

MINUTES

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

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on January 23, 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 182, Posted 1-16-97
Executive Action: SB 86 and SB 129

HEARING ON SB 182

Sponsor: SENATOR JOHN HERTEL, SD 47, Moore

Proponents:

Pat Keim, Burlington Northern Railroad
Les Graham, MT Stockgrowers
Russ Ritter
Candice Torgerson, Women Involved In Farm Economics
James Mular, Transportation Communication Union
Fran Marceau, United Transportation Union
Mark Bridges, MT Department of Transportation
Martin Jacobson, Public Service Commission

Craig Gilfiss, Brotherhood of Local Engineers
Dave Gissel
Lorna Frank Karn, MT Farm Bureau

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD, 47, Moore I am here to introduce to you Senate Bill 182. This bill was requested by the railroad industry. It is meant to repeal old outdated statutes governing railroads. It is necessary to do this because the statutes addressed in this bill have been rendered unneeded or are no longer workable in their present form. This is a good housekeeping bill. I want you to know that there has been a great deal of work done by many entities to get this bill worked out in the form we see it today. The railroad worked with the representatives of the rail unions and the staff of the Public Service Commission. They intentionally stayed away from controversial items. At these working meetings, the parties reached consensus on the items addressed in the bill. None of the repealers or revisions will compromise safety, service, or public responsibility. Many of the repealers were recommended by the PSC staff. This bill contains eighteen sections. I am aware that there will be some amendments to address concerns that some of the parties have. I think that it is a good policy to regularly review statutes and regulations, cleaning out those that are no longer relevant. That is the intent of this legislation.

Proponents' Testimony:

Pat Keim, Burlington Northern Railroad, submitted written testimony (EXHIBIT 1)

Les Graham, MT Stockgrowers, proposed amendments, (EXHIBIT 2)

Russ Ritter, I have had a chance to visit with Mr. Keim and we concur on the changes that are being recommended. We also concur with the amendments. We would be pleased if you would take positive action on this. Thank you.

Candice Torgerson, Women Involved In Farm Economics, submitted written testimony, (EXHIBIT 3 and 4)

James Mular, Transportation Communication Union, submitted written testimony, (EXHIBIT 5)

Fran Marceau, United Transportation Union, there were meetings held with the PSC and representatives of rail labor. The outcome of the meetings is the final draft of the bill and is not detrimental to the members I represent. I stand in support of the bill.

Mark Bridges, MT Department of Transportation, the department supports the Stockgrowers amendments. Thank you.

Martin Jacobson, Public Service Commission, we support the bill as introduced.

Craig Gilfiss, Brotherhood of Local Engineers, we have found nothing in this bill that is detrimental to the members that we represent and stand in favor of it thank you.

Dave Gissel, I appreciate Mr. Keims efforts and think this is an example of where organized labor and our employers can work together and we are pleased to stand in support.

Lorna Frank Karn, MT Farm Bureau, we are in support of the bill with the amendments suggested by the other agricultural organizations.

Questions From Committee Members and Responses:

SENATOR HOLDEN, I would like to clarify some parts of this bill. I see you are repealing section 69-14-216. Is it the railroads contention then that you no longer plan to haul livestock in Montana?

Pat Keim, it is an acknowledgement to the fact that we do not haul livestock. I will tell you that I know of no plans for the railroad to get back into the livestock hauling business.

SENATOR HOLDEN, on page 2 of the bill, you mention on line 14 of that page this definition. Tell me more about what you are doing here.

Pat Keim, section 2 defined what an investigatable accident was. Subsequent to when this law was written there has been a huge body of federal statutes which preempt this and redefine what an accident is and broaden the definition. So we are striking those portions of Montana law which describe an investigatable accident. And substituting in place of that federal law.

SENATOR HOLDEN, on page 2, line 20, with regard to grain producers to the state, does this change your present procedure with changing rates?

Pat Keim no, this does not allow us to change any procedure. All rates our established by guidelines put down by the federal statutes.

SENATOR HOLDEN, on page 7, line 16, you are dealing with reporting of livestock that you kill on the right of way. I was looking on page 8, lines 3 and 4, it seemed like there was some language there, talking about your liability for compensating livestock owners. What is the procedure now and how would you deal with it if we strike out this language.

Pat Keim, our current procedure now is when we strike an animal and injure or kill it we contact the owner or they contact us, we

send out a claims representative and settle for the value of that animal. Montana law requires that railroads must maintain right of way fences or pay for stock loss.

SENATOR HOLDEN, so with the Stockgrower amendments section 4 is restored.

Pat Keim, essentially yes.

SENATOR HOLDEN, so you are still obligated to pay for livestock.

Pat Keim, yes, sir. There are other provisions in Montana law that obligate us to pay for livestock.

SENATOR LINDA NELSON, do you think that you can work with Jim Mular on an amendment to be more protective of the shipper and more specific on the repairs.

Pat Keim, Yes, Mr. Mular and I have gotten together previously and I have been thinking of some language to compose.

SENATOR MACK COLE, I notice some real modern things have been crossed out of here. Have you been working on this for a long time?

Pat Keim, we attempted to run a similar piece of legislation a couple of sessions ago, but had not really completed all the leg work. We have had our eye on this for some time but are just now coming up with something workable.

SENATOR COLE, if there is no right-of-way fence at all you definitely would pay for the damage.

Pat Keim, Montana law specifies that railroads are required to maintain fences or pay for stock loss. That was dealt with in legislative session two years ago. Essentially the way it works out if we do not maintain fencing, then we are required to pay for stock loss.

SENATOR REINY JABS, does it say that you are always responsible for stock loss?

Pat Keim, if it can be demonstrated that it wasn't lack of a fence or lack of proper maintenance to a fence. That is a different matter.

SENATOR HOLDEN, so the law is not clear on this particular area.

Pat Keim, yes, there has been situations that have had to be decided in court.

Closing by Sponsor:

SENATOR HERTEL, when Mr. Keim asked me if I would be willing to sponsor this, I did think twice about it. Thank you for a real good hearing. Again this is a good house cleaning bill. It has merit and I hope you look favorably on it.

EXECUTIVE ACTION ON SB 86

Motion: **SENATOR HERTEL**, moved SB 86 DO PASS

Discussion:

SENATOR NELSON, the amendment really takes the place of the bill so I would like Connie to explain it to us.

Connie Erickson, What it will basically say is that the driver of the vehicle on the left shall yield the right-of-way to all vehicles approaching from the right. Then it will go on and insert a new subsection 2, that if the vehicle on the left is involved in a collision at the intersection, that is evidence that the driver failed to yield the right of way. When they have these accidents they have a hard time determining who was at fault. So what this amendment is saying is if the driver on the left is involved in the collision then that is evidence that they were at fault.

SENATOR JABS, what if one driver was driving at excessive speed and the other was going slow, if they collided the one on the left would be at fault even though the other fellow was illegal too?

Colonel Craig Reap, MT Highway Patrol, that comes up. The investigating officer would have to decide if in fact they did contribute to the crash. If they did it wouldn't necessarily mean that the person on the left would be at fault. The person on the left has an additional obligation to make sure that intersection is clear.

SENATOR LARRY BAER, I looked at this bill originally as a simplification of existing law, but the amendment that is proposed here changes the character intended by the bill and would perhaps change it's intent. If we adopt this amendment we are eliminating the application of comparative negligence. Which by Montana law would allocate fault to either one driver or the other depending on their negligence. It is applied to the respective damages awarded to the plaintiff. It also would make the driver on the left strictly liable for the result of an accident regardless of what the driver on the right had done.

Greg Vanhorsen, as I read the amendment it does in fact create a grave concern about the issue of negligence. It appears to me to read that if you are coming from the left hand side of an intersection and there is a collision you are at fault. That should raise concerns for virtually everyone. It does change the law that currently exists.

SENATOR BAER, I can see this creating tremendous harm in the courts. It is a real drastic change to the law of negligence applied to this type of situation. Frankly I don't know what good can come from it if we approve this amendment. It will create a fire storm of litigation.

SENATOR HOLDEN, if the bill was passed out of committee without the amendment would you still want to support this bill.

Colonel Reap, I was in support of the bill before the amendment.

SENATOR HOLDEN, I have a lot of concern with line 14, where you are talking about constituting immediate hazard. I am wondering if it would be more appropriate that we didn't offer an amendment that put a period after the word right, and strike all the rest of that line.

Colonel Reap, I think the intent of that continuation was so that there could be some kind of determination at what point the yield would have to be made. Approximately, in my opinion has been too vague of a term.

SENATOR BAER, so what you are saying is the language, at approximately the same time, has been problematic to you in making a determination. What you intended to do by way of this bill was to better define the hazard of a situation so you could properly apply liability.

Colonel Reap, I don't know if liability is the right word, I think what we were looking for was whether there was a violation or fault.

SENATOR JERGESON, couldn't we add some language that said something to the effect, notwithstanding evidence of contributed negligence, then this applies.

Motion: **SENATOR HOLDEN** moved the amendment.

Discussion:

SENATOR COLE, I would like **Colonel Reap** to explain it a little more so we are clear on what the amendment does.

Colonel Reap, if there is other evidence of violation, I think it would melt in with the amendment of the bill.

SENATOR JABS, I thought **Colonel Reap** came here to support the bill with out the amendment, so I took it that you were not in support of the amendment. Are you in support?

Colonel Reap, Yes, I think the amendment makes it even more clear.

Vote: The motion that the amendment **DO PASS** failed with **SENATORS MOHL, COLE, BAER, NELSON, AND STANG VOTING NO.**

Discussion: **SENATOR HOLDEN**, without the amendment of the bill enlighten us about this constituting immediate hazard.

Ward Shanahan, this is a bill drafted by the Insurance Commissioner. In trying to evaluate the position that we take on these bills, I felt that this is one that was not a significant change in the law so I decided not to oppose this bill. The immediate hazard identifies that the one on the left has to make the judgement.

SENATOR BARRY "SPOOK" STANG, I believe this clarifies that they have to be an immediate hazard.

SENATOR BAER, I agree with **SENATOR STANG**. This clarifies the law and might be helpful to our law enforcement personnel.

SENATOR BOB DEPRATU, eliminating the amendment made me comfortable with the bill.

SENATOR JABS, is there something about if the person could have avoided it, even though you have the right of way and everything else, but if you could have avoided it would that be taken into consideration?

Colonel Reap, yes that comes up, but in an enforcement standpoint that person is still in violation of the right away law.

Vote: SB 86 PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON

Motion/Vote: **SENATOR HOLDEN** moved a **DO PASS** on **SB 129**. **PASSED UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 2:40 PM



SEN. ARNIE MOHL, Chairman



PHOEBE KENNY, Secretary

AM/PK