

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 11, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: Sen. Debbie Bowman Shea (D)

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 78; HB 267; 3/5/97
Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 9:03 AM; Comments: N/A.}

HEARING ON HB 78

Sponsor: REP. RICHARD D. SIMPKINS, HD 49, GREAT FALLS

Proponents: Gary Blewett, Department of Revenue
Kati Kintli, MT Tavern Assoc.
REP. BOB PAVLOVICH, HD 37, BUTTE
John Hayes, Cascade County Tavern Assoc.

Opponents: None

Opening Statement by Sponsor:

REP. RICHARD D. SIMPKINS, HD 49, GREAT FALLS. This morning I
would like to introduce HB 78. A couple of people in Great Falls
had all sorts of problems on a liquor license transfer. Terms

came out that had not been used in years. I found these laws were unbelievable. There was no time element. So this problem has been going on for almost three years. There were many discrepancies. There was different terminology for a hearing, different meaning to an inspection, who does what inspection, etc. I wrote up the bill. At first, it stimulated some interest and then after presenting it to the House committee, those concerned came together and put a bill together that has been agreed upon by the Department of Revenue, the Department of Justice and the MT Tavern Association and the two people involved in Great Falls. The bill you have before you is almost like a substitute bill as my original bill was almost totally rewritten.

(The sponsor at this time explained the bill, section by section. The first proponent, **Mr. Gary Blewett, Department of Revenue**, handed in a written explanation of the bill and detailed it himself which was very similar to the sponsor's opening statement.)

There is an amendment that is going to be submitted. I am disappointed in what is happening. I have given it serious consideration. The amendment is to change the number of complaints from 100% to 10% of the quota for liquor licenses in a quota area. It states in section 4, subsection 4 (c): "The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be equal to the quota for all-beverages licenses determined for the quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption of beer or all beverage licenses." For example, in Great Falls the quota is 41 licenses. It would be necessary for 41 letters of complaint or protest be sent to the Department of Revenue. They want to amend it to only 4 protests or 10% of the quota. I would agree to 50% or 20 protest letters in Great Falls.

{Tape: 1; Side: A; Approx. Time Count: 9:19 AM; Comments: N/A.}

Proponents' Testimony:

Gary Blewett, Administrator, Liquor Division, Department of Revenue. I stand before you in support of this bill. I have copies of my testimony (**EXHIBIT 1**) and would like to read the nine points that have been laid out. The bill provides important clarification of alcohol licensing processes that have caused problems in the past. We appreciate the sponsor's willingness to modify the original bill to incorporate DOR issues. A team did evolve to produce this bill: the sponsor, the licensee, the tavern association, the Dept. of Revenue and the Dept of Justice. Thank you for your time and attention.

Kati Kintli, Attorney, MT Tavern Association. We come before you today in support of HB 78. As **REP. SIMPKINS** had mentioned, the MT Tavern Assoc. was involved in working out some of the elements of this bill. At the outset, we were concerned about the deletion of "public convenience and necessity". We believe that is an important element in our liquor licensing laws. We appreciate the sponsor's allowing us the opportunity to work with him and the Dept. in refining this bill. We feel this bill better defines "public convenience and necessity". It gives the applicant the opportunity to understand what "public convenience and necessity" is and what they need to do to meet that standard. As a private attorney in Helena, I represent applicants and protestants alike. I know that when a person applies for a liquor license, and if a person protests a liquor license, it is somewhat confusing as to what that "public convenience and necessity" standard is. These guidelines are very helpful. Some of the procedural changes that were entered into the bill are very helpful in aiding the very rigorous application process for a liquor license. I understand there has been an amendment to the bill suggested by the Cascade County Tavern Assoc. I am a bit in the middle here being from the MT Tavern Assoc. We understand the Cascade County Tavern Assoc.'s concerns and we would support any amendment that would be agreed upon by both parties. HB 78 is a good bill and urge your support of HB 78. Thank you.

REP. BOB PAVLOVICH, HD 37, BUTTE. I am rather an in-between testifier. When we heard this bill in the House Business & Labor Committee, my suggestion that we table the bill in the committee was almost unanimous. In the meantime, the sponsor and others have worked together to resurrect the bill. In talking with the MTA, they agreed with the bill, so I agreed with the bill. I have one amendment (**EXHIBIT 2**) requested by **SEN. DEBBIE SHEA** and this is on page 8, line 3 concerning protests. We would like to see that number changed to 10% of the quota. For example, in Silver Bow county, we have 47 quota licenses. I would have to have 47 letters of protest. I could get that from anyone just like a petition. But if I am going to protest something, I would like to go to my association and my community and get four or five tavern owners that would protest this with me and we would go to the hearing and present our case. We will leave it up to the committee. Thank you.

John Hayes, Great Falls, Cascade County Tavern Assoc. We thank the sponsor for this bill and the two Departments. We apologize to the sponsor for any misunderstanding that we have created in this bill. We feel that the amendment is necessary. We could get 41 signatures but we would rather do it with valid signatures and valid protestors.

{Tape: 1; Side: A; Approx. Time Count: 9:31 AM; Comments: N/A.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked if on page 7, the protest petition cannot be considered as one protest, but as letters of protest, would a form letter be considered the same as an original letter. What has been gained? **REP. SIMPKINS** replied that clarity has been gained. We prevented the petitions and the petitions have been driving everyone crazy and they couldn't be verified. The protest has to come from within the quota area. We have gained that. Even with a form letter, it could be verified that this person has a legitimate right to protest. **SEN. MCCARTHY** asked that if she signs the protest form letter, must she then go to Helena and protest there? **Mr. Blewett** responded that if you have something to offer in testimony relative to the protest, yes you would need to come to the county of the quota area for a "public convenience and necessity" hearing. The count of protests come by virtue of the letters themselves, not the appearance before the hearing. **SEN. MCCARTHY** asked if the Dept. notifies all protestors of the hearing? **Mr. Blewett** said that first there is a notice in the newspaper saying that protests can be made. But then, once protests are received, and to the extent that we can, every individual is notified that a hearing is going to be held. Notices are sent to the names and that is why they need to send us both their mailing address and street address so that we know they are in the quota area. **SEN. MCCARTHY** asked if it would be possible that a local zoning board hearing and a public hearing of protest both would be scheduled? **Mr. Blewett** said that yes it could be.

SEN. CASEY EMERSON asked if it were more important for 41 letters of protest and only four people show up for the hearing or more important if there would be four letters and four people show for the hearing? **Mr. Blewett** answered that it is the preponderance of evidence that is used; it is not the count or number of bodies or letters in making a determination whether or not the license should be issued.

SEN. EMERSON wondered about No. 5 from **Mr. Blewett's Exhibit 1** that said information received independently of the DOJ investigation could be used to deny an application without being verified by the DOJ investigators. Is that a concern to the sponsor? **REP. SIMPKINS** said there is just one investigation team through joint cooperation. The Dept. of Justice conducts the investigation but really works for the Dept of Revenue. The DOJ is also dealing with the gambling issues and the DOR is dealing with the liquor licenses. As soon as they get an application, they send out inquiries all over. Meanwhile, the DOJ goes along and if the DOR gets condemning information back, that allows them the ability to deny the application without having the DOJ investigate. Each one has to be able to say "no".

SEN. JOHN HERTEL asked about the amendment being proposed. Would the sponsor specify his concern about the 10% versus the 50%? **REP. SIMPKINS** said that he was concerned about how easy it would

be for other owners to stop an action. If they are really upset and want to stop an action, they should have to jump through some hoops--not be given a checkered flag and say go. If they have to have 41 protestors, they have to do a bit of work. Four is a very small number and for small quota areas only one would be required.

SEN. MCCARTHY reminded the committee that Mr. Blewett said it was not the number but the preponderance of evidence. So if one person came in and had a substantial reason for not wanting it and it was a good reason, that would be just as valid as if someone came in with 50 protestors. REP. SIMPKINS said that if you drop it down to that, one bar owner could object. But when you get into the "public convenience and necessity" issue, it is a much further expanded issue. I guess, if you want less, at least make it a percentage of the quota area number.

REP. SIMPKINS explained the difference between the two possible hearings. Two protests can launch a hearing on whether or not the sale or transfer should take place. But the other hearing on "public convenience and necessity", the Dept. of Revenue will determine whether or not to put the liquor license in a particular neighborhood and whether or not it meets the public's need and convenience. Do you see the difference in the hearing? One is much more complex and therefore you have the Dept. telling the city, even though the police chief had no problem and the city manager had no problem, you can't put it there. This is what we are trying to conclude.

{Tape: 1; Side: A; Approx. Time Count: 9:46 AM; Comments: N/A.}

Closing by Sponsor:

REP. SIMPKINS closed. I would like the charts to be handed out (EXHIBIT 3). It will help you to see the quotas for the licenses in the counties. It shows the 1994 census and the quotas are based upon population. Looking at Big Horn Co., the quota of 11 does not count the 4 in Hardin. The county figure represents the county less the incorporated cities. The incorporated cities have their quota within their own boundaries. Cascade Co. has 28 quotas and Great Falls has 41. The larger cities are pretty well maxed out. I appreciate all who have come out to testify. I thank the Depts. for their help and the MT Tavern Assoc. I hope that the committee will keep the percentage of protesters around 50%.

{Tape: 1; Side: B; Approx. Time Count: 9:50 AM; Comments: THE TAPE WAS TURNED AT THE END OF THE FIRST BILL.}

HEARING ON HB 267

Sponsor: REP. GAY ANN MASOLO, HD 40, TOWNSEND

Proponents: REP. SONNY HANSON, HD 9, BILLINGS
Mike Matthew, Yellowstone County Commissioner
Perry Eskridge, Department of Commerce
Patrick Holt, Attorney, RMAF

Opponents: Russell Hill, MT Trail Lawyers Assoc.

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, TOWNSEND. I have become involved with the Broadwater County Fair as Manager. I went to the Rocky Mountain Fair Association in Wyoming and found out how important carnivals are to fairs. In fact, the financial aspect is so important to fairs, that if we don't encourage carnivals to come to this state, we probably won't have the country fairs. They give their gates back to the fairgrounds-- sometimes 40%, 60%; it depends. After speaking with many involved, it became apparent that more would come to Montana if we had the Rider Responsibility Act. This is mostly a posting bill which is similar to 30 other states. It gives the operator responsibilities as well as the passenger responsibilities. It spells out the injury reports to be filed in section 6.

Proponents' Testimony:

REP. SONNY HANSON, HD 9, BILLINGS. I am past president of the MetraPark in Billings and am very much aware of what some of these carnival riders do and do not do. We actually changed during my tenure and went to a different carnival operator. There has to be, in law, recognition of responsibility of the carnival operator that they will perform in a safe and diligent manner. There has to be a recognition of the responsibility of those that ride. They have to pay attention to the conditions when they get on a ride. By having this Act posted, it spells out the responsibilities of both parties. I would encourage your favorable consideration.

Mike Matthew, Yellowstone County Commissioner. I would like to read you a letter (EXHIBIT 4) from Bill Chiesa, General Manager of MetraPark and president of the National Association of Fairs. He is very knowledgeable of fairs across the nation.

Perry Eskridge, Legal Counsel, Department of Commerce, Professional and Occupational Licensing Bureau. I am here today to see if POL will be involved in this bill and would answer any questions you might have about the impact the bill might have. Thank you.

Patrick Holt, Attorney, Lolo, MT. I would like to hand out my testimony (EXHIBIT 5) and go over it with you. There are some issues that I would definitely like to draw your attention to. I was involved in the original drafting of this piece of legislation on behalf of the amusement ride carnival industry as well as the Rocky Mountain Association of Fairs. The primary

issue is the safety issue. He then goes on to speak to the bill from his testimony.

{Tape: 1; Side: B; Approx. Time Count: 9:59 AM; Comments: N/A.}

Opponents' Testimony:

Russell Hill, MT Trial Lawyers Assoc. I will hand out my written testimony (EXHIBIT 6) and go over it with you. The bill has serious problems and I would like to point these out to you.

Questions From Committee Members and Responses:

SEN. WILLIAM CRISMORE asked if the little horse rides outside K-Mart are covered under this bill and would a posting be necessary for these? Mr. Holt said yes and a posted sign telling someone how to safely ride should be good. One area that may create a problem is that the bill also requires an area for first aid. This language could easily be changed if desired.

SEN. BEA MCCARTHY asked Mr. Holt if he had discussed with Mr. Hill his objections before today. Mr. Holt replied not all of them. SEN. MCCARTHY asked if Mr. Hill had appeared at the House hearing and had there been any compromise? Mr. Holt said yes and that some of these concerns were raised at that time. What happened was there were some changes made and most of the changes you see on the bill now were made in the House committee and some were as a result of some of the proposals that were presented back to the committee and Mr. Hill's objections brought about some of the changes as well. SEN. MCCARTHY further questioned about a ride that is going too fast. Mr. Holt felt that this issue would not be contained under the bill. SEN. MCCARTHY asked if a water slide would come under this bill? Mr. Holt said yes.

SEN. CASEY EMERSON asked Mr. Holt if he knew what a fully informed jury was? Mr. Holt replied yes, but it might be a different definition. SEN. EMERSON felt that a fully informed jury would take care of the issues and lawsuits that might arise from this bill.

SEN. JOHN HERTEL stated that on page 2, lines 29 the failure to comply is punishable by a fine or imprisonment or both. Can you explain this? Mr. Holt said that this line was in when section 7 was still part of the bill. When section 7 was taken out, unfortunately that line wasn't changed or taken out. Section 7 was taken out on the House floor. He didn't know where this statute would fall in the Codes. That may be appropriate language depending upon where it actually falls in the Codes. In the Codes, many times there are default penalty provisions. In terms of having to take it out, he thought it would be an easy thing to draw a line through.

SEN. HERTEL asked about the codification and where would it go? Mr. Eskridge stated that currently they have outfitters and

guides, they have passenger tramway safety and that board, though, in this session is up for deletion. The Department's position with tramways has usually been that it didn't belong in their division because it is equipment that they are licensing with tramways and they don't have the engineering services available in the POL for licensing equipment. Building codes might be appropriate. Transportation might be appropriate. There are several options.

SEN. HERTEL asked if it does go to your Department, would you need any more FTE's? **Mr. Eskridge** answered that the current staff is at their maximum for additional duties. One full time person may be necessary to handle the licensure paper work and another full time person for inspections. Traveling to different parts of the state would be necessary and in this business it would have to be done at very specific times. If the fair boards would take it upon themselves to inspect, that might be a way to eliminate one FTE.

SEN. HERTEL asked **Mr. Holt** if he saw any problem with the fair board overseeing that inspection. **Mr. Holt** said that should be a very viable way to do it. To get fair board certification would show that their carnival is in compliance with the requirements of the statute. A 30 minute walk-through of the carnival with the owner and operator and members of the fair board would accomplish this. The certification could be done in a letter form or whatever is acceptable to the regulatory agency.

SEN. HERTEL asked **REP. MASOLO** that before this bill should find its way from this committee to the Senate floor, do you think we should have a complication factor involved in the bill or do you think that what we have just discussed that this may not be necessary? **REP. MASOLO** stated that she and her husband have been involved in the equine act because they like to put on horse events and were almost to the point where they didn't want to carry on because of the litigious society they live in. She didn't know what they do with that group. Do they have someone go out and investigate everything that is put on by rodeos, etc.? She feels the fairs can handle it; it is just better to have it in writing to cover these issues.

SEN. HERTEL asked if this would change the insurance rates for fair boards whether in an increase or decrease? **REP. MASOLO** said that she did not foresee a change either up for down for that in the future. It might affect the carnivals with their insurance.

SEN. HERTEL asked if **Mr. Holt** had anything further to add to the hearing. He had some information that guides and outfitters are under Title 37 which is professions and occupations. Snowmobiling statutory language is under Title 23, parks, recreation, sports and gambling. The rodeo organizations are under Title 27 and the equine activity is also Title 27.


SEN. HERTEL asked Mr. Hill if what we have under present statute is sufficient and covers adequately or is this piece of legislation necessary? Mr. Hill said that he would be very happy with what is on the books right now. It takes care of it. But he did add that 90% of this bill is not objectionable to his group.

Closing by Sponsor:

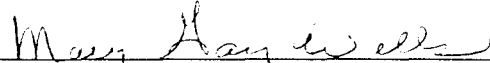
REP. MASOLO closed. I find it amazing that Mr. Hill would talk about the drug and alcohol because he is against my random drug testing bill which would give the owner of a carnival the option to do a random drug test which would eliminate some of these things happening. Also, when I ran for the House seat, I ran on business issues, so when I went to the Rocky Mountain Fair Assoc. I met the owners of these carnivals and they are very interested in business; but in our litigious society, they are concerned about coming into Montana. I feel this bill will encourage the carnivals and even new carnivals to come into Montana. This bill helps the industry to work on their safety records and will protect the innocent patrons from being hurt by other, more careless patrons. I would appreciate your concurrence. Thank you for the good hearing.

ADJOURNMENT

Adjournment: 10:24 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW