

MINUTES

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

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN LARRY TVEIT**, on January 17, 1995, at
1:00 P.M., Room 410

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

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

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

Committee Business Summary:

Hearing: SB 53 & SB 68
Executive Action: SB 34 & SB 53

HEARING ON 68

{Tape: 1; Side: A; Approx. Counter: 1.4.}

Opening Statement by Sponsor:

SENATOR J. D. LYNCH, Senate District 19, Butte, stated he was the chief sponsor of Senate Bill 68. He announced that he was bringing the Bill before the Committee, he thought, with near unanimous approval from various interested groups. He attributed the origin of SB 68 to difficulty encountered by the local garbage hauler from the Butte area. **SENATOR LYNCH** attested that the new landfill dump required the hauler, Tom McGree, to

transport his collections on Interstate 90, and in spite of excessive costs of new equipment purchases, he was continually receiving rather large fines for being over weight. **SENATOR LYNCH** stated that the hauler complied as much as he could, and retrofitted his new vehicles to get back into compliance. The Senator stated that he had originally intended to introduce a Bill which exempted local community garbage haulers within a fifty mile radius, because eventually taxpayer's bills and garbage rates would reflect environmental regulation and compliance costs. He identified having revisited the issue with their garbage hauler, after he'd made compliance efforts, and found that occasionally there were variances above five per cent and less than seven per cent.

SENATOR LYNCH reported having reviewed the law, contacted the Department of Transportation and had found that the Department had expressed it would be better to treat everyone the same and give a seven per cent variance. He defined the present variance as applying only to those hauling live stock. **SENATOR LYNCH** said he felt this variance could benefit all without jeopardizing the highways of Montana. He portrayed the Bill as a fairness bill and making sense from a business standpoint as to not unduly encumber people financially. He expressed hope that the Bill met with approval from the Committee and attested there were other proponents for the measure.

Proponents' Testimony:

Tom McGree, representing McGree Trucking, remarked that Senator Lynch had basically clarified his testimony and provided most of the points of SB 68. He attested that there were two points he would like to make. **Mr. McGree** articulated that his family had changed the way it operated its business so that all of their single axle vehicles which traveled that portion of Interstate 90 had been fitted with an additional axle and were in full compliance with existing law. **Mr. McGree** stated there were a couple of things that occur, which require them to be overweight in certain instances, such as a spring rainstorm adding weight to the load. **Mr. McGree** said what he was supporting was not a massive change in the legislation, they were in full compliance and wanted to maintain the Interstate, but supported the seven percent and the expansion to all carriers.

Ben Havdahl, representing the Montana Motor Carriers Association, identified his Association as the trucking industry group in the State, and said they wanted to go on record in support of SB 68 which adjusted the percentage from five to seven percent. He commented that if you looked at the Bill, up until this point the Section had been applied to livestock carriers, whom their Association represented along with a variety of other commodity haulers. **Mr. Havdahl** characterized the purpose of the Section, when it was enacted, as granting leeway to a trucker loading livestock where there were no scales on site or available before

transiting the Highway. He stated present law allowed a five percent tolerance for being overweight at the first available scale, if the vehicle had been loaded without the benefit of a scale. He identified the proposed Bill as increasing that tolerance to seven percent, allowing the purchase and issuance of a permit to proceed loaded legally or to the destination, whichever is closer. **Mr. Havdahl** remarked that they supported not only the tolerance, but the applicability to other commodities, and would appreciate support for the Bill.

Dave Galt, Administrator of Motor Carrier Services with the Department of Transportation, voiced the Department's support of the Bill. He stated that current law allowed a five percent tolerance when an overweight vehicle entered a weigh station, before a citation was written. He clarified that they took corrective action by issuing a ten dollar permit to the nearest facility to correct the weight. **Mr. Galt** conveyed that current law also allowed livestock carriers a seven percent tolerance under the same conditions. He attested that the Montana Department of Transportation (MDT) believed that in this case all tolerances should be equal and that passing this law would address many of the problems and concerns expressed by Senator Lynch and be more equitable to the trucking industry in general.

Keith Olson, of the Montana Logging Association, remarked that for many of the reasons raised by the previous supporters, they would like to go on record in support of the Bill.

Bob Stephens, representing the Montana Grain Growers Association, announced that they would like to go on record as supporting SB 68.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN asked how the Bill may affect sugar beet producers who run on the Interstate near Glendive? **Dave Galt** said the Bill would have an affect on all carriers in the State. He stated that right now, before a citation was issued, there was a five percent tolerance and this Bill would increase that tolerance to seven percent before issuance of a citation. He cited the increase as basically six hundred more pounds leeway per tandem axle or sixteen hundred pounds on a standard five axle truck.

SENATOR HOLDEN asked if this Bill would significantly make much difference concerning the complaints of the sugar beet farmers along the Interstate by Glendive? **Mr. Galt** answered that he thought it would make a little difference, but probably not

significant. He contended the big problem with sugar beet farmers was that those on the north end of the county, those hauling on Highway 16 into Sidney, get the benefit of the twenty percent agricultural tolerance during harvest. He continued that those hauling in Terry, Fallon country and east of Miles City, the ones where all of the complaints were coming from, was because they have to haul on the Interstate and the twenty percent tolerance does not apply to the Interstate. He rendered that passage of this Bill may ease some of those complaints, but he said he expected that it was not going to solve the problem one hundred percent.

SENATOR HOLDEN asked if the Bill dealt with raising the percent on Interstate highways? **Mr. Galt** answered yes. **SENATOR HOLDEN** continued to question, was it within their scope to raise it even more than this, to encompass the sugar beet farmers' problems as well as the people in Butte? **Mr. Galt** said yes it would be, but he presented caution that the twenty percent tolerance was pretty much limited to during harvest time and for agricultural purposes. He said this Bill affected any time for any carrier. He stated that the Committee could change that tolerance higher but he thought that would cause some pain from the Federal level.

SENATOR MACK COLE asked if there was a point of tolerance where the conditions of the road began to be affected and increased maintenance? He continued, would that twenty percent do it? **Mr. Galt** professed that anytime you increased axle weight it was going to have an adverse affect on the pavement. He stated that the two percent increase was going to allow a little bit more weight to be hauled on the axles, but was also going to level out. He explained that it was also to the point where, as soon at that vehicle got to a scale it would be issued a ten dollar permit to the nearest facility to get legal. **Mr. Galt** said that twenty percent would mean about a six thousand pound increase in axle weight which was going to directly increase pavement costs, and basic wear.

SENATOR COLE asked if the proposed seven percent would be all that bad. **Mr. Galt** said he thought they could live with that, as the tolerance used to be seven percent across the board in the '70's and early '80's. He explained that the change was made in 1985 when livestock was left at seven percent and the rest of the tolerance limits dropped to five percent.

SENATOR HOLDEN stated he was tired of receiving a lot of calls at home from beet farmers complaining about the Interstate, and indicated **Mr. Galt** was too. He asked where the line was, before reaching a problem with the Feds, and how far could the tolerance be raised to resolve the problem? **Mr. Galt** stated that he felt they were at the line at seven percent, and raising it further than seven percent could raise a red flag. He further stated that the Federal entities were particularly concerned about weight on the Interstate. He also said he did not know if the answer to the sugar beet problem on the Interstate in that area

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was raising the tolerance or carrying less beets.

SENATOR REINY JABS said he realized this was temporary, to the first facility, and a trucks coming through on the Interstate did not have that same tolerance? **Mr. Galt** said that the Senator was correct, this would be from the time the truck was weighed it would be sent to the nearest facility to get legal, for a ten dollar permit.

Closing by Sponsor:

SENATOR LYNCH thanked the Committee for a good hearing and stated that he closed.

CHAIRMAN TVEIT declared the Hearing on Senate Bill 68 Closed.

HEARING ON SENATE BILL 53

{Tape: 1; Side: A; Approx. Counter: 16.8.}

Opening Statement by Sponsor:

SENATOR MACK COLE, Senate District 4, Hysham, identified the Bill before the Committee as one eliminating the permitting and reporting requirements for "special fuel users" over 26,000 pounds that operate on the Intrastate only. He stated there were five changes within the Bill.

SENATOR COLE identified the first change as a fairly minor change revising the definition for special fuel and special fuel users. He said SB 53 would broaden the definition of special fuel to include any additive mixed or blended into special fuels to expand the quantity or special fuel in the tanker. He reported that these additives were not metered at the terminal. **SENATOR COLE** identified the new definitions as encompassing additives such as motor oil, mineral oil which are mixed or blended into special fuels at the retail level and later sold with the tax collected from the consumer. He reported that these definitions would not affect de-icers and those types of things. He announced those changes as being found on page 3, section one, fifteen, line twenty-six.

SENATOR COLE articulated the second change as the most important part of the Bill and explained it as eliminating the permitting and reporting requirements for special fuel users operating Intrastate only. He commented that the 1993 Regular Legislative Session elevated the taxation point on special fuels to the distributor level, and subsequently passed a dyed fuel law during the '93 Special Session. He attested that the fuel reported by special fuel users operating strictly Intrastate resulted in no tax due. **SENATOR COLE** related the State's original intent of

this permit and explained the reporting requirements were to tax special fuel that was not already taxed. He contended that the dyed fuel law eliminated the need for reporting possible use of untaxed special fuels. He professed the passage of SB 53 as eliminating the need for six thousand taxpayers to report either quarterly or annually. He accentuated this as the main portion of the Bill and identified it's location on page four, section two, line sixteen.

SENATOR COLE accounted the third change as limiting the issuance of temporary compliance bonds to intrastate operation only. He stated this change as being located on page five, section three, line eighteen.

SENATOR COLE defined the fourth change as clarifying how the Department taxed dyed special fuel. He interpreted dyed special fuel as being able to be purchased without the State tax, and only being consumed off-highway. He reported the new verbiage as causing dyed special fuel to be taxable if the fuel is used in a taxable manner, regardless of the vehicle's weight. He identified these changes as appearing on page six, section four C, line four.

SENATOR COLE proclaimed the fifth and final change as small, and added language defining a seller's potential tax liability. He described the seller of special dyed fuel as being liable for any special fuel tax, if the seller knows or has reason to know that the fuel will be used for a taxable purpose. He related the change to be found on page seven, section 5 C. He concluded that this was the total of his comments and he would have a short closing.

Proponents' Testimony:

William "Bill" Salisbury, Administrator, of the Administration Division, at the Department of Transportation, presented a copy of his written testimony. (EXHIBIT #1) He commended Senator Cole as doing an excellent job of explaining the changes within the Bill. **Mr. Salisbury** characterized the Bill as a culmination of the '93 Session when the taxation point on special fuels was elevated to the distributor level, the same as gasoline. He stated that at the time of elevating the taxation point, the reporting requirement had not been eliminated, because the affect of that legislation was not known. **Mr. Salisbury** identified SB 53 as allowing the Department to live with the changes which occurred in the '93 Sessions. He further stated that he hoped the Bill would meet with the Committee's approval.

Ben Havdahl, representing the Montana Motor Carriers Association, explained that they had a number of Member's operating Intrastate, and their Association was supporting the removal requirement for special fuel permits for those operators. He contended that, as the Sponsor testified, the taxable incident

was changed in the last Session to move to the distributor level. **Mr. Havdahl** maintained there was no more compelling reason to continue requiring Intrastate operations to purchase special fuel permits. He added that the increase in revenue generated as a result of changing the taxable incident was tremendous. He articulated that he was not saying that increase came from truckers not paying the taxes, but someone wasn't. He said his only other comment regarding dyed fuel was, that it was a catch twenty-two situation, in that Federal law precluded and made it illegal to put dyed fuel in the fuel tank of a vehicle. He said that in keeping with the situation that dyed fuel was being used illegally, at least one way of enforcement was to make the misused fuel taxable. **Mr. Havdahl** reiterated his Association's support of the Bill regardless of the reflection to the dilemma that if you do something illegal you must pay a tax.

Bob Stephens, representing the Montana Grain Growers Association, portrayed his Association as supporting SB 53. He described the measure as some which would make a lot of farmers hauling grain happy.

Keith Olson, of the Montana Logging Association, explained that the Bill didn't necessarily apply to all of their members. He remarked that they applauded the proposal, for those who would benefit from the paperwork reduction portion of the Bill.

Lorna Frank, representing the Montana Farm Bureau Federation, verbalized that they too supported the Bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR GREG JERGESON said his concerns related more to the dyed fuel itself, than to this Bill. He commented on his concerns regarding problems smaller distributors were having in regard to cleaning the dyed fuel contaminants out of pumps and lines of delivery equipment. He verbalized that small amounts of dyed fuel would remain in the equipment, even after pumping the tanks dry, and a concern for traces of the dye contamination showing up in consecutive loads of undyed fuel. He remarked on his understanding that the Department was taking samples from truck fuel tanks for lab analysis.

SENATOR JERGESON asked if the Department could determine the quantity of contamination, as to whether or not someone was trying to get around the use of dyed fuel? **Bill Salisbury** reported that they could, as there was a specific percentage allowable before a fine was imposed. He affirmed that the samples were sent to the Department of Health's Lab where there

was special equipment bought just for that purpose by the Department of Transportation. **Mr. Salisbury** identified the question as a difficult one, as well a learning process for distributors to develop methods of moving fuels through their equipment in a manner to avoid cross contamination of fuels. He stated that the test wasn't just for evidence of a contaminant, but the test had to reveal an amount over the percentage which would result in a fine.

SENATOR JERGESON asked what that percentage was? **Bill Salisbury** said he could not remember. He explained it as 4.3 pounds per one thousand barrels and whatever that percent was, he couldn't remember. He said the Department of Health was doing a couple of examples for the Department of Transportation, such as determining how much fuel was in the hose line and then how many gallons that amount would be put into to exceed the allowable limit. **Mr. Salisbury** asserted that the tests were being done this month, because the issue had just come up in the last couple months. He narrated that the contents of the hose may be one half of a quart and stated it may take twenty gallons of fuel before the percentage was exceeded, but said there was not a cut and dried answer yet.

SENATOR JERGESON queried, you are working on the answer, and as soon as you get an answer would you let me know? **Mr. Salisbury** said yes, and added that they went back to the distributor where the party being tested had purchased the fuel, and tested the physical setup at that particular location.

SENATOR REINY JABS questioned whether the Department did spot checks of vehicles on the highways? **Mr. Salisbury** contended, yes, that the Motor Carriers Division was the enforcer, and did random spot location checking on the Interstate.

Closing by Sponsor:

SENATOR COLE summarized by saying that he thought the Bill was a win, win situation which would get rid of a lot of unnecessary paperwork. He recommended passage of the Bill.

CHAIRMAN TVEIT declared the Hearing on SB 53 as closed, and reminded those present to sign the sign in sheets and hand in written testimony.

EXECUTIVE ACTION ON SENATE BILL 34

{Tape: 1; Side: A; Approx. Counter: 30.6.}

CHAIRMAN TVEIT reported having received a letter of support from Watkins Shepard Trucking, Inc. (**EXHIBIT # 3**)

Motion: SENATOR CHARLES "CHUCK" SWYSGOOD MOVED SB 34 DO PASS

Discussion:

SENATOR SWYSGOOD said he had received a letter after he had introduced the Bill in hearing, regarding the portion of the Bill which related to a measurable or detectable amount of alcohol, page six. SENATOR SWYSGOOD stated that the inquiry was to why the .04 couldn't be changed to .02, instead of measurable or detectable. He attested that the simple answer to that was that Federal law said measurable and detectable and we would be out of compliance with the suggested alternative language. SENATOR SWYSGOOD said he assumed that the writer of the letter was concerned that it was arbitrary as to what was measurable and detectable. He commented that he could not argue that point, but Federal law required the Bill to contain the language used to be in compliance with the Commercial Drivers License Program.

SENATOR REINY JABS related that the title referred to clarifying the status of fertilizer spreader trucks, and asked if was taken care of. SENATOR SWYSGOOD answered that it had, and asked Brenda Nordlund to further explain the proper section. Brenda Nordlund explained that fertilizer spreader trucks appeared in section one of the Bill, and deleted the reference to paying thirty-five percent G.V.W. She depicted deleting that reference as placing fertilizer spreader trucks and trailers within commercial vehicle codes.

QUESTION WAS CALLED FOR.

Vote: Motion that SB 34 DO PASS CARRIED UNANIMOUSLY.

{Tape: 1; Side: A; Approx. Counter: 35.4.}

EXECUTIVE ACTION ON SENATE BILL 43

CHAIRMAN TVEIT said SB 43 was introduced by Senator Beck and would authorize the Department of Transportation to reserve a conservation easement in land or an interest in land sold by the State and eliminating provision for the original landowner to match bids.

Discussion:

SENATOR ARNIE MOHL asked if the problem had been resolved regarding change of ownership of a piece property, and retainment of access easement for the original owner? Gary Gilmore stated it had not been resolved, and the Bill would have to be amended. He explained that currently the Department could not retain an

easement for access. He suggested the Bill would have to retain a conservation easement and an access easement, if necessary. He identified the provision as permissive not restrictive.

SENATOR LINDA NELSON stated that **John Brenden** had testified that the Bill would allow land which was intended for agricultural purposes to go for other uses, and she would like **Gary Gilmore** to explain that statement. **Mr. Gilmore** defined the parcels of land that were being discussed as very small, compared to the forty acres he recalled **Mr. Brenden** mentioning. He described the pieces as those the Department referred as uneconomic remnants, and said they only purchased them for purposes of constructing or widening the highway. He stated the projects left the landowner with very small pieces of land which the owner no longer wanted, so the Department purchased the remnant as well. He said that once the project was finished and the Department determined they did not need the land, they would try to resell it. **Mr. Gilmore** again stated they were not speaking of large parcels.

SENATOR NELSON remarked that she thought **Mr. Brenden** was thinking this legislation was like the camel's nose under the tent, an omen of things to come. **Mr. Gilmore** agreed that he felt **Mr. Brenden** was inferring, that if the Department of Transportation received this ability, what are the other agencies going to do?

SENATOR RIC HOLDEN asked if **Mr. Gilmore** had indeed stated that the Department had to sometimes purchase wetland to satisfy the Federal Government, in relating to some of the building projects? **Mr. Gilmore** said that wasn't entirely correct. He explained that the Department would purchase a piece of property for the purposes of establishing a wetland, because they had to replace, in-kind, what was destroyed during projects. He explained that they were required to replace anything destroyed as a last resort, but the first thing the Department did was try to avoid destruction whenever possible. He further stated that they could purchase one which was already established, but a certain number of acres of wetlands presently existed in the State, and his desire was to see that acreage did not decrease.

SENATOR HOLDEN queried, if the Department came to a rancher and requested to buy a small parcel of land in the middle of a section, to replace wetlands which had been taken from existence, would the Department retain an easement to that parcel? **Mr. Gilmore** replied no, first of all the Department would not buy it. He continued the Department had not condemned a piece of ground for the purpose of creating wetlands. **Mr. Gilmore** stated that a lot of times a contractor purchased gravel or some other material for incorporation into a project, the Department would have no involvement with the purchase, and the Department then paid the contractor to build the wetlands. He stated, if at that time it was to the Department's benefit, they would go to that landowner and try to purchase the wetland. **Mr. Gilmore** stated that secondly, if the landowner was willing to sell a piece of ground the Department knew there would need a need for reestablishing

wetlands, they would make the purchase. He attested that there was no provision in the law for access to that wetlands, but he thought present law allowed them the ability to purchase conservation easements. He identified their intended efforts in the Bill as wanting to be able to sell a piece of land with the conservation easement on it. **Mr. Gilmore** said they currently could not sell land when they placed more restrictive easements or covenants than were present at the time of purchase.

SENATOR HOLDEN asked if the Department was going to sell a piece of land which was a wetland, would this law allow the Department to place an easement on the land and sell the land regardless of how others felt. **Mr. Gilmore** said yes, the easement would go to whomever purchased the land.

SENATOR MOHL conveyed that he still did not feel comfortable with the division of property described during the hearing, where the original landowner could potentially find himself without access. He voiced a desire to add an amendment which would clarify an access easement, and related having spoken to **Senator Beck** who shared his concern. He asked if the amendment was a problem? **Mr. Gilmore** said he did not have a problem with that.

SENATOR CHARLES "CHUCK" SWYSGOOD asked how the amendment would work on line nineteen where the Bill stated that the land must be without covenants? **Mr. Gilmore** replied that was what the Department was trying to address.

SENATOR SWYSGOOD stated that if **Senator Mohl's** suggested amendment was put in the Bill, basically all the Bill would do is remove the option of the original owner to match the bid. He asked if the covenants or easements were added back on, would the repealer be all that was left? **Mr. Gilmore** said that **Senator Mohl's** suggestion could be dealt with in line nineteen and twenty. He said he thought the bottom line was that the Department was presently operating without this law and could continue to operate without it, but they were trying to free up some of their land to make it more saleable. He said that if they could not get conservation easements on the land, they would hold the land as wetlands and not sell it.

CHAIRMAN TVEIT asked for an explanation of what was needed for the intended amendment? **Connie Erickson** said the amendment **Senator Mohl** was speaking about was additional to and separate from the conservation easement. She contended that she could look at adding language to the new language in subsection two, section one, lines nineteen and twenty regarding access easement. **Ms. Erickson** said current law stated that the land could be conveyed by deed or patent without covenants. She described the amendment as stating without covenants, but, except for a conservation ease or an easement for access.

SENATOR MOHL explained his concerns, by using a note pad to emphasize his example, as in regard to protecting the original

landowner from being locked from access when slivers of land were sold to the new adjacent landowner. He identified the situation as potentially having the small parcel of land causing the original landowner an excessive amount of money if the new adjacent landowner wished to be difficult. He described the need of owner access easement retention here, as the same situation involved with purchase and easement retention of private property. **SENATOR MOHL** reiterated that he would like to see that provision added to the Bill.

CHAIRMAN TVEIT asked if the Committee Members had a problem with the repealer where a landowner no longer had a right match the highest bid?

SENATOR GREG JERGESON conveyed that he didn't know whether or not he had a problem or not with the repealer. He referred to **Former Senator Brenden's** indication that the Bill created a potential of how land owned by the State of Montana was used and concern regarding the conservation easement provision. **SENATOR JERGESON** portrayed **Former Senator Brenden's** concerns as to conservation easements and wetlands as different than his own thoughts regarding the precedent setting of the repealer which took away the right of first refusal. He claimed there was talk of selling State School Sections and maintained that if there was any precedent in this Bill, it was in the repealer of the right of first refusal. **SENATOR JERGESON** described himself as floored at the concept that the Committee would kill the Bill because of the conservation easement language, which was simply additional flexibility for the Department to deal with matters they were under extreme duress to do. He articulated the real problem within the Bill as in the repealer and contended that was what the Committee needed to discuss regarding precedent setting. **SENATOR JERGESON** summarized by stating, "If you want to kill the Bill, kill it for the right reasons, not the wrong one".

SENATOR MOHL attested that he conferred with the Department of Transportation in regard to trying to dispose with some of the pieces of land they had. He remarked that if the land was laying out there by itself, it would create a problem with weed control.

CHAIRMAN TVEIT asked when the Bill would take affect, was it grandfathered in now and to carry forward? **Gary Gilmore** said their was no date so he assumed October. **Connie Erickson** affirmed it to be October 1st.

CHAIRMAN TVEIT reiterated his question regarding everything in existence as being grandfathered in? **Gary Gilmore** stated that was correct and that the Department would operate as they were until that date.

CHAIRMAN TVEIT continued to question clarification as to whether everything acquired from that date forward would be affected and everything held now would be grandfathered in? **Gary Gilmore** said he believed there was no grandfather provision. **CHAIRMAN TVEIT**

concluded that all lands held by the Department would be included. He summarized by stating that in his area there were parcels which landowners were trying to buy back from the State and said that when the first right of refusal was removed it created concern for him. He cited instances where excess land had been purchased by the Department and those parcels were still adjacent to the original landowner and was tied to his farming operation. He maintained his concerns for that landowner losing his right of redemption in lieu of the Department possibly selling the land for wetland development. **CHAIRMAN TVEIT** spoke to the importance and possible precedence setting in the clause regarding right of redemption and it's being all inclusive to land held and to be obtained by the State or it's Agencies.

SENATOR SWYSGOOD defined the repealer as an issue of some significance, but expressed his greater concern regarding the conservation easement and what was used to define what a wetland was. He characterized wetland as able to be defined as just about anything and rendered that inferences had indicated water standing on land for a period of time could result in a Federally designated wetland. **SENATOR SWYSGOOD** summarized by stating there was a valid concern about the right of first refusal which definitely would set a precedent and additionally his concern as to what could be determined a wetland to establish a conservation easement.

SENATOR JERGESON voiced his recognition of the controversy of what constitutes a wetland and he attested sharing his concern. He argued for giving the Department the flexibility of dealing with their obligations. He remarked that if you wanted to pursue the Federal Government for their imposition of wetlands rules, he was probably with **Senator Swysgood**, but that clock wasn't going to be rolled back by killing the conservation easement section of the Bill. **SENATOR JERGESON** asserted that killing the conservation easement portion may force the Department to take more draconian measures to meet their obligations.

SENATOR HOLDEN stated his unwillingness to hold up the Department's ability to dispose of excess land but questioned whether passage of the Bill propagated the problems surrounding the Federal wetland regulations? **SENATOR JERGESON** claimed that passing the Bill did not confirm that they felt the wetland mandate was necessarily correct but simply said the mandate was recognized along with the Department's need to deal with it.

{Tape: 1; Side: B; Approx. Counter:.1.}

SENATOR JABS asked if, under existing law, if the Department of Transportation could retain the wetland and sell the rest of the land? **Mr. Gilmore** said the Department could break out and sell whatever they wanted to.

SENATOR JABS interpreted that the Department did not need the conservation easement if the Department had the present authority

to keep the wetlands and sell the rest. **Mr. Gilmore** said that was correct.

CHAIRMAN TVEIT asked what the Committee wished to do, amend the Bill or what?

SENATOR MOHL contended that if it had been concluded that the conservation easement wasn't necessary, an amendment was still necessary for granting an access easement.

Motion: **SENATOR MOHL MOVED TO AMEND THE BILL.**

CHAIRMAN TVEIT asked for a clarification of the amendment, as no written version was available.

SENATOR MOHL responded by expressing the need to retain access if needed.

CHAIRMAN TVEIT questioned, access by who? **SENATOR MOHL** replied that the State would have to place a permanent written statement on the deed of land they sold which would provide access. **Connie Erickson** requested time to draft the amendment.

CHAIRMAN TVEIT said executive action would be held until Thursday the 19th, for the purpose of allowing time to prepare the amendment.

SENATOR JABS asked if present law allowed the Department to give an easement? **Gary Gilmore** answered no, the Department never had an easement and therefore could not withhold it. **Mr. Gilmore** explained that the law said no covenants or restrictions, but if the easement was there when the land was purchased then they could give that existing easement.

EXECUTIVE ACTION ON SENATE BILL 68

CHAIRMAN TVEIT asked the Committee's pleasure on the Bill? He remarked that he did not know if know whether Senator Holden's concerns could be remedied or not.

Discussion:

SENATOR GREG JERGESON said he appreciated Senator Holden's problem with the Bill as he had experienced need for a greater percentage of tolerance while hauling wheat in December too.

SENATOR RIC HOLDEN expressed a wish to hold action on this Bill

until he had an opportunity to discuss the tolerance further with Dave Galt.

SENATOR CHARLES "CHUCK" SWYSGOOD responded to Senator Holden's concerns by stating that any tolerance greater than seven percent was not acceptable to him.

SENATOR HOLDEN asked him why he felt the way he did. **SENATOR SWYSGOOD** characterized increasing the percent of tolerance as opening the doorway to everyone. He stated that when an allowance was made just because someone lived in a place with an inability to apply that allowance, it was not the State's fault and would not result in the road's condition remaining the same if the percentage of tolerance was continually raised. **SENATOR SWYSGOOD** attested that he was a trucker and he would support the increase, for if anyone had something to gain from an increased tolerance it would be him, but he opposed the idea vehemently. He announced that he didn't even like the five percent tolerance and continued that a twenty percent tolerance was given to grain growers and sugar beet at harvest time. He described those tolerances as a considerable amount of weight which no other person in the industry received as a tolerance. **SENATOR SWYSGOOD** depicted this as a dangerous precedent to be setting and he would strongly oppose if there was a move to go above seven percent.

SENATOR ARNIE MOHL said he concurred with Senator Swysgood, as he was in the construction business and hauled on the highways all of the time, and the rutting problem due to overloading and the cost of repairing those damages was astronomical. He expressed a need to put a stop to overload at some point.

SENATOR MACK COLE commented that his District included a lot of sugar beets and some of them had to transit the Interstate, and he maintained that he wasn't getting the type of complaints reported by Senator Holden.

SENATOR SWYSGOOD clarified that he understood how difficult it was to judge the weight variances involved with sugar beets, but commented that when he was loading harvest trucks in the field he tried hard to keep the weights legal. He remarked that even though there was a twenty percent harvest tolerance he did not abuse that tolerance because he didn't feel it was right.

SENATOR JERGESON stated that the harvest exemption probably should apply to delayed delivery of that harvested crop. He remarked that he did not know if it was permissible to make a tolerance for the first load of stored grain when the unknown crop weight variances were like those Senator Swysgood had depicted as occurring at harvest time.

CHAIRMAN TVEIT reported having carried the twenty percent tolerance Bill in 1981 for loads being hauled during harvest on the interstate.

SENATOR HOLDEN asked why **Senator Tveit** hadn't included the twenty percent for the Interstate too, maybe the Department had more leeway than had been testified to. **CHAIRMAN TVEIT** attested that the Federal Government had refused to allow the Interstate to be included, or the State would be out of compliance.

SENATOR SWYSGOOD illuminated upon the fact that at harvest the farmer received a twenty percent tolerance, but if he was hired to load the same grain with his commercial vehicle he would only receive a five percent tolerance or seven with passage of SB 68 even though the he was loading under the same conditions.

EXECUTIVE ACTION ON SENATE BILL 53

Motion/Vote: **SENATOR MACK COLE** MOVED **SENATE BILL 53** DO PASS, **SB 53** DO PASS CARRIED UNANIMOUSLY.


{Tape: 1; Side: B; Approx. Counter: 15.8.}

ADJOURNMENT

Adjournment: 2:17 p.m.



CHAIRMAN LARRY TVEIT, Chairman



Carla Turk, Secretary

LJT/cmt

DATE _____

1/12/95

[illegible]

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wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 17, 1995

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration SB34 (first reading copy -- white), respectfully report that SB34 do pass.

Signed: Sen. Tveit
Senator Larry Tveit, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 17, 1995

MR. PRESIDENT:

We, your committee on Highways and Transportation having had under consideration SB 53 (first reading copy -- white), respectfully report that SB 53 do pass.

Signed: Sen Tveit
Senator Larry Tveit, Chair

PV
Amd. Coord.
Sec. of Senate

141438SC.SPV

SENATE HIGHWAYS

EXHIBIT NO. 1

DATE 1/17/95

BY SB 53

January 17, 1995

- Senate Bill 53

SUBMITTED BY: WILLIAM SALISBURY, ADMINISTRATOR
ADMINISTRATION DIVISION
MONTANA DEPARTMENT OF TRANSPORTATION

"AN ACT ELIMINATING LICENSING AND REPORTING REQUIREMENTS FOR VEHICLES OVER 26,000 LBS OPERATING INTRASTATE ONLY."

Eliminates the licensing and reporting requirements for vehicles over 26,000 lbs operating intrastate only, revising the definition of "special fuel" and "special fuel user", clarifying the use of dyed special fuel used on the highway.

The Montana Department of Transportation appears before this committee to offer our support for Senate Bill 53.

The 1993 Regular Legislative Session passed HB539 which elevated the point of taxation on special fuel (diesel) to the distributor level.

Under the new law, special fuel users who operate solely within the state boundaries report the fuel consumption that's already taxed and accounted for at the distributor level. Since the tax is remitted at the distributor level, special fuel users file reports that result in no tax due on their report forms.

Through this legislation, MDT will eliminate over 6,000 accounts from the special fuel user licensing and reporting requirements. The 1993 Legislature reduced staffing for the collections activity by 15% and the department is proposing an additional 5% reduction in collections staffing in the 1996-97 biennium. Passage of this legislation is critical to administration of the motor fuels function.

The Montana Department of Transportation urges this committee to give this proposal a do-pass recommendation.

SENATE HIGHWAYS

EXHIBIT NO. 2

DATE 1/17/95

BILL NO. SB68

BILL NUMBER: SB68
SPONSOR: SENATOR LYNCH

DATE:

TESTIMONY BY: DAVID A. GALT, ADMINISTRATOR
MOTOR CARRIER SERVICES DIVISION

MR CHAIRMAN, MEMBERS OF THE COMMITTEE FOR THE RECORD MY NAME IS DAVE GALT AND I AM THE ADMINISTRATOR OF THE MOTOR CARRIER SERVICES DIVISION. THE DEPARTMENT OF TRANSPORTATION STANDS IN SUPPORT OF THIS THIS BILL.

WHEN AN OVERWEIGHT VEHICLE ENTERS A WEIGH STATION CURRENT ^{LAW} ~~THE~~ ALLOWS A 5% TOLERANCE BEFORE A CITATION IS WRITTEN. WE TAKE CORRECTIVE ACTION BY ISSUING A 10.00 PERMIT TO THE NEAREST FACILITY TO CORRECT THE WEIGHT.

CURRENT LAW ALLOWS LIVESTOCK CARRIERS A 7% TOLERANCE UNDER THE SAME PRINCIPLES. MDT BELIEVES THAT, IN THIS CASE, ALL TOLERANCES SHOULD BE EQUAL. PASSING THIS LAW SHOULD ADDRESS MANY OF THE CONCERNS EXPRESSED BY SENATOR LYNCH AND BE MORE EQUITABLE.

EXHIBIT NO. 3

DATE 1/17

BILL NO. SB 34

**WATKINS
SHEPARD**

HOME OFFICE
P.O. BOX 5328
MISSOULA, MONTANA 59806-5328
WATS 800-548-8895
406 / 728-6121

TRUCKING INC.

HELENA TERMINAL
P.O. BOX 5055
HELENA, MONTANA 59604-5055
WATS 800-824-0913
406 / 442-9536

10 January 1995

Senator Larry Tviet
Montana Senate
State Capitol
Helena, Montana 59620

Dear Senator Tviet:

Watkins and Shepard Trucking would like to express its support of Senate Bill 34 which authorizes the Montana Department of Justice to certify companies which regularly employ commercial truck drivers to administer the driving portion of the commercial driver's license examination.

The Department is well qualified to determine which companies have a commitment to driving safety. By being able to delegate this responsibility, the Department will be able to expedite the process of qualifying good drivers without jeopardizing the (1) safety of the driving public and (2) the state's ability to qualify for federal highway funds.

Senate Bill 34 represents a cautious first step in helping to alleviate a nationwide shortage of good, qualified over-the road drivers.

Your support is deeply appreciated.

Sincerely,



Tom Walter
Driver Supervisor/Trainer

DATE 1/17

SENATE COMMITTEE ON Highway

BILLS BEING HEARD TODAY: SB 53 SB 68

Ex. Ord SB 34 & SB 43

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bill Salisbury	MDT	SB 53	✓	
Larry Brown	Ag. Pres. Assoc.	SB 53	—	
Maureen Cleary-Schwinden	W. I. F. E.	SB 68 SB 53	✓	
Dave Galt	MDT	SB 68 53	X	
Bob Stephens	Int. Grain Growers	SB 68 53	X	
Ja McEneaney	McEneaney Trucking	SB 68	X	
Ben Hardman	MT Motor Carriers Assn.	SB 53 SB 68	X	
Jane Bunn	Citizens Coalition for Science/H			
Lorna Frank	MT Farm Bureau	SB 68 53	X	
FEITH OLSON	MT Logging Assn	SB 53 68	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY