

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By SENATOR MACK COLE, on January 28, 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 188, Posted 1-17-97
Executive Action: SB 82, SB 85, SB 182.

HEARING ON SB 188

Sponsor: SENATOR ARNIE MOHL, SD 39, Kalispell.

Proponents:

Ronna Alexander, MT Petroleum Marketers
Bill Salisbury, MT Department of Transportation
Leland Griffin, Montana Refining Company
Gail Abercrombie, MT Petroleum Association
Carl Schweitzer, MT Highway Users
Dave Galt, MT Department of Transportation

Opening Statement by Sponsor:

SENATOR ARNIE MOHL, SD 39, Kalispell, I bring to you today SB 188. The problem that we are having is fuel is being brought in from different places and they are selling it and not collecting taxes in Montana. Right now if you are caught there can be a fine of \$1,000. If you bring in 10,000 gallons and the gas tax is .27 cents a gallon, you have a chance of picking up \$2,700 profit. If you were caught you would be fined 1,000 dollars but could still get rid of the fuel and make \$1,700. What this bill does is allow us to take the fuel and sell it and give the .27 cents a gallon to the Department of Transportation, and the remainder of the money goes to the General Fund. If there are second offenders you can charge them the \$1,000 fine and take their fuel. There should be no cost to the counties and they should benefit from it because for every gallon that is purchased the cities and counties get a percentage. With that I will turn it over to proponents.

Proponents' Testimony:

Ronna Alexander, Petroleum Marketers Association, fuel tax evasion is a recurring problem that has been going on for years, at both state and federal levels. The very nature of the tax itself provides an opportunity for people to evade it. With the increased tax rates, and varying rates between states, the incentive to cheat becomes rather attractive. It is impossible to estimate exactly what the extent of the evasion is. Some estimate it at over a billion dollars a year. What ever the extent, it becomes a menace to the state, to the automobile owner, and to the legitimate fuel dealer. The state obviously loses revenue in dollars, the automobile dealer is concerned because the guy that is cheating isn't paying his fair share of the taxes, and the fuel dealer loses when the racketeer cuts prices and undersells the market. There are four or five primary methods of tax evasion. Fraudulent refunds and exemptions, inadequate administration, misblending of fuels, and smuggling. Smuggling across state lines is probably the easiest method of tax evasion. Because interstate fuel is not subject to the tax, the state of origin can not collect the tax, and unless the state that is receiving the fuel has information about the shipment then the tax can be avoided. The fuel is sold to a dealer who pays the tax which the importer puts in his pocket, and the tax collector can not locate him. There is a law that says any one who imports fuel into Montana has to be a licensed distributor, but it is no big deal because the fine is only \$1,000 and there is still considerable amounts of profit being made. Senate Bill 188 is a tool that we think we can use to prevent this particular quom of evasion. Even though we can't tell you exactly what it is in dollars we believe that after one or two incidents of an importer not only losing the tax that he was going to evade, but the cost of the fuel that he purchased, that you will see an increase in fuel tax revenues in Montana.

Bill Salisbury, Department of Transportation, we collect the fuel tax for the State of Montana. We have appeared in front of subsequent legislative sessions to invoke many changes in the fuel tax laws. All these evasion schemes are possible in Montana. There is over a billion dollars lost in Federal taxes every year, and more than that in state taxes. You have heard that the \$1,000 fine is a no-brainer. You can afford to get caught quite a few times. The easiest and hardest to detect of all the evasions is the interstate movement of fuel. This bill gives us an interstate tool that we never had before. We are getting better at tracking the movement of fuel between states. We do have a current process for this. We have been writing courtesy tickets, so it isn't that we have to set up a huge process. We will have to set up a process to sell the fuel. We in our department set up term contracts throughout the state so that we could react immediately and get this fuel off-loaded. That is a point in this. We are only seizing the fuel not the vehicle. I urge this committee to pass.

Leland Griffen, MT Refining Company, We support this bill. The reason being is a problem we have is when product is brought into this state from Canada or another state is that it creates a situation where this product can be sold at a competitive advantage to our product, because of the large amount of tax on it. This there by displaces fuel that we would normally sell and affects our viability. We are an in-state employer and tax payer. We believe this bill should pass and the state needs the revenue.

Gail Abercrombie, MT Petroleum Association, We support this bill and urge a do pass.

Carl Scwhietzer, MT Highway Users and MT Contractors Association, both of these groups support this legislation in Montana. We have a fuel tax of .27 cents a gallon which is totally dedicated for the most part to highway construction and maintenance. We think that everyone should be paying their fair share and if there are people who are cheating and using our roads they need to be caught and dealt with.

Dave Galt, Montana Department of Transportation, We operate the weigh stations and we stand ready to enforce the provisions of this bill if passed. If you would like to explain the details I will do so in questioning.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR GREG JERGESON, what is the liability of a service station operator if they receive imported fuel that hasn't had taxes paid on it.

Bill Salisbury, there is no liability for the ultimate receiver.

SENATOR JERGESON, if they knew it was untaxed fuel when the purchased it would there be liability?

Bill Salisbury, currently our taxation point is really in the distributor.

SENATOR JERGESON, what if the distributor received it illegally?

Bill Salisbury, they would be subject to the fine, and we would probably pull their license.

SENATOR REINY JABS, explain the procedure on how you catch these people.

Dave Galt, When we stop at the weigh station they produce a bill of lading that shows who shipped the fuel and who is receiving the fuel. We check our list of licensed distributors and see if that distributor is licensed. If the distributor is not licensed, and the person receiving the fuel is not licensed currently we issue a warning to this outfit, we send letters to them and give the information to our auditor so we can collect taxes. We warn them that the next time they ship fuel without a license they will be subject to a \$1,000 fine. If this bill is passed we would go through the same process, but when it comes to the enforcement action rather than writing a citation we would send that fuel to the person we have on contract to store that fuel for us and take the fuel, notify any interested parties that the fuel is now in the possession of the Department of Transportation and they have the right to file a claim against it. If the department ends up having the fuel we would deduct our taxes, the administrative cost of having that fuel seized, we would pay the trucker for the transportation costs from where we stop them to where the fuel is unloaded, and any excess funds left out of that would go to the General Fund. The big difference in this bill now is in what we do when we catch the person at the weigh station. The rest of the process for us remains the same. We put a clause in there that only the department administrators can seize the fuel so that we are sure that this is an illegal movement before we seize the fuel.

SENATOR JABS, even though they are licensed dealers they could still have illegal fuel couldn't they?

Dave Galt, if they are a licensed distributor or a license receiver they are supposed to report all these imports to us so we can make sure all their tax collections are right.

SENATOR BOB DEPRATU, do you have a rough idea in round figures how many letters of warning and how many \$1,000 fines that you have sent out.

Dave Galt, we have sent out numerous warning tickets and two \$1,000 fines.

SENATOR JABS, how are the taxes tracked and who pays them?

Bill Salisbury, the distributor pays the tax.

SENATOR MACK COLE, you were talking about this illegal fuel coming in from various locations is it primarily from Canada or other states or how does this happen?

Dave Galt, it can come from anywhere.

SENATOR LINDA NELSON, what sort of violations are you finding up near the Canadian border area?

Dave Galt, one of the common ones was to have a bill of lading that said that the fuel was dyed, so we would think it was untaxed when actually it was clear and could be taxed.

SENATOR NELSON, where is the destination point for this fuel?

Dave Galt, all the destinations points have been a variety of places all over the State of Montana.

Closing by Sponsor: **SENATOR MOHL**, thank you for a good hearing. I would like to clarify a statement I made earlier, 16 million goes to the counties and cities, 10 million to the cities, 6 million goes to the counties. Justice Department gets 6.48 percent. That is how it breaks down. The rest goes to the Department of Transportation. Every gallon of fuel that comes in with out being taxed hurts these departments and they have to be funded another way, so if we can get this illegal money it makes quite a big difference.

EXECUTIVE ACTION ON SB 82

Amendments: SBO08201.ACE, SBO08202.ACE

Motion: **SENATOR REINY JABS** moved SB 82 DO PASS.

Motion: **SENATOR JOHN HERTEL** moved AMENDMENT SB008201.ACE (EXHIBIT 1)

Discussion:

SENATOR LARRY BAER, I know what **SENATOR DALE MAHLUM** was trying to do here, but he didn't accomplish it. What we were concerned with was eminent domain, which is a condemnation of a property, which doesn't violate or diminish your property rights, but supersedes your property rights. This amendment does not solve the problem of the possibility of the government condemning your property.

SENATOR GREG JERGESON, if in fact they have the power of eminent domain under the provisions of this program as a practical matter they are not likely to use that power given the fact that when we use the power of eminent domain they would have to compensate the

land owner for the land they took under the use of that power. I can't imagine that they are going to be using highway gas tax money to purchase property. I doubt very much that there is any possibility of them using this power of using this power of eminent domain. What is a concern here is that they, might adopt a regulation which might diminish the value of peoples property when it comes to the taking and this section prohibits their ability to adopt any kind of regulation that would diminish private property rights.

SENATOR JABS, they still have the right of eminent domain whether its scenic or not, so I don't think that would be affective here.

SENATOR BAER, again clarification, eminent domain and condemnation requires public necessity. We are creating a program here which could very well imply public necessity, and therefore apply eminent domain condemnation doctrines. You can't say it is unlikely that they would do it, because government is likely to do anything if they have the power. I know that **SENATOR MAHLUM** intended to write an amendment that would say that the doctrine of eminent domain could not be used in conjunction with this bill, but he didn't accomplish that.

SENATOR JOHN HERTEL, what do you suggest then. What do we do to correct it.

SENATOR BAER, if we were to offer a modified amendment to say, "designation of a road as a scenic historic byway may not incorporate in any way the use of eminent domain condemnation proceedings to require a property right". That would do it.

Motion: **SENATOR BAER**, moved his **ALTERNATIVE AMENDMENT**.

Discussion:

SENATOR BOB DEPRATU, would we want to also leave this other part of that in there, that it can not diminish private property rights of a person that owns land adjacent or visible from the designated road.

SENATOR BAER, it certainly wouldn't hurt.

SENATOR JABS, can we take the right of eminent domain away from the government?

SENATOR BAER, I think if you specify in the law that they can't use it, as a condition of the passage of this bill, I think you can do that.

CHAIRMAN MOHL, Idaho had that in their bill, that you can not take, force any right or anybody to sell to benefit the byways. They can not use state gas tax money to buy the land, they can use volunteered money if the land owner wishes to sell.

SENATOR "SPOOK" STANG, how does severability clause figure in with the first amendment if for somehow the first amendment was found unconstitutional, then we pass a scenic byways bill without any limitations to private property rights?

Connie Erickson, only that part that was challenged, the rest of the bill would be okay.

SENATOR STANG, so we could pass this bill with the protection for private property in it, but if that part was challenge in court and thrown out we would then have a scenic highway bill with no protection.

Motion/Vote:

SENATOR STANG moved to SEGREGATE THE AMENDMENTS. CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR STANG moved AMENDMENT NUMBER ONE PASS. CARRIED UNANIMOUSLY.

Motion: SENATOR HERTEL moved AMENDMENT NUMBER TWO PASS.

Discussion:

SENATOR MACK COLE, I think that we may be getting ourselves in trouble if we put a severability in, so I will vote against that.

SENATOR BAER, when you add severability clauses, you do it when you have a number of different facets in the bill and you don't want the entire bill to fail, for the determination of one of those facets to be illegal in some way. In this bill I think it will do more harm then good to maintain a severability clause. If in fact we did loose our protection from eminent domain the bill would continue to live on. There is no need to have a severability clause in this bill.

Vote: Amendment #2 PASSED 8 to 2 on a roll call vote.

Discussion:

Connie Erickson, explained amendment SB008202.ace (EXHIBIT 2).

SENATOR STANG, if you go to your amendment the scenic-historic byways program may not include roads that are on the national highway system or the primary highway system as those systems are defined in 60-2-125. Isn't that pretty much every road in the state?

CHAIRMAN MOHL, no, you still could put roads, like the Going To The Sun road in Glacier Park, county roads, and lateral roads. I talked to Idaho and they have done the same thing. They will not

allow a scenic byway on a road that could possibly create any safety problems.

Pat Saindon, explained what road could be designated. (EXHIBIT 3)

SENATOR RIC HOLDEN, for clarification of your amendments then, it would seem to me that you would want to withdraw section e of amendment 5 because the Baer amendment would have taken care of that part.

Motion: **SENATOR COLE**, moved **AMENDMENT NUMBER 8202 REMOVING SECTION 5-E.**

SENATOR STANG, if we include section C of amendment number 5 does that take the program away from where you wanted it to go?

Pat Saindon, the department would not entertain any grounds on the interstate. The department would entertain roads on our primary system both on the NHS and off. We will live with the bill however you give it to us.

SENATOR STANG, I would like to see you amend number 5 part C to leave the primary highway system. I think the people who are looking at this are trying to get people off the main roads and onto some of these other roads. I think we should leave the primary roads in.

Motion/Vote: **SENATOR STANG**, moved **ON C, AFTER HIGHWAY NATIONAL SYSTEM THAT WE "SCRATCH OR THE PRIMARY HIGHWAY SYSTEM" IN THAT AMENDMENT.**

Discussion:

SENATOR COLE, I would not be in favor of putting primary highways in the bill.

SENATOR STANG, when you said there is 70,000 miles of road and this amendment will only take out 6,700 miles of road, so all these black and orange roads are only 6,700 miles in Montana?

Pat Saindon, that is correct.

SENATOR STANG, are the city streets included in that 70,000 miles?

Pat Saindon, that is correct. Any road that the public has authority to drive on.

SENATOR STANG, could you give me an idea of how many miles of public roads are within the city limits.

Pat Saindon, not at this time, but I could probably find that information.

SENATOR JABS, I can't see the rational in taking out primary roads. Some of those roads go through mountainous areas and would be scenic.

CHAIRMAN MOHL, safety. If you have been up in our part of the country and driven on the roads, you understand that you can't have the traffic congested any more than it is. I have a real concern for safety. Maybe when we can afford to widen the roads and put some turn-outs in.

SENATOR REINY JABS, the local people are choosing the roads, don't you think they are smart enough to realize that and not designate roads that are dangerous. You are putting a blanket on everyone.

CHAIRMAN MOHL, that same person that might vote to put that road on, is probably the person that never drives it.

SENATOR JABS, I was along the highway to Kalispell and they were moving these house trailers through there. That to me is a lot more dangerous. There were also bicyclers. No matter what you do you will have this danger deal.

Pat Saindon, the primary system is under the ownership of the State of Montana. Before any primary could be designated as a scenic byway it would have to be evaluated by the Department of Transportation to determine if that road could meet the qualifications and safety is one of them.

SENATOR JABS, that just reinforces my argument.

Vote: ROLL CALL VOTE FAILED. 5 TO 5

Motion: SENATOR JERGESON MOVED TO AMEND SB 82 BY INCLUDING ITEM B AND ITEM F. I believe from the testimony that those amendments were acceptable to the proponents of the bill. I think that is the doctoring that this bill needs, and the rest of it is just pouring it on.

Discussion:

SENATOR COLE, I think after our previous vote it appears what is being proposed here might create even more safety problems than what we had before, and would be opposed to this vote.

Vote: ROLL CALL VOTE, MOTION FAILED. 8 TO 2

Discussion:

SENATOR HERTEL, how will item four reflect on the fiscal note ?

CHAIRMAN MOHL, these are non-paid commissions. They do not get paid.

SENATOR HOLDEN, not exactly, we do pay them to travel to meetings.

CHAIRMAN MOHL, there were 14 and I cut it to 13 so the fiscal note should have reflected that to begin with.

SENATOR HERTEL, why did you stop at thirteen.

CHAIRMAN MOHL, in case of a vote they wouldn't have a tie.

Vote: ROLL CALL VOTE, MOTION CARRIED. 9 TO 1

SENATOR STANG, are the goals of the National Scenic Byways program the same goals of the Montana program? Will they be tied to the Federal goal if we use the federal money.

Pat Saindon, the federal money that is available to scenic byways that in the future the roads that will be eligible for those funds will be roads that have already been designated on the national byways program. State roads may not be eligible for federal funds.

SENATOR STANG, if we take one of the roads and nominate it for the federal program, do we have to go by the federal goals? Can the feds come in with a group and designate a road without having the approval of the state?

Pat Saindon, you cannot have a road designated as a National Scenic Byway unless it is first designated as a State Scenic Byway. The National Scenic Byway Designation application will follow the guidelines for the National Scenic Byways. Therefore if the State would nominate one of our scenic byway routes for a national designation, in order to get accepted it would have to meet the federal nominations standards.

SENATOR STANG, do you see a conflict with the amendments and federal law?

Pat Saindon, I don't see a conflict. In order to have a byway designated, it will require a corridor management plan. I don't see that as having any conflict with the federal program.

Motion: SENATOR JABS, made a motion that SB 82 DO PASS AS AMENDED.

Discussion:

SENATOR HOLDEN, I was surprised that SENATOR JABS of all people would have moved this bill because last session, we had to go through quite a bit to get some money for you folks down in the Hardin area for roads. I tell you what happens with this sort of thing in my estimation. The department came in and testified that if you designate a scenic highway that they plan to repair highways and they have highways mapped out on how they are going

to spend taxpayer money, to keep those highways kept up. If you pass this kind of legislation you start to designate scenic highways in this state, the department testified that they would not come in a reallocate funds for scenic highways. What happens in reality is you get a room full of people who want their roads taken care of, and they go back to this piece of legislation and say it was the legislators intent to create scenic highways in our state. We will use this as an argument that we don't need to fix the road in Hardin or Glendive, but we need to fix the road around Highway 93. So the focus of your tax dollars starts to shift from maintaining the highways in a broad spectrum to now focusing that on certain highways. So your dialogue changes from what is good for all of Montana to what is good for the scenic highways. I am going to vote against the bill.

SENATOR STANG, my main concern with this bill was the private property rights. I think we have addressed those situations with the amendments in the bill. I even think we went too far, and will probably vote for the bill and hope we get it fixed up. There is a couple things in the absolute requirements for a State Scenic Byways, before a road can be considered it has to have traffic volumes, the nominated byways must be paved with an identifiable shoulder, most of the roads that we have left out of this bill probably don't qualify anyway because they are not wide enough and don't have a shoulder. They have to go by safety and road type conditions for byways, so we pretty much knocked this bill down to the city streets in Helena, and a couple of our secondary roads. Maybe we should give these people a chance to show us that they really aren't going to do us in like we think they are, and if they do we can always come back and take it away in two years. I am going to support this.

SENATOR BAER, I am real ambivalent about this bill, and I don't like the \$100,000 price tag and I don't like a lot of things about it. I think **SENATOR HOLDEN'S** concerns were valid, but I am going to give it the green and see how it turns out.

CHAIRMAN MOHL, where did you get the \$100,000.

SENATOR BAER, we have got \$50,000 in operating expenses in FY 98 and 99. It is going to come mostly out of federal funding but that is still tax payer money.

CHAIRMAN MOHL, is there any federal funding available right now for scenic byways?

Pat Saindon, there is funding available through the National Scenic Byways program. The state has to apply for those funds. As I explained to you earlier it appears that those funds will not be available the State Scenic Byways programs unless you have a road that has been nominated and accepted as a national scenic byway route or an All American road. I can not say that there is money available. It is anticipated to administer this program

that people who designate routes and want improvements on those roads will probably do it through the enhancement program.

CHAIRMAN MOHL, the fiscal note says that federal funds are anticipated to be available.

Pat Saindon, again the National Scenic program did have moneys and states who have scenic byway programs could apply for those monies, and did get some of those monies. Now the national program has designated its own program and the money will first go for those routes and the money that is left will go to the states that apply for that money.

CHAIRMAN MOHL, I am going to oppose the bill myself and the simple reason is I don't think there is going to be any federal money available and I think it is going to be another thing we end up funding ourselves.

SENATOR JABS, I would like to answer **SENATOR HOLDEN**, this bill last year was coal impact money. And number two it was mentioned that tourist spend only 3 days in Montana, I think this will keep them here a day or two longer. I am going to support the bill.

SENATOR NELSON, if this passed are we diverting any highway funds any special revenue that would go to normal maintenance of highways of building other highways?

Pat Saindon, no we are not.

SENATOR HOLDEN, if you don't want to direct me to certain segments of Montana then you don't want the bill. What is going to happen is next session they will want to add primary roads and national roads. You have to look ahead.

SENATOR BAER, it is customary for all departments to use federal funds instead of state funds if they are available. Did I hear you say you were prohibited from using federal funds on secondary roads.

Pat Saindon, I said that federal funds are available on secondary roads but there is a calculation of how funds come to the secondary program. The secondary road program is funds that go to the counties and the counties designate how the funds are spent.

SENATOR BAER, so if federal funds become available they may or may not become available depending on what the county decides.

Pat Saindon, I don't believe that there is going to be very much federal funds available for scenic byways program. No state dollars will be spent of this program.

Vote: ROLL CALL VOTE, PASSED. 8 TO 2

EXECUTIVE ACTION ON SB 85

Motion: SENATOR HOLDEN moved the SENATE BILL 85 DO PASS and that AMENDMENTS BY THE SUBCOMMITTEE BE ADOPTED. (EXHIBIT 4 and 5)

Discussion:

SENATOR NELSON, since this was SENATOR JERGESON'S bill I would like to hear his comments on it because it is amended so extensively.

SENATOR JERGESON, at the conclusion of our sub committee I moved that as amended the bill pass to the full committee. I am willing to make that recommendation to this committee now. There were a couple of amendments that I did not vote in favor of, but I am not prepared to let my disagreement over those endanger the passage of the bill.

Vote: the motion to AMEND SB 85 CARRIED UNANIMOUSLY.

Vote: the DO PASS AS AMENDED MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 182

Motion: SENATOR STANG moved SB 182 DO PASS.

Motion: SENATOR HOLDEN moved TO AMEND SB 182, with the amendment offered by the Stockgrowers. (EXHIBIT 6)

Discussion:

SENATOR HERTEL, the railroad people were in agreement with that.

SENATOR STANG, if Connie Erickson has to re write this amendment that is okay.

Vote: The motion to AMEND SB 182 CARRIED UNANIMOUSLY.

Motion: SENATOR NELSON moved the AMENDMENT OFFERED BY THE WOMEN INVOLVED IN FARM ECONOMICS. (EXHIBIT 7)

Vote: The motion to AMEND SB 182 CARRIED UNANIMOUSLY.

Motion: SENATOR HERTEL moved AMENDMENT 18203. (EXHIBIT 8)

Vote: The motion TO AMEND SB 182 CARRIED UNANIMOUSLY.

Motion: SENATOR HERTEL moved SB 182 DO PASS AS AMENDED.

Vote: SB 182 PASSED AS AMENDED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 2:48


SEN. ARNIE MOHL, Chairman


PHOEBE KENNY, Secretary

AM/PK