

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON HIGHWAYS & TRANSPORTATION

**Call to Order:** By VICE CHAIRMAN MACK COLE, on January 9, 1997,  
at 1:00 PM, in Room 410

#### ROLL CALL

**Members Present:**

Sen. Arnie A. Mohl, Chairman (R)  
Sen. Mack Cole, Vice Chairman (R)  
Sen. Larry Baer (R)  
Sen. Bob DePratu (R)  
Sen. John R. Hertel (R)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Linda J. Nelson (D)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** Nelson and Mohl

**Members Absent:** Holden and Baer

**Staff Present:** Connie Erickson, Legislative Services Division  
Phoebe Kenny, Committee Secretary

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 11, Posted 1-2-97  
Executive Action: None

{Tape: 1 ; Side: A; Approx. Time Count: ; Comments: .}

#### HEARING ON SB 11

**Opening Statement by Sponsor:**

SENATOR MIKE FOSTER, SD 20, Townsend, said the bill brought forward today was largely a cleanup in the statutes. The statutes had read for many years that the department had to find the original land owner and offer them first opportunity to purchase the land if it was to be traded or sold. He said it sounded like a good idea on the surface and if he was that land owner he would like to have that opportunity, but the problem had been that

often times there was a long period of time between when the land is acquired and when it was exchanged or sold. For the department to find the original land owner or a descendent sometimes was a long drawn out process that ended up utilizing much of their resources and becoming a real hassle. He believed this to be an administrative easing to cut red tape.

**Proponents Testimony:**

**Gary Gillmore, Montana Department of Transportation**, said this bill involved only the exchange of property. He said he believed the last legislative session had taken care of the selling issue and now they were just talking about the exchange of land. He said that this occurred most often when they purchased land at the owners request. This is an uneconomic revenue, meaning they have been left with a piece of ground so small, the owner has no use for it in their current operation. So the department purchased it rather than leaving it there to turn into a burden. Then later on the department came back through and wanted to widen the road. They have part of this parcel that they can trade the adjacent land owner for another piece that is beneficial to both parties. He said that under current law they would have to go back and find the original owner or their successors-in-interest and get their permission to trade if they don't want to offer it for sale. He said when it was offered for sale it had to go through an advertisement and auction, and many times the cost of doing this far exceeds the value of the property, thus administrative costs far exceed the value of what they are trying to accomplish. He believed the exchange of interest was overlooked when they dealt with the sale of interest, and they were here today to have that clause removed from the exchange portion as well.

**Opponents Testimony:** None

**Questions From Committee Members and Responses:**

**SENATOR "SPOOK" STANG, SD 36, Saint Regis**, questioned if this same proposal had not been in front of the legislature in one shape or form for the last five or six sessions.

**Gary Gillmore** said a proposal was brought forward in the last session that dealt with the appraisal process and some of this same language. He reinforced the fact that this bill only deals with exchange, that no money changes hands.

**SENATOR STANG, SD 36, Saint Regis**, said the first time he saw this bill the Ag interests in the state were rather concerned with it. If there was a situation where the previous owner had a ditch or a right of way through that land and his successor-in-interest still had some interest in that ditch or the right of way, and you don't confer with them and exchange land with out his consent, isn't it true, that he could lose access to a ditch.

**Gary Gillmore** said he believed when there were ditch interests and water interests, the owner of that water right had the right to access that ditch to keep it clean or whatever. He said generally when these exchanges occurred they were proposed by the department and not by the adjacent land owners. They do not try to create hostile environments between neighbors. He said it generally occurs with uneconomic revenues. They don't intend to go out and sell or trade 40 or 50 acres, most of the time its very small parcels.

**SENATOR STANG, SD 36, Saint Regis,** asked if a number of these parcels would happen to be on 10th Avenue South in Great Falls.

**Gary Gillmore** said he was sure that was an example that was used previously.

**SENATOR JOHN HERTEL, SD 47, Moore,** said he understood what they were trying to do was make exchanges without having to go back and find the previous owners. He wondered if there were a transaction made just within the last 3 or 4 years and the department definitely did know who that land belonged to, if there was going to be an effort to at least contact that person or if that aspect was lost altogether.

**Gary Gillmore,** said essentially yes, they were losing that aspect. If it had happened within the last couple years that would not be an issue because they basically were in the land business only to meet their needs. They only get involved in what are referred to as uneconomic revenues.

**SENATOR STANG, SD 36, Saint Regis,** asked if isn't it wasn't true that the original owner may have had that piece of land taken in a condemnation proceeding, and it wasn't because he didn't want it or need it, but because the highway department wanted it.

**Gary Gillmore,** said that could happen, but when they get into condemnations generally the toughest part was claiming necessity, and when that was the case you only took what you actually needed. So then there would not be any excess.

**SENATOR REINY JABS, SD 3, Hardin,** wondered if land that was taken by the state and it was discovered the land was not needed, if the owner was given the first chance to have that land back. And if not, could the bill be amended to allow that.

**Gary Gillmore** said that in most cases the property was returned or traded back to the original owners. The issue becomes after land has changed hands three or four times trying to locate the original owner, finding out that he has passed away, then trying to find the heirs. That is where they run into major problems.

**SENATOR JABS, SD 3, Hardin,** said he understood that. He was concerned that if the owner still lived on the property that they had the first chance of getting it back.

Closing Statement by the Sponsor:

SENATOR FOSTER, said he thought the questions were right on target. If the bill required some amending to make sure that legitimate concerns for common sense situations were met, then they should go ahead and do that. He thought the department was placed in an unfair situation, if they had to find heirs of someone who had been dead for several years and the land had changed hands several times. That incurs costs, and if those costs could be avoided it would be helpful.

ADJOURNMENT

**Adjournment:** VICE CHAIRMAN MACK COLE, SD 4, Hysham, closed the hearing.

  
SENATOR MACK COLE, Vice Chairman

  
PHOEBE KENNY, Secretary

AM/PK