

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN SHIELL ANDERSON**, on February 13, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Shiell Anderson, Chairman (R)
Rep. Rick Jore, Vice Chairman (Majority) (R)
Rep. Patrick G. Galvin, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Matt Brainard (R)
Rep. Robert C. Clark (R)
Rep. Charles R. Devaney (R)
Rep. Marian W. Hanson (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. William M. "Bill" Ryan (D)
Rep. Dore Schwinden (D)
Rep. Roger Somerville (R)
Rep. Joe Tropila (D)
Rep. Jack Wells (R)

Members Excused: Rep. Jeanette S. McKee

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Kim Greenough, Committee Secretary

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

Committee Business Summary:

Hearing: HB 448
HB 249
HB 456
Executive Action: HB 364 DO PASS
HB 448 DO PASS AS AMENDED
HB 133 TABLED
HB 456 TABLED

{Tape: 1; Side: A; Approx. Counter: 0; Comments: None.}

HEARING ON HB 448Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, Kalispell, introduced HB 448. He said this bill would clarify the legal responsibilities of railroad right-of-ways, specifically maintenance of right-of-ways and the removal of all fire hazards. He explained that in the past if a fire started on property adjacent to the railroad right-of-way, through no fault of the railroad and burnt down the railroad right-of-way, then the railroad was required to pay for damages from that fire. He said the bill clarifies the railroads responsibility to clean up their right-of-ways and not the adjacent owners.

Proponents' Testimony:

Russ Ritter, Director of Montana Rail Link Public Relations, testified in favor of the bill. He presented two amendments. **EXHIBITS 1 and 2** He said the bill updates the law regarding fire responsibility both within the railroad right-of-way as well as outside the right-of-way. He emphasized that the bill does not eliminate the railroad's responsibility for any fire that is initiated as a result of a train or a maintenance-of-way crew on the right-of-way for any property adjacent to the right-of-way. If a fire is started outside the right-of-way which Rail Link is responsible for they accept that. However, if a fire starts outside their property not as a result of railroad activity, then the perpetrator of that activity would become the responsible party. The present law makes it arbitrary.

The amendment offered by **Mr. Bloomquist** of the Montana Fire Districts Association would better describe the right-of-way (see Exhibit 1). This would include track maintenance. The other suggested change (see Exhibit 2) is needed because the right-of-way may only be ten feet so the word "reasonable" is necessary.

Dave Ditzel, Locomotive Engineers, testified in support of the bill. He discussed procedures that workers follow when a fire does break out.

Pat Kiem, Burlington Northern, supported the bill.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, spoke in opposition to the bill on the basis that it subjects owners of agricultural land to more liability of fires caused by trains. He called attention to several provisions in the bill. First, the bill deletes the term "dangerous" and only applied to combustible materials or conditions (line 14). So that makes the railroad no longer responsible for dangerous conditions which may be different than combustible.

The bill replaces the clear responsibility of the railroad to maintain a right-of-way one hundred feet on either side of the track with a vague definition of reasonable distance. He pointed out that there is no doubt that current law favors owners of agricultural land when there is a dispute of damages for fire. This bill would take away their current advantage.

He pointed out on lines 17-20 of the bill which does away the sentence that makes maintenance of railroad land prema-facia evidence of negligence. The railroad is still liable for fires caused by the railroad, but the disputes often center on what caused the fire and who was responsible. "Prema-facia evidence" is basically the term that says the burden is on the railroad to prove that its negligence did not start this fire. The bill would remove that burden on the railroad.

Maureen Cleary Schwinden, Women Involved in Farm Economics, spoke in opposition to the bill. She said she had the same concerns as **Russell Hill** regarding the elimination of language in the bill. She mentioned that this bill was not merely a way to clean up the law, especially if small farmers were forced to carry on litigation with the railroads in terms of proving their innocence or guilt in these situations.

Questions From Committee Members and Responses:

REP. PAT GALVIN asked **Mr. Ritter** about spark arresters or sticky breaks. **Mr. Ritter** replied that whatever caused a fire was accepted by the railroad as their responsibility. He explained that the equipment now is far superior to the equipment available when the law was first written. He pointed out that the railroad had spent over \$390,000 last year alone on its trackage to maintain its right-of-ways.

REP. GALVIN asked for an explanation of track arresters and sticky breaks. **Mr. Ditzel** replied that spark arresters were devices placed on the locomotive that controls or restricts the stack emissions. Sticky breaks can also cause a spark. Locomotives have been retrofitted with these devices universally. He noted that a lot of smoke from the stack means an inefficient use of fuel which is one of the biggest costs to the railroad which is attended to at the roundhouse. He discussed the sticky breaks which result from repeated application of the air breaks. He said the new air breaks installed are designed to reduce or eliminate this problem. The railroads have done a lot to reduce or eliminate things that cause fires since they would have to pay for it.

REP. DAN MCGEE asked about the language on line 12 and why the railroad wanted to qualify the reasonable distance. **Mr. Ritter** replied that the biggest problem with the language is that there were many places where they did not have one hundred feet so a reasonable distance would better cover what the right-of-way is, rather than giving it a blanket one hundred feet. However, he

said the railroad would not have a problem with the bill if the words "reasonable distance" were stuck from the bill and be "within the right-of-way".

REP. MCGEE asked how the railroad can keep the right-of-ways free from dead grass, weeds and combustible materials. **Mr. Ritter** said that the railroad spends over a half of million dollars a year by cleaning the debris as much as any landowner.. **REP. MCGEE** asked whether they burned the weeds. **Mr. Ritter** said they did and if fires started as a result it was the railroad's responsibility.

REP. MCGEE asked about the deletion of language in lines 17-20 where prima-facia evidence is not wanted. **Mr. Ritter** replied that they feel the responsibility of the fire should be with the individual that started it, whether it is the railroad or someplace else. However, he pointed out that the way the law has been written, it is so tilted in the past that no matter where a fire starts if it ends up on the right-of-way then the railroad not only pays for the right-of-way, but for the landowner's land as well. He pointed out an example near Wilsall where trains have not run for over three years and two years ago there was a large fire that the railroad eventually paid for simply because it happened on the right-of-way. He emphasized that if something happens and goes over into someone else's land then it is the responsibility of the railroad if they caused it.

REP. BARNETT asked about the responsibility that would occur should a rancher start a fire that ended up burning debris on railroad right-of-way on an abandoned track. **Mr. Ritter** replied that just because a track is abandoned does not mean it is forgotten and that the railroad does keep working at clearing brush even on those sections.

{Tape: 1; Side: A; Approx. Counter: 808; Comments: None.}

REP. JOE TROPILA asked about the present language "dangerous". **Mr. Ritter** said that normal materials that grow around the track or fenceline are not particularly dangerous unless allowed to accumulate and dry out in the summer heat when they can become a fire hazard. "Combustible material" fits the language better than "dangerous" but the language is not a serious problem.

REP. TROPILA asked about the approximate width of the right-of-way. **Mr. Ritter** replied that it varies all along the track. Some is narrow like 12-15 feet and in other places 45-50 feet.

REP. TROPILA asked about other land owned outside the right-of-way. **Mr. Ritter** replied that they did, but that most of the land was in cities not adjacent to the track.

REP. LINDA MCCULLOCH asked about the language on line 14, the word "dangerous".

{Tape: 1; Side: B; Approx. Counter: 0; Comments: None.}

She asked the committee if the railroad was so willing to take the responsibility for the right-of-ways in fire situations then why should lines 17-20 be eliminated. **Mr. Hill** responded that the word "dangerous" could entail hazardous materials. He pointed out that dangerous could be something that could block firefighters' progress. In lines 14-16, in terms of the liability of the railroad, the railroad currently is responsible for maintaining a distance of 100 feet off to the sides of the track. If it doesn't maintain that then the railroad is liable for a fire emanating from the train. Under the bill the area is shrunk down to the area so the railroad is no longer responsible for maintaining this area. If the fire starts in this area, it is not clear at all that the railroad is liable.

CHAIRMAN ANDERSON asked **Mr. Hill** about a fire starting in one place then getting in a railroad right-of-way, would the railroad be responsible for not keeping that right-of-way clear of dead grass. **Mr. Hill** replied that he thought the railroad was responsible to maintain some narrowed down corridor along the track.

REP. GALVIN asked what if the railroad does not own that one hundred feet. **Mr. Hill** replied that the present statute required them to keep it cleared one hundred feet. However, he pointed out, that he was not familiar with the case law and did not know how they could be required to keep clear private property that they don't own.

REP. MCGEE asked about the right-of-ways that are established legally on the plans of the railroad. He asked if there were not places on the plans that go 200 feet on either side and down to 30 feet in smaller sections. Sections may or not be on the two hundred foot line but that the legal right-of-way was defined on those plans. **Mr. Hill** replied that was correct. **REP. MCGEE** said if the language on line 12 were to drop the reasonable distance and say "within its right-of-way" would that meet the legal requirement. **Mr. Hill** said that it would and the railroads need to clarify this, but that right-of-way is legal control of the property.

Closing by Sponsor:

REP. SOMERVILLE closed on the bill. He discussed the proposed amendments. He said on the amendment to add track maintenance, the committee should look at the justification since most fires are caused by maintenance such as grinding, welding, or cutting and other track maintenance. He pointed out that right now the railroad is required to maintain property that they do not own.

HEARING ON HB 456Opening Statement by Sponsor:

REP. BOB REAM, HD 69 of Missoula, presented HB 456. He explained the bill was intended to address the growing problem of road kill. He handed out statistics from the Highway Patrol records reflecting wild animals only, not domestic animals that were killed on Montana highways since 1990. **EXHIBIT 3** The bill provides a mechanism for disposing of the animals. He said it could be done through the rulemaking of FWP.

Proponents' Testimony:

Pat Graham, Director, Department of Fish, Wildlife and Parks, testified in support of the bill. He discussed the road kill problem and what is being done now. Neither the Department of Transportation or the Fish, Wildlife, and Parks agencies are adequately funded to pick up and remove animals. The bill would provide funding for this through an additional motor vehicle registration fee, which seems reasonable since road kills result from motor vehicle use. He pointed out that the legislation allows DOT or FWP to contract for pick up and disposal, allow joint rulemaking authority to address issues that may arise, allow for pick up by food banks, and allow private citizens to obtain a permit to use what they have hit. **EXHIBIT 4**

Opponents' Testimony:

Steve Turkiewicz, Montana Automobile Dealers Association, testified in opposition to the bill. He said they found a problem in page 2, section 2, line 21 regarding the fee as an addition to the registration fee. He listed all the fees on the registration presently. He said they were sympathetic to the problem but were concerned about the \$360,000 bill paid by Montana motorists.

Dean Roberts, Administrator of Motor Vehicle Division, Department of Justice, testified against the bill. He said the department does not oppose solutions to road kill, however they are concerned about new taxes and fees. Presently, when the registration bill is paid, not the taxes or earmarked funds, \$9.8 million is presently generated for the general fund with \$2.6 million being spent by the Motor Vehicle Department leaving a surplus of almost \$7 million. The department opposes the funding structure for this reason.

{Tape: 1; Side: B; Approx. Counter: 550; Comments: None.}

Questions From Committee Members and Responses:

REP. WELLS asked about running over a deer as a means of hunting and if the department would keep track of the number of permits

issued to the same person. **Mr. Graham** replied that it did raise an issue and that the Wardens would become suspicious.

REP. GALVIN asked if there was an objection to changing the auto insurance to pay for the removal of the carcass which is done now for telephone and light poles instead of a new fee. **REP. REAM** replied that this would be a major cost to the insurance companies.

{Tape: 2; Side: A; Approx. Counter: 0; Comments: None.}

REP. MATT BRAINARD pointed out that frequently, when an animal is hit it is not reported and the insurance company may not know about it, so who would pick up the animal. In section 1, page 2, line 10 there are situations where the animal is not usable.

REP. REAM said enforcement problems would arise.

REP. BARNETT asked about the sense of notifying Fish and Game when the Highway Patrol gets involved. **Mr. Graham** said the notification comes from a variety of sources, such as calls or road maintenance crews. There is no requirement to report these. Typically the department is notified by someone in the area such as a neighbor asking for the animal to be removed. **REP. BARNETT** asked if this were privatized to pick up the animals then would state fish and game need to be involved. **Mr. Graham** replied that it would help to contract it out and the department would not have to be involved.

REP. SOMERVILLE asked how the meat could be salvaged if they couldn't get someone out there within a two hour period. **Mr. Graham** replied that was the core of the problem. He asked what he wants their state game wardens doing. There are a lot of demands on their time, the more time they spend salvaging deer the less time they have for the other portions of their jobs.

REP. BRAINARD asked if this bill was more of a problem with deer rather than highways. If more hunting zones were extended for hunting of archery if that would help the problem. **Mr. Graham** replied that deer could not be effectively controlled in that way.

REP. CLARK asked how many of the \$5 permit fees were anticipated. **REP. REAM** replied that the fees would be relatively small.

{Tape: 2; Side: A; Approx. Counter: 480; Comments: None.}

CHAIRMAN ANDERSON asked about the large number of deer and whether the department considered expanding the number of deer that could be hunted. **Mr. Graham** replied that the quotas were set every year and some of the largest numbers of permits were issued recently. He pointed out record populations due to the mild winters.

Closing by Sponsor:

REP. REAM closed on the bill. He said the issue is a serious problem and presents costs to the state.

HEARING ON HB 249**Opening Statement by Sponsor:**

REP. MARSHALL, HD 28, Bozeman, presented HB 249. He explained the bill was an attempt to change speed zones around day care centers.

Proponents' Testimony:

Tim Reardon, Chief Legal Counsel, Department of Transportation, testified in support of the bill. He presented some amendments. **EXHIBITS 5 and 6** The amendments provide control by local authorities over setting speed zones in certain areas within their city on state highways.

{Tape: 2; Side: A; Approx. Counter: 854; Comments: None.}

It also satisfies the requirements of the federal government in the Manual of Uniform Traffic Control Devices which is federally accepted and adopted in state law. It has also been adopted by the cities since it allows or requires those speeds be done in accordance with traffic engineering studies. He pointed out that the city is free to do their own traffic and engineering studies provided they are done by a qualified firm. These could be done faster than the department could do them and could be implemented quicker. The bill would allow the city at their discretion to change speeds in certain areas depending on conditions.

{Tape: 2; Side: B; Approx. Counter: 0; Comments: None.}

Jim Wysocki, City of Bozeman, testified in support of the bill. He submitted letters from Ned S. Levine, principal of the Willison Science and Technology School and Mary Hensleigh, former crosswalk guard and president of the Willison School's parent group in Bozeman. He also presented a letter from Jim Bruggeman, principal of Irving School regarding dangerous street crossings. **EXHIBITS 7, 8, 9** He noted that asking the department to do a study takes a considerable amount of time and that it is possible to do the study faster, using their same criteria though these are not available presently as an option.

Tom Barnard, Chief Engineer, Department of Transportation, supported the bill with the proposed amendments.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SOMERVILLE asked about rollerblading and skateboarding. **Mr. Wysocki** said there was a provision in the bill to avoid the collision problem. Skating is in the statute already.

{Tape: 2; Side: B; Approx. Counter: 103; Comments: None.}

REP. CLARK asked if skateboarding should be delineated, if there was a problem with skateboarding as opposed to rollerblades. **Mr. Wysocki** said it was up to the committee to alter the language.

REP. MCGEE asked if the words "activities or amusements" would cover everything. **Mr. Reardon** said they could, however, he noted it was a discretionary opportunity for local government.

REP. MCGEE asked if the amendments were not included what would the department's stand be on the bill. **Mr. Barnard** replied that if the amendments were not included, there would be some very serious problems with the bill. He pointed out that if arbitrary speed limits were established with no background behind it then it was likely not the safest speed zone. Mandates are set by federal law requiring studies.

REP. MCGEE pointed out the similarities to three other bills regarding speed bills.

REP. GALVIN asked if the word "close" could be included on line 17, page 2, and could the road be closed to these activities such as rollerblading, etc.

{Tape: 2; Side: B; Approx. Counter: 260; Comments: None.}

Mr. Wysocki replied that in dealing with a street where funding was coming from the highway department or federal government, then they would be hard pressed to do that. However, a local street could be closed if there was no jurisdiction by other entities.

REP. TROPILA asked about skateboarding and sledding on sidewalks, which are also public property. Could these be included in the bill? **Mr. Wysocki** replied that it could be included on line 22. **Mr. Reardon** responded that the language is broad enough to regulate any amusements.

REP. BARNETT asked **Mr. Reardon** if he would furnish the committee with all the regulations that absolutely prohibit the city from coming in and controlling the speed within their city limits. **Mr. Reardon** replied that he would.

REP. SOMERVILLE asked about updating the language in the statute, such a horseracing, if the department would have a problem with that.

{Tape: 2; Side: B; Approx. Counter: 226; Comments: None.}

Mr. Reardon replied that they would not have a problem.

CHAIRMAN ANDERSON asked whether the Highway Commission was being substituted with a local authority to use the traffic investigation to determine the speed. Mr. Barnard replied that either the Highway Commission or the local authorities could make those modifications under those provisions of law. Mr. Reardon said the intent was to allow local authority to do that.

{Tape: 2; Side: B; Approx. Counter: 516; Comments: None.}

He pointed out a problem was when a traffic and engineering study provided a speed higher than the speed that the local residents wanted. The study is still needed, according to the manual, it could be shown that speeds could be lowered. Mr. Barnard referred to a handout on HB 254 regarding the Uniform Property Control Devices where there are five things that must be looked at.

Connie Erickson clarified that the statute--61-8-310--which is the section that talks about local authorities may and shall alter limits. Local authorities can set or alter limits based on engineering studies only in certain instances. There are four instances listed. They cannot just do the studies and then set the limits for whatever they want on any road.

Closing by Sponsor:

REP. MARSHALL closed on the bill.

EXECUTIVE ACTION ON HB 364

Motion: REP. MCKEE MOVED THAT HB 364 DO PASS.

Discussion: REP. SOMERVILLE discussed the difficulty of reaching people at the current phone numbers.

REP. SCHWINDEN spoke against the bill. He said it was not so much in the interest of serving local shippers rather than serving certain shippers and in the interest of closing these agencies. The bill appears to keep the railroad from going through the hearings process. He recommended the committee do not pass the bill.

REP. BRAINARD said he would like to amend the bill. On page 2, he moved to amend on line 13, strike 50% and change it to 30% and on line 14 change 50% to 30%.

REP. SCHWINDEN discussed the hearing process and that in one instance the percentage should not be on it at all. He recommended letting the public service commission do their job

and listen to the concerns of all the shippers and weigh those according to how good their arguments are and what their needs for services are. He pointed out that he could not arbitrarily say a percentage would do the job.

{Tape: 3; Side: A; Approx. Counter: 0; Comments: None.}

REP. SCHWINDEN said there should be a system where any shipper that objects could be heard.

REP. MCGEE pointed out the percentage in the bill needed to be consistent.

Motion/Vote: REP. MARSHALL MOVED TO TABLE THE HB 364. A roll call vote to table the bill was taken. The motion failed 9-9.

Discussion:

The Brainard Amendment was discussed which would change the percentage from 50% to 30%.

CHAIRMAN ANDERSON spoke against the amendment. He said if the railroad wanted to close these agencies they had done some research to determine whether they would be losing business. This would hamper the market-based system telling them they would have to jump through these hoops if they want to close the agencies. If they close the agencies and it upsets the shippers that use them, then they will adjust that.

Vote: The question was called on the Brainard amendment. The motion failed 11 to 7 with REPS. BRAINARD, TROPILA, LARSON, RYAN, MCCULLOCH, DEVANEY and MCGEE voting yes.

Vote: The question was called on the motion that HB 364 do pass as unamended. A roll call vote was taken. The motion carried 10-8 with REPS. RYAN, LARSON, GALVIN, DEVANEY, MARSHALL, MCCULLOCH and TROPILA voting no. REPS. SCHWINDEN voted no by proxy.

EXECUTIVE ACTION ON HB 448

Motion: REP. CLARK MOVED THAT HB 448 DO PASS.

Motion: REP. HANSON moved to amend the bill, inserting the words "track maintenance".

Discussion:

REP. MCGEE said rather than putting in trains and track maintenance to go back to the original language which includes all operations.

REP. LARSON said he recommended adding back track and maintenance since most fires that develop along right-of-ways today are the

result of maintenance activities which are not the same as the operation of the train itself. He said for this reason he was in favor of the Hanson amendment.

REP. MCGEE replied that a clever attorney could find a way to get out of this situation, if they were not operating a train for maintaining a railroad track, that's why all things fall under the heading of operating the railroad. He said the original language was broad enough to be all-inclusive.

CHAIRMAN ANDERSON pointed out that this would clarify it. For example, if a track that did not have the dry grass cleared from it was struck by lightning, then this language would clarify whether the railroad was indeed operating or not.

{Tape: 3; Side: A; Approx. Counter: 495; Comments: None.}

REP. HANSON pointed out the problem of abandoned track and said the language would take care of that.

REP. MCGEE suggested the language say, "trains, track maintenance or other railroad operations".

Motion/Vote: **REP. MCGEE MOVED THE SUBSTITUTE AMENDMENT.** The question was called. The motion carried unanimously.

Motion: **REP. MCGEE** moved to amend the bill on line 12, to strike the words "or a reasonable distance of 100 feet on each side of the track or road bed" on line 13 and insert after the words "of the track", "within its right-of-way".

Discussion: **REP. MCGEE** explained that he did a lot of legal boundary work along railroad right-of-ways. A right-of-way is a very specific thing and is not arbitrary and not necessary to a fence. It is established legally. The responsibility of the railroad is to what it owns, which is a legal boundary. Their responsibility is the right-of-way. To say 100 feet or any dimension is limiting and will not address every situation. To say "right-of-way" establishes exactly what their limits are.

REP. SOMERVILLE commented that the right-of-way may be far beyond what is reasonable for the railroad to keep the dead grass out of the area.

REP. BRAINARD pointed out that one of the reasons for the language being 100 feet is for the maintenance crew who do not run the lines and the boundaries can be indistinguishable, however a hundred foot tape is a practical definition. A "reasonable" distance is not always defined the same way.

REP. HANSON said this raises a question if the railroad right-of-way is out a quarter of a mile would they be expected to take care of all the dead weeds and grass, this could then become unreasonable.

{Tape: 4; Side: A; Approx. Counter: 0; Comments: None.}

REP. MCGEE said he felt the railroad was responsible for their land and their right-of-way, as defined by their railroad plan. He said the bill would establish the railroad doesn't have liability if the fire, in fact, starts on someone else's property. It also establishes the limit of the liability. They are responsible for what lies in the right-of-way. They may choose to let something go which could create a situation that starts a fire.

REP. ANDERSON pointed out the only problem he could see is requiring the railroad to remove the dead grass. Ranchers are not required to remove their dead grass.

REP. DEVANEY pointed out the 100 foot tape is not a good thing since it would infringe on ranchers' hay ground, the fair grounds or wherever.

REP. LARSON spoke against the amendment. He said it seemed like the amendment was trying to clarify that they have a legal responsibility to keep a certain area free of grass but does not exonerate them from legal liability on the rest of their property. The physical difficulty of maintaining the entire right-of-way, where it may be a quarter of mile or 200 feet from the railroad center line, is quite burdensome when considering a couple thousand miles of track.

REP. BRAINARD pointed out that he had put out forty of these fires along the Milwaukee Railroad line because they did not maintain their right-of-way that year. This amendment would address the control of a fire hazard and removing dead grass. A practical distance is needed for effective fire control in removing the hazard. In some cases there is adjacent private property where there is no hazard, but there is a point of diminishing returns about how much grass would be removed and how far away from the tracks it will be. The point that was made was with the newer technology today with brakes and spark arresters that the old distances may not be as applicable as they used to be. He said he's seen trains rounding a corner at night and watched a shower of sparks. He noted that there is a reason the 100 feet is in the language. Sparks can go out of a stack and go up 300 feet in the air and start a fire on a hill, and the railroad would still be held liable for that.

CHAIRMAN ANDERSON pointed out that the language "reasonable" would suffice just because there are so many changing conditions, such as fall and summer. If the railroad starts a fire they would be liable.

The question was called on the amendment to strike on line 12 where it says "for a reasonable distance" and goes through the word "roadbed" on line 13 and insert "within its right-of-way".

{Tape: 4; Side: A; Approx. Counter: 200; Comments: None.}

Vote: A roll call vote was taken on the McGee amendment. The motion failed 11-7.

Motion: REP. SOMERVILLE proposed an amendment. After the word "distance" on line 12, strike out "of 100 feet on each" and go down to line 13, "side of the track or roadbed" and strike that. So it would read "a railroad corporation or rail company operating a railroad within this state shall keep its railroad track on either side of the track for a reasonable distance within its right-of-way free of dead grass, weeds or any combustible material".

{Tape: 4; Side: A; Approx. Counter: 256; Comments: None.}

Vote: The motion carried on the Somerville amendment with REPS. MCCULLOCH, BARNETT, LARSON and SCHWINDEN voting no.

CHAIRMAN ANDERSON moved to amend the language by putting in again the word "dangerous or" on line 14.

The question was called.

Vote: The motion on the Anderson amendment carried 16 - 2 with REPS. CLARK and JORE voting no.

Motion: REP. LARSON MOVED HB 448 DO PASS AS AMENDED. The question was called. The motion passed 17-1 with REP. SCHWINDEN voting no.

EXECUTIVE ACTION ON HB 133

Motion: REP. CLARK MOVED THAT HB 133 DO PASS.

Discussion:

REP. LARSON pointed out the risk was the same no matter which vehicle he was operating. He said the bill may have the effect of revolutionizing the industry and probably drive half the insurance out of the state so it was not practical.

REP. MCGEE said he would probably vote against the bill since he had more drivers than he had vehicles. He said he would like to see this as an operational option for insurance carriers but the way the bill is drafted it does not give them an option but basically reverses the procedures in place now.

Motion: REP. JORE MADE A SUBSTITUTE MOTION TO TABLE HB 133.

Vote: The motion carried 10-8 with REPS. ANDERSON, MCCULLOCH, BRAINARD, TROPILA, RYAN, CLARK, HANSON and LARSON voting no.

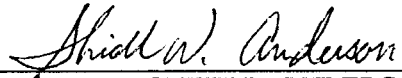
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ADJOURNMENT

Adjournment: 5:30 p.m.



REP. SHIELL ANDERSON, Chairman



KIMBERLEE GREENOUGH, Secretary



for DEB THOMPSON, Recording Secretary

SA/ksg/dt

EXECUTIVE ACTION ON HB 456

Motion/Vote: REP. HANSON MOVED TO TABLE HB 456. The motion carried 16 - 2 with REPS. LARSON and SCHWINDEN voting no.

HOUSE OF REPRESENTATIVES

Highways

ROLL CALL

DATE 02-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Shiell Anderson, Chairman	✓		
Rep. Rick Jore, Vice Chairman, Majority	✓		
Rep. Pat Galvin, Vice Chairman, Minority	✓		
Rep. Joe Barnett	✓		
Rep. Matt Brainard	✓		
Rep. Bob Clark	✓		
Rep. Charles Devaney	✓		
Rep. Marian Hanson	✓		
Rep. Don Larson	✓		
Rep. Rod Marshall	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Jeanette McKee	Came in later		4:20pm ✓
Rep. Bill Ryan	✓		
Rep. Dore Schwinden	✓		Hein
Rep. Roger Somerville	✓		
Rep. Joe Tropila	✓		
Rep. Jack Wells	✓		



HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Highways and Transportation** report that **House Bill 364** (first reading copy -- white) **do pass**.

Signed: *Shiell W. Anderson*
Shiell Anderson, Chair

Committee Vote:
Yes 12, No 6.

381319SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Highways and Transportation** report that **House Bill 448** (first reading copy -- white) **do pass as amended.**

Signed: 
Shiell Anderson, Chair

And, that such amendments read:

1. Page 1, line 12.

Following: "~~feet~~"

Insert: "within its right-of-way"

2. Page 1, lines 12 and 13.

Strike: "on" on line 12 through "roadbed" on line 13

3. Page 1, line 13.

Strike: "in this state"

4. Page 1, line 14.

Following: first "~~or~~"

Insert: "dangerous or"

5. Page 1, line 17.

Following: "trains"

Insert: ", track maintenance, or other railroad operations"

-END-

Committee Vote:

Yes 17, No 1.

381320SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Highways

DATE 2-13-95 BILL NO. ^{HB}364 NUMBER 9709

MOTION: table

NAME	AYE	NO
Rep. Shiell Anderson, Chairman		✓
Rep. Rick Jore, Vice Chairman, Majority		✓
Rep. Pat Galvin, Vice Chairman, Minority	✓	
Rep. Joe Barnett		✓
Rep. Matt Brainard		✓
Rep. Bob Clark		✓
Rep. Charles Devaney	✓	
Rep. Marian Hanson		✓
Rep. Don Larson	✓	
Rep. Rod Marshall	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee	✓	
Rep. Jeanette McKee		✓
Rep. Bill Ryan	✓	
Rep. Dore Schwinden	✓	
Rep. Roger Somerville		✓
Rep. Joe Tropila	✓	
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Highways

DATE 2-13-95 BILL NO. ^{HB}364 NUMBER 10708

MOTION: Do Pass

NAME	AYE	NO
Rep. Shiell Anderson, Chairman	✓	
Rep. Rick Jore, Vice Chairman, Majority	✓	
Rep. Pat Galvin, Vice Chairman, Minority		✓
Rep. Joe Barnett	✓	
Rep. Matt Brainard	✓	
Rep. Bob Clark	✓	
Rep. Charles Devaney		✓
Rep. Marian Hanson	✓	
Rep. Don Larson		✓
Rep. Rod Marshall		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Jeanette McKee	✓	
Rep. Bill Ryan	12/1/94	✓
Rep. Dore Schwinden		✓
Rep. Roger Somerville	✓	
Rep. Joe Tropila		✓
Rep. Jack Wells	✓	

Proxy
Proxy

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Highways

DATE 2-13-95 BILL NO. HB 448 NUMBER 7-11

MOTION: Amenel HB 448 Rep. McGEE

NAME	AYE	NO
Rep. Shiell Anderson, Chairman		✓
Rep. Rick Jore, Vice Chairman, Majority		✓
Rep. Pat Galvin, Vice Chairman, Minority	✓	
Rep. Joe Barnett		✓
Rep. Matt Brainard		✓
Rep. Bob Clark		✓
Rep. Charles Devaney		✓
Rep. Marian Hanson		✓
Rep. Don Larson		✓
Rep. Rod Marshall	✓	
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Jeanette McKee		✓
Rep. Bill Ryan	✓	
Rep. Dore Schwinden	✓	
Rep. Roger Somerville	✓	
Rep. Joe Tropila	✓	
Rep. Jack Wells		✓



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

Proxy for Highways 2/13/95

Jeannette McKee

HB 364 yes

& vote yes with chairman
on others

Pages

133 Yes

364 1319 No

396 Yes

Pages

Feb. 13

Highways



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

2-13-95.

Rep. Pat Galvin has my
proxy on all votes before
Highways & transportation this
day.

Don Schuler

EXHIBIT 1
DATE 2/13/95
HB 448

AMENDMENT TO HB448

Section 1. Section 69-14-721 is amended to read:

LINE 17; after the word trains, add the words, and track maintenance.

Justification; In the operation of modern diesel engines on railroads, very few fires are attributed to these engines, not as in the days of the old steam engines. Most fires along the railroad tracks are caused by maintaining the tracks: such as grinding, cutting, welding, and other track maintenance.

This amendment is offered by the Montana Fire Districts Association.

EXHIBIT 2
DATE 2/13/95
HB 448

Amendment to House Bill 448

Introduced by Representative Somerville

Section 1, line 12:

After the words reasonable distance insert within it's right of way.

EXHIBIT 3
DATE 2/13/95
HB 456

ROAD KILL GAME STATISTICS FROM THE HIGHWAY PATROL RECORDS

(THESE REFLECT WILD ANIMALS ONLY , DOMESTIC ANIMALS ARE NOT INCLUDED IN THESE STATISTICS.)

THE HIGHWAY DEPARTMENT FEELS THESE NUMBERS REPRESENT LESS THAN HALF OF THE ACTUAL ROAD KILL BECAUSE REPORTS ARE ONLY MADE FOR PEOPLE HAVING COMPREHENSIVE INSURANCE ON THEIR VEHICLE, OR IF AN INJURY OCCURS.

1990 713 REPORTED ROAD KILLS

1991 748 REPORTED ROAD KILLS

1992 851 REPORTED ROAD KILLS

1993 868 REPORTED ROAD KILLS

TOTALS FOR THIS TIME PERIOD **3,180** REPORTED ROAD KILLS

FATAL ACCIDENTS IN THIS TIME PERIOD **10**

INJURIES DURING THIS TIME PERIOD **660**

EXHIBIT 4
DATE 2/13/95
HB 456
THB456.HP

House Bill No. 456
February 13, 1995
Testimony presented by Pat Graham
Montana Fish, Wildlife & Parks
before the House Highways and Transportation Committee

Montana Fish, Wildlife, & Parks supports House Bill 456 because it addresses a growing problem for this department as well as for the Department of Transportation. In the past, wild animals killed by motor vehicles are normally pulled off the side of the highway or road and allowed to naturally recycle. With the increasing population of both humans and wildlife, collisions are becoming far more frequent, and often occur in areas of homes. The tolerance for dead animals lying along roadways, particularly deer, continues to go down.

The Department of Transportation (DOT) picks up most large road-killed animals on highways and the interstate system. The Department of Fish, Wildlife, and Parks responds to most in-town, and many county calls for removal of animals. In the Kalispell area, the local Food Bank assists with removal, and utilizes what they can.

Neither agency is adequately funded to perform this task, which will continue to increase as Montana's population grows. The majority of removal by FWP is done by Game Wardens, which uses time that could be better spent on higher priorities with the limited hours available. In addition, the funding currently comes from hunting and fishing license revenues.

The bill provides funding for the pickup and disposal of road-killed wildlife through an additional motor vehicle registration fee. Since roadkills result from motor vehicle use, this is a reasonable funding source.

The legislation would also allow DOT or FWP to contract pickup and disposal, with joint rule-making authority to address issues that may arise, and would allow for pickup by Food Banks. It would also allow private citizens to obtain a permit to use what they have hit if they wish. Commercial use of animal parts could also be addressed through rule making.

Amendments to House Bill 249 (Introduced Copy)

1. Page 3, line 1.
Strike: "a"
2. Page 3, line 2.
Strike: "day-care center, as defined in 52-2-703, a long-term care facility, as defined in 37-9-101,"
3. Page 3, line 3.
Strike: "or"
Insert: "or"
4. Page 3, line 3.
Strike: "a"
5. Page 3, line 4.
Strike: "day-care center, or a long-term care facility"
6. Page 3, line 5.
Following: "25"
Insert: "80%, rounded down to the nearest whole number evenly divisible by 5 of the limit that would be set on the basis of the engineering and traffic investigation required in (1), but not less than"
7. Page 3.
Following: line 6.
Insert: "(2) If warranted by the engineering and traffic investigation, a local authority may adopt variable speed limits to adapt traffic conditions by time of day provided such variations comply with 61-8-206."
Renumber: subsequent subsections

HOUSE BILL NO. 249

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENT REGULATION OF TRAFFIC; ALLOWING A CITY TO REGULATE ROLLERBLADING ON CITY STREETS; ALLOWING A LOCAL AUTHORITY TO REDUCE THE SPEED LIMIT NEAR A DAY-CARE CENTER OR A LONG-TERM CARE FACILITY; AND AMENDING SECTIONS 7-14-4102, 61-8-303, AND 61-8-310, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-14-4102, MCA, is amended to read:

"7-14-4102. Regulation of trafficways and public grounds. The city or town council may:

(1) regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;

(2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;

(3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;

(4) provide for and regulate street crossings, curbs, and gutters;

(5) prevent horseracing or Immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;

(6) regulate or prohibit coasting, skating, sliding, rollerblading, or tobogganing on the streets or alleys or other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals."

Section 2. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions – basic rule. (1) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead. The person shall drive a vehicle so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(2) When no special hazard exists that requires lower speed for compliance with subsection (1) of this section, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 is lawful, but a speed in excess of those limits is unlawful:

- (a) 25 miles per hour in an urban district;
- (b) 35 miles per hour on a highway under construction or repair or on a highway being surveyed;
- (c) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour.

(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(4) The speed limits set forth in this section may be altered by the highway commission or a local authority as authorized in 61-8-309, 61-8-310, and 61-8-313.

(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition."

Section 3. Section 61-8-310, MCA, is amended to read:

"61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

- (a) decreases the limit at an intersection;
- (b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime;
- (c) decreases the limit outside an urban district, but not to less than 15 miles per hour; or
- (d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, a designated crosswalk, as crosswalk is defined in 61-1-209, that is close to a school, or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5 of the limit that would be set on the basis of the engineering and traffic investigation required in (1), but not less than 15 miles per hour.

EXHIBIT 6
DATE 2-13-95
HB 249

1 (2) If warranted by the engineering and traffic investigation, a local authority may adopt variable speed
2 limits to adapt traffic conditions by time of day provided such variations comply with 61-8-206.

3 (3) A board of county commissioners may set limits, as provided in subsection (1)(c), without an
4 engineering and traffic investigation on a county road, as defined in 60-1-103.

5 (4) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set
6 a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303
7 for an urban district.

8 (5) An altered limit established as authorized under this section is effective at all times or at other times
9 determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

10 (6) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed
11 limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The
12 commission shall set these limits in accordance with 61-8-309."

13 -END-

MEMO

To: Rep. Bill Boharski, House Local Gov. Comm.
From: Mary Hensleigh
Date: Monday, January 23, 1995
Subject: House Bill 249

As a parent, former crosswalk guard and President of the Willison Science & Technology School Parent group in Bozeman, Montana I would like to urge you to pass House Bill 249. For the safety of all the children and adults that have to cross Babcock Street it would make crossing this dangerous street much safer if the speed limit was 15mph. Having a traffic light to stop the traffic completely would also be to the benefit of all that have to cross this street. The injury or death of a child due to excessive speed on this street is inevitable unless we slow the traffic down. Please vote YES. I sincerely appreciate all the time and effort your job requires. Thank you.

EXHIBIT 8
DATE 2/13/95
HB 249

Ned Levine

Principal

Willson Science and Technology School
Phone: (406) 585-1533 Fax: (406) 585-1504
E-mail: WILEVI@HAWKS.BPS.MONTANA.EDU



Bozeman Public Schools
404 W. Main
Bozeman, Montana 59715

Committee Chair Representative Bill Boharski
House Local Government Committee
State Capitol Building
Helena, Montana

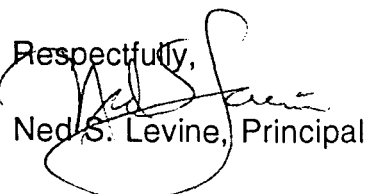
The Honorable Bill Boharski and Committee Members:

I am writing this letter in strong support for HB 249. It will allow us to establish a 15 mph School Zone on an arterial street. The Bozeman Public Schools have lived through past tragedies, including a pedestrian death, and many near misses within our school crosswalks. I believe that future tragedy could be averted by a more sensible traffic speed. We have worked with all government agencies we could in the past three years, both state and local, to correct an inherently dangerous situation.

The Willson Science and Technology School is bounded by two major arterial thoroughfares in Bozeman: on one side we have Main Street and on the other Babcock. Both streets have manned pedestrian crosswalks for student safety. Across Babcock Street from our building is the Bridger Alternative High School. We also have a great deal of pedestrian traffic to our residential neighborhood, between school sites for transportation needs, and to the Willson auditorium for public events.

While Main Street traffic is controlled by stop signals, our attempts to change traffic flow on Babcock have been met with repeated frustrations. Babcock Street, as a major arterial, supports an extremely heavy, one way traffic pattern. Cars traveling at 35 mph cannot stop/ do not stop in a timely manner for pedestrians, even when the crossing guard is present.

We have convinced our local planning and traffic boards that this change is necessary. Please allow them the authority to implement this safeguard for our children.

Respectfully,

Ned S. Levine, Principal



Bozeman Public Schools
611 S. 8th
Bozeman, Montana 59715

EXHIBIT 9
DATE 2/13/95
HB 249
Jim Bruggeman
Principal
Irving School

Phone: (406) 585-1600

Mr. Bill Boharski, Chair
House Local Government Committee
State Capitol, Helena MT 5960

Dear Representative Boharski:

I am the principal of Irving Elementary School (Bozeman School District #7). On their route to and from school, our students have to transverse three street crossings, which, even though they are supervised by a school crossing guard, are incredibly dangerous. Currently, the crossing closest to our school is posted with a 15 mile-per-hour speed limit and patrolled by the Bozeman Police Department to the best of their ability (our police department has many guarded crossings to watch). But the speed limit does allow our police through ticketing to establish a zone of protection around our school which they cannot at the other crossings. Consequently, this is our safest crossing. I shudder to think what will happen if the 15 mile-per-hour limit were abolished. I fear that lifting the current limits will result in dead and injured school children.

Particularly in the winter on icy streets, 25 or 35 mile-per-hour limits simply do not allow enough time for drivers to brake for students and guards. This has been the case at our crossings which do not have a 15 mile-per-hour posted speed limit. We have recorded in the past three years at least twenty-five incidents in which automobiles have nearly struck a child or a crossing guard at the crossings *without* a 15 mile-per-hour limit. On two occasions when I have substituted for a crossing guard, I have nearly been hit by speeding or otherwise careless drivers. It is only a matter of time before someone is killed or seriously hurt at these crossings.

I urge you to do whatever you can to assure that our city officials have the power to impose 15 mile-per-hour limits around schools and guarded crosswalks. Please put a higher value of the lives of our children than on the convenience of motorists.

Thank you.

Respectfully,


Jim Bruggeman
Principal

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Highways & Trans. COMMITTEE BILL NO. HB 456, 249, 448
DATE 2-13-95 SPONSOR(S) Rep. Ream, Rep. Marshall, Rep. Scherwill

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
D.B. Ditzel	BRO. OF LOCOMOTIVE ENGRS	HB 448 ✓	
JAMES A LOFFTOS	MT FIRE DIST ASSN	HB 448 ✓	
Jim Wysocki	CITY OF BOZEMAN	Amended HB 249	
Naureen Cleary-Schwarze	WIFE	HB 448	X
Pat Levin	BNAR	HB 448	
Steve Turkiewicz	MT. Auto Dealers	HB 456	X 456
Dean Roberts	DOJ		X 456

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.