

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on January 14, 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: None

Members Absent: None

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

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 29 and SB 81; Posted 1-8-97
Executive Action: SB 11 and SB 12

HEARING ON SB 29

{Tape: 1; Side: A

Sponsor: SENATOR CHUCK SWYSGOOD, SD 17, Dillon.

Proponents:

David Galt, Motor Carrier Services, Ben Havdahl, Motor Carriers Association.

Opening Statement by Sponsor: SENATOR CHUCK SWYSGOOD, SD 17, Dillon, Senate Bill 29 eliminates three permits that the Department of Transportation now issues. The department believes,

as I do, that these permits are no longer necessary or could be accomplished in a simpler manner.

Proponents' Testimony:

David Galt, submitted written testimony (**EXHIBIT 1**).

Ben Havdahl, MT Motor Carriers Association, We support this bill. I would like to make sure that the members of this committee understand what we mean when we talk about excessive weight permits. There is a federal limit on a five axle combination truck tractor and semi trailer of 80,000 pounds. The sum of the axles on that vehicle add up to 80,000 pounds, if you have two tandem axles at 34,000 pounds and a steering axle at 12,000 pounds. It is the full maximum amount allowable on those axles as well as the gross weight. When we talk about weight in excess of 80,000 pounds and using a permit system, it would be helpful to you to take a look at the material I am handing out. He explained (**EXHIBIT 2, EXHIBIT 3, and EXHIBIT 4**).

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN, thought he heard something about doing away with the 20% tolerance for agriculture.

David Galt, we wouldn't require agriculture users to purchase the restricted route permit. The 20% tolerance would still be in effect.

SENATOR HOLDEN, so what you are saying is it would make it easier for agriculture in that they wouldn't have to get the permitting.

David Galt, that is correct.

SENATOR HOLDEN, several truckers have come into my office and said that it wasn't reasonable to abide by the speed limits that are set in the state. I notice that part of this bill talks about the sections that deal with speed limits for the state. Would your industry be supportive of an increase in the speed limit of five miles per hour as it pertains to the statute.

Ben Havdahl, our board of directors met just this past week and wrestled at great length with the position on speed limits for trucks in Montana. A poll of our members came back almost evenly divided on what to do with speed limits as they relate to the speed limit bill that will be heard later in the session. We have decided to support a bill that will set up a speed limit of reasonable and prudent for automobiles and light trucks, and leave the speed limit standard for trucks, which is in a separate statute, and will not be addressed by that bill. That speed limit is 65 miles per hour on the interstate, 60 on two lane roads, and 55 on two lane roads at night.

SENATOR "SPOOK" STANG, are we in any way going to do away with our ability to restrict the routes on triple trailer combinations or seed potato haulers which we have been able to restrict in the past?

David Galt, what we did with the potato haulers was to let them haul at legal weights on low posted roads, but we want them to get off that road as soon as possible, and get to a non-posted road. We can still take them to the nearest non-posted road, we just wouldn't have the loss of that permit as a hammer to do so.

SENATOR STANG, by eliminating this permit are we taking away are ability to enforce that? Is there an other permit they have to buy that we can restrict their route with?

David Galt, there is not a permit that they could buy that we could restrict that route with. I still think that we have the ability to direct them to the nearest non-posted road, I just can't pull their permit for not doing so. Under existing law, if I pull a permit, I still have to be out there to make sure that they are not on that road anyway.

SENATOR STANG, by what authority can we direct them to the nearest non posted road if we can't make them buy a permit.

David Galt, on page eight of the bill the language, if the permit has been issued under 61-10-107, it describes a restricted route permit. I will no longer have a permit to specify the route from point of loading to the nearest non-restricted road. If we do away with this, there is a possibility that we could just require in the weight control statute, that this is only during seasonal weight restrictions, and then make it a violation for not doing so?

SENATOR STANG, I would like to do that. We worked long and hard to come to that agreement and there were a lot of contentious moments in the last ten years trying to get to that agreement. To see it slipped out the back door in some housekeeping legislation would bother me greatly.

David Galt, I think we could still control that, we could put an amendment on that required them to get to the nearest non-posted road and a violation of that is a misdemeanor, punishable just like any other misdemeanor in that section.

SENATOR STANG, does this bill in any way relieve us of the responsibility or the ability to designate which roads triple trailers can travel on?

David Galt, we still issue triple trailers a \$200 special combination permit. Only the restricted route portion will be added to their GVW fees, so they will still have to pay that additional revenue for operating over 80,000 pounds.

SENATOR MACK COLE, I see in the fiscal note that \$166,000 dollars of revenue will be lost through this bill, is that correct?

David Galt, that is our best guess of the total revenue lost. GVW permits are prorated, in other words, you only pay for them when you are operating on the highway. GVW fees are allowed to be purchased by the month, so if you are not operating for a month or two, you do not have to pay road use GVW fees. The way the permit is now, you pay a flat \$100.00 whether you use the permit for one month or ten months. When we move the fee to a pro rateable fee, carriers are only going to pay that GVW fee when they are operating. So there is going to be a revenue loss and that is the best guess we can come up with on what that revenue loss will be.

SENATOR COLE, is there some place else you are looking to pick up the loss of revenue.

David Galt, I think it was a long hard decision on the Department of Transportation to put this bill together. We do cost allocations studies on a periodic basis. Those studies are what we use to set the levels of user fees. When you use a license fee or a permit to collect revenue to pay for the damage that is done to the highways, it makes sense only to charge them when they use the highway. So no, there is not a plan in the works right now to come up with that additional \$166,000.00. We are going to redo our cost allocation study, to make sure the trucks pay their fair share. We will have that ready for the 1999 session but I don't think that there is a plan in-hand right now to recover that money.

SENATOR COLE, what effect will this have then on services provided?

David Galt, \$166,000 in a \$160 Million program is 1/10 of 1 percent of our total budget. I don't know where that loss of service would be on such an item.

SENATOR REINY JABS, can they purchase the GVW's by the month now or are those quarterly?

David Galt, they can purchase by the month, quarter, or year. They have been issuing monthly GVW fees since 1983.

SENATOR HOLDEN, in your bill on page nine, line nine, you are lining out section 61-10-107. If you are lining that section out of the law, where are you going to use this section.

David Galt, lets pretend that line is not stricken. The operator of a combination vehicle subject to the provisions of 61-10-107 paragraph 4, has a special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles. Transporting a harvesting combine or other harvesting machinery, to the point of first unloading, is for the full term of the

harvest season of the agricultural product transported. That is telling us when we issue a permit, we have to give you the permit for the whole time. Section (3) requires the permit be purchased any time the vehicle exceeds 80,000 pounds. So in current law, if you are out during the farm tolerance period and you have a two axle or a three axle farm truck running over gross, but your gross weight is 30,000 or 40,000 pounds, you are not over 80,000 and you are still getting that tolerance. By leaving the remainder of the language in the other section, it leaves your farm tolerance totally intact, you just don't have to have a permit for it.

SENATOR ARNIE MOHL, is there a restricted route now?

David Galt, no, in this sense there is not a restricted route for vehicles over 80,000 pounds. There have always been county roads that have ten ton bridges posted. Nothing can go over those roads. We don't consider that a restricted route in the same sense that we considered restricted routes that only trucks under 80,000 pounds could operate on.

SENATOR MOHL, legally, we in the trucking industry have been forced to buy a restricted route permit when there have been no restricted routes. This does not change going over those ten ton bridges. You still are restricted to the ten ton or whatever the limit on the bridges are no matter what your permit says.

David Galt, that is absolutely correct.

Closing by Sponsor:

SENATOR SWYSGOOD, basically what the department is trying to do is simplify the paper work that is associated with this. It isn't allowing them to do any more then they currently do. The big difference in the loss of revenue is how it is proportioned under the GVW fees.

HEARING ON SB 81

{Tape: 1; Side: A; Approx. Time Count: 35 minutes}

Sponsor: **SENATOR CHUCK SWYSGOOD**, SD 17, Dillon

Proponents: **Brenda Nordland**, Department of Justice

Opening Statement by Sponsor:

SENATOR SWYSGOOD, during an audit by the federal government, mistakes were found that this bill addresses. There is nothing contained in the bill that changes the way we operate our commercial drivers' license program. Basically, it clarifies some of the gross weight stations and ratings and how that is applied clarifies the passengers capacity and the hazardous materials.

Proponents' Testimony:

Brenda Nordland, Department Of Justice, five of these sections are driven by audit dings, brought forth in our meeting with the federal authorities concerning our administration of the Commercial Drivers License section. Another one is driven by an audit question that pertains to the Motor Carriers Safety Enforcement Program. The audit driven sections are sections 1,2,3,4, and 9.

The remainder of the changes are additions that the Division has sought in order to bring motor vehicle laws in compliance with the implied consent law, which applies to base drivers license holders. On page five is the first change that pertains to the CDL holder, with respect to alcohol concentration or refusal of blood, breath or urine testing.

In section 6 which amends 61-8-805, we are changing the method by which an driver is notified of a suspension following an .04 finding by a peace officer. In the past the peace officer has sent an affidavit or sworn report to the Department. We send out a letter to the CDL holder notifying them, that based on our receipt of that sworn affidavit, their drivers license is suspended according to the provisions under federal regulation, incorporated herein. When the officer is on the road with the individual we will be providing them with a form that informs the driver that they are suspended as of that point, subject to a temporary driving privilege of five days rather than 72 hours, as the law previously stated. It will also provide information as to their right to a hearing to challenge the suspension based on either the .04 alcohol concentration level in 61-8-805 or refusal under 61-8-806.

The other change that you will note is an administrative change. We are no longer requiring the report that the officer sends to the department be a sworn report. Instead we are seeking approval of the legislature to permit certified reports. This eliminates having to have a notary present to sign and notarize the officers signature every time an encounter based on an .04 or a testing refusal occurs. We are asking this committee to recognize that if the officer certifies under penalty of law that the facts contained in this affidavit are true and correct, that should suffice for us to take departmental suspension action. Of course the driver still has the right to go into court to challenge the suspension based on the provisions of the law.

Section eight, which starts on page seven and continues on page eight is the right of appeal to court. We're not changing the law in any sense here. We are consolidating redundant language as to the right to hearing, that appeared in 61-8-806 and simply referring to both the .04 suspension under 61-8-806, and the suspension based on testing refusal under 61-8-805 as both being provided under this same section. That is not intended to be a change in the law just merely to streamline the language.

I want to point out briefly the change that we have recommended in terms of accident reporting. This is contained on page three and four. Current law restricts the use of accident reports in terms of their accessibility to the Department of Justice or other state agencies having use of the records for accident prevention purposes or other administration of the laws of the state, relating to proof of financial responsibility. We are restricted under this law from sharing the accident reports concerning trucks and passenger cars, with the federal authorities for the Federal Highway Administration and Federal Highway Safety Commission, because we specifically say state agencies. By incorporating this amendment we are allowing disclosure of these accident reports for limited purposes who have use for them either in accident prevention, road way design, or motor carrier safety monitoring purposes.

Ben Havdahl, Montana Motor Carriers Association, the changes that are being proposed by the department are required by federal law and put our law in compliance with federal law. The changes being proposed in this bill are beneficial and our industry people support this bill.

Questions From Committee Members and Responses:

{Tape: 1; Side: B

SENATOR BOB DEPRATU, what is considered a serious traffic violation?

Brenda Nordland, at the top of page five is a numeration of what a serious traffic violation means for purposes of the commercial motor vehicle.

Closing by Sponsor:

SENATOR SWYSGOOD, I appreciate the hearing on both bills. This particular bill is something we live with when we have federal regulations involved in things. Ninety percent of this bill contains those adjustments that are required by federal law.

EXECUTIVE ACTION ON SB 11

Motion: SENATOR HERTEL MOVED SB 11 PASS.

Amendments: sb001101.ace, see (EXHIBIT 5).

Discussion: SENATOR MACK COLE, I believe everyone has before you an amendment on SB 11, EXHIBIT 2. There are three parts to it. The biggest thing the amendment does is to give easements on the property that is subject to exchange. I would recommend a do pass.

SENATOR LARRY BAER, any easement that is attached to the property will run with the land anyway. We can accept this amendment, but by way of law if there is an easement on the property it will automatically be preserved.

SENATOR MOHL, There is not an easement in writing, you just owned it, before the department bought it. Then someone else purchased it and blocked access, this is supposed to take care of that.

SENATOR COLE, maybe it needs to be written a little different, but I was not looking at that formal easement that was part of the deed, what I would look at more was an informal easement, of something that had not been specifically identified on the property deed itself. I realize it may have already been covered, but I didn't think there was any harm in putting it in.

SENATOR BAER, I don't see any harm in putting it in, but if there is a prescriptive easement, that has to be pursued in a court of law, otherwise there could be a license or any other contractual matter regarding the owner of the property with someone else prior to transfer.

Connie Erickson, **SENATOR BAER** is absolutely right. Easements pass with the land. The thought was that maybe the Department had let the person use the land, but there was not a prescriptive easement there that fit the qualifications for an easement or an easement was not granted, or something along those lines. So we came up with the term apparent easement. There was something there but it might not have been a granted easement or a prescriptive easement, so we just said well if there is something there when the department does the exchange they would include language in the conditions of the exchange to address this.

Motion/Vote: **SENATOR BAER**, moved to AMEND SB 11. The motion CARRIED UNANIMOUSLY.

Vote: The DO PASS motion for SB 11 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 12

{Tape: 1; Side: B; Approx. Time Count: 10 minutes}

Motion/Vote: **SENATOR COLE**, moved SB 12 DO PASS. The motion CARRIED UNANIMOUSLY.

NOTE: A Section Analysis on SB29 submitted by **David A. Galt**, Administrator MCS, was handed out to the committee. (EXHIBIT 6)

ADJOURNMENT

Adjournment: the meeting adjourned at 2:00 PM



SEN. ARNIE MOHL, Chairman



PHOEBE KENNY, Secretary

AM/PK