

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By CHAIRMAN ARNIE MOHL, on February 13, 1997, at  
3:10 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: SJR 9 and SB 309  
Posted 2-10-97  
Executive Action: SB 309, SJR 9, SB 257,  
SB 293, SB 246

#### HEARING ON SJR 9

**Sponsor:** SENATE HIGHWAYS AND TRANSPORTATION COMMITTEE

**Proponents:**

Pat Saindon, MT Department of Transportation  
Carl Schweitzer, MT Contractors Association

**Opponents:** None

Opening Statement by Sponsor: SENATOR "SPOOK" STANG, SD 36, St. Regis, Spokesman for the Committee, this is just a resolution that urges the Senators and Representatives of the State of Montana to urge the United States Congress to act in a timely fashion to reauthorize the Federal Surface Transportation Program. I think we all know why we want it reauthorized. We receive more money than we pay in.

Proponents' Testimony: Pat Saindon, MT Department of Transportation, we definitely hope that you will pass this resolution. The reason that we are interested in having this resolution go forward, is because there are several other recommendations out there from other states about how they would like to see reauthorization happen. This is vitally important to the State of Montana.

Carl Scwheitzer, MT Contractors Association, I echo the support of this resolution.

Opponents' Testimony: None

Closing by Sponsor: SENATOR STANG, I close.

#### HEARING ON SB 309

Sponsor: SENATOR DALE MAHLUM, SD 35, Missoula

Proponents:

Bob Brooks, MT Sign Group  
Nick Rotering, Department of Transportation  
Bud Williams, MT Innkeepers Association

Opponents: None

Opening Statement by Sponsor:

SENATOR DALE MAHLUM, SD 35, Missoula, I bring you SB 309 which is quite a simple bill. In 1989 Montana's legislators authorized the Department of Transportation to institute a motorist information sign program to provide additional information to the traveling public. They locate these signs on the primary highways of the state. This program commonly referred to as a local signing program, is similar to the information sign programs adopted by many other states. They inform the traveler of services provided at that exit. The legislation also authorized that this local sign program be franchised and operated by a private entity under a franchise granted by the department and supervised by the departments staff at the expense of the franchisee. All this is trying to do is bring us up with other states to allow for six signs instead of four. I would really appreciate your agreement with this. I will reserve the right to close.

Proponents' Testimony:

Bob Brooks, MT Motorist Sign Group, our company supports this bill, for the reasons that SENATOR MAHLUM expressed. We hope you agree that this will provide more information to motorists, and enable more businesses to participate and generally provide a better program. I would be happy to answer questions. Thank you.

Nick Rotaring, MT Department of Transportation, we support the bill as proposed and it does bring us into compliance with what was authorized by the Federal Highway Department.

Bud Williams, MT Innkeepers Association, we support the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: SENATOR MAHLUM, this is a very good bill for the people who travel through the State of Montana. This bill has no adverse affects, and I urge your approval.

EXECUTIVE ACTION ON SB 309

Motion/Vote: SENATOR "SPOOK" STANG MADE A DO PASS MOTION ON SB 309. PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SJR 9

Motion/Vote: SENATOR LARRY BAER MOVED TO ADOPT SJR 9. PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 246

Amendments: 24601.ACE

Motion: SENATOR STANG MOVED SB 246 DO PASS.

Motion: SENATOR RIC HOLDEN MOVED ADOPTION OF AMENDMENT 24601.ACE. (EXHIBIT 1). I have some real problems with the bill. The amendment strikes the requirement for people to obtain slips from the property owner. It only would require oral permission.

Discussion:

SENATOR STANG, I think that if written permission is not given, the people that enforce this law will be coming in to my store looking for me, to see if it is okay that the car is there for sale. I think it makes sense to have the written permission in the window so the proprietor of the store is not bothered all the time.

SENATOR BOB DEPRATU, I would speak against the amendment also.

**Vote:** The motion to AMEND SB 246 FAILED. HOLDEN AND HERTEL VOTED YES.

**Discussion:** SENATOR HOLDEN, I believe we have big guys who want to limit the sale of merchandise in Montana. I don't see the need to restrict peoples ability to sell their vehicle. I think they should be able to sell it any way they can. I am not convinced that we don't have laws on the book right now that would handle people that try to surpass current statutes.

SENATOR DEPRATU, This is really a bill that I think gives the consumer some protection. I am not for a lot of regulation, but I have been in the business for 37 years now, I have seen a lot of thing evolve. The problem that happens with so many of these is that a person will bring in vehicle from out-of-state or other areas and sell them like a dealer. This does a disservice to the person who wants to sell their own vehicle.

SENATOR STANG, this to me, relates to the written permission to hunt on private land. I believe there is a problem with salvage vehicles. There are people who get taken. I think that is an important point.

SENATOR "SPOOK" STANG, if you see these cars with all the same numbers, why are we not prosecuting these people.

SENATOR HOLDEN, I think there is only one enforcement officer in Deer Lodge to handle these, and I think they get a lot of calls. They are really short handed.

CHAIRMAN MOHL, who is going to enforce this?

Dave Brown, this allows the Justice Department to use the Highway Patrol, and local law enforcement when there are complaints filed.

**Vote:** THE MOTION TO DO PASS SB 246 PASSED. SENATOR HOLDEN VOTED NO.

#### EXECUTIVE ACTION ON SB 257

**Amendment:** SB025701.ACE (EXHIBIT 2)

**Motion:** SENATOR JOHN HERTEL MOVED SB 257 DO PASS.

**Discussion:**

Connie Erickson, read the amendment.

SENATOR STANG, that is existing law. We have had a portion of state funds for the secondary highway system, have we done something to the change the law that would make us do that?

Pat Saindon, yes. Before ISTEA, they apportioned the state funds, and then the federal funds followed. When ISTEA came about and we did a lot of clean up language on a lot of the statutes. This is one statute that the clean up was not taken care of, and this bill covers that. We did not catch it when we came in with the other amendments.

Motion/Vote: SENATOR COLE MOVED THE AMENDMENT, (EXHIBIT 2) CARRIED UNANIMOUSLY.

Motion: SENATOR HERTEL MOVED THE BILL AS AMENDED.

Discussion:

SENATOR STANG, the only question I have is did we find a definition of consolidated city governments somewhere?

Connie Erickson, there is not a specific definition, however there is a whole part in title seven that talks about the creation of a consolidated city-county government.

SENATOR STANG, do we need to put that definition somewhere in the statutes? Will someone come and challenge that later if we don't?

Tim Reardon, MT Department of Transportation, It probably couldn't hurt, but I don't know where the challenge would lie.

SENATOR STANG, this is the first time I have seen a bill that designates something, without a definition of it somewhere in the codes. I am not too worried about it, I would just hate to see someone challenge the disposition of the funds because of it.

Vote: SB 257 DO PASS AS AMENDED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 293

Amendments: (EXHIBIT 3) and (EXHIBIT 4).

Motion: SENATOR COLE MOVE SB 293 DO PASS.

Discussion:

Tim Reardon, MT Department of Transportation read the departments amendments.

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Motion: SENATOR HOLDEN MOVED THE AMENDMENT BY THE DEPARTMENT OF TRANSPORTATION. (EXHIBIT 4)

Discussion:

SENATOR JERGESON, has SENATOR SHARON ESTRADA had a chance to read the amendment.

**SENATOR ESTRADA**, I would just withdraw my amendments, (EXHIBIT 3) and go with the departments if that would be appropriate.

**SENATOR NELSON**, would someone from the department explain.

**Tim Reardon**, we tried to come up with a definition that the department could use for purposes of establishing an identifiable area in a construction project that would not create a definition that was inconsistent with what we already have in current statute or in the standard specifications that we use with contractors. That is where the definition of a construction clear zone came from. In the third part of the amendment we tried to identify the times and the means by which contractors could store equipment if they had to. The amendment relative to the fine was proposed in a letter to the committee. The reality is that accidents do happen. We don't have that many prime contractors so we don't want to put them out of business for a first time offense.

**SENATOR STANG**, on your amendment number 3, part A, are we putting an awful lot of liability on that person if somebody is driving negligently through there or hits a piece of ice in the winter time and skids off the road and hits this piece of equipment. Will that individual be liability because he gave permission or failed to give permission.

**Tim Reardon**, I don't think that any employee of the state or local government doing their job, exercising the discretion that comes with it, is ever personally liable for those kinds of things. You put people on a project to make decisions based on a professional ability. There is certainly potential liability to the state.

**SENATOR STANG**, are you familiar at all with the Brockie case?

**Tim Reardon**, a little bit.

**SENATOR STANG**, are you familiar enough to say that Mr. Brockie was in violation of any laws when this accident happened.

**Tim Reardon**, it was my understanding that no citations were issued. He was a passenger in that vehicle.

**SENATOR STANG**, was this in a posted construction zone at the time, or had the speed restrictions been removed?

**Tim Reardon**, my understanding was that this was a striping project, and the stripers were essentially done for the Thanksgiving Holiday. I think all the signs were removed but this one. I assume they were just repainting.

**SENATOR JABS**, does this cost the state more money because contractors have to bid jobs higher?

**Tim Reardon**, most contractors are very aware of their statutory and contractual obligations, and that this is a cost to them. Traffic control is always costly. The extent of that is very hard to say. It will depend on the project.

**SENATOR JABS**, in other words, in some areas where they have to move the equipment, it will cost a lot more. This is going to effect the cost of contracts.

**Tim Reardon**, yes. I don't think there is any doubt.

**CHAIRMAN MOHL**, on the second amendment, I can give you numerous examples were the nearest bottom of the outside slopes, or the top or outside the right-of-way line, there is absolutely no place to park equipment. The procedure has always been thirty feet from the shoulder line. On the third amendment, construction workers private vehicles are only parked there when they are working. I have a real problem with this.

**Tim Reardon**, we understand those concerns and we don't disagree. That is one of the reasons that we put a provision in there that a department representative is going to have to make some on-site determinations. If you have no place to go, that is when discretion comes in.

**CHAIRMAN MOHL**, on the federal project in the park, the flaggers were told to leave their vehicles at the nearest approach. One of them was attacked by a bear because they didn't have any place to go. After that they changed the rules.

**SENATOR BAER**, this is the first time I have seen this bill. I wasn't here when it was presented. I can see that the department has really tried hard to mitigate the possible problems that this bill could cause. I don't know that they can be properly mitigated, but I think in their amendment that they have done the best they can.

Vote: the MOTION TO AMEND SB 293 PASSED WITH CHAIRMAN MOHL VOTING NO.

Motion: SENATOR COLE MOVED SB 293 PASS AS AMENDED.

Discussion:

**SENATOR HOLDEN**, If you look at the hand-out that the trial attorneys brought in, this was a court case that dealt specifically with the Brockie case. I think it is critical to understand what a large policy change this small bill would do in the State of Montana. If you look at the case that went to court, the court concluded that if you take the manual that explains what the rules are and you put those into statute the court ruled that you have declared that you have declared negligence per say. That means that you can not offer any sort of counter arguments when an accident occurs. Just the fact that you were there makes

you negligent per say. In the Brockie case the jury had the opportunity to listen to what the road conditions were like, the speed at which he was traveling on the road. The also had the right to consider the significance of a road sign sitting there as opposed to a culvert or a fence post or whatever might have been in his path when he went off the road. It is tragic that the boy lost his life. The jury had the opportunity to consider all the facts of the accident. With passage of this bill you make it negligence per say, the jury would no longer have the right to examine all the facts of the accident, but the trial attorney would be able to bring up the negligence per say argument, and they would have to disregard some of the critical information as to why that accident occurred. I can tell you sincerely that any contractor trying to purchase insurance in the State of Montana once the insurance companies have discovered that negligence per say is in force, it will double your insurance premiums more than anyone would want to pay. It is also critical to understand that the state also would be on the hook, in accidents that involved their equipment. I think those reasons are strong enough reasons to table the bill.

**SENATOR BAER,** without this bill you have a situation where we have an errant vehicle. I would assume that is a vehicle that is out of control and leaves the road for some reason. As the Highway Patrol treats that situation, a vehicle that leaves the road is automatically construed to be a vehicle that was not being driven in a reasonable and prudent manner, and will be cited. If in fact an errant vehicle leaves the highway and hits a construction vehicle, and it goes to court under a negligence theory you have comparative negligence, where the court decides if one party was more negligent than the other. It is a percentage that they allow. If the plaintiff was eighty percent negligent he will only be allowed to recover 20% of damages. We would create a negligence per say situation with this bill, that is very hard to overcome for the defendant. It will raise the liability to contractors. It will raise their insurance, and create a litigative bonanza for trial lawyers. You will see not only a \$5,000 fine for someone who mistakenly leaves his vehicle in the wrong place, but that person will be liable for huge wrongful death compensation. The fact that you are violating the law, the liability is there. There would be tremendous ramifications here.

**SENATOR JABS,** a lot of telephone poles go along the right-of-way. I don't believe they are any less dangerous than vehicles. I don't see where this is any worse.

**SENATOR JERGESON,** it strikes me that if a contractor does everything according to the standards, so that he is not liable, it would have reduced liability. It looked to me that the department has tried very hard to draw these amendments so that it would be a reasonable means for contractors to comply with provisions in this section.



SENATOR HOLDEN, I deal with litigation in this area a lot. What happens is these are clear definitions of the rules. We have these rules in a manual now that contractors have to abide by. The difference is, if you take these from a rule book and put them in statute, what you create is negligence per say and it is a big deal. You are liable 100%.

SENATOR BAER, if we don't have this bill at all, the law of negligence requires that they look for a duty. If your left you equipment there, was that something that a reasonable and prudent person would do. Did they have a duty not to leave it there. That is what would be determined. If the bill passes, that duty would be increased tremendously, making him much more vulnerable to a lawsuit. You are increasing the duty of the contractor substantially.

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Motion/Vote: SENATOR DEPRATU MOVED TO TABLE SB 293. THE MOTION CARRIED WITH SENATOR JERGESON AND SENATOR STANG VOTING NO.

ADJOURNMENT

Adjournment: 4:30 PM

  
SEN. ARNIE MOHL, Chairman

  
PHOEBE KENNY Secretary

AM/PK