

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN LARRY TVEIT**, on February 2, 1995, at 1:00 P.M., Room 410.

ROLL CALL

Members Present:

Sen. Larry J. Tveit, Chairman (R)
Sen. Charles "Chuck" Swysgood, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Arnie A. Mohl (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Carla Turk, Committee Secretary

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

Committee Business Summary:

Hearing: SB 159, SB 181, SB 183
Executive Action: Time did not permit planned executive action on SB 129.

HEARING ON SENATE BILL 183

Opening Statement by Sponsor:

SENATOR JEFF WELDON, SD 35, Arlee, said SB 183 would establish a Montana Scenic Byways Program and give the Highway Commission authority to develop criteria and select routes for such a program. He explained that the Commission would be assisted by the Montana Department of Transportation (MDT) and an advisory council if deemed necessary. He termed the intent of the program as promoting tourism by identifying routes with scenic, cultural historic, recreational, or educational assets worthy of special recognition. He explained that once the routes were designated

the Department could adorn the highway with such facilities as pathways for pedestrians, bicycles or horses; landscaping for scenic beautification; and prehistoric and historic preservation measures such as preservation of abandoned highway corridors or paths. He reported a growing interest in developing a program to enhance Montana's tourism economy and that several approaches to the topic had gone nowhere. He defined the lack of progress as the Department's lack of money and expertise for addressing development of the program and addressing concerns of how the program would affect other economic and transportation activities. He contended that the situation had changed in 1991 with passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) and creation of the national scenic byways program. He stated that the Department had applied for and received a grant from the national program to study the feasibility of such a program for Montana.

SENATOR WELDON stated the 1993 Legislature had appropriated \$40,000 in state funds to qualify for \$160,000 in federal matching funds and maintained that about \$100,000 of the grant money remained available to the MDT for development of this Program. He reported that the Department feasibility study took nearly a year and included a survey of other states with such programs, analysis of potential management costs and a review of possible designation criteria for Montana. He said the Department selected a 22-member advisory committee to assist in the study. He identified the committee as including representatives from groups possibly affected by the Program such as ag interests, local government interests, business, and tourism. He passed his copy of the feasibility study to Committee Members to review. He reported the study concluded that Montana would be well served by such a program and proposed a program entitled Big Sky Byways and Backways Program which would serve all areas of the state by giving local governments and residents the opportunity to designate roads for scenic byways.

SENATOR WELDON portrayed local involvement and support as an important, key function to the Program because route nominations needed to originate at the local level and required support of local governments. He said the Department had assured him the program could be managed with existing funds and actual costs would be covered by remaining grant funds, as was reflected in the fiscal note.

Proponents' Testimony:

Pat Saindon, Administrator of the Transportation Planning Division of the Montana Department of Transportation, said the Department had been concerned, because during the last several years, numerous individuals had come to MDT staff, Highway Commission, and the Legislature to request certain roads be designated as scenic byways. She attested that the Department

was concerned because there were no existing objective criteria or process for designating roads as scenic byways, and if there wasn't a process for designation they could actually end up putting restraints on highways which would affect other users. She reported that the Department had formed an advisory committee to look at a number of issues which had been raised. She said it had been determined that Montana could afford this program and could establish one which worked. She stipulated the second portion of the Bill as the Department's request for authorization to establish a scenic highway program and reported that the Department was prepared to develop the criteria. She explained that the Highway Commission would have the authority to designate those roads.

Jim Pannell, Myhre Advertising, submitted and read written testimony which he termed as in whole-hearted support of a scenic byway Program for the state of Montana. However, he also offered two suggestions for amendments. (EXHIBIT # 1).

Willa Hall, speaking for herself, said she supported the idea of scenic byways. She reported being a member of an organization that promoted the development of bicycle pathways and hiking pathways and expressed hope that bikeways would be included in the Program.

Lars Lithander, Frontier Outdoor Advertising, Casper, Wyoming and Billings, said they felt the concept of an act establishing a Scenic Byways Program was good. He said certain areas of Montana had significant recreational, historic, cultural, scenic, educational, and tourism aspects appropriate for scenic byways designation. He stated that rather than offer any amending language he would just mention a couple of thoughts for Committee Members and suggested they consider some of the overall ramifications when scenic byway designations were allowed. He said the Montana Highway Commission would have the authority and responsibility of outdoor advertising on Indian Reservations, and asked if the Commission would be bound by how they governed allocation of highway construction funds along designated byways? He asked if local cities and municipalities would have the choice to be exempt from participation when scenic byways passed through their particular jurisdiction? He asked consideration of possible adverse affects of other proposed legislation. He stated that promoting tourism was listed as one of the criteria for scenic byway designation, and suggested another advisory council member be named to represent tourism. He said the concept of scenic byways was great, but they were simply asking the Committee to think about some of these issues.

Joan Vetter, representing herself, said she worked in the tourism industry and supported the scenic byways program. She stated it would give Travel Montana another tool to sell the State. She reported that when people came here and drove through Montana they found it beautiful. If there was a plan and map suggesting driving a scenic road through such places as Glendive and Charlie

Russell Country, they could help direct visitors to areas and communities needing more promotion assistance. She said they were continually sending travelers to our National Parks, but this would give them another avenue to promote tourism throughout the State.

Bill Allen, Montana Audobon Legislative Fund, urged support for SB 183 in its present form. He said their support was based on their members interest in enhancing Montana's scenic and recreational assets and they believed this bill could and would accomplish that goal.

Gloria Hermanson, said she wasn't really representing anyone except the fact that she spent a good portion of last year working with the MDT and the advisory committee. **Ms. Hermanson** expressed the feeling that she could speak for the committee by stating that she considered all who worked on the committee as proponents for the Bill. She maintained committee members felt very strongly that the Program should carry forward and their criteria development work was exemplary. She related utilization of a process which was close to a consensus with very little dissention at the end of the process.

Frank Crowley, 807 2nd Street, Helena, said he was appearing on behalf of his two children, who were in school. He stated that based on the number of trips they had taken and the many comments the children had made, he knew them to be very sensitive and keenly aware of the scenic values of our state and other regional states. He reported having asked the children if they would like him to voice their opinions and they had said yes. He articulated those feelings as full support of SB 183.

Opponents' Testimony:

Ben Havdahl, Montana Motor Carriers Association, said he was representing 450 commercial truckers who were members of their Association. He reported the Montana Motor Carriers Association was represented on the advisory committee for the scenic byway program and understood that the Program was part of ISTEA and the completed study was very comprehensive. He expressed that while they were not an opponent to the whole notion or idea of a scenic highway program, they were concerned that within the program certain actions could be taken which would preclude the commercial operation of trucks on certain routes in Montana which may be designated under the program. He said they had several examples of such actions in the state in the past and identified one of the classic examples as Highway 35 which runs up the east shore of Flathead Lake. He stated that some may recall specific legislation introduced in the 1991 Session which proposed banning commercial vehicles on that route. He said there had been similar proposals for bans on Highway 191 into Yellowstone Park and reported having been in court on the issue. He explained their Association was concerned that designation of a route

currently used for commercial carriers as a scenic byway route would prevent its continuing use by all commercial vehicles. He urged the Committee to consider a possible safeguard amendment or language in SB 183 which would give protection to commercial trucking.

CHAIRMAN TVEIT asked for clarification as to whether **Mr. Havdahl** was a proponent or an opponent to the Bill? **Mr. Havdahl** clarified that they would be an opponent if there was no such protection granted in the Bill, but stated they were not opposed to the whole idea of a scenic byway program if some protection was contained. He identified himself as an opponent.

Proponents' Testimony:

John Bloomquist of the Montana Stockgrowers, said they were on the advisory group which developed this legislation. He stated the real affect this legislation would make was in how the rules were written and whether the program moved forward. He said agricultural areas were along many of the proposed byways. He contended that one of the key issues they were interested in within the program was that local governments and local people would be involved in the development of these byways because, along with the concept of scenic byways, was the concept of scenic corridor management. He said with that in mind the local parties were going to have to be involved and possibly more than just consulted on the development of the program. He commented that if an advisory council was established it should not necessarily be just agency personnel. He said that a fourteen-member council was being requested and said he thought nine of those were agencies. He expressed hope that the council would be as broad-ranged as was the advisory council which developed this proposal.

Daphne Jones, said she and her husband go south every winter and have for years. They always look at the maps and look for scenic designation. That designation is important to the route they travel.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR CHARLES "CHUCK" SWYSGOOD asked what the makeup of the advisory council was. He stated that on the back of the Bill nine were listed as part of the 14 member advisory council and those nine represented either federal or state agencies. He commented that the advisory council which did the study had recommended 22 and asked why that number had been decreased?

Gloria Hermanson said she didn't know why the number was decreased by the advisory committee. **SENATOR SWYSGOOD** asked if **SENATOR WELDON** would have a problem with increasing the number on the council. **SENATOR WELDON** said he would not.

SENATOR SWYSGOOD asked if the Department would have a problem with putting language in the Bill to protect all entities to some degree? **Pat Saindon** replied it was the Department's intent that they would rather work all of those issues in the rules as opposed to having it put into law. She said their initial concern had been with the number of different people coming to the Department and asking for their roads to be designated and the Department having no established criteria for making those designations. She said the Department had hoped the Bill would provide them with a method for developing a program and not be hung up with a lot of complications.

Ms. Hermanson asked to briefly speak to the question and was granted permission. She said that one of the criteria for the national program dealt with commercial traffic and stated that commercial traffic could not be restricted. She stated that one of the recommendations of the advisory committee had been that in order to qualify as a designated byway, you had to meet the criteria of national standards.

SENATOR SWYSGOOD asked if she could make the criteria available to the Committee before executive action? **Ms. Hermanson** replied yes.

SENATOR MACK COLE asked, with the 13%, if the Department had any idea what type of funding was being talked about? **Pat Saindon** replied that the match for the scenic byway was to match a grant and the matching funds were state funds. She said the 13% non-state match they were talking about was from the CTEP Program came from local dollars. She said the CTEP Program was federal funds that went to local governments over 1,000 population.

SENATOR COLE asked if these were funds which could be used for actual construction if they weren't used for CTEP. **Pat Saindon** replied these funds could not be used for road improvements.

SENATOR COLE asked for clarification whether she meant the 13% could not be used for road improvements? **Pat Saindon** replied the 13% were local dollars the local entities came up with from their own coffers, and she assumed local governments could do whatever they wanted to with their local monies.

SENATOR ARNIE MOHL asked if this was a federally mandated program? **Ms. Saindon** stated it was not.

SENATOR MOHL asked if a present stretch of two lane road was designated and some years later when you wanted to do construction on that stretch, would it be restricted? **Pat Saindon** stated the intent of the program was that it would not

restrict any uses of the highway for what they are currently being used for and if the road needed to be reconstructed the scenic byway program would not put any restrictions on improvements to the highway.

SENATOR MOHL asked if that would be true if it was realigned? He reasoned that every time there were historical buildings or anything like that you couldn't go in and do anything to change it. **Pat Saindon** stated the intent of the program and the rule making process of the Department was intended to have the Department continue to be able to rehabilitate the road in whatever way was necessary for the safety of the traveling public.

SENATOR BARRY "SPOOK" STANG referred to **SENATOR WELDON'S** opening statement that the original request had to come from local area and said he did not see that in the bill. **Pat Saindon** replied that it was not in the Bill. She said that when the advisory committee met, they worked together to come up with a way that they thought the program should operate. She said the intent of the Bill was for local governments to be responsible for submitting the applications for a scenic byway designation with the stipulation that there must be approval of the agency with authority over that road, whether that be the Forest Service, the county, Bureau of Land Management or whatever. She said that whoever owned the road would have to support the request for scenic designation.

SENATOR STANG said his concern was that people who didn't live in the area could request the state to designate that as a scenic highway and local people would have to defend against the request. **Pat Saindon** stated the request for designation would have to come from the locals because they would also have to tell the Department how the road was used. She said the application could not be submitted solely on the basis that someone thought a particular road was scenic and they wanted it designated. She explained there would be an application process that will have to have approval of the local government.

SENATOR STANG stated that with the scenic rivers deal there were a lot of restrictions on current landowners along the scenic rivers and expressed concern about the property rights of the people who may own land along these scenic highways. He asked if there was anything which would restrict future rights of those people from changing the use of their property. **Pat Saindon** stated she understood that was not the intent of the Bill. She also said she understood that when there was interest by a community to designate a certain road, the adjacent landowners would also be asked to participate in helping to designate that road.

SENATOR STANG asked what would happen if five out of the six landowners wanted to make the designation, but the sixth person wanted to do something else with his land? He wanted to know if

the sixth landowner would be unable to do what he chose with his land and asked what they were going to do to prevent this from happening? **Pat Saindon** stated she was not sure if that specific issue had been addressed. She said their concern was that before the Department would designate a road as a scenic byway they wanted the request to come from the locals and be supported by the locals without lots of controversy. She said they were not anxious to be administering a program that had lots of controversy.

SENATOR LINDA NELSON asked if they already had some highway enhancement funds in their communities? **Pat Saindon** asked if she was talking about the Community Transportation Enhancement Program? **SENATOR NELSON** said she was not sure but stated she thought it was something that went hand in hand with the ISTEA Program and local governments had some highway enhancement monies. **Pat Saindon** replied that every county and every city over 1000 population received transportation enhancement dollars and those dollars could be used for ten different categories. She said a large percentage had been spent on bicycle and pedestrian facilities, some on road beautification, historic building preservation, and highway runoff.

SENATOR NELSON questioned whether the community had the 13% match required for those funds? **Pat Saindon** said yes, local communities matched those enhancement dollars which were available to them.

SENATOR MOHL asked **SENATOR WELDON** if he would have objections to the amendments proposed by some of the proponents? **SENATOR WELDON** reviewed the suggestions as broadening of the advisory council, protection of commercial traffic, and adding bike-ways and said that he understood most of those points were either already covered in the national criteria or the feasibility study. He said he had no objection to expanding the advisory council. We have just learned that the commercial vehicles were protected under the federal law and he thought the bike-ways were intended as an integral part of the program.

CHAIRMAN TVEIT reminded them of another proposed amendment by MYHRE Advertising for adding language to the statement of intent regarding incorporated communities.

Closing by Sponsor:

SENATOR WELDON stated he felt the statement of intent was lacking, and had not had a chance to work with the Department to rewrite that statement of intent. He said he would suggest looking at the feasibility study, draw up the particular points the Committee thought would enhance the program, and place them in the statement of intent. He contended it was clear the rules would be an important part of the Legislation. He related the understanding that the Department was under the Administrative

Procedures Act and that would require the rules to go through a hearing process. He suggested that the statement of intent should be enhanced and strengthened. He said he thought putting more people on the advisory council was a good idea as it would benefit the Department to have more people involved.

HEARING ON SB 181

Opening Statement by Sponsor:

SENATOR JEFF WELDON, Senate District 35, Arlee, said this Bill had its genesis in early 1993 when western Montana in particular saw very large billboards erected along Highway 93 and Interstate 90. He gave a quick background on the issue of billboard regulation and SB 181. He said that since 1993 several community groups had formed to address the issue of billboard regulation. He made reference to a survey which had been conducted by a legislative candidate last fall, which showed that in **SENATOR WELDON'S** District the majority of people believed stricter regulations should be put in place to control large billboards similar to the ones already in that District. He reported that several have enacted emergency ordinances banning new billboard construction. He stated that finally, last fall, the Governor called together a task force to specifically look at state law as it related to billboard regulation in Montana. He submitted **(EXHIBIT # 2)** a list of the task force members and an article summarizing what the task force concluded.

SENATOR WELDON said SB 181 was the result of a consensus of the task force. He said SB 181 reduced the size of billboards or outdoor advertising. It reduced the maximum area from 1200 to 672 square feet, the maximum width from 60 to 48 feet, the maximum height from 40 feet from the bottom of the sign to a maximum ceiling height of 30 feet from the road. He said the Bill also asked the Montana Department of Transportation (MDT) to develop fees commensurate with the cost of administering the program.

SENATOR WELDON said the intent of the Bill was to limit the number of outdoor advertising signs in unzoned commercial and industrial areas to two billboards. This was left out in the drafting of the Bill. He attested that this change would be presented in a forthcoming amendment.

SENATOR WELDON said it could be seen by the fiscal note that the proposed fees the Department calculated would raise approximately an additional \$28,000 for the next two fiscal years. He said assumption number six showed the current annual cost to regulate the program as \$50,000 so SB 181 came closer to covering the cost of that program. **SENATOR WELDON** asked the Committee to consider

placement of an immediate effective date on the Bill so any new billboards permitted in the State would meet these criteria.

SENATOR WELDON stated he had been involved in a few consensus-building group meetings and they were usually never easy when there was representation from groups with various goals and objectives. He commended those involved from the billboard industry and the concerned citizens for sitting down and coming up with a consensus.

Proponents' Testimony:

Rich Munger, Coordinator of the Outdoor Advertising Program, with the Department of Transportation, read written testimony (**EXHIBIT # 3**). Contained in his testimony were the amendments **SENATOR WELDON** spoke to earlier.

Willa Hall, representing herself, said she appreciated the effort of the Governor's Task Force and expressed support for lowering the height, size, and number of signs. She wanted to protect her scenic view of the mountains and stated resentment for big signs taking away the visual aspects along our roads.

Sara Busey and Joan Vetter, Outdoor Advertising Campaign (OAC) Task Force, stated they had served on the task force and looked at outdoor advertising laws in ten different states to evaluate Montana's law. They portrayed Montana's law as twenty-four years old and as the most lenient in the ten states surveyed. They provided the committee with written testimony, (**EXHIBIT # 4**) & (**EXHIBIT # 5**).

Bill Allen, Montana Audubon Legislative Fund, read his written testimony (**EXHIBIT # 6**) and urged the Committee's support for SB 181 and the proposed amendments.

Lars Lithander, representing Frontier Outdoor Advertising, Casper, Wyoming and Billings, thanked the Governor's task force, the Montana Department of Transportation and others who worked on the task force. He reported participants as working hard to come to a commendable consensus. He read his written testimony (**EXHIBIT # 7**). He related enthusiastic support for the Bill and offered minor amending language which he felt was reasonable and important (**EXHIBIT # 8**). He said it was important to note that some important items were given up by the outdoor advertising industry throughout the task force process. He characterized limiting the square footage of signs as a minor concession and the proposed limited height as a needed restriction. He reported the major concession as the limiting of the number of sign locations allowed in unzoned commercial and industrial areas. He explained that current law allowed up to six sign locations on both sides of Interstate highways, and eight or ten locations on the primary system. **Mr. Lithander** stated their potential business was being eliminated by two thirds with the proposed

Legislation and their proposed amendment was only asking that the two signs could be placed on either side of the road. He said new businesses in certain cities would benefit by having the chance to legitimately advertise their business by adopting the amendment. He maintained SB 181 was good legislation and they were simply asking that the two allowable locations could go on either side of the highway.

Rose Magnuson, stated she was a member of the coalition and was representing the Citizens for Scenic Lake County, reemphasized the importance of the Task Force agreement which deleted language allowing signs on the opposite side of the highway from a qualifying business in unzoned commercial and industrial areas. She attested to the hard work of the Task Force in their efforts of arriving at a compromise. She said they opposed **Mr. Lithander's** amendment.

Jim Pannell, representing **Myhre Outdoor Advertising**, stated the increased number of signs was a result of the economic growth in Montana, and a majority of the problem has occurred in the Flathead Valley where an individual had moved his sign company from Florida and Texas. He said the style of sign that individual chose to build was a panoramic outdoor sign of very large proportions. He explained that the style may be contemporary in some areas but not in Montana and efforts were currently being made to try solving the problem. He maintained that concerns being expressed today revealed the overdue need to address the problem. He attested it was imperative the door be closed today or signs built by people who didn't care about Montana's scenic perspective would continue to grow. He stated there were also landowners building large, high signs of their own because they didn't have an understanding of the industry. He claimed passage of SB 181 was important as these signs were giving the industry a bad name and a change was needed.

Stuart Doggett, representing the Montana Inn Keepers, reported they had a representative participate in the discussions on SB 181 and lent support. He stated their membership had some concern regarding the 30 foot height, but generally most members expressed support of the Bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BARRY "SPOOK" STANG asked **Mr. Munger** what constituted a conforming business? **Mr. Munger** replied that was something that would be addressed by rule if the Bill passed. He said that currently if someone put up a building with access to it, which either gave the appearance of doing business or did business

there for even a few months of the year, it was considered a conforming business. He maintained it did not have to be a business for the public; it could be an industrial business or anything which gave the traveling public the appearance of being a business.

SENATOR STANG asked if a trailer court was a conforming business? **Mr. Munger** replied a trailer court in itself was not a conforming business, but if the trailer court happened to have a gas station and a convenience store as a part of the trailer court, the store would be a conforming business.

SENATOR STANG asked about signs on the Frenchtown Hill. He had been told by MDT that the signs were related to a trailer court which was a conforming business. **Mr. Munger** replied that if they were talking about the same area, he believed the qualifying business there was a mobile home repair business. He said that was a good example of businesses that technically, according to the law, do qualify for signs.

SENATOR RIC HOLDEN asked if passage of this Bill would cause advertisers to have to demolish some of the existing signs. **Mr. Pannell** replied it would not; those oversize signs he spoke of would become nonconforming. He said that unless they were purchased by either a municipality, county, or the state, they would continue in existence.

SENATOR REINY JABS asked businesses choose which side they placed the signs? **Mr. Munger** stated the definition language would read that the signs could only be placed within 600 feet of the location of the qualifying business on the same side of the road.

SENATOR LINDA NELSON asked about the testimony regarding a nonrefundable fee of \$6 and noted that the \$6 had been struck with an indication that the fee would be established by rule? **Mr. Munger** stated the \$6 had been struck and nonrefundable inserted. The fees would be established by rule by the Highway Commission. He said the fee amount had not been determined.

SENATOR STANG stated the nonrefundable fee bothered him. He said he had a constituent who applied for a liquor license and paid a \$500 fee with the assumption of obtaining that license. He had not received the license and had lost the \$500. He said he was curious if they would be willing to make the application fee a smaller fee that would not be refundable but maybe the renewal fee for the sign could be higher? He said that at least the person wasn't throwing \$200 out there on a gamble that maybe the Department would find a technicality for not issuing a permit. He stated that maybe the sponsor could address that in his closing.

SENATOR CHARLES "CHUCK" SWYSGOOD asked about the status of existing signs that would be in nonconformance if this Bill passed. He questioned what would happen to those signs if nobody

bought them, would they stay? **Mr. Pannell** stated that if the law passed, any sign which didn't meet the requirements of this Bill would become a nonconforming sign.

SENATOR SWYSGOOD asked if a nonconforming sign, since there is no grandfather clause in the Bill, would be in violation of the law? **Mr. Panell** answered no they are not; they are a legal nonconforming sign as compared to an illegal sign.

SENATOR SWYSGOOD asked the Department for clarification. **Mr. Munger** stated that with current law an owner could increase the size, lighting, or otherwise change a legal sign which would make it a legal nonconforming sign. He said that with passage of the Bill a legal nonconforming sign must stay in its' present same condition. He said they could maintain it, but were restricted as to the type of changes. He said there was 30/50 rule for nonconforming signs which allowed an owner to maintain a sign up to 30% of its total value each year and if it got knocked down or destroyed they could re-erect it at a cost of no more than 50% of its value.

SENATOR SWYSGOOD asked if the rule could allow the Department to do something about the nonconforming signs, such as determine they had to be removed or after a certain period of time there would be a fine for nonreplacement or removal? **Mr. Munger** said the Department couldn't make them take the sign down because it was a property right. He stated he did not know if the Department could make them take a sign down in 10 years. He commented that it had never been an issue.

Closing by Sponsor:

SENATOR WELDON asked the Committee to consider the two amendments proposed. He suggested the Committee resist the amendment offered by Frontier Advertising, primarily because of the Task Force work and the consensus developed therein. He maintained that any who had been involved in a consensus process understood the difficulty of a change later on in the process. He said **SENATOR STANG'S** suggestion seemed like a reasonable one, as the fees would be set by rule and the Highway Commission was to set those fees. He proposed **Mr. Munger** pass that suggestion along to the Highway Commission.

SENATOR WELDON stated that last September the Governor wrote that outdoor advertising played an important role in Montana's economy, while at the same time he thought we all recognized that development needed to proceed in a way that protected or enhanced the natural beauty of the State. **SENATOR WELDON** maintained that the Governor was seeking assistance to sort out these issues to arrive at appropriate recommendations. **SENATOR WELDON** claimed SB 181 answered that call and urged a Do Pass recommendation.

HEARING ON SB 159Opening Statement by Sponsor:

SENATOR LINDA NELSON, Senate District 49, Medicine Lake, said SB 159 would allow the Montana Department of Transportation (MDT) the ability to lease portions of the rest areas for commercial uses. She stated that the intended commercial activities being addressed were within federal regulations which stated that you could have vending machines at rest areas. She explained that as meaning there would be the ability to have pop and candy machines such as other states have. She reported that the money which would be recovered from placing these vending machines could go toward the cost of electricity and maintenance of the rest areas. She defined the idea as one whose time had come in Montana.

Proponents' Testimony:

Gary Gilmore, Operations Engineer for the Montana Department of Transportation (MDT), said the Department supported the proposal wholly and thought it a tremendous service to the traveling public. He reiterated that federal regulations only allowed vending machines and current State regulations allowed no commercial activity. He stated that the Department would like to be able to place those vending machines. He explained that federal regulations limited what could be sold through vending machines. He said fuel products, motor oils, and car parts could not be sold. He said their concern was for the public and had a lot of requests for doing this. He reported that lots of groups go into the rest areas on holidays and offer coffee, cookies, etc on a donation basis. He said they did not intend to restrict that.

Dan Ritter, representing the Montana Chamber of Commerce, stated that they would like to go on record as supporting SB 153.

Rose Magnuson, stated she thought there should be more privatization in these rest areas and that it was a wonderful bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BARRY "SPOOK" STANG stated the testimony had indicated only noncommercial people would be doing this and asked if this law would prohibit anyone from participating? Mr. Gilmore replied that presently they allowed civic organizations to go in

and they did not intend to prohibit that. He explained that this Bill would allow them to lease a location for vending machines.

SENATOR STANG asked if **Mr. Ritter** if he had polled his retailers along the freeway and did they think it was fair to allow their competitors to have a prime location on the freeway when they were not allowed to? **Mr. Ritter** stated they had not polled their members.

SENATOR ARNIE MOHL asked who would be responsible if the machines were vandalized; would the State accept the responsibility? **Mr. Gilmore** stated the Department did not want anything to do with this. There were private organizations that operated these types of things and the Department would set up an agreement with them to operate the machines in the rest area.

SENATOR MOHL maintained they were on State property and therefore a liability. **Mr. Gilmore** said he didn't believe it would be.

SENATOR GREG JERGESON asked for assurance that the intent was to be restricted to vending machines? **Mr. Gilmore** stated yes and quoted from the federal regulation, "The state may permit the placement of vending machines in existing or new safety rest areas located on the rights-of-way of the Interstate system for the purpose of dispensing such foods, drinks or other articles the state determines are appropriate and desirable, except that the dispensing by any means of petroleum products or motor vehicle replacement parts shall not be allowed".

Closing by Sponsor:

SENATOR NELSON stated someone had suggested that perhaps we should allow vending machines at GVW stations and she thought that if that was workable maybe that could be added.

ADJOURNMENT

Adjournment: The meeting was adjourned at 3:47 p.m.


SENATOR LARRY TVEIT, Chairman


Carla Turk, Secretary

LT/cmt



SENATE HIGHWAYS

EXHIBIT NO. Ex 1

DATE 2/2/95

BILL NO. 58183

Senator Larry Ivey, Chairman
Senate Highways and Transportation Committee
Montana State Senate
Capitol Station
Helena, MT 59620

RE: Senate Bill #183: Scenic Byways Program

Dear Chairman Ivey and Committee Members:

I am writing this letter on behalf of my employer Myhre Outdoor Advertising. We have been in the outdoor advertising sign business in Montana for nearly forty (40) years. Through these many years, almost annually have been subjected to increased restriction in the operation of our business. For that reason, we have become acutely concerned with legislation that may have current or future impact on our business.

As part of the outdoor advertising industry and participants in the Montana business community, we wholeheartedly support the concept of a Scenic Byways program for the State of Montana. In that regard, we are pleased to cooperate with the Montana Department of Transportation (MDOT) in developing the program and in working with the department on any aspects of the program that might have an impact on our business or industry.

Because the statement of intent is not included in the introduced bill, we can only speculate on the possible content of that statement. From the outset it is imperative that we understand the intentions of the Scenic Byways Program. It is also imperative that we know the impact of possible regulations on our business.

Rather than making statements that may or may not have relevance to the future program, we have only two (2) requests. The first request is that the following language be placed in the policy or intent statement:

"Incorporated communities and their extraterritorial jurisdiction that are located on Scenic and/or Historic Byways shall not be considered as part of the Scenic and/or Historic Byway. Exceptions, such as kiosks, visitors centers, points of interest, etc., within the communities that are deemed scenic or historic may be included as part of the Scenic and/or Historic Byway."

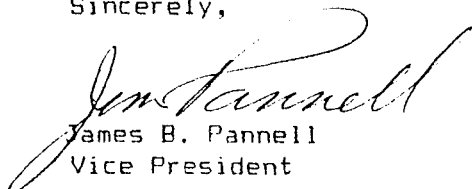
This language is in the policy statement of the State of Idaho for their Scenic Byways Program and insures that "segmentation" may occur in the programs.

MYHRE ADVERTISING

50 S. PARK • P.O. BOX 151, HELENA, MT 59624 • 406/442-0387
4225 2ND AVE. N. • P.O. BOX 1067 • GREAT FALLS, MT 59403 • 406/453-6591
315 E. MAIN • BILLINGS, MT 59105 • 406/252-7181

Our second request is that one of the stated goals of the program be tourism/economic development. If we are to designate areas of Montana as scenic byways, the overriding logic should relate to some degree to increased tourism and continued improvement of economic conditions in Montana along with fostering and protecting scenic areas.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Pannell", written in dark ink. The signature is fluid and stylized, with a large loop at the end.

James B. Pannell
Vice President

Billboard compromise reached

KALISPELL (AP) — A task force of civic activists and the billboard industry has agreed on a compromise plan to restrict the size and location of billboards, and an Arlee lawmaker plans to introduce a bill writing the compromise into law.

The law would cut the maximum size of a billboard by nearly half and reduce the allowed number of signs by two-thirds. It was worked out by a task force organized by Gov. Marc Racicot.

The proposed legislation is being introduced by Sen. Jeff Weldon, D-Arlee, who also is a member of the task force.

Billboard opponents from Flathead, Lake and Missoula counties met with Racicot in August to press for controls because some out-of-state billboard companies were putting up billboards larger than the standard 14 by 48 feet.

The governor proposed getting both sides together and working out a compromise, said Rich Munger, outdoor advertising coordinator for the Montana Department of Transportation.

Joan Vetter of Citizens for a Better Flathead, one of the groups on the task force, said activists learned quickly that most Montana billboard companies also were unhappy with the oversize billboards, which had

overwhelmed their signs and given the industry a black eye.

The group met twice in December to devise a compromise bill.

"Both sides, the scenic advocates and the industry people, walked away feeling pretty good," said Munger.

The proposal would reduce the maximum sign size to 672 square feet, from the current 1,200 square feet. The maximum length would be reduced from 60 to 48 feet. Fourteen by 48 feet — 672 square feet — is a standard size for billboards, said Munger.

Present law limits billboard faces to 40 feet high but puts no restrictions on how tall the poles can be. The new bill would limit signs to 30 feet high, measured from the road surface.

The current formula allows up to six billboards for a business along a highway. The new law would allow billboards only on the same side of the road as the business, and only two.

A final change would replace the \$6 permit fee with one set by the Montana Highway Commission, based on square footage. The money would go toward enforcement of state sign regulations.

Gazette, 1/4/95

SENATE HIGHWAYS
EXHIBIT NO. 2
DATE 2/2/95
BILL NO. SB 181

57181
TASK FORCE MEMBERS

John Waggoner
Josco Outdoor Advertising
820 Division
Billings, MT 59101
(256-9920)

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Citizens For A Scenic Lake County
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Joan Vetter
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Senator Jeff Weldon
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Fern Hart, Commissioner
Missoula County Courthouse
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STAFF

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SENATE HIGHWAYS

EXHIBIT NO. 3

DATE 2/2

BILL NO. SB 181

February 2, 1995

Senate Highways and Transportation Committee
Capitol Station
Helena, MT 59620

Subject: Senate Bill No. 181

The proposed revisions to Sections 75-15-101, et seq, "The Outdoor Advertising Act" result from consensus of members of the Governor-appointed Outdoor Advertising Control Task Force established in October of 1994.

During the last two years, a number of large billboards were erected along I-90 in western Montana and along US-93 from west of Missoula to Kalispell. A group of scenic advocates expressed concern to Governor Racicot. As a result, the Governor created a task force assigned to make recommendations on revisions to current regulations.

In his letter to task force members, Governor Racicot said:

"There are obviously differing opinions on how billboards ought to be regulated. And to some degree these things are dictated by federal statute. We do have some flexibility in program policy and how it's administered, and based on the comments I've received, I think it's time we look into this issue again.

"Outdoor advertising plays an important role in Montana's economy. At the same time, I think we all recognize development needs to proceed in a way that protects or enhances the natural beauty of our state. So I'm seeking assistance to sort out the issues and come up with appropriate recommendations."

The task force included outdoor advertising industry representatives, scenic advocates, local government planners, a state senator and a county commissioner.

Proposed Revisions

75-15-103.(14) changes the definition of "unzoned commercial or industrial area" to eliminate lands on the opposite side of the highway from a qualifying activity for the placement of outdoor advertising:

75-15-113 reduces the maximum size of signs. Subsection (1) reduces the square footage of signs from 1,200 to 672. Subsection (2) reduces the length of a sign from 60 feet to 48 feet.

Subsection (3) allows for a sign to be 40 feet high. The current height restriction is limited to the sign face which means there's no restriction on the height of the structure. The proposed revision to Subsection (3) provides for a maximum height of the sign structure to 30 feet above the road surface.

75-15-122 currently requires a \$6 fee to accompany applications for sign permits. It also provides for a \$3 renewal fee every three years (\$1 per year).

The revision proposes a nonrefundable fee for initial applications and renewals based on the square footage of the sign face. The fees will be established, by rule, to cover a portion of the cost of administering and enforcing outdoor advertising regulations.

The current regulations, which have not changed in the proposed revisions, provide the fees be paid into the highway account in the state special revenue fund.

The intent of the proposed fee changes is two-fold:

- Applications made under the current regulations allow for a refund of fees if the application is denied. In the past, spurious applications have been submitted which require considerable staff time to determine if they meet regulations. Costs are incurred that are not, in any way, covered by the applicant.
- The \$6 application fee was set by statute in 1971 and hasn't been changed since then. The fee doesn't cover the cost of processing the fee itself, notwithstanding the costs of application review. The intent of this revision is to cover processing costs and a portion of the review costs.

Senate Highways and Transportation Committee
Page 3
February 2, 1995

Amendments

Since the introduction of Senate Bill No. 181, we're suggesting the following amendments:

In the title and 75-15-122(c), there is reference to administrative rules established by the Department. The amendments suggest changing "Department of Transportation" to "the Montana Highway Commission" who has the authority to establish administrative rules.

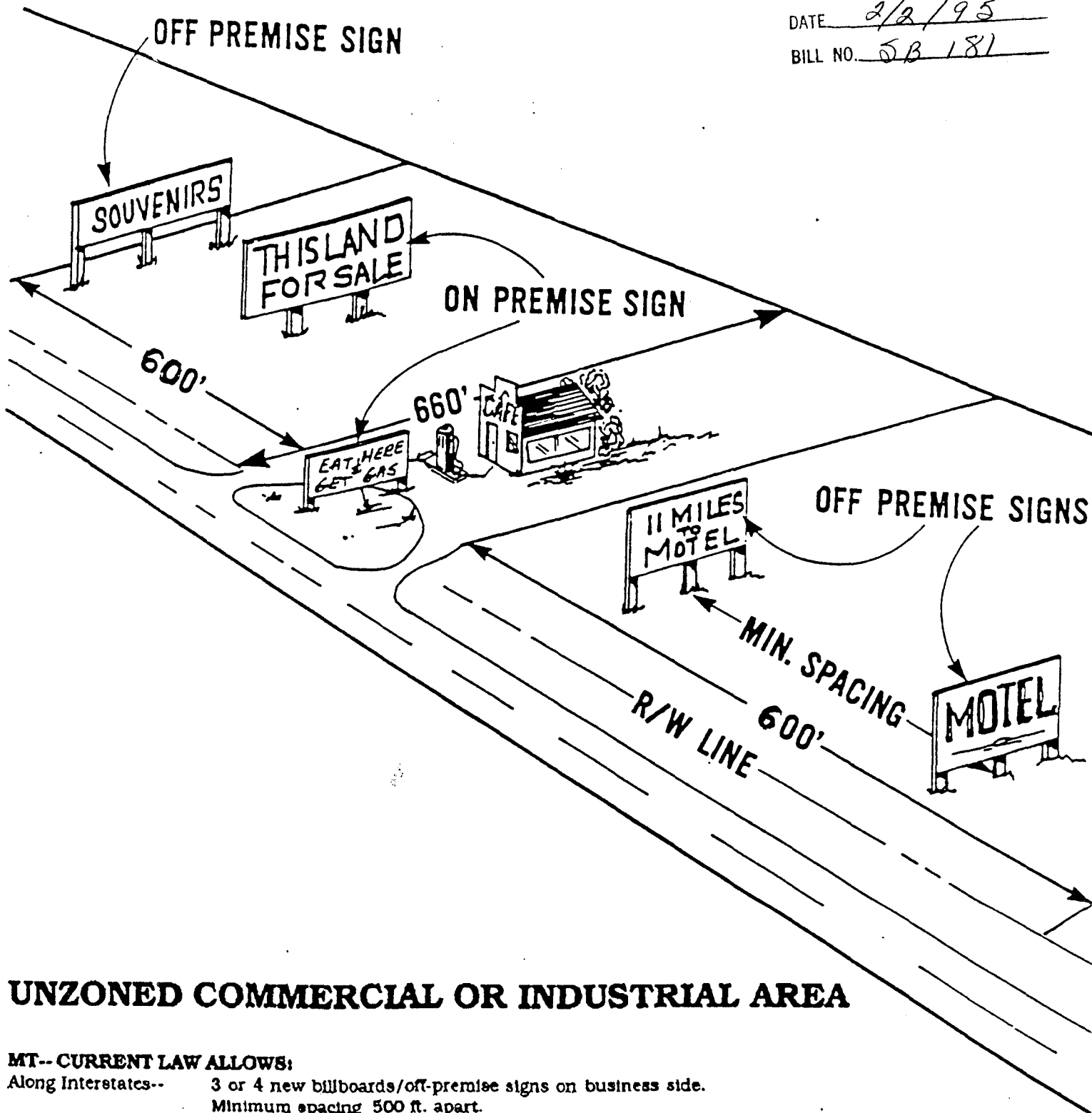
The task force reached consensus on the number of signs allowed from a qualifying activity in an unzoned commercial or industrial area. We presumed the limitation could be accomplished by administrative rule. It was determined that limiting the signs must be established by statute.

Therefore, 75-15-11(e) is amended to allow for a maximum of two (2) signs in unzoned commercial and industrial areas.



Richard T. Munger, Coordinator
Outdoor Advertising Control

RTM:D:PAF:28.dlm



UNZONED COMMERCIAL OR INDUSTRIAL AREA

MT-- CURRENT LAW ALLOWS:

- Along Interstates-- 3 or 4 new billboards/off-premise signs on business side.
Minimum spacing 500 ft. apart.
- Along Primaries-- 3 or 4 new billboards on other side of road depending on area.
4 or more billboards/off-premise signs on business side.
Minimum spacing 300 ft. apart
4 or more new billboards/off-premise signs possible on other side of road.
Minimum spacing 300 ft. apart.

In this area Task Force consensus recommendation will allow:

- A maximum of two billboards on the business side of the road
The area on other side of highway no longer qualifies.

We commend the industry representatives for agreeing to this change. It provides new advertising opportunities but preserves unbroken vistas.

Some Outdoor Advertising Terminology:

Off-premise signs are all signs which advertise a business or activity not on the particular piece of property on which they are erected.

On-premise signs are signs erected on property for the sole purpose of advertising its sale or lease or of advertising an activity conducted on the property. To qualify as on-premise a sign advertising an activity conducted on the property must be located on the land actually used or occupied by the activity.

Non-conforming sign means one which was lawfully erected but which does not comply with the provisions of state law or local regulations passed at a later date, or which later fails to comply with the state law or state regulations due to changed conditions. Illegally erected or maintained signs are not non-conforming signs.

Conforming signs are ones which were lawfully erected and which comply with spacing, zoning, size, lighting and all other requirements under the Outdoor Advertising Act and the outdoor advertising regulations promulgated by the highway commission.

Unzoned Commercial or Industrial Area means an area not zoned by state or local law, regulation, or ordinance that is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities.

The following criteria used to determine an area's qualification status are:

- The permanent buildings or improvements comprising a business used to qualify an area must be located within 660 feet of the right-of-way of an interstate or primary highway.
- The business must be clearly visible to the traveling public and be easily recognizable as a commercial or industrial activity.

Citizens' Coalition for A Scenic Montana*
#1 2nd Ave. East C-153
Polson, MT 59860

* Scenic Preservation Group--Citizens for a Better Flathead, Save America's Visual Environment,
Citizens for Scenic Lake County

TASK FORCE BILL S.B. 181**How Does Montana's Outdoor Advertising Act Compare with
Other States?**

We compliment the outdoor advertising industry for their willingness to face this issue. Companies operating for many years in Montana have shown restraint under what is, we have discovered, the most lenient law of ten states surveyed. With the recent proliferation of huge out of state signs, we can no longer proceed without fixing this 24 year old dinosaur. Senate Bill 181 is the result of consensus by divergent views. It is imperative that you carry it through into law. (see Consensus Sheet)

Are these changes reasonable? We looked at the outdoor advertising law in seven other Western states--Washington, Oregon, Texas, Colorado, Idaho, Arizona, California-- as well as Maryland and North Carolina. Our agreed upon changes in size, location and number of signs, and permit fees were put side by side with theirs.

Size. The issue of "too large" signs concerned most Task Force members. Current Montana law allows a maximum of 1200 sq. ft. Most signs erected before 1993 were smaller, but a rash of these huge boards have recently appeared. Only California and Arizona allow 1200 sq. ft. signs and only in zoned commercial and industrial areas. Maryland and Idaho allow 1000 sq. ft., Washington and Texas, 672 sq. ft. Oregon's maximum size is 825 sq. ft. for relocated signs, but they allow no new signs in the state. Colorado does allow 1200 sq. ft. in areas zoned commercial/industrial prior to 1970, but local ordinances keep these to under 800 sq. ft. New signs in other areas can be no larger than 150 sq. ft. The Task Force agreed to reduce sign size in Montana to the industry standard of 672 sq. ft.

Height. Montana now sets the maximum height for the sign face (poles not included) at 30 feet. Every state surveyed limits face height to 25 feet. In an effort to provide for advertising but not block views, the new maximum height of 30 feet is measured from the roadbed to the top of the sign face. No limit is put on the height of the actual sign face.

Width. Currently allowable width in Montana is 60 ft. Although Arizona, California and Texas also allow that, Washington, Maryland and Idaho limit width to 50 ft. In the interest of smaller signs, the task force agreed on a new width of 48 ft.

How many signs are there out there? The Montana Dept. of Transportation estimates 4000 legal signs are on interstate and primary roads in Montana today. This printout lists a total of 1165 new sign permits issued in just five of the last 10 years. That is an average of 320 signs/year in the past three years alone. New permits have gone up from 97 in 1984 to 324 last year, even though three prime sign counties had freezes in place in '93 and '94. If the trend continues, Montana will have 7720 off-premise signs by the year 2020.

Unzoned Commercial/Industrial Areas. In order to slow the increase, the Task Force agreed to reduce the number of permitted signs in unzoned commercial/industrial areas to two (2). Under current Montana law, one gas station or taxidermy shop out in rural Montana qualifies 6 billboards on interstate and as many as 12 on Primary roads. Both sides of the road within 600 feet either side of the business become qualified for billboards. (see diagram)

Of the states which qualify unzoned c/i areas for billboards, Washington requires there be 3 adjacent business, and Texas requires 2. Idaho, Arizona, Oregon and Montana require only one.

Washington and Montana allow unzoned commercial or industrial activity to qualify both sides of the highway for billboards. Oregon, Texas, Idaho and Arizona allow only the same side. Maryland, Colorado, and California, as well as two other Western states--Alaska and Hawaii--do not recognize unzoned commercial and industrial areas at all for **any** billboards. The Task Force agreed to limit signs to one side of the road.

Permit Fees. Montana's current fee for a sign permit is the lowest of all 10 states. At \$2/yr for the first three years, and \$1/yr thereafter, program costs far exceed permit revenue. In state law, the fee hasn't been raised since 1971. Washington, with a \$10/yr fee is the next lowest. Yet Texas charges a \$96 initial fee and \$40 annual renewal; and California's initial fee is \$20, with a \$20 annual renewal. No state surveyed said revenue covered program costs of permit processing, administration and legal expenses. Those with the dollar amount in rules, not in law, were best able to adjust fees to current costs.

Even with the proposed modified Oregon fee schedule (Theirs is annual, ours will be every 3 years), only Washington, Arizona and Maryland will have lower initial fees than Montana. No state will have lower renewal ones.

Every state surveyed except Montana has annual fees.

Only Montana and Washington refund fees if an application is denied, even though staff time has been invested in processing, verifying and inspecting the site.

What is the Cost of the Outdoor Advertising Program? If fees do not cover the cost of a program, taxpayer money--either from the state's general fund or Federal Highway funds--does. **A raise in fees to those who directly benefit from the program translates into a tax reduction for the citizens of Montana, not an increase in revenues.** The new fee schedule will save Montana taxpayers \$27,900. This will still leave a deficit of \$17,500/yr. for them to pick up.

Montana's law overall is the weakest of all ten states surveyed. Because seven of these are our neighbors and fellow competitors for tourists who are interested in seeing scenery as well as finding services, it makes economic sense to strengthen Montana's law with Senate Bill 181. We appreciate members of the industry who worked with us to reach this compromise. We ask your help to carry it on into law.

Information prepared by Task Force Members:

Sara Busey, Save America's Visual Environment

Dana Boussard, Save America's Visual Environment

Rose Magnuson, Citizens for Scenic Lake County

Joan Vetter, Scenic Preservation Group--Citizens for a Better Flathead

Fern Hart, Missoula County Commissioner

Montana Audubon Legislative Fund
P.O. Box 595 • Helena, MT 59624 • 443-3949

Testimony on SB 181
Senate Hwy./ Trans. Committee
February 2, 1995

Mr. Chairman and Members of the Committee,

My name is Bill Allen and I am here today on behalf of the Montana Audubon Legislative Fund and I urge your support for Senate Bill 181.

Our nine chapters across Montana believe that scenic beauty along the state's roads and interstates is worthy of preservation. This bill will work to do this by limiting the number of new billboards as well as their size and height. We also concur with the Department that the current fee structure for such billboards is clearly outdated and should be amended.

The changes prescribed in SB 181 were agreed upon by consensus by the Governor appointed task force on Outdoor Advertising Changes. These changes were agreed upon by members of the billboard industry, scenic preservationist, county commissioners, and others. We therefore urge your support for the bill and the before mentioned amendments.

Thank You

SENATE HIGHWAYS

EXHIBIT NO. 7

DATE 2/2/95

BILL NO. SB 181

Frontier
OUTDOOR ADVERTISING

P.O. BOX 2918
CASPER, WYOMING 82602

(307) 234-9107
(800) 334-3830
FAX : (307) 266-5519

HEARING ON SB 181

As a result of legitimate concerns arising in Western Montana, a Governors Task Force was called in late 1994 to address issues pertaining to new legislation regulating outdoor advertising in Montana. A result of the Task Force is proposed SB 181.

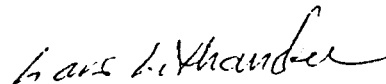
Currently, up to six sign locations can be permitted from one qualifying commercial activity along the Interstate highway system. The proposed legislation will now specify only two locations on either Interstate or Primary highways with both being on the same side of the roadway. Using the current six locations as an example, the industry is losing two-thirds of their potential business by going to two.

Frontier Outdoor Advertising supports SB 181 and urges its enactment but asks for the language to be ammended to allow two sign locations on either side of the roadway. That can mean two on one side, two on the opposite side or, split, with one on either side. The Montana Department of Transportation has indicated they will not oppose this change.

Thank you for your consideration.

Lars Lithander

Frontier Outdoor Advertising
P.O. Box 22405 Billings, MT 59104
(406) 655-0174



Proposed Amendment to Senate Bill No. 181

February 2, 1995

1. Page 3, line 8.

Following: "~~by-the-commission.~~"

Insert: "and those lands directly opposite on the other side of the highway to the extent of the same dimensions and to a maximum depth of 660 feet when measured from the highway right-of-way; provided those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission."

DATE 2/2

SENATE COMMITTEE ON Highways

BILLS BEING HEARD TODAY: SB 159 SB 181 SB 183

Name	Representing	Bill No.	Check One	
			Support	Oppose
Sara Burey	Task Force	181	✓	
Joanne Rudie	SAVE	181	✓	
Jim Pannell	My HRE Adv	181 & 183		
Rich Munger	Transportation	181	✓	
Deane Jones	SAVE	181	✓	
Rich McAlmond	My HRE Adv.	181-183		
Doc McAlmond	Summit Outdoor	181-183	✓	
Willa Hall	myself	181-183	✓	
Lars Lithander	Frontier Outdoor	181-83	✓	
John Waggoner	Josco Outdoor	181-83	✓	
Joan Vetter	OAC Taskforce	181-83	✓	
DAN RITTER	MT CHAMBER	159	✓	
Bob Campbell	Self	181 & 183	X	
Pat Gindon	MDT	183	✓	
GARY GILMORE	MDT	159	✓	
Bill Allen	MT Audubon	181 & 183	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/2

SENATE COMMITTEE ON Highways

BILLS BEING HEARD TODAY: SB 159 - SB-181 - SB183

Name	Representing	Bill No.	Check One	
			Support	Oppose
Robert White	Bozeman Chamber	159	✓	
HAL HAY	BLUE SKY SIGNS	181		
Gloria Hermanson		183	✓	
Rose Magnuson	Task Force	181	✓	
FRANK CROWLEY		183	✓	
Nick Rotering	DOT	183 181	✓	
Harriette Meloy		181 183	✓	
Stuart Dwyer	MT Insurance	181	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY