MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN LARRY TVEIT**, on January 10, 1995, at 1:00 P.M.

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: Senate Bill 34 Senate Bill 43
Executive Action: None

HEARING ON SB 43

{Tape: I; Side: A; Approx. Counter: 1.3; .}

Opening Statement by Sponsor:

SENATOR TOM BECK, SD 28, Deer Lodge, said SB 43 was an act authorizing the Department of Transportation to reserve a conservation easement in land or interest in land sold by the State, and was strictly dealing with the Highway Department. He said the second provision of the Bill was to eliminate a provision in the law that would allow the land owner, to whom the Department of Transportation acquired land from, to have the right of first redemption. **Senator Beck** said he would have Gary Gilmore of the Department of Highways explain the Bill in detail.

Proponents' Testimony:

Gary Gilmore, Operations Engineer for the Department of Transportation Engineering Division, said he was attending as a proponent of SB 43, a bill requested by the Montana Department of Transportation (MDT). He said the proposed bill had two objectives: (1) to amend the section of current law allowing the MDT to reserve a conservation easement on excess land sold by the State and (2) to repeal a section of current law which eliminated the option given to original owners or their successors to match the highest bid when selling excess land.

Mr. Gilmore explained that when dealing with a conservation easement, under present Statute, land or an interest in land, may be conveyed by a deed or patent of conveyance"without covenants". He further commented that the reserve conservation easement the Department was requesting would essentially be the same as provided in current law for outright purchase of a conservation easement.

Mr. Gilmore characterized defining excess land as a complex decision based on environmental economics and the need of other Government Agencies as well as Primary Highway purposes. **Mr. Gilmore** articulated the need to insure sufficient right-of-way to maintain the integrity of existing highway and safety for the traveling public throughout the process of determining a parcel of land as excess.

Mr. Gilmore maintained that the Montana Department of Transportation was required to become more and more involved with environmental issues such as wetlands replacement sites, hazardous waste contamination and the protection of scenic integrity of the highway. He said the proposed amendment would allow the MDT flexibility and better management possibilities for the land it now owns. He said MDT would be able to reserve conservation easements and still sell excess land to the private sector; thus retaining certain rights for protection of wetland areas, water quality, corridor preservation, wildlife habitat, erosion control and other issues. **Mr. Gilmore** contended that wetlands banking was becoming a very critical issue and MDT would not consider land to be excess without the ability to retain conservation easements for replacement of any wetlands damaged or lost due to highway construction.

Mr. Gilmore said the second portion of SB 43 was to repeal the option of the former owner or their successor to match the high bid in excess land auctions. He described the presently required location process as difficult, time consuming and an additional burden for MDT in the management of excess land.

Mr. Gilmore further explained that highway right of way sometimes created an uneconomic remnant of land on the opposite side of the highway from the major parcel owner or successor in interest. He contended the uneconomic remnant could create potential problems

such as the newly created adjacent landowner can never fairly outbid the original owner or successor in interest, thus creating a possible hostage situation by the original owner or successor in interest. **Mr. Gilmore** then used the blackboard to draw grids labelled A, B, C, and D to illustrate development of right-of-way needs and how intersecting section lines ultimately form uneconomic remnants of no use to the original property owner. He cited the new adjacent person as the legitimate person to have the parcels, but the former owner or his successor has the right to meet the high bid and can effectively shut off the new adjacent owner from access to the highway.

Mr. Gilmore said current law prevents the MDT from selling excess land with access/easement covenants, thus potentially land locking the landowner abutting the excess land parcel.

Mr. Gilmore summarized by stating that repealing this section of law would potentially free up more excess land for sale, expedite the sale and provide for a more equitable and fair sale of excess land to all interested parties. **(EXHIBIT #1)**

Opponents' Testimony:
John Brenden, Scobey farmer and businessman, stated he opposed SB 43 because it could set a precedent regarding the sale of State Lands. He remarked on legislation presented last Session which dealt with the disposition of State Land, particularly isolated tracts. He further stated that someone may want to purchase a tract of these lands, but may not want covenants on it. He maintained that covenants can be bad, because easements and covenants can prevent lands from being returned to practices engaged in prior to attaching covenants or easements.

Mr. Brenden voiced concern regarding additional legislation being drafted which dealt with the sale of certain State Lands. He maintained that SB 43 could lower the price of State Land tracts offered for sale, because the price of those portions of land would lower with each restriction and covenant attached. He explained that restrictions would make it necessary to be more specific as to the definition of the ultimate use of the land. He related SB 43 to the programs within Fish Wildlife & Parks, Nature Conservancy, and Montana Heritage where a lot of land and easements were being purchased in Montana. He explained that these easements could be written between the landowner and whomever as to however they agree upon their sale purchase.

Mr. Brenden said he was concerned, coming from rural America and rural Montana, when there were these types of easements which would impede economic opportunities in the state of Montana. He further stressed agriculture of all kinds as the "king of economics" in Montana. He reinforced his concern of precedent setting with the type of easements described in SB 43 and their affect on private property. He stated his hope that the easement section be amended out of the bill on the grounds that it was a precedent setter and would hurt economic enterprise.

Mr. Brenden said he found it ironic that a few years ago the Department of Transportation, along with the Northwest Power Planning Council tried to do some wetlands banking with Fish Wildlife & Parks (FWP), and FWP didn't want to do it, and wanted to know why the change today.

Questions From Committee Members and Responses:

SENATOR BARRY "SPOOK" STANG said that he carried this bill for the Department a few years ago and the Stockgrowers used the example: When the little parcel you wanted to sell may have a ditch that flowed through it which fed the property of the original landowner, and their concern had been that somebody else could buy that land and shut off the ditch. He asked Mr. Gilmore if there was anything in this Bill which prohibited that from happening? **Mr. Gilmore** said there was nothing in the Bill regarding that and they had not thought of addressing that particular issue.

SENATOR REINY JABS asked if the easements would specify as to location or could that be added later. **Mr. Gilmore** answered that it was absolutely specific and may not be on the entire parcel. He elaborated that the easements would not be on all excess parcels, just on parcels needed to replace wetlands destroyed or removed by the Department. He stated that this was all the Department was concerned with.

SENATOR JABS said, when the Department buys property for right-of-ways and other needs all of the time, why the interest for wetlands and these other conservation things all of a sudden? **Mr. Gilmore** cited Federal requirements as the reason.

SENATOR JERGESON asked if, when the Department gained an easement to build a highway and they destroyed a wetland, federal government required them to somehow mitigate or replace that? **Mr. Gilmore** stated that was correct.

SENATOR JERGESON asked if the Bill was to give them a tool by which to meet those mitigation requirements? He further questioned Mr. Gilmore as to what the Department's alternative to meeting those requirements would be? **Mr. Gilmore** said the Department was presently purchasing land to build wetlands on and if the Bill was not passed the Department would not sell that land back to the landowners. He asserted the Department's need to maintain that land as wetland, and under present law the land would not become excess land.

SENATOR ARNIE MOHL asked if, on the blackboard example, there was any way MDT could get an easement to the new adjacent landowner? Could a portion of the land be kept by MDT, to insure an access easement, or could the Bill be amended to that effect? **Mr. Gilmore** said the law stated that if there were covenants or easements on property at the time of purchase, they must remain, but MDT cannot add more.

SENATOR MOHL questioned how access would be handled with a road change which crossed land which did not have an easement at the time of purchase. **Mr. Gilmore** stated that if a landowner had access at the time road construction began, and reconstruction eliminated access, MDT would either purchase that access from him or provide other access.

SENATOR MACK COLE queried, as to whether there were reasons, in addition to wetlands, for covenants? **Mr. Gilmore** said he was sure there were needs for repairing vegetation along a stream, contamination of ground and hazardous waste types of things.

SENATOR JABS asked for clarification regarding MDT's inability to sell land with a wetlands designation which could not be reserved? **Mr. Gilmore** stated that MDT probably would not sell that land because law required them to maintain it as a wetland, and retention of ownership would insure that end.

CHAIRMAN LARRY TVEIT asked if MDT wanted to retain a conservation easement in the land they sold, in order to reacquire that land if needed? **Mr. Gilmore** replied no, the conservation easements would only be such that the land would remain a wetland. He said MDT had the present ability to sell the property to the land owner, and repurchase the conservation easement back. He stated that they just were unable to sell property with conservation easements on it.

CHAIRMAN TVEIT asked if it was possible, with rule changes by another agency, for wetlands to become wetlands, when they had never been designated as such before? **Mr. Gilmore** stated that if there were no wetlands, MDT would not want a conservation easement.

SENATOR JABS asked Mr. Brenden if he could comment in regard to Mr. Gilmore's statement that federal law required MDT to keep a conservation easement on the wetlands? **Mr. Brenden** commented that he was not up to date on the regulations, but he stated that we have been blackmailed by the federal government long enough and thought it was time to stand up for ourselves. He announced that if the Committee wanted to create a precedent here, on easements in Montana, just wait until concerned parties learned of the consequences. He recognized the problems MDT has had regarding this matter, but remarked that there had been previous efforts to do mitigation banking with Fish Wildlife & Parks before. He further elaborated that Fish Wildlife & Parks wouldn't do this, and he advised that the proper question may be whether Fish Wildlife & Parks was behind this?

SENATOR STANG asked that a copy of the section of statute being repealed, be provided Committee members before executive action. **CHAIRMAN TVEIT** said copies would be provided before executive action was taken, probably Tuesday the 17th, and quickly read statute 60-4-204.

Closing by Sponsor:

SENATOR BECK said he thought the Committee had a pretty good picture of the reason for the Bill, and that he would have to agree with Former Senator Brenden that everyone was getting tired of federal regulations, but presently they had to be lived with. He contended that was particularly true of the Highway Department, because they received practically all of their funds from Federal sources. **SENATOR BECK** defined SB 43 as a tool to utilize when dealing with conservation easements to only specifically identify that area which MDT has to maintain as a wetlands, while allowing the sale of the balance of the land to be sold for other purposes. He articulated the second portion of SB 43 as the right to first refusal. He stated he didn't honestly know, when you repealed the right of first refusal, if there were other MCA Codes which would be affected. **SENATOR BECK** recommended the Committee staff researcher check that out. He said the Committee knew what MDT was asking, and if this wasn't the proper way to address the issue, he was sure the Department was receptive to whatever approach was available. He said he knew there were other areas of Statute where there may be the right to refusal, and stated he did not know if this repealer would affect all areas of law. He maintained that he thought the Bill was alright and asked the Committee give favorable consideration, and offered to reappear if he could be of further assistance.

CHAIRMAN TVEIT announced the Hearing on SB 43 as closed. He then announced opening the Hearing on SB 34.

HEARING ON SENATE BILL 34

{Tape: 1; Side: A; Approx. Counter: 34.9: .}

Opening Statement by Sponsor:

SENATOR CHARLES "CHUCK" SWYSGOOD, Senate District 17, Dillon, announced he was bringing before the Committee Senate Bill 34 which did about five things. He portrayed the Bill as mostly bringing Montana Law in compliance with federal statute, as related to alcohol testing of commercial drivers and definitions, and the rest of the Bill dealt with setting up a pilot program allowing third party testing for skills related to commercial drivers licenses. Senator Swysgood stated there were others present to explain SB 34 and he reserved the right to close.

Proponents' Testimony:
Brenda Nordlund, Assistant Attorney General with the Motor Vehicle Division of the Department of Justice,
said she was prepared to do a section by section analysis of the Bill if the Committee was interested in that type of detail. She said the Bill was basically several amendments which were

necessary to bring Montana law into compliance with federal regulations regarding the licensing of commercial drivers. She identified the first amendment as rather small in nature and not a compliance amendment. She said it appeared in section one of the Bill, where the definition of what a commercial motor vehicle (CMV) was, and made explicit reference to the fact that a manufacturers rated capacity would be used to determine whether a vehicle was a CMV. She stated they had been using that determination within their regulations for years and this amendment would simply recognize that procedure within the law.

Ms. Nordlund defined the second amendment as within section one, and dealing with the farm exemptions to the commercial motor vehicle definition. She stated that in the 1993 Legislature there was an amendment made to incorporate, among others, fertilizer spreader trucks and fertilizer trailers into the 35% GVW fee statute. She explained that the previous commercial motor vehicle definition structure contained an internal incorporation, by reference, to the 35% GVW fee statute; therefore each time the 35% GVW fee statute changed, the commercial motor vehicle definition changed and not all of those changes comported with federal regulations. **Ms. Nordlund** stated that when fertilizer spreader trucks and spreader trailers were treated as something other than a commercial vehicle we became out of compliance. She interpreted this amendment as a description of the vehicles to be excluded from the commercial motor vehicle definition. She said the amendment followed the federal waiver program and utilized language adopted in 1988. She articulated the amendment as exempting farmers who own and operate their vehicles either within one hundred and fifty miles of headquarters, or within the state of Montana and not hauling for hire from the Commercial Motor Vehicle definition. She said fertilizer spreader trucks and trailers, and soil conservation contracting efforts would no longer be excluded from this CMV definition.

Ms. Nordlund noted the next exemption to the CMV definition as a clarification regarding fire fighting vehicles.

Ms. Nordlund cited sections four through seven and section twelve as speaking to the pilot project being proposed which would allow employers of commercial motor vehicle operators to administer their own skills test to their trainee drivers prior to issuance of a Commercial Drivers License by the Department of Justice. She cited present law as requiring trainees to obtain an appointment with the Commercial Driver Examiner for administration of the skills testing within the locale in which they would be operating. **Ms. Nordlund** depicted the skill testing process as extremely labor intensive and time consuming for the applicant and examiner, and described the proposed project as an experiment to see how well it worked. She stated that there was a sunset clause which would abandon the program four years from now in case the project proved unsuccessful. She said the program would allow an employer who had met the Department of

Justice's criteria and training, equivalent to that of a driver examiner, to administer the skills test to their own driver trainees. She said the program would be small and the Department was looking only at employers and not setting up schools for skills testing, and was designed to use the current FTE they now have.

Ms. Nordlund cited the other major portion of the Bill as applicable to the applied consent law, which applied to the commercial drivers license holders. She said those changes appeared in sections eight and nine, and was another compliance issue required in regard to enabling the testing by law enforcement officers when they suspected a driver had met or exceeded the .04 alcohol concentration level and upon any measurable or detectable amount of alcohol. **Ms. Nordlund** explained the language as simply clarifying that the officer could request testing and if the test results showed less than .04, the only consequence to the driver would be their being placed out-of-service for the next twenty-four hours. She explained that there would be no driving record created with the Motor Vehicle Division, and no drivers license suspension. She stated that the law already provided for allowing the officer to place the driver out-of-service if measurable or detectable alcohol was present.

Ms. Nordlund announced another small amendment appearing in section three which would bring Montana within federal compliance when dealing with the licensing exemption law. She said current Montana law allowed an exemption for a Commercial Drivers License (CDL) holder only if they met an age requirement, and the Montana CDL age requirement did not comport with federal law. She urged the Committee to make a Do Pass recommendation on behalf of the Department of Justice, and offered to answer any questions from the Committee. **(EXHIBIT #2 & #3)**

Ron Ashabraner, State Farm Insurance Companies, said his Companies insured approximately one third of the insured private passenger automobiles in Montana, and they urged passage of SB 34.

Pam Langley, Montana Agri-Business Association, cited section four, page four, end of the first paragraph regarding restricted CDLs available to members of their Association as important, and stated they were in support of the exemptions. She said their Association had been working on these restricted CDL's, at a federal level for two years, as well as with the Department of Justice for that period of time. She stated this amendment would enable members, when they had to hire new people at the beginning or busy time of the season, to license the newly hired more quickly. **Ms. Langley** said restricted CDL's only permitted six months of travel within 150 miles of location, with other restrictions, and were basically used in emergency situations.

She further stated that very few (eleven in 1994) were ever issued. She explained that if employment was extended the party could complete his full CDL at a less busy time of year.

Dave Galt, Montana Department of Transportation, stated the Department of Transportation went on record in support of SB 34, as it moved state law into compliance with federal law in CDL areas.

Ben Havdahl, Executive Vice-President of the Montana Motor Carriers Association, stated they wanted to go on record in support of SB 34 and the modifications and changes to comply with the federal CDL Program. He added a comment regarding section six, that in 1988-89 when the CDL Program was adopted in Montana the Montana Motor Carriers Association offered this very proposal, but with an authorization outside of the Department for skill testing by their Association for the large volume of drivers making the conversion from chauffeurs licenses to CDL's. He said the Department opposed, and Legislature defeated the proposal. He was surprised that at this late date the Department was bringing the program back to the Legislature. He stated they had no problem with the proposal, but did not know of any great influx of demand for road tests for drivers being converted.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR BARRY "SPOOK" STANG asked if this pilot program being set up would be available to people other than employees of the particular corporations participating, or just to their employees? **Brenda Nordlund** said it would only be open to employees of a corporation or company recognized by the Department as a certified CDL requirement testing program participant.

SENATOR STANG asked how many companies the Department would be using? **Ms. Nordlund** said they would try bringing the companies on one at a time, and stated she wasn't sure the Department had established how many could be brought on in any biennium. She then asked the question be referred to **Anita Drews** of the **Field Operations Bureau of the Department. Anita Drews** said she felt Brenda Nordlund had correctly stated that the entities would be added slowly to insure that the standards of the Program were being met and the Department was able to monitor the Program. She stated that the Department intended to handle the Program with existing staff. She further answered, maybe five to ten companies within the first couple years.

SENATOR STANG asked if it was envisioned that almost any major trucking company in Montana would be able to give tests, maybe in ten years time or so? **Ms. Drews** answered yes, as the Program

developed and showed hope for the future, the Department hoped to continue expanding the Program. She stated that if the Program did not show these successes, then it would have a sunset in four years.

SENATOR STANG further questioned whether the Department envisioned in the future an organization such as the Montana Motor Carriers being part of that group? **Ms. Drews** answered yes; at this point the Department had not closed their mind to say it was only going to be certain companies.

SENATOR LINDA NELSON asked what affect, if any, SB 34 had on eighteen year olds who were custom combining drivers who actually left the state? **Ms. Drews** said SB 34 itself did not change any of the requirements which have been set for custom harvesters. She stated that right now, in Montana, there was a provision for a sixteen year-old to operate a Class B vehicle within one hundred and fifty miles from point of operation, and eighteen year olds could operate in Montana and their Department could issue, an intrastate license for Class A. She said other states would have to decide reciprocity as to whether drivers pass through, and that federal law required twenty-one years of age to drive interstate.

CHAIRMAN TVEIT stated he had received a phone call concerning legislation changing the law from eighteen to sixteen years old, and asked if SB 34 was the Bill which addressed that language? **Ms. Drews** answered yes, and was the Chairman speaking of the call from Mr. Waller? **CHAIRMAN TVEIT** said he was. **Ms. Drews** continued that she had also received a call from Mr. Waller concerning this Bill, and she had also explained to him that the Bill did not change the age requirements. She explained that the change was that old statute 61-1-104 used to say a non-resident who is eighteen years of age may operate in the State of Montana as long as they have a chauffeurs license. She stated they had tried to clean that language a little when it went into commercial, by just deleting chauffeur and saying commercial, but federal regulations required removing that age standard and state 'a nonresident who has in their possession a valid commercial drivers license may operate in the state of Montana'.

SENATOR ARNIE MOHL asked how SB 34 affected licensing procedures for a CDL for hazardous material? **Ms. Drews** stated that a hazardous endorsement only required a written test and the Department would continue to give the written tests. She said this part of the Bill was only for skills testing and the Department would continue to administer all written tests, as per federal law.

CHAIRMAN TVEIT asked, if in the first paragraph of section eight where it said .04 was stricken, was that a federal law or why was it stricken and now testing was basically to be based on whether or not someone thought there may be something wrong and could he still be found guilty? He asked what the measurement would be

when this was stricken? **Brenda Nordlund** answered that Federal Regulation 49-392.52 states that no person shall consume an intoxicating beverage regardless of its alcohol content, be under the influence of an intoxicating beverage, or have any measured alcohol concentration or any detected presence of alcohol while operating or in physical control of a motor vehicle. She said the companion Federal Regulation was the obligation which fell on the Department, occurring under part 383.72, the implied consent to alcohol testing, which was the testing and standards required for CDL issuance. She further stated that those tested would not be found guilty of anything.

CHAIRMAN TVEIT asked if this was just complying with federal regulations? **Ms. Nordlund** answered yes; it was only asking them to take the test, and no suspension would occur unless test results exceeded the .04 or they refused the test. She further clarified the .04 was still in place elsewhere.

SENATOR STANG asked if this only pertained when a CDL license holder was driving a commercial vehicle and not their personal car? **Ms. Nordlund** stated that these regulations would have to be applied in the operation of a commercial motor vehicle.

SENATOR MACK COLE asked if it had been stated earlier that if the tests revealed something less than .04 the driver would be out of service for 24 hours. **Ms. Nordlund** answered yes there was a consequence, not a criminal consequence or a licensure action, but that was as current law already provided.

SENATOR MOHL stated that in Section Eight, Line 5 of Page 7 it stated 72 hours? **Ms. Nordlund** stated that reference was regarding a refusal to test.

CHAIRMAN TVEIT asked if fertilizer trucks were now exempt? **Senator Swysgood** said SB 34 would waive the skills and knowledge test for farm related service industries who otherwise meet the requirements of a seasonal commercial license. He assumed section four addressed that, and had Ms. Nordlund clarify. **Ms. Nordlund** said they were defined as a commercial motor vehicle, but it was correct that farm related service industries would be able to obtain a seasonal CDL.

Closing by Sponsor:

SENATOR SWYSGOOD stated that it had been attested that most of SB 34 dealt with bringing state law within federal compliance and he thought the real gut of the Bill was as it related to alcohol. He further explained that he thought that was because of the new federal law which went into affect January 1st of this year. He said the commercial motor carriers industry regulation dealt with alcohol testing of all new employees before hiring the same as they had to drug test. He stated that the new law which began the first of the year dealt with companies with fifty or more

employees and companies with less than fifty employees go under the same regulation next January 1st. **SENATOR SWYSGOOD** stated that there could be some degree of concern regarding the measurable and detectable amount of alcohol, but that was the law. He said the good thing about the regulation was that nothing went on the driver's record unless the test was over .04. He remarked that he felt anyone driving under the influence should be off the road anyway. He said that even though the Bill created a lot of extra cost to those in the industry, they strongly supported the program for testing of skills for CDL's.

{Tape: 1; Side: B; Approx. Counter: 67; Comments: notes were used to fill in the statement made during time used to turn the tape and restart..}

SENATOR SWYSGOOD referred to Senator Stang's earlier question and related that he had a concern related to rural area testing, and whether one of the Industry's companies could be set to do the testing. He stated that this could be a matter that may need to be talked over with the Department during executive session on the Bill. **SENATOR SWYSGOOD** reiterated that SB 34 basically brought the state into compliance and asked the Committee for a DO PASS recommendation.

CHAIRMAN TVEIT declared the hearing on SB 34 closed, and reminded testifiers to be sure they signed the register. He announced that one week from today there would be a hearing on one bill and he wanted to take executive action on both of the bills heard today at that time.

ADJOURNMENT

Adjournment: 2:04 p.m.

Larry Tveit
SENATOR LARRY J. TVEIT, Chairman

Carla Turk
Carla Turk, Secretary

LJT/ct

MONTANA SENATE
1995 LEGISLATURE
HIGHWAYS AND TRANSPORTATION COMMITTEE

ROLL CALL DATE 1-10-95

NAME	PRESENT	ABSENT	EXCUSED
MACK COLE	X		
RIC HOLDEN	X		
REINY JABS	X		
GREG JERGESON	X		
ARNIE MOHL	X		
LINDA NELSON	X		
BARRY "SPOOK" STANG	X		
CHUCK SWYSGOOD, VICE CHAIRMAN	X		
LARRY TVEIT, CHAIRMAN	X		

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SENATE HIGHWAYS
EXHIBIT NO. 1
DATE 1/10
BILL NO. SB43

Testimony for SB 43

Mr. Chairman and members of the committee. For the record, my name is Gary Gilmore, I am the Operations Engineer for the Engineering Division of the M.D.T. I am here today as a proponent for SB 43, a bill requested by the M.D.T.

The proposed bill has two objectives, to amend a section of current law to allow MDT to reserve a conservation easement on excess land sold by the State, and to repeal a section of current law to eliminate the option given to original owners, or their successors, to match the highest bid when selling excess land.

First the conservation easement.

Under the current Statute, "Land or an interest in land, may be conveyed by a deed or patent of conveyance <u>without covenants</u>."

The reserved Conservation Easement, we are requesting, would essentially be the same as that provided in current law for outright purchase of a Conservation Easement.

Many factors are considered when determining whether or not a parcel is considered excess land to the Department, and includes environmental, economics, the need of other

Governmental agencies, as well as primary highways purposes need. In other words, to insure there is sufficient right of way to maintain the integrity of the existing highway and safety for the travelling public.

The MDT is becoming more and more involved with environmental issues such as wetlands replacement sites, hazardous waste contamination and the protection of scenic intergrity of the highway.

The proposed amendment would allow the MDT flexibility and better management possibilities for the land that it owns.

MDT would be able to reserve Conservation Easements and still sell excess land to the private sector, thus retaining certain rights for protection of wetland areas, water quality, corridor preservation, wildlife habitat, erosion control and others.

It just does not make sense to sell excess land with wetland possibilities or other environmental needs that the Department may have to eventually purchase.

Wetlands banking is becoming a very critical issue and concern to the Department because of our need to purchase replacement sites for any existing sites that are damaged or removed from the environment.

EXHIBIT 1
DATE 1-10-95
SB 43

The ability to reserve various Conservation Easements would save the State much time and money and also make more excess land available to the private sector.

MDT could retain whatever rights are needed for future mitigation and thus not have to repurchase additional land or interests in land in the future, possibly at a much higher value.

If the department cannot retain conservation easements we would have no choice but to retain the land as it would not be considered excess land.

The second part of the bill is a repealer, repealing the option of the former owner or their successor to match the high bid on excess land auctions.

This procedure is time consuming and sometimes difficult to locate the original owner, or successor in interest, as required by law.

It places an additional burden on MDT in the management of excess land.

The original owner, or successor in interest, can still bid on the excess land as anyone else could.

Another situation that could occur is when a highway right of way splits a parcel of land, creating an uneconomic remnant on the opposite side of the highway from the major parcel owner or successor in interest. The uneconomic remanent, or excess land, would now lie on the opposite side of the highway.

This situation creates several potential problems, including, the landowner on the opposite side of the highway and adjacent to the excess land, can never fairly outbid the original owner, or successor in interest and could be held hostage by the original owner, or successor in interest.

The way law is currently written, the MDT cannot sell excess land with covenants, providing for access/easement, thus potentially land locking the landowner abutting the excess land parcel.

Repealing this section will potentially free up more excess land for sale, expedite the sale and provide for a more equitable and fair sale of excess land to all interested parties.

I am available to address questions, and urge your support for passage of this bill.

Thank you.

SENATE HIGHWAYS
EXHIBIT NO. 2
DATE 1/10/95
BILL NO. SB 34

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

MEMORANDUM

TO: CARLA TURK
Secretary, Senate Highways Committee

FROM: BRENDA NORDLUND,
Assistant Attorney General

DATE: January 10, 1995

SUBJECT: SB 34 - General Revision to Commercial Vehicle Laws

Attached is a copy of some written materials that I prepared for myself as a section-by-section analysis of the bill. Although much of the material was referred to in my extemporaneous testimony, this document is not a verbatim copy of what I said before the committee. However, if having this document assists you in any way with your transcription of the meeting, please rely on it in whatever manner you see fit.

If you have any questions, you can reach me at 444-2026. Thanks.

bn/brf

Enc.

SECTION BY SECTION ANALYSIS OF SB 34

SECTION ONE:

The definition of "commercial motor vehicle" is changed to

(a) reflect the current regulatory practice of using manufacturer's rated capacity, as opposed to merely gross vehicle weight, as a determinant for when a vehicle is a commercial motor vehicle;

(b) separate the farm vehicle exception in the definition from Montana fee statutes and adopt language that essentially parallels the farm vehicle waiver approved by the Federal Highway Administration in September, 1988 [53 Fed.Reg. 37313].

> In the past the farm exception has been dependent, in part, on fee statutes (specifically, the 35% GVW fee requirement set forth in 61-10-206), however, this has caused compliance problems with the feds, particularly when vehicles other than those operated and controlled by a farmer are included in the fee statutes, and then by reference, exempted from the CMV definition also. An example of this occurred during the 1993 legislative session when fertilizer spreader trucks and trailers were included in the 35% GVW fee statute, and thus excluded from the CMV definition, even though such an exclusion is not permitted or recognized in federal regulations. Such a situation could result in Montana being found in noncompliance with federal CDL requirements, the possible consequence of which is loss of 5 percent of apportioned Federal-aid highway funding during the first year of non-compliance and loss of 10 percent of funding in subsequent years.

(c) clarify when a firefighting vehicle is excluded from CMV definition by stating requirement that vehicle must be both exempt from taxation [15-6-201(1)] and bearing tax exempt plates [61-3-332(6)(B)] and delete safety education vehicles, which are not exempted from commercial driver testing and licensing standards by the feds, from the CMV exception.

SECTION TWO:

This is simply a housekeeping amendment to insert the word "vehicle" into the phrase "gross weight", since common reference is to GVW, not just GW.

SECTION THREE:

This is another change to bring Montana law into compliance with federal regulations. Federal regulations grant age exemptions to certain classes of interstate drivers, such as custom harvesters.

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Current Montana law does not recognize those exemptions, but instead purports to require all interstate drivers to meet Montana's age requirements. The net effect of this change is that Montana will be granting full reciprocity to CDL issued by other states with lower age requirements than our own.

SECTIONS FOUR THROUGH SEVEN AND TWELVE:

These amendments would allow the Department of Justice, Motor Vehicle Division to implement a pilot third-party commercial driver license testing program, that would permit authorized companies to perform skills testing on trainee drivers who have already passed a knowledge test administered by the Department and certify those testing results to the Department for CDL licensure.

Skills testing for commercial drivers is very labor intensive. A specially trained examiner typically musts spend 1-1/2 to 2 hours administering each test. In a state as geographically diverse and sparsely populated as Montana, such testing also entails significant logistical planning to ensure that the examiner, the applicant, and a commercial vehicle in the same class for which the applicant is seeking a license, arrive in the same spot at the same time. It is very difficult to meet the demand in the more populated areas, which typically are also the areas in which major trucking employers are operating, and that in outlying locations in a timely and convenient manner.

By creating an opportunity for a segment of the trucking industry to service its own needs by in-house skills testing of its own employees, state examiners should be able to offer better service to rural applicants and independents. Additionally, by limiting the scope of a program from its inception, current MVD staff should be able to implement the program in a gradual manner without a major disruption to current service delivery or any additional program specific FTE. By providing for its sunset in four years [Section 12], MVD could also disband the program without legislative action if it does not prove fruitful.

Third party skills testing of commercial drivers is commonly done in other states, and is specifically permitted in the federal regulations governing licensures of commercial motor vehicle operators. 49 CFR § 383.75.

Sections 4 and 5 also include an express reference to waiving knowledge and skills testing for qualified farm-related service industry seasonal CDL applicants. Such a waiver has been recognized in department rules since January, 1994, however, there has been continuing question as to whether the statutes invested the department with adequate authority to implement such a seasonal CDL program. Federal regulations have authorized seasonal CDLs for certain employees of custom harvetsers, farm retail outlets and suppliers, agrichemcial business and livestock feeders since April 17, 1992 [57 Fed.Reg. 13650].

SECTIONS EIGHT AND NINE:

On September 16, 1993, the Department of Justice received written notice from the Federal Highway Administration that Montana's CMV implied consent testing statute:

> must be changed from just when an officer has reasonable grounds to believe the driver's BAC is .04+ to "any measurable or detectable alcohol."

Inclusion of the "measurable or detectable" language in Mont. Code Ann. § 61-8-806 will allow a peace officer to test a driver for alcohol even if the officer doesn't suspect the driver of being impaired or under the influence. However, a positive test result less than .04 BAC will not result in any action being taken against the driver's official driving record or any points being accrued by the driver, rather the driver will simply be placed out of service for the required 24 hour period, as currently provided for in Mont. Code Ann. § 61-8-805(2). It is only if an out-of-service order is violated, that a serious licensing consequence would occur, as a first conviction for operating while out-of-service results in a 6-month suspension and a second or subsequent in a 1 year suspension. See Mont. Code Ann. § 61-8-812.

These amendments will assure Montana's compliance with applicable federal regulations regarding implied consent testing and operating a commercial motor vehicle while having any measured alcohol concentration or detected presence of alcohol while on duty, operating or in physical control of a commercial motor vehicle. 49 C.F.R § 383.72 and 392.5(a)(2).

SECTION ELEVEN

The third party skills testing portions of the bill will be effective October 1, 1995, and terminate September 30, 1999. The remainder of the bill will be effective on passage and approval.

SENATE HIGHWAYS
EXHIBIT NO. 3
DATE 1/10/95
BILL NO. SB 34

DEPARTMENT OF JUSTICE
SENATE BILL 34:
General Revision of Commercial Motor Vehicle Laws

Purpose

This bill will allow the Department of Justice to set up a pilot program to allow third party skills testing of commercial driver's license applicants.

Proposal

The commercial driver's license (CDL) pilot program is being proposed in response to a directive from the 53rd Montana Legislature to the Department to explore privatization of driver examination services.

Testing for commercial driver's licenses would be administered to applicants employed by companies approved by the Department of Justice. The primary purpose of such a program is to allow the Department to improve its customer service by allowing approved companies to service their own in-house testing needs on their own timelines.

The program will also free up some of the demand on specially trained state commercial driver examiners so that service to rural areas can be enhanced.

Necessary Amendments

The remainder of the bill contains amendments necessary to assure Montana's continuing compliance with federal regulations of the Federal Highway Administration concerning the testing and licensing standards for drivers of commercial motor vehicles. A state found to be in noncompliance with any of these requirements may risk a loss of 5 percent of its apportioned federal-aid highway funding during the next federal fiscal year, and 10 percent for each subsequent year of non-compliance.

Current problem areas in terms of potential non-compliance with federal regulations and the language needed to correct those problems (in italics) are:

a. **"commercial motor vehicle" definition** that exempts vehicles based on classification for GVW fee payment, a concept not recognized in federal regulations, rather than *describing those classes of vehicles and vehicle operators for whom the federal regulations have already been waived* (i.e., firefighters and certain farmers).

--over--

b. **commercial driver implied consent law that permits testing** only if officer has reasonable grounds to believe that commercial motor vehicle operator has alcohol concentration of .04 or more, rather than *for any measurable or detectable amount of alcohol in the operator's body.*

c. **general licensing exemption law** that purports to subject all out-of-state commercial driver's license holders to Montana's age requirements, even though federal regulations *recognizes age exceptions for* certain categories of drivers *(i.e. custom harvesting operations and apiarian industries).*

Finally, the bill gives **explicit authority to the Department of Justice for the administration of a seasonal CDL program for farm-related service industries.** Seasonal CDLs for farm-related service industries have been permitted by federal regulations since April, 1992.

DATE 1-10-95

SENATE COMMITTEE ON Highways

BILLS BEING HEARD TODAY: SB 34 SB 43

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Dewn Robertz	Justice	34		
John C. Brenden	Self	43		X
GARY A GILMORE	MDT	43	X	
Tom Martin	"	43	X	
[illegible]	STATE FARM INS	34	/	
Dave GALT	MDT	34	X	
Ben Havdahl	MMCA	34	X	
Pam Langley	MABA	34	X	
Brenda Nordlund	MDept of Justice	34	X	
Anita Mewes	Justice	34	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY