

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on January 16, 1997, at
1:00 PM, in 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 85 & SB 129; Posted 1-8-97
Executive Action: SB 29 (Revisited 1-21-97)

HEARING ON SB 129

{Tape: 1; Side: A

Sponsor: SENATOR WILLIAM CRISMORE, SD 41, Libby

Proponents:

Keith Olson, MT Logging Association
David Galt, MT Department of Transportation

Opponents: None

Opening Statement by Sponsor:

SENATOR WILLIAM CRISMORE, SD 41, Libby, Senate Bill 129 is a fairly simple short bill. What we would like to do is identify log loaders as special mobile equipment. This allows them to run on a SM plate, rather than being licensed as a regular highway truck. These log loader trucks stay in the woods all year unless there is a break down. The other reason this is important to the industry is because some of the insurance companies are making us insure them as a truck that's on the highway. So we have a different liability insurance on them and it is much more costly to us. If they came under our broad form liability which we have on the whole job, it would really be a savings to us.

Proponents' Testimony:

Keith Olson, MT Logging Association, written testimony EXHIBIT 1.

David Galt, MT Department of Transportation, written testimony EXHIBIT 2.

SENATOR "SPOOK STANG, SD 36, St. Regis, went on record as an proponent.

SENATOR BOB DEPRATU, SD 40, Whitefish, went on record as an proponent.

Opponent's Testimony: None

Questions From Committee Members and Responses:

SENATOR STANG, are log loaders defined somewhere in the statute?

David Galt, no, a log loader is not defined in statute.

SENATOR STANG, are fertilizer spreaders defined anywhere or is this a generic way to do this.

David Galt, I don't believe that fertilizer spreaders are defined either. When we have a question, it is a collective decision between myself and our licensing people and Dean Roberts and his licensing people.

SENATOR MACK COLE, what were these trucks classified as before, as far as licensing? What effect did that have on putting them as special mobile equipment?

David Galt, currently because of the definition of special mobile equipment these vehicles are classed as a truck. Most of them are trucks with equipment attached to them. As such, they would be licensed as a truck and required to pay property taxes and GVW fees. The fiscal note expresses the best estimate of the number of log loaders times their average weight, and the fee for that under GVW, times two months.

SENATOR COLE, prior to making them special mobile equipment, were they obligated to be using undyed fuel rather than dyed full.

David Galt, when the special fuel law was passed, initially it said all vehicles on a highway had to have clear fuel. It became apparent that there were times when there were exceptions to this. The Department did a policy statement that said off-road equipment that is used off-road and not designed to carry persons or property but occasionally uses the highway is allowed to use dyed fuel when they move.

Senator Reiny Jabs, last year we had fertilizer trucks, this year logger trucks, are we setting a precedent maybe to convert other things as well.

David Galt, this is a problem that has existed in the special mobile statutes for a long time. If you open the definition of special mobile equipment, it specifically mentions well boring apparatus, ditch digging apparatus, and farm tractors. We are adding to the list of vehicles that have a problem being caught between real trucks and special equipment. That is why we take a look at these vehicles closely. Vehicles we have trouble defining we add to the statute. I don't think this list will grow anymore.

Closing by Sponsor:

SENATOR CRISMORE, thank you for the time for the hearing. This bill does not do away with requirements in regards to safety, and it makes it clear what kind of fuel is required for use in the vehicles. Again I would ask your favorable consideration of the bill.

HEARING ON SB 85

Sponsor: **SENATOR GREG JERGESON**, SD 46, Chinook

Proponents:

Colonel Craig Reap, MT Highway Patrol
LT. Mike Frelick, MT Highway Patrol
Dan Smodel, Cascade County Sheriff Office
Jim Sharpe, Great Falls Police Department
Brent Sells, Missoula City Police
Mona Jamison, American Automobile Manufacturers
David Galt, MT Department of Transportation
Ben Havdahl, MT Motor Carriers Association
Steve Turkiewitz, MT Auto Dealers Association
Lorna Frank Karn, MT Farm Bureau
George Paul, Farmers Union

Opponents:

Carl Schweitzer, Montana Contractor Association

Opening Statement by Sponsor:

SENATOR GREG JERGESON, SD 46, Chinook, one of our great American freedoms is mobility. We have always been able to get from one place to another pretty much at our own will. This has created a more free society than the rest of the world. When we look at our highway system, in the country and in the state of Montana, it is the very definition of our freedom. We are able to choose to move from one place to another at our own will, unless of course we have been arrested and thrown in jail. Freedoms are tempered by responsibilities. As we exercise our freedoms on our great American highways we are exercising those freedoms in connection with millions of other people. Therefore we cannot just exercise this freedom unabated. We have traffic laws relating to motor vehicles because we have to be responsible to one another. That is the reason we have these kind of laws on the books and have had for some time. Circumstances do change over time and in order to continue the fostering of our public safety as we share this freedom, it's been determined that we need to make some revisions in those laws. That is what this bill is all about. I, as the sponsor of this bill, am not going to spend a lot of time going through the specifics of the bill, we have many people here to testify today. After this bill was introduced, there were a number of individuals and groups who looking at the various details in the bill had some concerns about how it would impact their freedom. We are interested in amendments to the bill, so long as those amendments to foster convenience and freedom also took into account our responsibility to preserve public safety on our highways.

Proponents' Testimony:

Colonel Craig Reap, MHP, this bill has to do with equipment on motor vehicles. I would like to give some historical background involved in the process that went into this change. I have been involved in this section of the code on a daily basis for the last twenty years. For the last ten years I have instructed this chapter in our recruit school at the Highway Patrol Training Academy. What I saw as I went through this section of law in the last twenty years, is that a number of terminology used, as well as some of the items of equipment that are talked about, aren't used anymore on vehicles. Also we found that there were some after market products that now have become commonly used that are actually in conflict with the law. We thought that it was time to revisit this whole chapter and bring Montana law up to federal standards where it was necessary, and then to take a look at some after market products that not only cause us confusion, but also distract the drivers of other vehicles as well. Some of them, in fact, we have had to get Attorney General opinions on whether they were legal or not. As we went through this in a very meticulous manner, we were able to identify those areas and make the proper corrections. Because we saw this as not just a Highway Patrol concern, we involved other law enforcement agencies and other agencies that have an impact on motor vehicle equipment. As

the sponsor mentioned we had other people get involved after the bill was drafted. We have been very receptive to their suggestions and have made some amendments. We feel that we have a viable product here that hopefully you will consider favorably. Handouts, **EXHIBITS 3 AND 4.**

LT. Mike Freelick, MHP, a year ago Col. Reap approached me and asked me if I would mind facilitating a committee to review Title 61 Chapter nine in an effort to attempt to bring Montana's motor vehicle codes more into a unified position with the rest of the United States and to make those laws consistent in addition to being uniform. Our committee has identified numerous sections in chapter nine which we feel don't conform to that goal thus the committee established a four fold objective. One was to streamline the sections that were either obsolete or did not conform to current industry standards or production models as established by the automotive manufacturers equipment compliance agency or the society of automotive engineers. Our second goal was to compare Montana's equipment laws with statutes from other states, that have established vehicle inspection laws. Our third objective was to compare Montana's equipment laws with what is referred to as the uniform vehicle code which is published by North West Traffic Institute, to try to bring all vehicle equipment laws into conformity. Our final objective was to obtain input from Montana's law enforcement and judicial representatives concerning ongoing interpretation and enforcement problems. He explained **EXHIBIT 3.** I urge your support of SB 85 and will be here to answer questions.

Dan Smodel, Cascade County Sheriffs Office, I represent the Montana Sheriff and Peace Officers association and we support this bill.

Jim Sharpe, Great Falls Police Department, representing the Chiefs of Police association. I would like to urge support of this bill, and support of the highway traffic safety goal that I believe all of us have. Many of the things that are contained in this bill are going to be vast improvements that the municipal agencies are looking forward to.

Brent Sells, Missoula City Police, I supervise the traffic unit within our department and we are very supportive of traffic safety issues. This particular Senate Bill will be an extremely useful tool for the officers with in our department. I would greatly appreciate support of this bill.

Mona Jamison, American Automobile Manufacturing Association, after reviewing the bill and visiting with my clients we support the bill with the amendments that have been offered.

David Galt, MT Department of Transportation, we believe that these changes are due and critical to the safety of Montana. We support this legislation and I am here to answer any questions you might have.

Ben Havdahl, MT Motor Carriers, we have had our safety people review this bill completely. As the provisions apply to commercial vehicles and trucks on the highways, we are supportive of the amendments to this bill, and changes in the current law. We also support the proposed amendment that would make it consistent with federal law and I have copies of the Federal Motor Carrier Safety Regulations that cover the subject matters addressed in this bill. This bill will make our law consistent with the federal regulations. **EXHIBIT 5.**

Steve Turkiewitz, MT Auto Dealers Association, we are in support of the concept of the bill, I have not seen the amendments yet. I do have some concerns that we have uniformity with federal statutes on vehicles that are ordered from the manufacturers by our dealers and that our dealers are not in jeopardy in the event there is conflicts with that. I have been assured that the amendments address those issues but we want to make sure that our folks won't have any trouble selling a vehicle that comes off the transport from the manufacturer, otherwise we support the bill.

Lorna Frank Karn, MT Farm Bureau, we were very concerned with this bill and were in opposition of it because of its affect on farm tractors. With the amendments that provide exemption for farm tractors we would support it.

George Paul, Montana Farmers Union, we are concerned about some of the agricultural issues but the safety considerations being what they are, we are in support of the bill.

Opponents' Testimony:

Carl Schweitzer, Montana Contractors, I am really not an opponent I just have a serious question about Section 43 where it talks about covering loads. My concern is when does a load have to be covered and when doesn't it. This just implies that the load and its cover need to be securely fastened. I am wondering if it could be rewritten to say "operate a covered load unless the load and it's cover are securely fastened".

Questions From Committee Members and Responses:

SENATOR HOLDEN, on page two line 15, explain to me what your idea is behind a public safety worker.

Colonel Reap, a public safety worker would be anyone that would permanently or temporarily have an assignment of directing traffic in a situation where there was a crash that required some type of signaling to approaching traffic. Where we have trouble with the way that definition is now, is that someone like a non sworn accident investigator, or sometimes we enlist the aid of an individual at the scene to direct traffic temporally, and we feel that those type people should have the same type authority as a uniformed officer for that particular time to direct traffic and require that people comply with their directions.

SENATOR HOLDEN, would these people be able to issue citations or file complaints?

Colonel Reap, no, they would not have any arrest authority or would not be able to cite anyone, all they could do is report the action to a law enforcement officer.

SENATOR HOLDEN, on page three, line 24, I see the first indication here that you are increasing the visibility distance to 1,000 feet from 500 feet. I am wondering if the older vehicles I have at home, or the new vehicles I am buying, are going to be able to be in compliance with that distance.

Colonel Reap, that is the federal standard at this time. I don't believe that there are any vehicles that aren't grandfathered in some other section that would be affected.

SENATOR HOLDEN, on page four, line eight, where you talk about the ability of motorcycles to dim their headlights, is that bringing it up to current federal statutes, or is that something you invented.

Colonel Reap, that would be up to standards also.

SENATOR HOLDEN, on page 22, line 12, it would seem from the indication, that you wanted to insert the word farm tractors into that new wordage there that is underlined. It would sound like to me, that you would want farmers and ranchers to be wearing safety glasses, goggles, and face shields.

Lorna Frank Karn, no, it says a motor vehicle except a motorcycle, quadracycle, or a motor-driven cycle or a farm tractor, must be equipped, so in my estimation, would take that away.

SENATOR HOLDEN, on line 18, we all know that there are a lot of vehicles out there with windshields with cracks in them because of the rural areas that we live in. What is your position on this part of the bill.

Lorna Frank Karn, in my estimation if we delete the farm tractor up above then it would not apply to line 18.

SENATOR HOLDEN, on these proposed amendments that you prepared, I am looking on page two, amendment eight. In the bill I am reading that all farm tractors will have to be equipped with fender guards and mud flaps how does that fit into this?

Beth Baker, Department of Justice, the reason for the amendment is to make sure that farm tractors are excluded from the requirement of having fenders, splash aprons or flaps, because motor vehicle, as the bill is currently written, includes farm tractors. So if you add at the end of the exceptions farm tractor it would clarify that farm tractors are exempt. We have made that

same suggestion for the section on bumpers and we would not have any objection to making sure that exemption is in for windshields as well.

SENATOR HOLDEN, what is your feeling on this new Section, page 32, line 19, where we are talking about covering loads, a lot of our farmers and ranchers are hauling sand, grain, water, all kinds of stuff. Would you believe this to be a tarping bill at this point.

George Paul, we would like to look at it from a safety first stand point. In that the farmers that do haul products whether it be bulk commodity or whatever, do so in a responsible manner.

SENATOR HOLDEN, so as a clarification then, you are standing here telling us that the grain growers in your organization support tarping each and every load.

George Paul, I don't believe that is the intention of the bill.

Beth Baker, I would direct your attention to amendment number 11. It would amend that particular section of the bill to read a person may not operate a vehicle with a load on a highway unless the load and its covering, if any, are securely fastened. Subsection one is the main thrust of that section of the bill and it says that the vehicle may not be driven unless its loaded so that the load doesn't spill. That is the objective of this section. Subsection two is to make sure that if there is a covering on it, the covering isn't flapping around or flying off or ripping into shreds as the vehicle is moving down the highway. The intent of that amendment is to make sure that it is not in fact requiring a cover.

SENATOR COLE, when we are talking about tractors as far as agriculture is concerned, is it your understanding that the definition would take in most any agricultural implement like a self propelled vehicle other than just a tractor.

Beth Baker, the definition of farm tractor is actually in chapter one of title 61, which has hundreds of definitions in it. It defines farm tractor as every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

SENATOR DEPRATU, as the automobile manufacturers develop vehicles down the road, I am concerned about minimum heights for headlights, I see new vehicles that are going to be developed that may conceivably have headlights that will be lower than 22 inches above the road. Would there be any problem with changing this where it would meet standards other than this.

Colonel Reap, we added, in one of the amendments, a subsection that talks about federal equipment standards. What it says

basically is that if there is a conflict, the federal standards would reign supreme.

SENATOR DEPRATU, going to page five, section five, as you talk about tail lamps or head lamps that are covered by a plastic cover, you are saying that a person could drive during the day with that cover on as long as it was taken off at night. Carrying on, it says that they must be the original vehicle manufacturers equipment. Sometimes we see in older vehicles, units that might not be available through a new auto dealer but there are after market lamps that are adequate, but it is not an original equipment replacement.

Colonel Reap, what we were looking for there is, the customizing lens cover that goes over the headlight assembly, and I would agree that maybe that needs to be cleaned up. I don't think that your consideration even entered into the committees discussion. But I do know what you are speaking of and there is certainly nothing wrong with that.

SENATOR JABS, on page 12, the new section, if your vehicle is eighty inches in width and manufactured before January 1, 1953 you don't have to have signal lights. That is a new section, is that a minimized requirement, before they had to have it and now they don't.

Beth Baker, I believe because we were changing the distance requirements, if you look at subsection one, it talks about a distance requirement of 100 feet and because we are trying to deal with increasing the distance requirement to 300 feet we wanted to make sure that the older vehicles would be grandfathered in.

SENATOR JABS, I don't understand that, it says here that you don't need signal lights if your vehicle is less than eighty inches in width or manufactured before 1953.

Beth Baker, that is right, if it was manufactured before 1953. That is the key, because at that time they weren't required to have those things on them, and we didn't want to required new equipment on old vehicles.

SENATOR JABS, this is a new section, so evidently before now you had to have them.

Beth Baker, as I recall there was another section that dealt with this that we took out so we could add it in this section. The purpose is just to grandfather those older vehicles.

SENATOR JABS, on page 25, line eighteen, it says the person may not operate on the highways of this state a motor vehicle, trailer, semitrailer, or pull trailer mounted with a tire having cut into the fabric or worn so that the fabric is visible, having knots or bulges in the sidewall or tread. If I have my old farm

trailer on the road with old tires on it are they going to say that it is unsafe?

Beth Baker, the intent of this section was to put in the codes some safety standards for tires because we have none right now.

Mike Freelick, Ms. Baker is absolutely correct, under current law there is not any stipulations for tires that are, what we would consider hazardous.

SENATOR STANG, on page two you talk about authorized emergency vehicles. A privately owned motor vehicle is not considered an authorized emergency vehicle. What about volunteer firemen who are responding to accidents and fires on the freeway that use those? Will they be ticketed for responding in their private vehicle?

Colonel Reap, the opinion of the committee is that the individual will not be allowed to operate their private vehicles as emergency vehicles for a number of reasons. Because of liability, lack of training, lack of vehicle capability, we don't feel that those individuals should be able to drive their personal vehicles as an emergency vehicle.

SENATOR STANG, then is the Highway Patrol going to furnish these people vehicles? Our fire truck only holds a driver and a passenger.

Colonel Reap, the issue then would be if they can operate their vehicle in a safe and prudent manner. One of the questions was would these people be allowed to run red lights, to exceed the speed limit, to park and stop irrespective of law and other situations? From a safety standpoint you would have to say no. I don't believe that anyone would want unmarked vehicles being driven through their town running stop lights and no one identifies them as emergency vehicles.

SENATOR STANG it has been a long time since you have lived in a rural town or a long time since you traveled the freeway. If you belong to the volunteer fire department and you follow your fire truck to a fire on the freeway, which frequently happens, a lot of times you either drive twenty miles to the next exit or you use the authorized emergency vehicle turn around. If we are prohibited from doing that there will be no volunteer firemen left in this state.

Colonel Reap, I don't think there is any intent to do anything like that. I think the intent is to let them use that vehicle to get as quickly as reasonably possible to the scene of the accident.

SENATOR STANG, is it a violation for people to use their fog lights when their headlights are on and they are meeting on coming traffic?

Colonel Reap, the definition of a fog light in the bill says a fog beam provides a low wide light pattern to greatly increase short range visibility, ideal for adding driving safety in rain snow or fog. If that fog light is brighter than low beam headlights and that is not turned off or dimmed then it is the same violation as driving with the high beam headlights on.

SENATOR STANG, on page 22, line 17, a person may not drive a motor vehicle with a sign, poster, or other transparent material, or a crack upon the front windshield. Does that mean I will be driving illegally twelve months out of the year because invariably when you get your windshield replaced in Montana it gets broke within the next week.

Colonel Reap, I think that the key there is, obscures or impairs. That has been the problem with this section of law before, is that it wasn't clear enough.

SENATOR STANG, in who's opinion does it obscure or impair. Would that be the Highway Patrolmen or the driver's.

Colonel Reap, if the officer in his discretion sees it as an impairment and cites it, then the case will go to court and the judge will decide.

SENATOR BAER, would there be any objection from you or the other proponents of this bill, to insert the word unreasonably in front of obstruct.

Colonel Reap, I think that we could clean that up if we put in the word substantially.

SENATOR BAER, very good.

SENATOR HOLDEN, if a patrol officer pulls you over now, and they observe that the tires are worn, can they issue a careless or reckless driving ticket based on the tires.

Beth Baker, I don't think so.

Colonel Reap, the driver could be cited for driving a vehicle in an unsafe condition.

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SENATOR STANG, say I have this old Ford pickup and I backed it into my loading dock five or six times and I can't get a tail light cover for it, and I put a piece of red plastic over it or paint the bulb red, will I be in violation of this section.

Colonel Reap, I don't think there was any intention to cause that to be considered as a violation. I think the intention was to outlaw the use of a device during the time that head lights are

required to be used, that would diminish the effect of the headlights.

SENATOR MOHL, on page nineteen, it says a horn or other warning device could not remit unreasonable noise. Have you checked with OSHA lately, when we use our trucks, to back up we have to have horns with sufficient sound.

Colonel Reap, referred to the amendment that stated federal regulations always supersede state requirements.

SENATOR MOHL, on page 22, what if you are driving a fork lift, that doesn't qualify under the farm tractor, and it doesn't have a windshield?

Colonel Reap, those types of vehicles are not included in the definition of motor vehicle. They would be under construction equipment or some other type of vehicle. They are exempt.

SENATOR MOHL, asked if Mike Frelick thought that all loads had to be covered.

Mike Frelick, said that was not his intention, just that if a load was covered, the cover was secure.

Closing by Sponsor:

SENATOR JERGSON, I think that there was good questions asked, and the department proved their willingness to consider peoples concerns and consider amendments so long as we hold to our standard that we are promoting public safety.

EXECUTIVE ACTION ON 29

Motion:

SENATOR COLE moved SB 29 DO PASS.

Discussion:

SENATOR STANG said he believed there was amendments to be discussed.

Motion: **SENATOR STANG**, moved to amend SB 29.

Discussion:

SENATOR STANG, said this amendment made sure that they get to the nearest nonposted road as soon as possible.

Vote: The motion to amend SB 29 CARRIED UNANIMOUSLY.

Motion: **SENATOR BAER**, moved SB 29 DO PASS AS AMENDED.

Discussion: SENATOR JERGESON, I did not offer an amendment, but in light of our conversation on the floor the other day this does reduce revenues to the Department of Transportation, and this bill does not have a contingency voidance clause on it. Maybe the excuse is that this is such a huge budget and such a small amount that it really doesn't matter.

Motion: SENATOR BAER, said that he would like to move to amend the bill to include a contingency voidance clause if it applies.

Vote: The motion to amend SB 29 PASSED by Roll Call Vote.

Motion: SENATOR BAER, moved SB 29 DO PASS AS AMENDED.

Vote: SB 29 PASSED AS AMENDED, UNANIMOUSLY.

EXECUTIVE ACTION ON SB 81

Motion: SENATOR COLE moved SB 81 DO PASS.

Motion: SENATOR COLE move to amend SB 81.

Discussion: SENATOR HOLDEN, when you are trying to handle these claims and get payments to the insured quickly, a lot of times you just need that police report. This amendment allows insurance people to get that report.

Vote: The motion to amend SB 81 PASSED with SENATOR STANG voting NO.


Vote: SB 81 PASSED AS AMENDED, UNANIMOUSLY.

ADJOURNMENT

Adjournment: 2:45



SEN. ARNIE MOHL, Chairman



PHOEBE KENNY, Secretary

AM/PK