permission for OHV use on level three maintenance roads.

Rep. Clark noted that the term used by BLM for "maintenance level roads" was "collector roads". He added that section two, line six ought to reflect that difference in language. **SEN. SWYSGOOD** suggested the Committee consider the amendments one at a time.

Motion:

SEN. SWYSGOOD moved to STRIKE PAGE SIX, LINES 3-8 IN ITS ENTIRETY AND TO REINSERT THE LANGUAGE THAT WOULD STRIKE FROM SECTION FOUR, SUBSECTION FIVE INTO SECTION ONE, LINE FOUR.

Discussion:

SEN. STANG asked **SEN. SWYSGOOD** to clarify the purpose of that amendment. **SEN. SWYSGOOD** stated the amendment would ensure that HB 679 contained language requiring unlicensed operators to complete the safety education training program before operating an OHV on plural-use roads.

SEN. STANG asked if the amendment stipulated where unlicensed operators could ride OHVs. **SEN. SWYSGOOD** said the amendment would stipulate use on roads level three or higher with the federal agency's permission. **SEN. TVEIT** explained HB 679 without the amendment would simply open all maintenance level roads to OHV use.

Vote:

The AMENDMENT CARRIED with **SEN. STANG** voting NO.

Discussion:

SEN. SWYSGOOD stated any bill that requires more than three amendments is a bad bill. **SEN. STANG** commented that **SEN. TOWE** would not agree.

SEN. SWYSGOOD attempted to formulate an amendment for section two which would incorporate BLM language instead of FS terminology.

He said the amendment would be inserted under section two, line six but was unsure of the exact language.

Doug Abelin suggested the amendment should read an "unlicensed operator who has successfully completed the off-highway vehicle safety education training program offered by the Department of FWP may operate an off-highway vehicle on a collector level BLM road at the discretion of the BLM authorized officer and under the supervision of licensed adult".

SEN. SWYSGOOD stated he was not sure since the amendment needed to be consistent with the other language relating to BLM in HB 679.

Tom Gomez said the amendment under discussion would also need to conform with the rest of HB 679 and probably should not be formulated as a statement.

Motion/Vote:

SEN. SWYSGOOD moved THE AMENDMENT UNDER DISCUSSION and asked Tom Gomez to draft the final language. The MOTION CARRIED WITH SEN. STANG voting NO.

Motion/Vote:

SEN. TVEIT moved an AMENDMENT TO STRIKE THE WORD "STATE" ON PAGE 6, LINE 19 AND INSERT THE WORD "FEDERAL" IN ITS PLACE. The MOTION CARRIED with SEN. STANG voting NO.

Discussion:

SEN. STANG asked who would teach the safety education training program and what distance unlicensed motorists would need to travel to participate. Bob Walker stated the proposal Fish, Wildlife & Game had developed contained various options depending upon the amount of federal money that became available. He said there would be anywhere between four to twelve permanent training sites around the state. He noted that 4-H is offering OHV safety training and the All-Terrain Vehicle Safety Institute (ASI) also has some certified instructors in Montana. He said if HB 679 passed and the program received the appropriate amount of money from the Federal Highway Administration, his Department intends to establish at least twelve permanent sites and as many local sites as possible. He admitted some people would need to travel to attend a safety education training program.

SEN. STANG asked how much federal money would be appropriated to the program, enough for closer to four or to twelve sites. Rep. Clark explained the money would be part of those funds diverted from the highway construction fund into the traffic safety education program. He stated that money would then be distributed to FWP to administer the program and set up the training. He stated the actual amount of money would not be known until October, 1994.

SEN. REA asked what would happen if a helmet law were approved during the next legislative session and no extra funds were made available for the OHV safety education training program. He asked if the state program would be coordinated with another group like 4-H, so that a safety education training program would still be available for unlicensed OHV operators. **Rep. Clark** expressed his doubt that a Montana State Legislature would ever approve a motorcycle helmet law. He said out of the 15 states which have discussed the options posed by the 1991 Federal Intermodal Surface Transportation Efficiency Act (ISTEA), only one had adopted a motorcycle helmet law as a result.

SEN. STANG asked why successful completion of the safety program was mandatory, since the extra safety money might never become a reality. He expressed his concern that unlicensed OHV users might never have a reasonable opportunity to take the safety program and would be breaking the law as a result. **Rep. Clark** stated they are breaking the law now.

Motion:

SEN. TVEIT moved HB 679 BE CONCURRED IN AS AMENDED

Motion:

SEN. STANG made a SUBSTITUTE MOTION TO AMEND HB 679 AS NECESSARY TO REMOVE THE REQUIREMENT THAT UNLICENSED OHV USERS SUCCESSFULLY COMPLETE THE OFF-HIGHWAY VEHICLE SAFETY EDUCATION TRAINING PROGRAM.

Discussion:

SEN. TVEIT stated if the program were removed from HB 679, Montana could not qualify for any federal safety money and HB 679 bill might as well be tabled. **Rep. Clark** suggested the safety program requirement could be made contingent upon the receipt of federal funding for the program.

Motion:

SEN. STANG AMENDED HIS AMENDMENT TO MAKE THE OFF-HIGHWAY VEHICLE SAFETY EDUCATION PROGRAM REQUIREMENT CONTINGENT UPON RECEIPT OF THE FEDERAL FUNDS.

Discussion:

SEN. TVEIT asked that a representative of FWP comment on **SEN. STANG's** amendment.

Bob Walker said the federal money would enable FWP to develop "the best OHV safety training program in the United States". He stated a safety training program does exist, but not with the desired scope. He explained the program currently relies on private land and the federal money would allow FWP to establish permanent training sites. He assured the Committee that even if the program is mandated without the federal dollars, FWP would "work real hard to get the existing program expanded".

SENATE HIGHWAYS & TRANSPORTATION COMMITTEE

April 6, 1993

Page 22 of 22

SEN. STANG commented that expanding the existing program without federal funding would require an increase in OHV user fees. He stated legislation has already increased personal income tax and boosted various fees by about \$25 million. He concluded he would rather make the safety education training program requirement contingent upon the receipt of federal money.

Vote:

The AMENDMENT CARRIED UNANIMOUSLY.

Motion/Vote:

SEN. STANG moved HB 679 BE CONCURRED IN AS AMENDED. The MOTION CARRIED WITH A ROLL CALL VOTE. With **SENATORS WEEDING, MCCLERNAN** and **HARP** were excused and allowed to cast their votes at a later date.

ADJOURNMENT

Adjournment: 5:55 p.m.



SENATOR CECIL WEEDING, Chair



BETH E. SATRE, Secretary

CW/bes

ROLL CALL

SENATE COMMITTEE HIGHWAYS & TRANSPORT. DATE April 6, 1993

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CECIL WEEDING, CHAIR	X		
SENATOR BETTY BRUSKI-MAUS, V-CHAIR	X		
SENATOR DARYL TOELJS	X - late		X
SENATOR JOHN HARP			X
SENATOR FRANCIS KOEHNKE	X		
SENATOR JACK "DOC" REA	X		
SENATOR LARRY TVELT	X		
SENATOR CHARLES SYWSOOD	X		
SENATOR BARRY "SPOOK" STANG	X		
SENATOR HENRY MCCLERNAN	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 7, 1993

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration House Bill No. 679 (third reading copy -- blue), respectfully report that House Bill No. 679 be amended as follows and as so amended be concurred in.

Signed: Cecil Weeding
Senator Cecil Weeding, Chair

That such amendments read:

1. Page 3, line 6.

Following: line 5

Insert: "(e) An unlicensed operator has successfully completed the off-highway vehicle safety education training program offered by the department of fish, wildlife, and parks and operates the off-highway vehicle under the direct supervision of a licensed adult."

Renumber: subsequent subsection

2. Page 4, line 8.

Following: line 7

Insert: "(e) An unlicensed operator has successfully completed the off-highway vehicle safety education training program offered by the department of fish, wildlife, and parks and operates the off-highway vehicle under the direct supervision of a licensed adult."

3. Page 6, lines 3 through 8.

Strike: subsection (5) in its entirety

4. Page 6, line 19.

Strike: "state"

Insert: "federal"

5. Page 6.

Following: line 25

Insert: "(4) Authorization for the training program provided in subsection (1) is contingent upon the receipt of federal funding for the program."

-END-



Amd. Coord.

Sec. of Senate

Senator Carrying Bill

781559SC.San

ROLL CALL VOTE

SENATE COMMITTEE HIGHWAYS & TRANSPORTATION BILL NO. HB 679

DATE APRIL 6, 1993 TIME 5:50 A.M. (P.M.)

NAME

YES NO

[illegible]

Beth Sater

SECRETARY

Sen Brustki-Maus

CHAIR

MOTION: HB 697 be concurred in as amended.

The original of Exhibit 1 is 24 pages long and is located at the Historical Society, 225 North Roberts Street, Helena, MT, 59620-1201. The phone number is 444-2694.

SENATE HIGHWAYS

EXHIBIT NO. 2

DATE April 6, 1993

BILL NO. HB 679

April 6, 1993

TO: Senate Transportation Committee
FROM: Dal Smilie, Chairman Montana Motorcycle Safety advisory
Committee
AMA Vice Chairman
RE: Testimony in Support of HB 679

Industry figures estimate that there are 22,400 off highway motorcycles in Montana. This does not count the 7,500 or so dual purpose motorcycles or tourist motorcycles.

These users enjoy the trails in Montana and contribute to the Montana economy. Their contribution is very similar to the contribution made by snowmobilers.

This bill provides for a much needed federally funded OHV safety program.

This bill sets out responsibility code like that in place for ski areas. This will protect both public land managers and private land owners who allow OHV use on their trails.

Montana motorcyclists have drafted and supported legislation to help upgrade and build trails with their user fees. Other funds are just becoming available from state and federal off road gas taxes. There should be increased interest in the use of the trail systems.

Off road users enjoy "loop" trails and trail heads that have a campground immediately available. Where those conditions do not exist short stretches of road connect the "loop" or lead from the campground.

HB 679 allows user groups and public land managers to plan the use of certain roads to create loops or access to adequate parking and camping. This act does not force any change in use but allows it if and only if public land managers approve.

Trail users have sought to implement similar plans but were told by federal land managers that state law was the problem. This bill would change state law so that such planning could be agreed to. It places no responsibility on federal land managers to agree, it just allows them the option.

The USFS has reviewed this proposal for two months. On March 24 they indicated they would oppose it because it is a REGIONAL POLICY to not allow more than one type of user on "two track" roads. Currently licensed autos, motorcycles, quadricycles, log trucks, horses, bicycles, hikers and skiers can use the same "two track" roads. Is the USFS going to segregate those users? Of course not.

The USFS has "de facto" allowed OHVs on these roads. They allow it in other states. HB 679 will merely make that lawful.

SENATE HIGHWAYS

EXHIBIT NO. 3

DATE April 6, 1993

BILL NO. HB 679

HB 679
April 6, 1993

Testimony presented by Arnold Olsen, Dept. of Fish, Wildlife & Parks before the Senate Highways and Transportation Committee

The Department of Fish, Wildlife and Parks, by statute, has the responsibility for coordinating Off-Highway Vehicle (OHV) trail development and safety education programs. We work closely with state, federal and private land managers and with OHV clubs to provide OHV trail riding opportunities and to provide riders with safety-related information as well as legal and ethical responsibilities.

We support this bill primarily on the basis that it will provide for establishment of a statewide OHV safety and ethics training program which could save lives, reduce conflicts and improve user behavior.

This bill allows OHV users to lawfully cross public, USFS and BLM roads to get from one riding area to another and it establishes an OHV rider's assumption of responsibility. These sections are modeled after current snowmobile laws which have proven effective. The conditions of the bill help to provide for a safe corridor of travel.

Due to limited funds, OHV rider education and training has, to this point, been very limited. This bill authorizes funding for a more

comprehensive statewide OHV rider training program. Additional dollars would allow the department to teach OHV users, especially youth, safe and responsible riding practices through hands-on training and/or classroom instruction. The program would include ATV and motorcycle safety, ethics, and trail etiquette.

We therefore support HB 679.

SENATE HIGHWAYS

EXHIBIT NO. 4

DATE April 6, 1993

BILL NO. HB 679

STATEMENT OF
ERNIE NUNN, FOREST SUPERVISOR, HELENA NATIONAL FOREST
FOREST SERVICE, NORTHERN REGION
UNITED STATES DEPARTMENT OF AGRICULTURE
Before the
Highways and Transportation Committee
Montana State Senate

Concerning House Bill No. 679 entitled "AN ACT REVISING THE LAW RELATING TO OFF-HIGHWAY VEHICLE USE: ALLOWING OFF-HIGHWAY VEHICLE USE ON CERTAIN FOREST AND BUREAU OF LAND MANAGEMENT ROADS; ALLOWING OFF-HIGHWAY VEHICLES TO CROSS PUBLIC ROADS UNDER CERTAIN CONDITIONS; ESTABLISHING A STANDARD OF RESPONSIBILITY FOR OFF-HIGHWAY VEHICLE OPERATORS; PROVIDING FOR OFF-HIGHWAY VEHICLE SAFETY TRAINING AFTER 1994; APPROPRIATE FEDERAL FUNDS FOR OFF-HIGHWAY VEHICLE SAFETY TRAINING; AMMENDING SECTIONS 17-7-502 AND 61-2-111, MCA."

April 6, 1993

CHAIRMAN WEEDING AND COMMITTEE MEMBERS:

My name is Ernie Nunn, and I am the Forest Supervisor of the Helena National Forest. Thank you for the opportunity to participate in this hearing and to share the USDA Forest Service position on House Bill 679.

The Forest Service opposes House Bill No. 679. We support current Montana State law as written and feel that HB 679 does not provide any desired additional authority or flexibility in the management of Off Highway Vehicle (OHV) use for the Forest Service.

As we interpret the language in section 1 of this bill, it would amend Section 61-8-111, MCA, to permit off-highway vehicle use on Forest Development roads (FDRs) when certain conditions are met. This use would be permitted at the discretion of the Forest Service. The Forest Service already has the authority and flexibility to manage traffic on Forest Development Roads under the Code of Federal Regulations; therefore, the bill is not further enabling in this regard. Additionally, it would appear that the bill could be interpreted to affect cooperative law enforcement efforts on exempted Forest Development roads. Given the sound cooperation in law enforcement with the State under current legislation, we would sincerely hope that nothing weaken this relationship.

The bill also allows for mixed vehicle traffic (street legal/non-street legal) at the same time on Forest Development roads, as well as unlicensed, minor operators. In other words, an eight-year-old, non-licensed operator on a 3-wheeler or trail bike could be sharing the road with a logging truck. We will not support legislation that places the American public, in particular unskilled children as operators, at risk of serious injury or death. Northern Region Forest Service policy does not allow the mixing of street legal and non-street legal vehicles on forest development roads at the same time. The mixing of traffic types and operators on these roads is not permitted because of safety concerns and the risks and liability associated with such use. If you take a look at this bill from a safety and liability standpoint alone, as we have done, the mixing of licensed and unlicensed operators and vehicles on any unrestricted road system, i.e. Forest Service, State, County, is cause for major concern. Therefore, while enactment of HB 679 would allow the mixing of traffic on Forest roads, this mixed use conflicts with Northern Region Forest Service policy and would be prohibited by the Forest Service.

Section 2 of the bill pertains to the Bureau of Land Management. We defer to them on this section.

Section 3 of the bill allows OHV crossing of public roads in certain circumstances. Again, this is a critical safety issue. This is particularly true in situations where OHVs cross public roads in high traffic areas. We believe the safety and liability issue cannot be ignored and outweigh perceived benefits.

Section 4 discusses OHV operator responsibilities and liability. We feel this section does not adequately address mixed traffic safety concerns, nor is there mention of operator responsibility to prevent resource damage. We would suggest that the liability language contained in this bill reflect or strengthen the State of Montana's current liability laws. While this section does include reference to an unlicensed operator operating "under the direct supervision of a licensed adult", direct supervision is not well defined, nor does it alleviate the mixed traffic concerns of safety and liability. The situation of an unlicensed minor sharing the road with a log truck is still a very real possibility.

The Forest Service supports educational training programs for off-highway vehicle use. We sponsor the "Tread Lightly" program which focuses on environmentally conscious, responsible use of OHVs on public lands. The concept of educational training is one which we strongly support. Since this portion of the bill redefines management of, rather than creation of, OHV safety educational training, we defer to Montana State's Departments of Justice and Fish, Wildlife, and Parks on these sections.

The Forest Service believes that the use of OHVs is an appropriate recreational use of the National Forests. Street legal OHVs are not prohibited from any non-restricted FDRs. This translates into over 27,000 miles of Forest Development roads which are available for their use in the Northern Region...this is over 56% of the Northern Region's total road system. In addition, many miles of Forest trails currently provide opportunities for both street legal and non-street legal OHV use.

While the Forest Service does not support this bill, there are opportunities for identifying additional Forest Development roads which could be restricted solely for use by OHVs. The Forest Service presently has the authority to designate roads as restricted for OHV use. This has been done for snowmobiles on all forests in the Region. We have also established some summer routes for other OHVs throughout the Region. Further, the Region is taking a more proactive stance in educating our line officers about the appropriate use of this authority. This should assist in identifying additional options for OHV use. We welcome the opportunity to work with user groups and sponsors to this legislation to facilitate a case-by-case review of roads which might be suitable for use by OHVs on the National Forests in Montana. We have recently participated in meetings with these groups and sponsors of this legislation and we will continue to do so in the future.

Again, we appreciate the opportunity to share the Forest Service's position on this bill. This completes my testimony. I will be pleased to answer any questions you may have.

DATE 4/6

SENATE COMMITTEE ON Highways

BILLS BEING HEARD TODAY: HB 679 HB 483

Name	Representing	Bill No.	Check One	
			Support	Oppose
DAL SMILE	AMA	HB 679	✓	
Glenora Wortman-Obie	ADA Montana	HB 483	✓	
EDNIE NUNN	Forest Service	HB 679		✓
John Connor	Dept of Justice	HB 483	✓	
CRAIG L. HOPPE	MT MAGISTRATES ASSN	HB 483	✓	
LIZ LODMAN	FWP	HB 679	✓	
Aimee Olsen	FWP	"	✓	
PAT FOLY	MTVRA/CTUA	HB 679	✓	
BOGA ABELIN	MTVRA/CTUA	HB 679	✓	
Chas Risbrudt	US Forest Service	HB 679		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY