

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By Senator Cecil Weeding, Chair, on April 13, 1993, at 11:42 a.m.

ROLL CALL

Members Present:

Sen. Cecil Weeding, Chair (D)
Sen. Betty Bruski-Maus, Vice Chair (D)
Sen. John Harp (R)
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: None.

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: None.
Executive Action: HB 483, HB 572, HB 679

EXECUTIVE ACTION ON HOUSE BILL 483

Motion:

SEN. MCCLERNAN moved that THE COMMITTEE RECONSIDER ITS ACTION TO TABLE HB 483.

Discussion:

SEN. MCCLERNAN said he had moved to reconsider HB 483 because the Butte-Silverbow county attorney had informed him that the demise of HB 483 would leave law enforcement officials at a disadvantage when trying to control people who are driving under the influence (DUI) of illegal drugs. He said he recognized that HB 483 might potentially allow harassment. He stated, however, DUIs involving

illicit drugs have created a growing problem in Butte which cannot be addressed under current law.

CHAIRMAN WEEDING noted several county attorneys had also contacted him with the same information.

SEN. REA said the Bozeman county attorney had informed him that if individuals are suspected of DUI but have a legal blood alcohol count (BAC), officers have no choice but to allow them to drive off even if they are still visibly impaired.

SEN. HARP asked why HB 483 had been tabled. **SEN. SWYSGOOD** stated he had been strongly opposed to the bill.

Vote:

The MOTION TO RECONSIDER HB 483 CARRIED UNANIMOUSLY

Motion:

SEN. MCCLERNAN moved that HB 483 BE CONCURRED IN.

Discussion:

SEN. TVEIT asked that the need for HB 483 be clarified. **Mike McGrath, Lewis and Clark County Attorney**, said the Implied Consent Law provides that when individuals obtain their driver's licenses, they also consent to submit to a test for alcohol. He added that current DUI law stipulates that if a person's driving is impaired either by alcohol or by drugs that person is in violation of the law. He state HB 483 would allow officers to request a drug test when sufficient probable cause exists to test a person for alcohol, even though that person has a legal BAC. He stated under the current law officers cannot request a drug test. As an example of the need for HB 483, **Mike McGrath** outlined a case which had recently occurred in Helena. He said a man who was obviously impaired -- he had bounced his car off three different vehicles, could hardly talk, and could not walk but his BAC was 0.00. He stated in such a scenario, only a test for alcohol is allowed.

SEN. STANG asked who would pay for the drug test. **Mike McGrath** said the arresting agency would pay for the drug test. He added that drug tests are expensive.

SEN. STANG verified that HB 483 contained no provision which would require that the person submitting to the test pay for that test.

Mike McGrath replied that individuals would not be required to pay for the drug tests. He added drug tests would not be requested very often because the drug tests are not only very expensive but also very time consuming. He explained it currently takes about two hours to process a DUI and the additional step of the drug test would take even longer.

SEN. KOEHNKE asked how long a drug test would show drugs after an individual had actually consumed them. **Mike McGrath** replied it would depend on the drug type and the quantity consumed. He stated drugs can be in a person's system for up to three days. He said he anticipated that occasionally the defendant would admit to previous drug use, but not driving impairment. He stated, in such cases, the jury would have to decide. He added the arresting officer would still be required to give other field sobriety tests.

SEN. SWYSGOOD stated he would assume that a person who refused to submit to a drug test would be subject to the loss of their driver's license under HB 483. **Mike McGrath** replied if drivers refuse to submit to the testing, they would lose their license for 90 days.

SEN. MCCLERNAN asked if that were the same penalty for refusing to submit to the current BAC test. **Mike McGrath** replied yes.

SEN. STANG asked if the results of a drug test could be used to determine whether a person had just got done smoking marijuana or snorting cocaine, or had ingested the drug three days previously. **Mike McGrath** replied he was not an expert on drug testing, but had been involved in numerous cases where drug consumption was an issue. He said the ability to determine when and how much of a drug had been ingested depended upon the type of drug involved. He explained that some drugs break down very quickly. Using methamphetamine as an example, he stated methamphetamine breaks down within about 12 hours, but its precursors such as ephedrine remain the system. He stated cocaine and marijuana tend to stay in the system longer, but dissipate leaving trace amounts in the system for up to three days. He added that alcohol dissipates more quickly.

SEN. SWYSGOOD stated HB 483 concerned him because it would not establish a legal limit of consumption, unlike alcohol. He stated HB 483 would provide that any trace of a drug could possibly be considered an impairment, even if the driver were not impaired. He stated it would be difficult for those people who are not impaired, but have a drug in their system to defend themselves against the charge of DUI. He emphasized that people ought to be tested for DUI and drugs and removed from the road, but that the testing should be fair. He stated he was concerned that HB 483 contained no level by which to gage impairment. He said that a trace of any drug could subject an individual to a severe penalty, when they might not have been guilty of DUI.

Mike McGrath commented it was against the law to use illegal drugs. He added, however, the issue would be whether or not a person's driving ability was impaired. He stated the officer would have to prove, with whatever evidence was available that a person's driving ability was impaired. He emphasized if a drug test establishes a trace amount of cocaine, the state had the responsibility to prove driving impairment. He said the evidence

would probably consist of the officer's testimony, the use of the video tape, etc. He added there would be a lot of cases where a driving impairment could not be proven.

SEN. REA said he thought **SEN. SWYSGOOD's** concerns were addressed on page five, line seven which provides that "a person cannot be convicted on a trace amount, but the drug test has to show an impairment in driving ability".

Vote:

The MOTION HB 483 BE CONCURRED IN CARRIED UNANIMOUSLY. **SEN. MCCLERNAN** will carry HB 483 on the Senate floor.

SEN. SWYSGOOD commented that HB 483 would come back to haunt lawmakers.

EXECUTIVE ACTION ON HOUSE BILL 572

Motion/Vote:

SEN. SWYSGOOD moved that the COMMITTEE RECONSIDER ITS ACTION TO TABLE HB 572. The MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. SWYSGOOD proposed an amendment to HB 572 which would allow the Department of Transportation (DOT) to issue a yearly permit for loads which were no more than 5,000 pounds in excess of axle weight (Exhibit #1). He said these permits would cost \$200 and would help those people who had to regularly carry such loads; they would not be required to get or issue themselves a permit each time they move a load.

Motion:

SEN. SWYSGOOD moved THE AMENDMENT (Exhibit #1).

Discussion:

CHAIRMAN WEEDING asked what the effect of such a term permit would be. **Dave Galt** replied DOT had received many requests for an annual overweight permit. He stated currently overweight permits only cover one-way trips. He said an annual overweight permit which applied only to the lowest segment of overweight loads would relieve those people moving non-divisible loads within that category of the burden of having to process self-issuing permits. He stated the annual permit would help to reduce both the state's and the industry's paperwork. He noted that the \$200 fee is consistent with the annual overweight permit for cranes which the legislature adopted four years ago. **Dave Galt** stated he felt the measure was reasonable.

SEN. STANG asked what fine would be levied if a carrier was caught without an overweight permit. **Dave Galt** replied if carriers are caught without an overweight permit, they are fined for being overweight and then sold an overweight permit. He said

the fines assessed an overweight load of 5,000 pounds would be approximately \$160. He explained overweight fines are assessed according to the penalties already in statute.

SEN. MCCLERNAN asked if a distance factor also figured into the cost of the annual permit. **Dave Galt** said he had not incorporated a distance factor into the cost of the permit. He said the fee of \$200 would be about the cost of a permit to haul a 5,000 pound load 1,500 miles. He explained if carriers haul such loads 1,700 miles, they would save some money by buying a permit. He added if a carrier hauls such loads under 1700 miles, they would pay a little more money, but enjoy a reduction in their paperwork.

SEN. TVEIT asked if the \$200 fee would apply per trip. **Dave Galt** replied the amendment would allow motor carriers to buy an annual permit for \$200. He emphasized that the permit would allow motor carriers to haul overweight, indivisible loads of no more than 5,000 pounds for an entire year.

SEN. TVEIT asked if this fee would effectively double the price of the seasonal permit which currently costs \$100. **Dave Galt** replied the \$100 seasonal permit applies only to divisible loads which exceed the 80,000 pound federal cap. He stated the permit under discussion would apply to non-divisible loads only.

Vote:

The MOTION CARRIED UNANIMOUSLY.

Motion:

SEN. SWYSGOOD moved HB 572 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. HARP pointed out the major change in overweight permits that HB 572 represented. He stated the fiscal note accompanying the bill estimates the current average overweight permit at \$30, but the estimated average overweight permit would be \$197 under the fee schedule HB 572 would establish.

CHAIRMAN WEEDING noted HB 572 would generate \$3.4 million in new revenue over the biennium. He said HB 572 would place the largest share of that burden on the heavy overloaders and the long haul overloaders. He added the short run and the small overloaders would "get by" a little cheaper.

SEN. SWYSGOOD asked how the fee schedule contained in HB 572 compared to the fees charged for overweight permits in surrounding states. **Dave Galt** replied the fees contained in HB 572 are a little higher than in the surrounding states, but "in the ballpark" with Washington's fees. He added that the fees in Washington are based on total gross weight whereas the system contained in HB 572 is designed on axle weights. He explained the difference is that in Washington an extremely heavy load will

pay a high fee, but using the system in HB 572 a truck could have a high gross weight and not have to pay a high fee if enough axles were underneath it. He added a lower gross weight would pay more if there were not enough axles underneath it. He stated axle weight is responsible for road damage.

SEN. TVEIT asked **Dave Galt** to explain how the fees would be calculated according to total axle weights. **Dave Galt** explained how the sum of the excess axle weights would be calculated. He said that on a standard five axle truck 34,000 pounds are allowed on each of the axles. He said if one axle was carrying 40,000 pounds and another axle was carrying 36,000 pounds, the total excess axle weight would be 8,000 pounds. He said that particular overweight, which would be rounded up to 10,000 pounds, would be charged \$7 for every 25 miles that load was hauled.

SEN. TVEIT asked if a limitation was set on the excess amount of axle weight that could be hauled in a truck. **Dave Galt** replied DOT's bridge engineers have developed a weight analysis manual which indicates the maximum weight to be allowed on any axle configuration. He added if a permit is requested for a load which cannot be reduced and is over what the bridge formula or the weight analysis manual stipulates, the bridge engineers carry out a route analysis at the expense of the permittee. He explained the engineers examine each bridge on the route and determine whether or not to issue a permit. He said when the axle weight exceeds a certain amount, permits are evaluated on a per unit basis. He added that many permits are denied.

SEN. TVEIT verified that HB 572 would apply only to non-divisible loads.

Vote:

The MOTION THAT HB 572 BE CONCURRED IN AS AMENDED FAILED with SENATORS HARP, KOEHNKE, SWYSGOOD, STANG and TVEIT voting NO.

Motion/Vote:

SEN. STANG moved the COMMITTEE RECONSIDER ITS ACTION ON HB 572. The MOTION CARRIED UNANIMOUSLY.

Motion/Vote:

SEN. STANG moved HB 572 BE CONCURRED IN AS AMENDED. The MOTION CARRIED with SENATORS HARP, SWYSGOOD, KOEHNKE and TVEIT voting NO.

EXECUTIVE ACTION ON HOUSE BILL 679

Motion/Vote:

SEN. BRUSKI-MAUS moved the COMMITTEE RECONSIDER ITS ACTION ON HB 679. The MOTION CARRIED with SENATORS STANG, SWYSGOOD, and TOEWS voting NO.

Discussion:

CHAIRMAN WEEDING stated the decision of the Committee to reconsider its action on HB 679 stripped the amendments it had previously put on the bill. He informed the Committee he had asked **Dave Bohyer, Legislative Council**, to draft some additional amendments for HB 679 (Exhibit #2).

Motion:

SEN. MCCLERNAN moved the AMENDMENTS (Exhibit #3).

Discussion:

CHAIRMAN WEEDING asked **Doug Abelin** to explain the amendments. **Doug Abelin** said most of the amendments had been adopted by the Committee on April 6, 1993. He said the exceptions were the second and fourth amendments which would strike all reference to the Bureau of Land Management (BLM) from HB 679. He stated BLM had never entered into an enforcement agreement with the state, but instead did their own enforcement on BLM land. He said both the off-highway vehicle (OHV) community and BLM had agreed it would be "a good thing" to include BLM in HB 679, but that proved not to be true. He explained because HB 679 would regulate something BLM officials felt was unnecessary and had asked to be excluded from HB 679.

Vote:

The MOTION TO AMEND HB 679 CARRIED UNANIMOUSLY.

Motion:

SEN. TVEIT moved HB 679 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. SWYSGOOD said he usually supported the off-highway vehicle (OHV) community but could not understand why the Forest Service (FS) was included in HB 679. He stated, he thought the reasons given to strike section two, which pertained to BLM lands, also applied to the FS. He said the primary concern OHV users have is being able to use level three maintenance roads to access OHV designated trailheads. He said their concern about access is valid, but the adoption of HB 679 would not change FS policy relating to access problems. **SEN. SWYSGOOD** expressed his support of the training program associated with federal monies, but said section one should be removed. He stated he had spoken with the forest supervisor in his area where the FS has worked on 20 sites to improve parking at trailheads and otherwise facilitate access to designated OHV trails. He added, in his area, the FS is in the process of addressing a considerable number more trails, but is restricted by the money available.

SEN. SWYSGOOD stated it was inconsistent to complain about the federal blackmail surrounding the issue of the helmet law, and then pass a piece of legislation like HB 679 which would use the federal monies while attempting to dictate policy to a federal agency. **SEN. SWYSGOOD** stated the FS should negotiate with the OHV users in a cooperative manner to address the issue of safe

access. He said this issue needed to be addressed, but repeated he did not think HB 679 was the proper vehicle to force that change.

Motion:

SEN. SWYSGOOD made the SUBSTITUTE MOTION TO STRIKE SECTION 1 OUT OF HB 679.

Discussion:

SEN. TVEIT asked how the elimination of BLM from HB 679 would affect the riders on BLM land. **Doug Abelin** replied removing the references to BLM lands would have no effect, since OHV users can currently ride on plural-use roads within BLM boundaries.

SEN. TVEIT said the comment had been made at the hearing on HB 679 that the bill, if adopted, would get the attention of the FS. He asked how HB 679 would effect that and what role the safety program and the federal monies played in HB 679.

Doug Abelin said everyone has had mixed emotions about the need and intent of section one, and the FS has been more than fair in the conversation. He added, however, the position taken by the OHV community was that it was getting nowhere on the issue of safe access. He stated "the way to address nowhere is to change the law so that the FS would have to make its own determination" on that issue. He stated the intent of the OHV community in section one was to pressure the FS to make its own determination. He expressed his belief that both the OHV community and the FS would like to negotiate a cooperative agreement. He added that HB 679 would assure the issue was at least addressed. He said section one would not affect the safety education training program also contained in HB 679. He stated the safety aspect is extremely important, and the best way to make the trails and roads safer for everyone concerned.

CHAIRMAN WEEDING asked a FS representative to comment on section one of HB 679. **Tom Donahue, Forest Service**, said the FS is of the opinion that section one would not do anything for the FS; the FS can already do what section one would mandate if it so wanted. He stated the FS's current policy, which will continue to be its policy, is not to allow mixed traffic on level three maintenance roads. He added the FS has talked with **Doug Abelin**, who understands the FS position.

SEN. SWYSGOOD stated if his amendment were adopted, the title and other references to section one would have to be corrected to reflect the deletion of section one.

Vote:

The SUBSTITUTE MOTION TO STRIKE SECTION 1 OUT OF HB 679 CARRIED UNANIMOUSLY.

Discussion:

SEN. STANG asked if HB 679 would require an unlicensed operator to complete a program which is currently non-existent and would not be readily available in every town in Montana. **Bob Walker, FWP,** said there is an existing small-scale safety training program run in conjunction with 4-H. He added that the All-Terrain Vehicle Safety Institute (ASI) also has certified trainers who offer classes. He admitted that safety training classes are not offered in every town. He explained if the federal dollars become available, depending upon the amount of money, FWP could develop up to 12 permanent sites spread out around the state. He stated FWP would continue to work with ASI to offer classes at temporary sites as well.

SEN. STANG asked if unlicensed operators would be required to pass that test before they could operate an OHV on BLM or FS land. **Bob Walker** replied he was unsure how the latest amendments would affect that provision in HB 679. He stated he believed unlicensed riders would be required to complete the OHV safety training program before they would be legally allowed to operate on mixed-use roads.

Doug Abelin noted that he agreed with **Bob Walker.** He added the OHV community would have a considerable amount of time to resolve that issue. He stated the program would help, not hinder the OHV community.

SEN. STANG commented that HB 679 was ahead of its time, since there is no readily available place for all unlicensed motorists to take this course. He said "the kids" in his county would probably have to drive to Missoula. He stated he did not feel any differently about the safety training program than the driver's licensing program. He expressed his intent to oppose HB 679.

Vote:

The MOTION HB 679 BE CONCURRED IN AS AMENDED CARRIED with **SENATORS STANG, TOEWS,** and **KOEHNKE** voting NO.

CHAIRMAN WEEDING stated the record should reflect that the FS was present while the Committee took action on HB 679 and has pledged its utmost cooperation in accommodating the desires of the OHV community regarding the issue of safe access to OHV designated trails within the confines of agency directives.

ADJOURNMENT

Adjournment: 12:26 p.m.



SENATOR CECIL WEEDING, Chair



BETH E. SATRE, Secretary

CW/bes

ROLL CALL

SENATE COMMITTEE HIGHWAYS & TRANSPORT. DATE April 13, 1993

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

FO8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 13, 1993

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration House Bill No. 483 (third reading copy -- blue), respectfully report that House Bill No. 483 be concurred in.

Signed: Betty Bruski-Maus
Senator Betty Bruski-Maus, Vice-Chair

AW Amd. Coord.
AW Sec. of Senate

McClellan
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 13, 1993

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration House Bill No. 572 (third reading copy -- blue), respectfully report that House Bill No. 572 be amended as follows and as so amended be concurred in.

Signed: Betty Bruski-Maus
Senator Betty Bruski-Maus, Vice-Chair

That such amendments read:

1. Page 1, line 21.

Following: line 20

Insert: "(2) There is charged a fee of \$200 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight."

Renumber: subsequent subsections

2. Page 3, line 2.

Strike: "(2)"

Insert; "(3)"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
April 13, 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: Betty Bruski-Maus
Senator Betty Bruski-Maus, Vice-Chair

That such amendments read:

1. Title, lines 20 through 22.

Following: "USE;" on line 20

Strike: remainder of line 20 through "ROADS;" on line 22

2. Title, page 2, line 2.

Following: "AMENDING"

Strike: "SECTIONS"

Insert: "SECTION"

Following: "17-7-502"

Strike: "AND 61-8-111"

3. Page 2, line 6 through page 4, line 9.

Strike: sections 1 and 2 in their entirety

Renumber: subsequent sections

4. Page 4, line 25.

Strike: "-- UNLICENSED OPERATORS"

5. Page 6, lines 3 through 8.

Strike: subsection (5) in its entirety

6. Page 6, line 19.

Strike: "state"

Insert: "federal"

7. Page 6.

Following: line 25

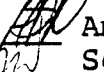
Insert: "(4) Authorization for the training program provided for in subsection (1) is contingent upon the receipt of federal funding for the program."

8. Page 7, line 25.

Strike: "5"

Insert: "3"

9. Page 8, lines 22 through 25.

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

811508SC.San

Strike: subsection (1) in its entirety

10. Page 9, line 1.

Strike: "(2)"

Following: "Sections"

Strike: "3"

Insert: "1"

Following: "through"

Strike: "5"

Insert: "3"

11. Page 9, line 4.

Following: "sections"

Strike: "3"

Insert: "1"

Following: "through"

Strike: "5"

Insert: "3"

-END-

Amendments to House Bill No. 572
Third Reading Copy

For the Senate Highways and Transportation Committee

Prepared by Tom Gomez
April 13, 1993

1. Page 1, line 21.

Following: line 20

Insert: "(2) There is charged a fee of \$200 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight."

Renumber: subsequent subsections

2. Page 3, line 2.

Strike: "(2)"

Insert: "(3)"

Amendments to House Bill No. 679
Third Reading Copy

For the Senate Highways and Transportation Committee

Prepared by Dave Bohyer
April 7, 1993

1. Title, line 21.

Strike: "AND" through "MANAGEMENT"

2. 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

3. Page 3, line 8 through page 4, line 9.

Strike: Section 2 in its entirety

Renumber: subsequent sections

4. Page 4, line 25.

Strike: "-- UNLICENSED OPERATORS"

5. Page 6, lines 3 through 8.

Strike: subsection (5) in its entirety

6. Page 6, line 19.

Strike: "state"

Insert: "federal"

7. 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."

Amendments to House Bill No. 679
Third Reading CopyDATE April 13, 1993BILL NO. HB 679

For the Senate Highways and Transportation Committee

Prepared by Tom Gomez
April 13, 1993

1. Title, lines 20 through 22.
Following: "USE;" on line 20
Strike: remainder of line 20 through "ROADS;" on line 22
2. Title, page 2, line 2.
Following: "AMENDING"
Strike: "SECTIONS"
Insert: "SECTION"
Following: "17-7-502"
Strike: "AND 61-8-111"
3. Page 2, line 6 through page 4, line 9.
Strike: sections 1 and 2 in their entirety
Renumber: subsequent sections
4. Page 4, line 25.
Strike: "-- UNLICENSED OPERATORS"
5. Page 6, lines 3 through 8.
Strike: subsection (5) in its entirety
6. Page 6, line 19.
Strike: "state"
Insert: "federal"
7. Page 6.
Following: line 25
Insert: "(4) Authorization for the training program provided for
in subsection (1) is contingent upon the receipt of federal
funding for the program."
8. Page 7, line 25.
Strike: "5"
Insert: "3"
9. Page 8, lines 22 through 25.
Strike: subsection (1) in its entirety
10. Page 9, line 1.
Strike: "(2)"
Following: "Sections"
Strike: "3"
Insert: "1"
Following: "through"
Strike: "5"
Insert: "3"