

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By CHAIRMAN ARNIE MOHL, on February 18, 1997, at
3:12 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 360 AND SB 335,
POSTED 2-12-97
Executive Action: SB 360 AND SB 335

HEARING ON SB 335

Sponsor: SENATOR LOREN JENKINS, SD 45, Big Sandy

Proponents:

Bob Stephens, MT Grain Growers Association
John Youngbery, MT Farm Bureau
Dave Galt, MT Department of Transportation

Opponents: None

Opening Statement by Sponsor:

SENATOR LOREN JENKINS, SD 45, Big Sandy, we have a problem that has shown up in our area and the way the law is written now, any farm machine moving on a county road has to be preceded by a flag man. In my area every section has a county road around it. Theoretically I couldn't move from one field to the next without a flag man. We thought that the law allowed us to move on a county road within a 100 miles of your farm, as long as it was part of your operation. On line 20 to clarify, "or movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay." Hauling hay, I believe is already in the law now. Then on lines 24-26, again we restrict it to a county road, not on state or federal highways, are we allowed to do this. I am not asking for this on state or federal highways where traffic volume is higher, they should have a flag man on these roads. A county road is described in section 60-1-103 as stated on page 2 of the bill.

Proponents' Testimony:

Bob Stephens, MT Grain Growers Association, we are in support of this bill.

John Youngbery, MT Farm Bureau, we support this bill.

Dave Galt, MT Department of Transportation, this bill does two things. It allows agriculture vehicles owned and operated by the farmer, to move on county roads without the use of a pilot car. The other thing this bill does is raise the general width for when a farm vehicle needs a pilot car to 12 feet 6 inches wide. I'll be here to answer questions.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR GREG JERGESON, is there any difference in the liability for a person who is moving equipment with or without a pilot car.

SENATOR JENKINS, yes there is. If you didn't have a pilot car, and had a wreck, you would be liable no matter what.

SENATOR JERGESON, if you are coming up on a hill top and someone is coming from the other direction and there is no pilot car, and you haven't seen them to get over, and crash into them, who has liability in that circumstance?

SENATOR JENKINS, if you have the road blocked then you would be liable. I am not trying to discourage farmers from using flag cars if they are available. I really anguished on how to write this bill to protect us.

SENATOR JABS, you mentioned 12 foot 6 inches brought agriculture into compliance with others. What is the legal length for requirements of a flag car.

Dave Galt, on all other vehicles, the current width is twelve feet, over that you are required to have a pilot car.

SENATOR JABS, I have a fourteen feet swather, do I need a flag car to drive that down a road.

Dave Galt, yes.

CHAIRMAN MOHL, the fifteen feet on the tractor, how come didn't we change that down to 12'6?

Dave Galt, I can only speculate, but I believe that change occurred about the time of the popularity of Big Bud tractors. These tractors were equipped with lights and turn signals so I believe the law was adjusted to provide for those.

CHAIRMAN MOHL, how come 100 miles, isn't that quite away from the farm.

Dave Galt, I came to work here in 1978 and it has been 100 miles since I came here.

CHAIRMAN MOHL, if you are going to change the 12 feet 6 inches to make it legal for everybody else, then there should be no restrictions to the one hundred miles from the farm.

Dave Galt, by administrative rule we are going to widen vehicles to 12 feet 6 inches wide. There is no place in state statutes that deals with those kind of requirements with the possible exception of farm vehicles. There is no restrictions contained in the administrative rules that prohibit anyone to 100 miles. Those restrictions are set by statute. That would be up to this body to change those.

CHAIRMAN MOHL, if I have a piece of equipment going down the road after you change this administrative rule that allows me to move a 12 foot 6 inches wide vehicle without a flag person, all over the state of Montana, but if I have a tractor, I can only go 100 miles from my farm without putting a flag man on it?

DAVE GALT, without this bill an agriculture person can go within 100 miles of their farm without purchasing a permit to do so.

CHAIRMAN MOHL, this is all about permits then.

Dave Galt, yes.

SENATOR LINDA NELSON, when does this become effective, should it have a date?

SENATOR JENKINS, I would have no objections to passage and approval.

Closing by Sponsor: SENATOR JENKINS, anything above 12 feet six inches wide must be preceded by a flag vehicle. Farmers are allowed to go up to 12 feet 6 inches wide anywhere in the state also. Over that then they are only allowed to go within a 100 miles radius of their farm operation. That does seem like a long ways, but my cows go seventy miles from my house to where they are pastured in the summer. We tried to narrow it down to where it would be part of the regular operation of the farm and anything other than that we believe they need to have flag cars and permits.

EXECUTIVE ACTION ON SB 335

Motion:

SENATOR LINDA NELSON, moved SB 335 DO PASS. She then moved to AMEND SB 335.

Discussion:

SENATOR NELSON, the amendment would make it effective upon passage and approval.

Vote: the motion to AMEND SB 335 CARRIED UNANIMOUSLY.

Motion\Vote:

SENATOR NELSON moved SB 335 DO PASS AS AMENDED. The motion CARRIED with SENATOR STANG voting NO.

HEARING ON SB 360

Sponsor: SENATOR BRUCE CRIPPEN, SD 10, Billings

Proponents:

Craig Reap, Colonel MT Highway Patrol
John Connor, MT Department of Justice
Tara Mele, MT Public Interest Research Group
Ben Havdahl, MT Motor Carriers Association
Bob Gilbert, MT Tow Truck Association, MT Magistrates Association
SENATOR BARRY STANG, SD 36, Saint Regis

Opponents: None

Opening Statement by Sponsor:

SENATOR BRUCE CRIPPEN, SD 10 Billings, I am the sponsor of SB 360 which is an act to enhance the public safety on Montana Highways by revising the laws pertaining to violations of speed

restrictions, in other words, dealing with the "Basic Rule". You may inquire why this bill is here. Originally I intended to have this bill drafted as part of SB 64, because they were companion bills. By that I mean the provisions under SB 360 were intended to be brought before the legislature no matter what happened to the posted speed limit. In the unlikely event that SB 64 would not find favor in the legislature it was thought that a separate bill should be introduced. The basic rule is a rule that we have had for a long time. This law requires that motorists drive in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper, for traffic, weather, road, and vehicle conditions. What SB 360 will do is to clarify what it means in so far as it relates to law enforcement officials, judges, juries, and county attorneys. Also drivers of the motoring public who are not familiar with the basic rule and would like to look at it further, as to exactly what it would entail, and what it really means. Under the bill drivers could be cited for violating the basic rule if their speeds are too fast for any one or more of the following conditions.....

- the amount and character of traffic
- the condition of the brakes
- the weight of the vehicle
- the grade and width of the highway
- the condition of the highway surface
- freedom of obstruction to the view ahead
- approaching and going around a curve or a hill crest
- traveling a narrow or winding roadway
- when a special hazard exists because of pedestrians or other traffic, weather and highway conditions.

The bill goes on to maintain a 65 mile an hour limit on interstates and 60 miles an hour on two lanes for large trucks. It extends that vehicle limit to all vehicles over ten thousand pounds. The reason for that is there was some question about these new pickups that might fall between the eight and ten thousand pound category. SB 360 clarifies that those trucks are not subject to those numerical limits. The basic rule in my opinion is very subjective in nature. This bill will erase some confusion and give some guidelines to those folks who have the responsibility to enforce the rule. I present it to you for your consideration.

Proponents' Testimony:

Col. Craig Reap, MT Highway Patrol, I have some fact sheets that I would like to pass out regarding this bill. (EXHIBIT 1). One of the elements of the proposal is that we change the wording so that one condition being present would cause the driver to be in violation of this bill. That has been one of the points of contention about this, some county attorneys feel that you need two, three or sometimes all of the conditions present in order for there to be a violation. We have large numbers to date where just one condition was present and caused a vehicle to be involved in a crash where people were injured or killed. I think that component of the bill is going to help tremendously in

understanding the bill and what a violation would be. The fact that the bill has some language now that would require the driver to reduce their speed when these conditions are present is also helpful. On page 2, lines 6 and 7, are stricken. This will help tremendously because some people felt that there had to be an injury or excessive damage or rights taken away in order for it to be a violation. History has shown us that isn't necessary in order for there to be a problem of someone being injured or killed. Subsection 5 was struck and added to the list rather than having a different paragraph. It will still be necessary for the officer to articulate what the conditions were. When we started to deal with no numerical limits, our direction to the officers was that there had to be a condition and there had to be some speed in what was in excess of what would be normal for a situation. The officer has to be able to state what that condition was in order to convince the judges or jury. That hasn't changed. The main reason for expanding the section from 8 to 10 thousand pounds is there is a lot of pickups that are rated in excess of 8 thousand pounds. This was cleared up to make it understandable for all drivers of those vehicles. We are more concerned with the trucks like you would have to haul furniture or something. The last subsection was struck for confusion purposes. A lot of people thought that if they were pulling a fifteen foot camp trailer then this applied to them and it doesn't. A house trailer would be a mobile home or trailer that people set up on permanent basis. Those are regulated now by a special permit. The repealers have to do with the five dollar ticket and penalties and the fact that it didn't go on the record. We see no way to estimate for a fiscal note. I would urge that you would consider this bill.

John Connor, Department of Justice, our job is to provide training and trial systems to county attorneys and as part of that responsibility we attempt to present the position of county attorneys through their association to the legislature on criminal related matters. I appear to today on behalf of the Montana County Attorneys Association, which is comprised of all of Montana's County Attorneys, in support of SB 360. We think that this bill is an excellent means of positively restructuring a vague statute that is the principal prosecution tool for speed related violations. This law has been around for a long time and been amended five times. The vague aspects have still shown up throughout the history of it. This bill would propose to fix those so it is simply more clear. Because this is a criminal statute prosecutors are required to prove every element of the offense by proof beyond a reasonable doubt. The problem with the statute in its present form is that it's unclear by looking at that list of the things that ought to be considered, whether those are actual elements that have to be proved in their entirety or whether more than one, up to the maximum need to be proved. I think that this bill will help immeasurably to clear up confusion. We think that this bill makes good sense, and that it is basic public policy that is helpful to all who deal with this

statute and we would encourage the committees do pass consideration.

Tara Mele, MT Public Interest Research Group, we support this bill. I guess it is easiest just to say ditto. We support this on the issue of safety.

Bob Gilbert, MT Tow Truck Association and MT Magistrates Association, I support the bill. We like the clarification of the law and clarification on trucks from 8 to 10 thousand pounds. The Magistrates don't take positions on whether a law is a bad law or a good law, they are just concerned about the ease to administer the law. Anything that makes a judges job easier and more clear in the court is a benefit to the court and the people who appear before it.

Ben Havdahl, MT Motor Carriers Association, we want to be on record as a proponent of this bill. Section three is the section that opens up the heavy truck speed limit section of the law. We support going to a 10,000 pound vehicle limit. That has been pointed out to be consistent with the federal highway administration motor carrier administration safety regulations. We don't have a real problem with eliminating the four lane divided highway from the statutes since we don't have very many of those in Montana. I would like to assure this committee MT Motor Carriers Association is not asking for the truck speed limit rate to be raised to eighty miles an hour. Thank you for the opportunity to speak on the bill.

SENATOR BARRY STANG, SD 36, St. Regis, went on record as a proponent.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR STANG, would you have any objection to raising the night time speed limit on two lane roads to 65 miles an hour?

SENATOR CRIPPEN, yes, because I don't think that the bill title would allow you to do that.

SENATOR STANG, you eliminated the section that prohibits using the old five dollar ticket on the record. Would you have an objection if we said that the basic rule did not go on your record?

SENATOR CRIPPEN, as to what level?

SENATOR STANG, I don't know, I suppose we would determine the level. I would say a reasonable level, in speed under 90 or 95 miles an hour.

{Tape: 1; Side:B}

SENATOR CRIPPEN, if this committee would like to eliminate the provision that would require it to go on your record that would be up to them. I sense however that there might be some concern among members of this committee and members of the legislature that if you had it open ended, then you would be going beyond what we have presently.

SENATOR NELSON, on page 2, line 10, would you briefly tell me what the statutes are that are listed there?

SENATOR CRIPPEN, I would probably have to get those statutes out, or refer you to John Connor or Col. Reap.

John Connor, the statutes are about special speed zones, when local authorities can alter speed limits, and special speed limitations.

SENATOR NELSON, under basic rule, if I am zipping down the road at 100 miles an hour, is there going to be a violation of anything? Will you have an excuse to stop me if I'm a mechanic and the conditions are right, and my car is in good shape?

Col. Reap, we have been asked that question for a year now, it is difficult to answer. If I told you no, we wouldn't bother you, we would be setting a speed limit of 100 miles an hour. My response to people when they ask that is that I can't answer that.

SENATOR NELSON, it grovels me that people can drive 100 miles per hour and its not a violation. Can we add an amendment to address that?

SENATOR CRIPPEN, how about 98? How about 95?

SENATOR NELSON, I just don't think that anyone at anytime should be driving 100 miles per hour on a public road.

SENATOR CRIPPEN, I would agree with you, under present law, it would be subjective in nature. It would be a case for the judge and jury to decide.

SENATOR REINY JABS, how do you test the conditions of the brakes out on the road?

Col. Reap, this is usually determined after there is a crash. Unless it is obvious that the brakes were a factor in a normal traffic stop it wouldn't come into play .

SENATOR JABS, I have heard from people that are comfortable with the speed limit being 65 for trucks, but that the trucks were not abiding by the limits.

Col. Reap, I know that happens, we write a lot of violations. They are like any other group of people, there are some that obey the law and some that don't.

CHAIRMAN MOHL, what is a legal sign in a construction area?

Col. Reap, the signing guidelines are set by the Department of Transportation. They have a manual that we train our officers by. Where we have lost enforcement cases is when the contractor doesn't put the sign back far enough or it is the wrong color of sign. It has to be black on white and reasonably large enough.

CHAIRMAN MOHL, all survey signs are black on orange. If they are not legal why are we allowing the state, counties, or contractors to use them?

Col. Reap, there are two types of signs that the survey crews are using. The orange ones are simply advisory for when they are surveying off the roadway. If it is a black on white sign, then they are on the highway and we do enforce that.

CHAIRMAN MOHL, don't you think that it is deceiving to the public with the survey rig still parked on the road and people crossing?

Col. Reap, I would say within the last four years we have seen an improvement in that.

CHAIRMAN MOHL, this would affect the tow trucks the same way?

Col. Reap, we have changed those rules. They are required to have certain colored signs and certain size letters and so on.

CHAIRMAN MOHL, if the tow truck just puts out a little sign and someone came speeding by at 70 miles an hour, would you be able to pick that person up?

Col. Reap, the tow truck signs don't have a speed on them and there are no restrictions to a certain speed required by tow trucks. These are simply advisory signs.

SENATOR STANG, under this new proposal, it would be a violation of the basic rule?

Col. Reap, that would be correct.

SENATOR RIC HOLDEN, give me a few examples of another basic rule violation. I think in Montana we are thinking of it as basically a speeding ticket.

Col. Reap, one vehicle runs off the road on an icy road situation where it was obvious if the vehicle had been operated at a slower speed they wouldn't have lost control. One vehicle colliding with another because of road conditions.

SENATOR HOLDEN, when you are doing your reports and you are issuing a basic rule ticket, would your report distinguish what the ticket was being issued for?

Col. Reap, the report and citation would indicate the factor and whether there was a crash or not?

SENATOR HOLDEN, I am wondering if there is a way to keep this information away from the insurance companies to keep them from jacking rates on the issue of speed? Is there a way to distinguish that?

John Connor, I don't see this bill changing the law beyond what it is now. The law now is that the insurance companies get the information when there is a violation of the statute. My view of this is that it just clarifies what is in effect the existing law. I don't think that speed alone is enough to charge under this statute. There has to be speed coupled with a condition listed here.

SENATOR GREG JERGESON, this is a peculiar effective date, is there a reason for May 27?

Col. Reap, that was the same effective date as SB 64. The logic was to get it as quickly as possible before the summer traffic season began, and I believe that date was the date before the Memorial Day weekend.

CHAIRMAN MOHL, I still have a real problem in construction zones. I think our people are out there real vulnerable. It doesn't make any difference if SB 64 would have passed or not, we still have a lot of accidents. I also have a problem on the uniform traffic control manual, on how the signs have to be up and everything. I don't think the tow truck warning signs perform with it. I think we are just going to make a whole bunch of lawyers rich. What can we do?

Tim Reardon, Department of Transportation, I would agree with you that there are situations where the signing is not adequate. Sometimes that is due to a lack of sign inventory, sometimes it is due to the number of projects going on. It is an explanation not an excuse. There are at least two bills I am aware of that have originated in the House to deal with construction zone area speed control. As far as the tow truck operators are concerned, I am not sure what manuals they are obliged to comply with.

Closing by Sponsor:

SENATOR CRIPPEN, thank you for a good hearing. First in the matter of speeding through a construction zone, I would submit to you that it wouldn't be a violation of the basic rule, but rather a reckless driving violation. I think this bill should pass just so it clarifies it for law enforcement, and maybe even for others. I don't know if it is the intent of the Department of Justice at some time to try and give to the motoring public a clearer interpretation of what the basic rule is. I think it is a good bill and I would urge a do pass.

EXECUTIVE ACTION ON SB 360

Amendments:

Motion: SENATOR STANG moved SB 360 DO PASS.

Discussion: SENATOR HOLDEN, I have an amendment that I would like to propose. On page 3 line 2, I would propose that we would strike the numeral 65 and insert 70. The reason is I think that anytime you have people that continually drive over what the posted speed limit is, that is an indication that the speed limit is too low for the conditions of the road. I don't think it is the intent of the legislature to pass laws that people would continually break. Truck drivers have stated that 65 was to slow.

Motion: SENATOR HOLDEN moved his amendment.

Discussion: SENATOR MACK COLE, as far as the Montana Motor Carriers are concerned what is their feeling of raising the 65 to 70?

Ben Havdahl, our board of directors support the speed limits for heavy trucks.

SENATOR JABS, why aren't they driving 65? They drive the way the want to.

Ben Havdahl, I think that it is a real problem because a lot of trucks come through Montana, we have about 75,000 vehicles registered in Montana and over 100,000 that go through Montana on an annual basis. The majority of those trucks come from out of Montana. All our surrounding states allow 75 miles an hour. It is a real problem.

SENATOR COLE, With the comments that Ben Havdahl has made, I would be against raising it.

SENATOR STANG, I oppose the motion to raise it also. I think if you raise the speed limit to 70 miles an hour you will have trucks going eighty miles an hour with the exceptions allowed.

SENATOR HOLDEN, withdrew his motion.

CHAIRMAN MOHL, I drove to Missoula the other night going the night speed limit and every tuck passed me. I decided to follow one of them to see how fast they were going. I had to go 75, 80 and 85 miles an hour to keep up with them. I finally got scared and backed off. When the truckers say they obey the speed limit I would really have to question it.

Motion: SENATOR JERGESON, I move to AMEND SB 360 to have an immediate effective date.

Vote: the motion to AMEND SB 360 PASSED UNANIMOUSLY.

Motion: SENATOR STANG moved SB 360 DO PASS AS AMENDED.

Vote: SB 360 PASSED AS AMENDED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 4:30 PM


SEN. ARNIE MOHL, Chairman


PHOEBE KENNY, Secretary

AM/PK