

1 *Senate* BILL NO. *440*
 2 INTRODUCED BY *Fasbender Roberts Kallala Mather*
 3 *Reyn*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPROVE AND MAINTAIN
 5 QUALITY TRANSPORTATION SERVICES IN MONTANA BY CREATION OF A
 6 DEPARTMENT OF TRANSPORTATION AND A TRANSPORTATION
 7 COMMISSION; TRANSFERRING ALL STATE TRANSPORTATION FUNCTIONS
 8 TO THE DEPARTMENT OR THE COMMISSION; AMENDING SECTIONS
 9 1-322.1, 8-103, 8-118, 32-2144.1, 32-2203, 72-101.1, 72-136,
 10 AND 82A-901.1, R.C.M. 1947; AND REPEALING SECTIONS 32-2404,
 11 72-105, 72-107, 72-112, 72-113, 72-139, 82A-701, 82A-701.1,
 12 82A-706.1, 82A-709, 82A-905, 82A-1204, 82A-1205, AND
 13 82A-1206, R.C.M. 1947."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. There is a new R.C.M. section numbered
 17 82A-710 that reads as follows:

18 82A-710. Declaration of policy. It is the purpose of
 19 the legislature in this act to provide the means to plan for
 20 the present and future transportation needs of the citizens
 21 of Montana, so that transportation will remain viable in the
 22 private sector of the economy and will be able to provide
 23 energy-efficient, ecologically compatible transportation
 24 services with optimum efficiency, effectiveness, and economy
 25 through the creation of a department of transportation

1 within the executive branch of Montana government. It is
 2 hereby declared to be the policy of the state of Montana
 3 that adequate, safe, and efficient transportation facilities
 4 and services of all modes are essential to the economic
 5 growth of the state and the well-being of its people and
 6 that the planning and development of such facilities and
 7 services shall be coordinated by a state department of
 8 transportation with overall responsibility for balanced
 9 transportation policy and planning.

10 Section 2. There is a new R.C.M. section numbered
 11 82A-711 that reads as follows:

12 82A-711. Department of transportation — creation —
 13 head. There is created a department of transportation. The
 14 department head is the director of transportation provided
 15 for in 82A-713.

16 Section 3. There is a new R.C.M. section numbered
 17 82A-712 that reads as follows:

18 82A-712. Department of highways abolished — functions
 19 transferred to department. (1) The department of highways is
 20 abolished, and its functions, as listed below, are
 21 transferred to the department of transportation created in
 22 this act:

- 23 (a) assist municipalities with road construction
- 24 (1-807);
- 25 (b) contracting with cities on construction (11-1023);

1 (c) aid fish and game department in enforcement
 2 {26-1705};

3 (d) speed and traffic regulations (Title 32, chapters
 4 11 and 21);

5 (e) designation and construction of federal-aid and
 6 state highways (Title 32, chapters 24, 26, and 39);

7 (f) state vehicle fees (Title 32, chapters 32 through
 8 34);

9 (g) letting contracts for highway construction (Title
 10 32, chapter 41);

11 (h) regulation of encroachments (Title 32, chapter
 12 44);

13 (i) regulation of junkyards (Title 32, chapter 45);

14 (j) regulation of outdoor advertising (Title 32,
 15 chapter 47);

16 (k) highway construction in coal impacted areas (Title
 17 50, chapter 17);

18 (l) state motor pool (Title 53, chapter 5);

19 (m) motor vehicle reciprocity (Title 53, chapter 7);

20 (n) park and highway connecting roads (62-307);

21 (o) railroad grade crossings (84-1840.1);

22 (p) collection of tax on liquid petroleum powered
 23 vehicles (84-1862);

24 (q) custom combine identifying device (84-6015); and

25 (r) contracts for use of railroad right-of-way

1 (89-3310).

2 (2) Unless inconsistent with this act, any reference
 3 in the Revised Codes of Montana, 1947, to the department of
 4 highways means the department of transportation.

5 Section 4. There is a new R.C.M. section numbered
 6 82A-713 that reads as follows:

7 82A-713. Director of transportation -- appointment --
 8 duties. (1) The director shall be appointed by the governor
 9 in the manner set forth in 82A-106 for directors who are
 10 department heads.

11 (2) Section 82A-107 applies to the director as a
 12 department head, subject to the concurrence of the
 13 transportation commission in designating all or part of
 14 those powers and duties as applicable.

15 (3) The director is the chief administrative officer
 16 of the department and shall perform those functions that are
 17 assigned by law or delegated to him by the commission.

18 Section 5. There is a new R.C.M. section numbered
 19 82A-714 that reads as follows:

20 82A-714. Director of highways abolished -- functions
 21 transferred. (1) The position of director of highways is
 22 abolished, and its functions are transferred to the director
 23 of transportation.

24 (2) Any reference to the director of highways in the
 25 Revised Codes of Montana, 1947, means the director of

1 transportation or, as appropriate, director.

2 Section 6. There is a new R.C.M. section numbered
3 82A-715 that reads as follows:

4 82A-715. Motor pool division of department of highways
5 abolished. (1) The motor pool division of the department of
6 highways, referred to in Title 53, chapter 5, is abolished.

7 (2) Wherever the motor pool division appears in the
8 Revised Codes of Montana, 1947, the department of
9 transportation or, as appropriate, department is
10 substituted.

11 Section 7. Section 82A-901.1, R.C.M. 1947, is amended
12 to read as follows:

13 "82A-901.1. Functions of department. The department
14 and its units are responsible for administering laws
15 pertaining to relationships between the state and local and
16 federal governments, including, but not limited to, laws
17 pertaining to:

18 ~~(1) Aeronautics (Title 1, chapters 1 to 9);~~

19 ~~(2) Highway traffic safety (Title 32, chapter 46);~~

20 ~~(3) Indian affairs (Title 82, chapter 27);~~

21 ~~(4) Planning and economic development (Title 82,
22 chapter 37);~~

23 ~~(5) Examination of political subdivisions (Title
24 82, chapter 43);~~

25 ~~(6) Economic opportunity and poverty relief (Title~~

1 71, chapter 16);

2 ~~(7) County printing (Title 16, chapter 12)."~~

3 Section 8. There is a new R.C.M. section numbered
4 82A-716 that reads as follows:

5 82A-716. Divisions abolished, functions transferred.

6 (1) The aeronautics division, created administratively
7 within the department of community affairs, is abolished and
8 its functions in Title 1, chapters 1 through 11, are
9 transferred to the department of transportation. Unless the
10 context requires otherwise, wherever department of community
11 affairs or aeronautics division or division appears in Title
12 1, chapters 1 through 11, department of transportation or
13 department, as appropriate, is substituted.

14 (2) The highway traffic safety division, created
15 administratively within the department of community affairs,
16 is abolished and its functions in Title 32, chapter 46, are
17 transferred to the department of transportation. Unless the
18 context requires otherwise, wherever department of community
19 affairs or highway traffic safety division appears in Title
20 32, chapter 46, department of transportation or, as
21 appropriate, department is substituted.

22 (3) The responsibilities for functional transportation
23 planning of the planning division of the department of
24 community affairs and the department function of aiding
25 public transportation in 11-4513 are transferred to the

1 department. Wherever department of community affairs appears
2 in 11-4513, the department of transportation is substituted.

3 Section 9. There is a new R.C.M. section numbered
4 82A-717 that reads as follows:

5 82A-717. Division of motor vehicles abolished --
6 functions transferred. (1) The division of motor vehicles
7 created in 82A-1204 within the department of justice is
8 abolished. The functions of the division in Title 53,
9 chapter 1, except the function of providing license plates
10 for motor vehicles provided for in Title 53, chapter 1, are
11 transferred to the department of transportation. The
12 function of providing license plates remains a function of
13 the warden of the state prison. Unless inconsistent with
14 this act, any reference in the Revised Codes of Montana,
15 1947, to the division of motor vehicles of the department of
16 justice, except the references relating to the function of
17 providing license plates, means the department of
18 transportation.

19 (2) The functions of the division in Title 31, chapter
20 1, except the function of appointing the highway patrol
21 chief in 1-104 which function is transferred to the director
22 of transportation, are transferred to the department of
23 transportation. Unless inconsistent with this act, any
24 reference in the R.C.M. 1947, to the division of motor
25 vehicles of the department of justice means the department

1 of transportation, except references in section 31-104
2 relating to the function of appointing the highway patrol
3 chief, where it means director of transportation.

4 (3) The highway patrol, created in 31-101, and the
5 position of highway patrol chief or supervisor, created in
6 31-104, are transferred to the department of transportation.

7 Section 10. There is a new R.C.M. section numbered
8 82A-718 that reads as follows:

9 82A-718. Transportation positions in governor's office
10 and department of agriculture transferred. (1) The office
11 of director of rail planning, created administratively
12 within the office of the governor in compliance with the
13 Railroad Revitalization and Regulatory Reform Act, P.L.
14 94-210, and located within the department of agriculture, is
15 abolished and the functions transferred to the department of
16 transportation.

17 (2) (a) The position of transportation specialist
18 created administratively within the department of
19 agriculture and its functions set forth in 3-3001 through
20 3-3004 are transferred to the department of transportation.

21 (b) The person shall be responsible to the director of
22 transportation for transportation functions set forth in
23 3-3001 through 3-3004.

24 (c) The specialist may, at the discretion of the
25 governor, be physically located within the department of

1 agriculture.

2 Section 11. There is a new R.C.M. section numbered
3 82A-719 that reads as follows:

4 82A-719. Motor vehicle inspection functions of
5 department of justice transferred. The functions of the
6 department of justice in Title 53, chapter 11, concerning
7 motor vehicle inspection are transferred to the department
8 of transportation. Any reference therein to department of
9 justice means department of transportation.

10 Section 12. There is a new R.C.M. section numbered
11 82A-720 that reads as follows:

12 82A-720. Transportation commission created --
13 membership. (1) There is a transportation commission.

14 (2) The commission is designated as a quasi-judicial
15 board for purposes of 82A-112 and as a quasi-legislative
16 board. The commission is allocated to the department for
17 administrative purposes only as described in 82A-108.

18 (3) (a) The transportation commission consists of
19 seven members.

20 (b) One member shall be a resident of and appointed by
21 the governor from each of the following districts, composed
22 of the counties named:

23 (i) District 1. Lincoln, Flathead, Sanders, Lake,
24 Mineral, Missoula, Ravalli, Granite, Lewis and Clark,
25 Jefferson, Broadwater.

1 (ii) District 2. Powell, Deer Lodge, Silver Bow,
2 Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park,
3 Sweet Grass.

4 (iii) District 3. Glacier, Toole, Liberty, Hill,
5 Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

6 (iv) District 4. Fergus, Petroleum, Garfield, Phillips,
7 Valley, McCone, Prairie, Dawson, Wibaux, Richland,
8 Roosevelt, Daniels, Sheridan.

9 (v) District 5. Golden Valley, Stillwater, Carbon, Big
10 Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer,
11 Powder River, Carter, Fallon.

12 (c) One member shall be a resident of and appointed by
13 the governor from each of the United States congressional
14 districts.

15 (d) No less than one and no more than two members may
16 have job experience predominately related to either air,
17 rail, motor vehicle, motor carrier, or nonmotorized
18 transportation modes.

19 (e) Not more than four members may be members of the
20 same political party.

21 (f) The governor shall appoint the members pursuant to
22 82A-112 except that the terms of three members shall expire
23 on January 1, 1979. They shall serve until their successors
24 are appointed and qualified.

25 Section 13. There is a new R.C.M. section numbered

1 82A-721 that reads as follows:

2 82A-721. Highway commission abolished -- functions
3 transferred to commission. (1) The highway commission,
4 provided for in Title 32, chapter 24, is abolished and its
5 functions contained in the following sections are
6 transferred to the transportation commission:

7 (a) designating public highways (Title 32, chapter
8 24);

9 (b) classifying highways (32-21-176 and 32-21-179);

10 (c) designating controlled access highways (32-4301,
11 32-4303, and 32-4307); and

12 (d) approval of coal impact area highway funds
13 50-1703.

14 (2) Unless inconsistent with this act, any reference
15 in the Revised Codes of Montana, 1947, to the highway
16 commission, except those below in which highway commission
17 means department of transportation, means transportation
18 commission:

19 (a) contracts with municipalities (11-1023);

20 (b) confiscation of permits (32-1127.9);

21 (c) speed restrictions (32-2145 through 32-2149);

22 (d) footpath and bicycle paths (32-2626 and 32-2627);

23 (e) letting contracts (32-4101 through 32-4103);

24 (f) encroachment regulation (32-4411);

25 (g) regulating outdoor advertisement (32-4717,

1 32-4718, and 32-4722); and

2 (h) construction contracts (84-3505).

3 Section 14. There is a new R.C.M. section numbered
4 82A-722 that reads as follows:

5 82A-722. Board of aeronautics abolished -- functions
6 transferred. (1) The board of aeronautics in Title 1,
7 chapter 2, and 82A-905, is abolished, and its functions
8 pertaining to granting and suspending certificates of public
9 convenience and necessity for air carriers, setting rates,
10 and related matters referred to in 1-322 through 1-324 are
11 transferred to the transportation commission.

12 (2) Wherever board of aeronautics appears in the
13 Revised Codes of Montana, 1947, transportation commission is
14 substituted.

15 Section 15. There is a new R.C.M. section numbered
16 82A-723 that reads as follows:

17 82A-723. Functions of public service commission
18 transferred to commission. (1) The functions of the public
19 service commission contained in the following sections are
20 transferred to the transportation commission:

21 (a) license and regulation of motor carriers (Title 8,
22 chapter 1);

23 (b) notice to consumer counsel (8-901 and 8-902);

24 (c) regulation of intrastate rail transportation
25 (Title 72, chapter 1, and Title 72, chapter 6);

1 (d) requiring sidetracks for shippers (88-207); and
 2 (e) jurisdiction over docks (89-605).

3 (2) Unless inconsistent with this act, any reference
 4 to the public service commission, the board, the commission,
 5 or the department of public service regulation in those laws
 6 and in 3-3302, 8-812.1, 11-1019, 11-1021, 53-707, and
 7 53-713(2) means the transportation commission or, as
 8 appropriate, commission.

9 (3) Insofar as the power and duties of the public
 10 service commission in 84-709.1, 84-1902, 85-404, and 93-4215
 11 pertain to regulation of transportation or transportation
 12 companies, the words "and transportation commission" shall
 13 be added wherever public service commission, commission, or
 14 board appears in those sections.

15 Section 16. There is a new R.C.M. section numbered
 16 82A-724 that reads as follows:

17 82A-724. Transportation division within department of
 18 public service regulation abolished. The transportation
 19 division created administratively within the department of
 20 public service regulation and the motor carrier enforcement
 21 bureau and the motor carrier insurance and authority bureau
 22 are abolished.

23 Section 17. There is a new R.C.M. section numbered
 24 82A-725 that reads as follows:

25 82A-725. Functions of public service commission

1 transferred to the department of transportation. The
 2 functions of the public service commission in Title 72,
 3 chapter 7, are transferred to the department of
 4 transportation. Wherever the words "public service
 5 commission", "commission", or "board" appears in that
 6 chapter the words "department of transportation" shall be
 7 substituted therefor.

8 Section 18. Section 1-322.1, R.C.M. 1947, is amended
 9 to read as follows:

10 "1-322.1. Definitions. In sections 1-322 through
 11 1-324, unless the context requires otherwise:

12 (1) The general definitions in section 1-102 apply.

13 (2) "Air carrier" means a person or corporation
 14 owning, controlling, operating, or managing aircraft as a
 15 scheduled common carrier of passengers or freight for
 16 compensation within this state.

17 (3) "Board" means the ~~board of aeronautics~~
 18 ~~transportation commission~~ provided for in ~~section 82A-905~~
 19 ~~82A-720."~~

20 Section 19. Section 8-103, R.C.M. 1947, is amended to
 21 read as follows:

22 "8-103. Commission to supervise and regulate motor
 23 carriers — appointment and duties of supervisor. (a) The
 24 commission is hereby vested with power and authority, and it
 25 is hereby made its duty to supervise and regulate every

1 motor carrier in this state; to fix specific, just,
 2 reasonable, equal and nondiscriminatory rates, fares,
 3 charges and classifications for class A and class B motor
 4 carriers; to regulate the properties, facilities,
 5 operations, accounts, service, practices, affairs and safety
 6 of operations of all motor carriers; to require the filing
 7 of annual and other reports, tariffs, schedules, or other
 8 data by such motor carriers and to supervise and regulate
 9 motor carriers in all matters affecting the relationship
 10 between such motor carriers and the traveling and shipping
 11 public. To fully secure adequate motor transportation
 12 facilities for all users of such service, and to secure the
 13 public advantages thereof, the commission shall encourage a
 14 system of common carrier motor transportation within the
 15 state for the convenience of the shipping public. The
 16 maintenance of a common carrier motor transportation system
 17 within Montana is hereby declared to be a public purpose.
 18 The commission shall have power and authority by general
 19 order or otherwise to prescribe rules and regulations in
 20 conformity with this act applicable to any and all motor
 21 carriers.

22 (b) ~~The commission shall appoint a supervisor of motor~~
 23 ~~carriers who~~ director of transportation shall have general
 24 responsibility to ~~it~~ the commission for enforcement of the
 25 provisions of this act. The ~~supervisor~~ director shall direct

1 all enforcement activities in behalf of the commission,
 2 including the investigation and prosecution of violations of
 3 this act or the rules, regulations or orders prescribed
 4 thereunder by the commission. The director shall appoint a
 5 supervisor of motor carriers who shall be responsible to him
 6 for enforcement of the provisions of this act. The
 7 supervisor shall be either an attorney admitted to practice
 8 law in the state of Montana, or a person qualified by at
 9 least five (5) years of suitable experience and training in
 10 appropriate phases of the motor carrier industry; ~~he shall~~
 11 ~~serve at the pleasure of the commission and at an annual~~
 12 ~~salary to be set by the commission.~~ The supervisor, and
 13 whatever field inspectors may be employed ~~by the commission~~
 14 to assist him, shall be deemed peace officers for the
 15 purpose of making arrests in connection with violations of
 16 this act, and issuing summonses, accepting bail and serving
 17 warrants of arrest. The supervisor and field inspectors are
 18 empowered to make reasonable inspections of cargoes carried
 19 by commercial motor vehicles and require production of
 20 manifests, bills of lading, leases and other documents
 21 relating to the cargo, routing or ownership of such
 22 vehicles.

23 (c) All rules and regulations in relation to
 24 schedules, service, tariffs, rates, facilities, accounts and
 25 reports shall have due regard for the differences existing

1 between class A, class B, and class C motor carriers as
 2 herein defined, and shall be just, fair and reasonable to
 3 the said classes of motor carriers in their relations to
 4 each other and to the public. In fixing the tariff or rates
 5 to be charged by class A and class B motor carriers for the
 6 carrying of persons and/or property, the commission shall
 7 take into consideration the kind and character of service to
 8 be performed, the public necessity therefor, and the effect
 9 of such tariff and rates upon other transportation agencies,
 10 if any, and as far as possible avoid detrimental or
 11 unreasonable competition with existing railroad service or
 12 service furnished by a motor carrier."

13 Section 20. Section 8-118, R.C.M. 1947, is amended to
 14 read as follows:

15 "8-118. Records of motor carriers to be open for
 16 inspection by board -- system of accounts to be prescribed
 17 -- reports required. All records, books, accounts and files
 18 of every class A and class B motor carrier in this state, so
 19 far as the same shall relate to the business of
 20 transportation conducted by such motor carrier, shall at all
 21 times be subject to examination by the board or by any
 22 authorized agent of the commission or employee of the board
 23 department of transportation. The board shall prescribe a
 24 uniform system of accounts and uniform reports covering the
 25 operations of such class A and class B motor carriers and

1 every motor carrier authorized to operate as such in
 2 accordance with the provisions of this act shall keep its
 3 records, books, and accounts according to such uniform
 4 system, in so far as possible. On or before the thirty-first
 5 day of March of each year, every motor carrier authorized to
 6 engage in such business shall file with the board a report,
 7 under oath. In addition to such annual reports every motor
 8 carrier shall prepare and file with the board, at the time
 9 or times and in the form to be prescribed by the board,
 10 annual reports, special reports and statements giving to the
 11 board such information as it shall require in order to
 12 perform its duties under this act."

13 Section 21. Section 32-2144.1, R.C.M. 1947, is amended
 14 to read as follows:

15 "32-2144.1. Declaration of speed limits -- exception
 16 to the basic rule. The ~~attorney-general~~ director of
 17 transportation shall declare by proclamation filed with the
 18 secretary of state a speed limit for all motor vehicles on
 19 all public streets and highways in the state whenever the
 20 establishment of such a speed limit by the state is required
 21 by federal law as a condition to the state's continuing
 22 eligibility to receive funds authorized by the Federal Aid
 23 Highway Act of 1973 and all acts amendatory thereto or any
 24 other federal statute. Such speed limit may not be less than
 25 that required by federal law, and the ~~attorney-general~~

1 director shall by further proclamation, change the speed
 2 limit adopted pursuant to this act to comply with federal
 3 law. Any proclamation issued pursuant to this act becomes
 4 effective at midnight of the day upon which it is filed with
 5 the secretary of state. A speed limit imposed pursuant to
 6 this act is an exception to the basic rule requirements of
 7 section 32-2144 and a speed in excess of the speed limit
 8 established pursuant to this act is unlawful notwithstanding
 9 any provision of that section."

10 Section 22. Section 32-2203, R.C.M. 1947, is amended
 11 to read as follows:

12 "32-2203. General definitions. Subject to additional
 13 definitions contained in this Title which are applicable to
 14 specific chapters or sections, and unless the context
 15 otherwise requires, terms are defined as follows:

16 (1) "Abandonment"--Cessation of use of right of way
 17 (easement) or activity thereon with no intention to reclaim
 18 or use again. (Sometimes called "vacation.")

19 (2) "Auditor"--County auditor.

20 (3) "Board"--Board of county commissioners.

21 (4) "Bridge"--Includes rights of way or other interest
 22 in land, abutments, superstructures, piers, and approaches
 23 except dirt fills.

24 (5) "Clerk"--County clerk and recorder.

25 (6) "Commission"--Highway Transportation commission

1 provided for in ~~section 82A-706~~ 82A-720.

2 (7) "Committee"--Local improvement district committee
 3 of supervisors.

4 (8) "Condemnation"--Taking by exercise of the right of
 5 eminent domain.

6 (9) "Construction"--Supervising, inspecting, actual
 7 building, and all expenses incidental to the construction or
 8 reconstruction of a highway, including locating, surveying,
 9 and mapping, costs of right of way or other interests in
 10 land and elimination of hazards at railway-grade crossings.

11 (10) "Control of access"--The condition in which the
 12 right of owners or occupants of abutting land or other
 13 persons to access, light, air, or view in connection with a
 14 highway is fully or partially controlled by public
 15 authority.

16 (11) "County road"--Any public highway opened,
 17 established, constructed, maintained, abandoned, or
 18 discontinued in accordance with chapters 31 and 40 of this
 19 title.

20 (12) "Department"--Department of highways
 21 transportation provided for in ~~title 82A, chapter 7~~ 82A-711.

22 (13) "Director"--Director of highways transportation, a
 23 position provided for in ~~section 82A-701~~ 82A-713.

24 (14) "Easement"--A right acquired by public authority
 25 to use or control property for a designated purpose.

1 (15) "Eminent domain"--The right of the state to take
2 private property for public use.

3 (16) "Federal-aid highway"--Any public highway which is
4 a portion of any of the federal-aid highway systems.

5 (17) "Federal-aid highway systems"--All of the systems
6 named hereafter and their urban extensions.

7 (18) "Federal-aid interstate system"--That system of
8 public highway selected by the commission in co-operation
9 with adjoining states, subject to the approval of the
10 secretary of commerce as provided in the Federal Highway
11 Act, as amended.

12 (19) "Federal-aid primary system"--That system of
13 connected public highways designated by the commission
14 subject to the approval of the secretary of commerce, as
15 provided in the Federal Highway Act, as amended.

16 (20) "Federal-aid secondary system"--That system of
17 public highways not on the federal-aid primary or interstate
18 systems selected by the commission in co-operation with the
19 boards of county commissioners, subject to the approval of
20 the secretary of commerce, as provided in the Federal
21 Highway Act, as amended.

22 (21) "Fee simple"--An absolute estate or ownership in
23 property including unlimited power of alienation.

24 (22) "Highway"--Includes rights of way or other
25 interests in land, embankments, retaining walls, culverts,

1 sluices, drainage structures, bridges, railroad-highway
2 crossings, tunnels, signs, guardrails, and protective
3 structures.

4 (23) "Highway," "road," "street"--Whether they appear
5 together or separately or are preceded by the adjective
6 "public," these are general terms denoting a public way for
7 purposes of vehicular travel, including the entire area
8 within the right of way.

9 (24) "Highway authority (ies)"--The entity (ies) at any
10 level of government authorized by law to construct and
11 maintain highways.

12 (25) "Maintenance"--Preservation of the entire highway,
13 including surface, shoulders, roadsides, structures, and
14 such traffic-control devices as are necessary for its safe
15 and efficient utilization.

16 (26) "Public highways"--All streets, roads, highways,
17 bridges, and related structures, which have been or shall
18 be:

19 (a) Built and maintained with appropriated funds of
20 the United States or the state or any political subdivision
21 thereof.

22 (b) Dedicated to public use.

23 (c) Acquired by eminent domain.

24 (d) Acquired by adverse user by the public,
25 jurisdiction having been assumed by the state or any

1 political subdivision thereof.

2 (27) "Right of way"--A general term denoting land,
3 property, or any interest therein, usually in a strip,
4 acquired for or devoted to highway purposes.

5 (28) "State highway"--Any public highway planned, laid
6 out, altered, constructed, reconstructed, improved,
7 repaired, maintained, or abandoned by the department.

8 (29) "Superintendent"--County road superintendent.

9 (30) "Supervisor"--County road supervisor.

10 (31) "Surveyor"--County surveyor.

11 (32) "Toll bridge"--Any bridge constructed by the
12 department, together with all appurtenances, additions,
13 alterations, improvements, replacements, and the approaches
14 thereto, lands used therefor, and improvements thereon.

15 (33) "Treasurer"--County treasurer."

16 Section 23. Section 72-101.1, R.C.M. 1947, is amended
17 to read as follows:

18 "72-101.1. Definitions and terms. (1) This act
19 applies to the transportation of passengers and property
20 between points in this state, and to the receiving,
21 switching, delivering, storing, and handling of property,
22 and to charges connected therewith, and applies to railroad
23 companies, express companies, car companies, sleeping-car
24 companies, freight and freight-line companies, and to any
25 shipments of property made from one point in this state to

1 another point in this state, whether the transportation of
2 it is wholly in this state, or partly in this state and
3 partly in an adjoining state or states. (2) Unless the
4 context requires otherwise, in Title 72: (a)
5 "Transportation" includes instrumentalities of shipment or
6 carriage. (b) "Railroad" means a corporation, company, or
7 individual owning or operating a railroad, in whole or in
8 part, in this state. The term also includes express
9 companies and sleeping-car companies. (c) "Commission" or
10 "board" means the ~~public-service-commission~~ transportation
11 commission, provided for in ~~section 82A-1702~~ 82A-720. This
12 act applies to all persons, firms, or companies,
13 incorporated or otherwise, that do business as common
14 carriers on any of the lines of railroad in this state."

15 Section 24. Section 72-136, R.C.M. 1947, is amended to
16 read as follows:

17 "72-136. Acceptance of favors and gratuities from
18 railroads prohibited. A ~~public-service~~ transportation
19 commissioner or the secretary may not, directly or
20 indirectly, solicit or request from or recommend to any
21 railroad corporation, or any officer, attorney, or agent
22 thereof, the appointment of any person to any place or
23 position. Nor shall any railroad corporation, its attorney,
24 or agent, offer any place, appointment, or position or other
25 consideration to such commissioners, or either of them, nor

1 to any clerks or employees of the commission; neither shall
 2 the commissioners, or either of them, nor their secretary,
 3 clerks, agents, employees, or experts, accept, receive, or
 4 request any pass from any railroad in this state, for
 5 themselves or for any other person, except as herein
 6 otherwise provided, or any present, gift, or gratuity of any
 7 kind from any railroad corporation; and the request or
 8 acceptance by them, or either of them, except as herein
 9 specified, of any such place or position, pass, presents,
 10 gifts, or other gratuity, shall work a forfeiture of the
 11 office of the commissioner or commissioners, secretary,
 12 clerk or clerks, agent or agents, and employee or employees,
 13 expert or experts, requesting or accepting the same. Any
 14 person violating any of the provisions of this section is
 15 guilty of a misdemeanor."

16 Section 25. There is a new R.C.M. section that reads
 17 as follows:

18 Intent. (1) It is not the intent of this act to repeal
 19 or amend any laws relating to fundtions performed by an
 20 agency, unless specifically provided in this act or unless
 21 there is a irreconcilable conflict between this act and
 22 those laws.

23 (2) The provisions of Title 82A, chapter 1, insofar as
 24 they refer to that title are intended to apply to this act.

25 Section 26. Severability. If a part of this act is

1 invalid, all valid parts that are severable from the invalid
 2 part remain in effect. If a part of this act is invalid in
 3 one or more of its applications, the part remains in effect
 4 in all valid applications that are severable from the
 5 invalid applications.

6 Section 27. Repealer. Sections 32-2404, 72-105,
 7 72-107, 72-112, 72-113, 72-139, 82A-701, 82A-701.1,
 8 82A-706.1, 82A-709, 82A-905, 82A-1204, 82A-1205, and
 9 82A-1206, R.C.M. 1947, are repealed.

10 Section 28. Effective date. This act is effective upon
 11 the date the governor signs an executive order implementing
 12 the act or on September 1, 1977, whichever occurs first.

-End-

Approved by Committee
on Highways & Transportation

1 SENATE BILL NO. 440
2 INTRODUCED BY FASBENDER,
3 ROBERTS, HAZELBAKER, MATHERS, REGAN
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPROVE AND MAINTAIN
6 QUALITY TRANSPORTATION SERVICES IN MONTANA BY CREATION OF A
7 DEPARTMENT OF TRANSPORTATION AND A TRANSPORTATION
8 COMMISSION; TRANSFERRING ALL STATE TRANSPORTATION FUNCTIONS
9 TO THE DEPARTMENT OR THE COMMISSION; AMENDING SECTIONS
10 1-322.1, 8-103, 8-118, 32-2144.1, 32-2203, 72-101.1, 72-136,
11 AND 82A-901.1, R.C.M. 1947; AND REPEALING SECTIONS 32-2404,
12 72-105, 72-107, 72-112, 72-113, 72-139, 82A-701, 82A-701.1,
13 82A-706.1, 82A-709, 82A-905, 82A-1204, 82A-1205, AND
14 82A-1206, R.C.M. 1947; AND PROVIDING FOR AN EFFECTIVE DATE."
15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17 Section 1. There is a new R.C.M. section numbered
18 82A-710 that reads as follows:
19 82A-710. Declaration of policy. It is the purpose of
20 the legislature in this act to provide the means to plan for
21 the present and future transportation needs of the citizens
22 of Montana, so that transportation will remain viable in the
23 private sector of the economy and will be able to provide
24 energy-efficient, ecologically compatible transportation
25 services with optimum efficiency, effectiveness, and economy

1 through the creation of a department of transportation
2 within the executive branch of Montana government. It is
3 hereby declared to be the policy of the state of Montana
4 that adequate, safe, and efficient transportation facilities
5 and services of all modes are essential to the economic
6 growth of the state and the well-being of its people and
7 that the planning and development of such facilities and
8 services shall be coordinated by a state department of
9 transportation with overall responsibility for balanced
10 transportation policy and planning.

11 Section 2. There is a new R.C.M. section numbered
12 82A-711 that reads as follows:

13 82A-711. Department of transportation -- creation --
14 head. There is created a department of transportation. The
15 department head is the director of transportation provided
16 for in 82A-713.

17 Section 3. There is a new R.C.M. section numbered
18 82A-712 that reads as follows:

19 82A-712. Department of highways abolished -- functions
20 transferred to department. (1) The department of highways is
21 abolished, and its functions, as listed below, are
22 transferred to the department of transportation created in
23 this act:

24 (a) assist municipalities with road construction
25 (1-807);

SECOND READING

1 (b) contracting with cities on construction (11-1023);
 2 (c) aid fish and game department in enforcement
 3 (26-1705);
 4 (d) speed and traffic regulations (Title 32, chapters
 5 11 and 21);
 6 (e) designation and construction of federal-aid and
 7 state highways (Title 32, chapters 24, 26, and 39);
 8 (f) state vehicle fees (Title 32, chapters 32 through
 9 34);
 10 (g) letting contracts for highway construction (Title
 11 32, chapter 41);
 12 (h) regulation of encroachments (Title 32, chapter
 13 44);
 14 (i) regulation of junkyards (Title 32, chapter 45);
 15 (j) regulation of outdoor advertising (Title 32,
 16 chapter 47);
 17 (k) highway construction in coal impacted areas (Title
 18 50, chapter 17);
 19 (l) state motor pool (Title 53, chapter 5);
 20 (m) motor vehicle reciprocity (Title 53, chapter 7);
 21 (n) park and highway connecting roads (62-307);
 22 (o) railroad grade crossings (84-1840.1);
 23 (p) collection of tax on liquid petroleum powered
 24 vehicles (84-1862);
 25 (q) custom combine identifying device (84-6015); and

1 (r) contracts for use of railroad right-of-way
 2 (89-3310).
 3 (2) Unless inconsistent with this act, any reference
 4 in the Revised Codes of Montana, 1947, to the department of
 5 highways means the department of transportation.
 6 Section 4. There is a new R.C.M. section numbered
 7 82A-713 that reads as follows:
 8 82A-713. Director of transportation -- appointment --
 9 duties. (1) The director shall be appointed by the governor
 10 in the manner set forth in 82A-106 for directors who are
 11 department heads.
 12 (2) Section 82A-107 applies to the director as a
 13 department head, subject to the concurrence of the
 14 transportation commission in designating all or part of
 15 those ~~IHEIR~~ powers and duties as applicable.
 16 (3) The director is the chief administrative officer
 17 of the department and shall perform those functions that are
 18 assigned by law or delegated to him by the commission.
 19 Section 5. There is a new R.C.M. section numbered
 20 82A-714 that reads as follows:
 21 82A-714. Director of highways abolished -- functions
 22 transferred. (1) The position of director of highways is
 23 abolished, and its functions are transferred to the director
 24 of transportation.
 25 (2) Any reference to the director of highways in the

1 revised Codes of Montana, 1947, means the director of
2 transportation or, as appropriate, director.

3 Section 6. There is a new R.C.M. section numbered
4 82A-715 that reads as follows:

5 82A-715. Motor pool division of department of highways
6 abolished. (1) The motor pool division of the department of
7 highways, referred to in Title 53, chapter 5, is abolished.

8 (2) Wherever the motor pool division appears in the
9 revised Codes of Montana, 1947, the department of
10 transportation or, as appropriate, department is
11 substituted.

12 Section 7. Section 82A-901.1, R.C.M. 1947, is amended
13 to read as follows:

14 "82A-901.1. Functions of department. The department
15 and its units are responsible for administering laws
16 pertaining to relationships between the state and local and
17 federal governments, including, but not limited to, laws
18 pertaining to:

19 ~~{1}--Aeronautics--{Title-1, chapters-1-to-9}†~~

20 ~~{2}--Highway-traffic-safety--{Title-32, chapter-46}†~~

21 {3}{11} Indian affairs (Title 82, chapter 27);

22 {4}{21} Planning and economic development (Title 82,
23 chapter 37);

24 {5}{31} Examination of political subdivisions (Title
25 82, chapter 43);

1 ~~{6}{14}~~ Economic opportunity and poverty relief (Title
2 71, chapter 16);

3 ~~{7}{51}~~ County printing (Title 16, chapter 12)."

4 Section 8. There is a new R.C.M. section numbered
5 82A-716 that reads as follows:

6 82A-716. Divisions abolished, functions transferred.

7 (1) The aeronautics division, created administratively
8 within the department of community affairs, is abolished and
9 its functions in Title 1, chapters 1 through 11, are
10 transferred to the department of transportation. Unless the
11 context requires otherwise, wherever department of community
12 affairs or aeronautics division or division appears in Title
13 1, chapters 1 through 11, department of transportation or
14 department, as appropriate, is substituted.

15 (2) The highway traffic safety division, created
16 administratively within the department of community affairs,
17 is abolished and its functions in Title 32, chapter 46, are
18 transferred to the department of transportation. Unless the
19 context requires otherwise, wherever department of community
20 affairs or highway traffic safety division appears in Title
21 32, chapter 46, department of transportation or, as
22 appropriate, department is substituted.

23 (3) The responsibilities for functional transportation
24 planning of the planning division of the department of
25 community affairs and the department function of aiding

1 public transportation in 11-4513 are transferred to the
2 department. Wherever department of community affairs appears
3 in 11-4513, the department of transportation is substituted.

4 Section 9. There is a new R.C.M. section numbered
5 82A-717 that reads as follows:

6 82A-717. Division of motor vehicles abolished --
7 functions transferred. (1) The division of motor vehicles
8 created in 82A-1204 within the department of justice is
9 abolished. The functions of the division in Title 53,
10 chapter 1, except the function of providing license plates
11 for motor vehicles provided for in Title 53, chapter 1, are
12 transferred to the department of transportation. The
13 function of providing license plates remains a function of
14 the warden of the state prison. Unless inconsistent with
15 this act, any reference in the Revised Codes of Montana,
16 1947, to the division of motor vehicles of the department of
17 justice, except the references relating to the function of
18 providing license plates, means the department of
19 transportation.

20 (2) The functions of the division in Title 31, chapter
21 1, except the function of appointing the highway patrol
22 chief in 1-104 which function is transferred to the director
23 of transportation, are transferred to the department of
24 transportation. Unless inconsistent with this act, any
25 reference in the R.C.M. 1947, to the division of motor

1 vehicles of the department of justice means the department
2 of transportation, except references in section 31-104
3 relating to the function of appointing the highway patrol
4 chief, where it means director of transportation.

5 (3) The highway patrol, created in 31-101, and the
6 position of highway patrol chief or supervisor, created in
7 31-104, are transferred to the department of transportation.

8 Section 10. There is a new R.C.M. section numbered
9 82A-718 that reads as follows:

10 82A-718. Transportation positions in governor's office
11 and department of agriculture transferred. (1) The office
12 of director of rail planning, created administratively
13 within the office of the governor in compliance with the
14 Railroad Revitalization and Regulatory Reform Act, P.L.
15 94-210, and located within the department of agriculture, is
16 abolished and the functions transferred to the department of
17 transportation.

18 (2) (a) The position of transportation specialist
19 created administratively within the department of
20 agriculture and its functions set forth in 3-3001 through
21 3-3004 are transferred to the department of transportation.

22 (b) The person shall be responsible to the director of
23 transportation for transportation functions set forth in
24 3-3001 through 3-3004.

25 (c) The specialist may, at the discretion of the

1 governor, be physically located within the department of
2 agriculture.

3 ~~section 11. There is a new R.C.M. section numbered~~
4 ~~82A-719 that reads as follows:~~

5 ~~82A-719. Motor vehicle inspection functions of~~
6 ~~department of justice transferred. The functions of the~~
7 ~~department of justice in title 53, chapter 11, concerning~~
8 ~~motor vehicle inspection are transferred to the department~~
9 ~~of transportation. Any reference therein to department of~~
10 ~~justice means department of transportation.~~

11 Section 11. There is a new R.C.M. section numbered
12 82A-720 that reads as follows:

13 82A-720. Transportation commission created --
14 membership. (1) There is a transportation commission.

15 (2) The commission is designated as a quasi-judicial
16 board for purposes of 82A-112 and as a quasi-legislative
17 board. The commission is allocated to the department for
18 administrative purposes only as described in 82A-108.

19 (3) (a) The transportation commission consists of
20 seven members.

21 (b) One member shall be a resident of and appointed by
22 the governor from each of the following districts, composed
23 of the counties named:

24 (i) District 1. Lincoln, Flathead, Sanders, Lake,
25 Mineral, Missoula, Ravalli, Granite, Lewis and Clark,

1 Jefferson, Broadwater.

2 (ii) District 2. Powell, Deer Lodge, Silver Bow,
3 Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park,
4 Sweet Grass.

5 (iii) District 3. Glacier, Toole, Liberty, Hill,
6 Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

7 (iv) District 4. Fergus, Petroleum, Garfield, Phillips,
8 Valley, McCone, Prairie, Dawson, Wibaux, Richland,
9 Roosevelt, Daniels, Sheridan.

10 (v) District 5. Golden Valley, Stillwater, Carbon, Big
11 Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer,
12 Powder River, Carter, Fallon.

13 (c) One member shall be a resident of and appointed by
14 the governor from each of the United States congressional
15 districts.

16 (d) ~~No less than~~ AT LEAST one and no more than two
17 members ~~may~~ SHALL have job experience predominately related
18 to either EACH OF THE FOLLOWING MODES OF TRANSPORTATION air,
19 rail, motor vehicle, ~~OR~~ motor carriers ~~or nonmotorized~~
20 ~~transportation modes.~~

21 (E) AT LEAST ONE MEMBER AND NO MORE THAN TWO MEMBERS
22 SHALL BE SELECTED FROM PERSONS WHOSE JOB EXPERIENCE IS NOT
23 PREDOMINANTLY RELATED TO TRANSPORTATION.

24 ~~(e)(E)~~ Not more than four members may be members of
25 the same political party.

SB 0440/02

1 ~~(f)~~(G) The governor shall appoint the members pursuant
 2 to 82A-112 except that the terms of three members shall
 3 expire on January 1, 1979. They shall serve until their
 4 successors are appointed and qualified.

5 Section 12. There is a new R.C.M. section numbered
 6 82A-721 that reads as follows:

7 82A-721. Highway commission abolished -- functions
 8 transferred to commission. (1) The highway commission,
 9 provided for in Title 32, chapter 24, is abolished and its
 10 functions contained in the following sections are
 11 transferred to the transportation commission:

12 (a) designating public highways (Title 32, chapter
 13 24);

14 (b) classifying highways (32-21-176 and 32-21-179);

15 (c) designating controlled access highways (32-4301,
 16 32-4303, and 32-4307); and

17 (d) approval of coal impact area highway funds
 18 50-1703.

19 (2) Unless inconsistent with this act, any reference
 20 in the Revised Codes of Montana, 1947, to the highway
 21 commission, except those below in which highway commission
 22 means department of transportation, means transportation
 23 commission:

24 (a) contracts with municipalities (11-1023);

25 (b) confiscation of permits (32-1127.9);

1 (c) speed restrictions (32-2145 through 32-2149);

2 (d) footpath and bicycle paths (32-2626 and 32-2627);

3 (e) letting contracts (32-4101 through 32-4103);

4 (f) encroachment regulation (32-4411);

5 (g) regulating outdoor advertisement (32-4717,
 6 32-4718, and 32-4722); and

7 (h) construction contracts (84-3505).

8 Section 13. There is a new R.C.M. section numbered
 9 82A-722 that reads as follows:

10 82A-722. Board of aeronautics abolished -- functions
 11 transferred. (1) The board of aeronautics in Title 1,
 12 chapter 2, and 82A-905, is abolished, and its functions
 13 pertaining to granting and suspending certificates of public
 14 convenience and necessity for air carriers, setting rates,
 15 and related matters referred to in 1-322 through 1-324 are
 16 transferred to the transportation commission.

17 (2) Wherever board of aeronautics appears in the
 18 Revised Codes of Montana, 1947, transportation commission is
 19 substituted.

20 Section 14. There is a new R.C.M. section numbered
 21 82A-723 that reads as follows:

22 82A-723. Functions of public service commission
 23 transferred to commission. (1) The functions of the public
 24 service commission contained in the following sections are
 25 transferred to the transportation commission:

1 (a) license and regulation of motor carriers (Title 8,
2 chapter 1);

3 (b) notice to consumer counsel (8-901 and 8-902);

4 (c) regulation of intrastate rail transportation
5 (Title 72, chapter 1, and Title 72, chapter 6);

6 (d) requiring sidetracks for shippers (88-207); and

7 (e) jurisdiction over docks (89-605).

8 (2) Unless inconsistent with this act, any reference
9 to the public service commission, the board, the commission,
10 or the department of public service regulation in those laws
11 and in 3-3302, 8-812.1, 11-1019, 11-1021, 53-707, and
12 53-713(2) means the transportation commission or, as
13 appropriate, commission.

14 (3) Insofar as the power and duties of the public
15 service commission in 84-709.1, 84-1902, 85-404, and 93-4215
16 pertain to regulation of transportation or transportation
17 companies, the words "and transportation commission" shall
18 be added wherever public service commission, commission, or
19 board appears in those sections.

20 Section 15. There is a new R.C.M. section numbered
21 82A-724 that reads as follows:

22 82A-724. Transportation division within department of
23 public service regulation abolished. The transportation
24 division created administratively within the department of
25 public service regulation and the motor carrier enforcement

1 bureau and the motor carrier insurance and authority bureau
2 are abolished.

3 Section 16. There is a new R.C.M. section numbered
4 82A-725 that reads as follows:

5 82A-725. Functions of public service commission
6 transferred to the department of transportation. The
7 functions of the public service commission in Title 72,
8 chapter 7, are transferred to the department of
9 transportation. Wherever the words "public service
10 commission", "commission", or "board" appears in that
11 chapter the words "department of transportation" shall be
12 substituted therefor.

13 Section 17. Section 1-322.1, R.C.M. 1947, is amended
14 to read as follows:

15 "1-322.1. Definitions. In sections 1-322 through
16 1-324, unless the context requires otherwise:

17 (1) The general definitions in section 1-102 apply.

18 (2) "Air carrier" means a person or corporation
19 owning, controlling, operating, or managing aircraft as a
20 scheduled common carrier of passengers or freight for
21 compensation within this state.

22 (3) "Board" means the ~~board~~ ~~of~~ ~~of~~ ~~aeronautics~~
23 ~~transportation commission~~ provided for in ~~section 82A-905~~
24 ~~82A-720.~~"

25 Section 18. Section 8-103, R.C.M. 1947, is amended to

1 read as follows:

2 "8-103. Commission to supervise and regulate motor
3 carriers -- appointment and duties of supervisor. (a) The
4 commission is hereby vested with power and authority, and it
5 is hereby made its duty to supervise and regulate every
6 motor carrier in this state; to fix specific, just,
7 reasonable, equal and nondiscriminatory rates, fares,
8 charges and classifications for class A and class B motor
9 carriers; to regulate the properties, facilities,
10 operations, accounts, service, practices, affairs and safety
11 of operations of all motor carriers; to require the filing
12 of annual and other reports, tariffs, schedules, or other
13 data by such motor carriers and to supervise and regulate
14 motor carriers in all matters affecting the relationship
15 between such motor carriers and the traveling and shipping
16 public. To fully secure adequate motor transportation
17 facilities for all users of such service, and to secure the
18 public advantages thereof, the commission shall encourage a
19 system of common carrier motor transportation within the
20 state for the convenience of the shipping public. The
21 maintenance of a common carrier motor transportation system
22 within Montana is hereby declared to be a public purpose.
23 The commission shall have power and authority by general
24 order or otherwise to prescribe rules and regulations in
25 conformity with this act applicable to any and all motor

1 carriers.

2 (b) ~~The commission shall appoint a supervisor of motor~~
3 ~~carriers--who~~ director of transportation shall have general
4 responsibility to ~~it~~ the commission for enforcement of the
5 provisions of this act. The ~~supervisor~~ director shall direct
6 all enforcement activities in behalf of the commission,
7 including the investigation and prosecution of violations of
8 this act or the rules, regulations or orders prescribed
9 thereunder by the commission. The director shall appoint a
10 supervisor of motor carriers who shall be responsible to him
11 for enforcement of the provisions of this act. The
12 supervisor shall be either an attorney admitted to practice
13 law in the state of Montana, or a person qualified by at
14 least five (5) years of suitable experience and training in
15 appropriate phases of the motor carrier industry; ~~he shall~~
16 ~~serve--at--the--pleasure--of--the--commission--and--at--an--annual~~
17 ~~salary--to--be--set--by--the--commission.~~ The supervisor, and
18 whatever field inspectors may be employed ~~by the commission~~
19 to assist him, shall be deemed peace officers for the
20 purpose of making arrests in connection with violations of
21 this act, and issuing summonses, accepting bail and serving
22 warrants of arrest. The supervisor and field inspectors are
23 empowered to make reasonable inspections of cargoes carried
24 by commercial motor vehicles and require production of
25 manifests, bills of lading, leases and other documents

1 relating to the cargo, routing or ownership of such
2 vehicles.

3 (c) All rules and regulations in relation to
4 schedules, service, tariffs, rates, facilities, accounts and
5 reports shall have due regard for the differences existing
6 between class A, class B, and class C motor carriers as
7 herein defined, and shall be just, fair and reasonable to
8 the said classes of motor carriers in their relations to
9 each other and to the public. In fixing the tariff or rates
10 to be charged by class A and class B motor carriers for the
11 carrying of persons and/or property, the commission shall
12 take into consideration the kind and character of service to
13 be performed, the public necessity therefor, and the effect
14 of such tariff and rates upon other transportation agencies,
15 if any, and as far as possible avoid detrimental or
16 unreasonable competition with existing railroad service or
17 service furnished by a motor carrier."

18 Section 19. Section 8-118, R.C.M. 1947, is amended to
19 read as follows:

20 "8-118. Records of motor carriers to be open for
21 inspection by board -- system of accounts to be prescribed
22 -- reports required. All records, books, accounts and files
23 of every class A and class B motor carrier in this state, so
24 far as the same shall relate to the business of
25 transportation conducted by such motor carrier, shall at all

1 times be subject to examination by the board or by any
2 authorized agent ~~of the commission~~ or employee of the board
3 ~~department of transportation~~. The board shall prescribe a
4 uniform system of accounts and uniform reports covering the
5 operations of such class A and class B motor carriers and
6 every motor carrier authorized to operate as such in
7 accordance with the provisions of this act shall keep its
8 records, books, and accounts according to such uniform
9 system, in so far as possible. On or before the thirty-first
10 day of March of each year, every motor carrier authorized to
11 engage in such business shall file with the board a report,
12 under oath. In addition to such annual reports every motor
13 carrier shall prepare and file with the board, at the time
14 or times and in the form to be prescribed by the board,
15 annual reports, special reports and statements giving to the
16 board such information as it shall require in order to
17 perform its duties under this act."

18 Section 20. Section 32-2144.1, R.C.M. 1947, is amended
19 to read as follows:

20 "32-2144.1. Declaration of speed limits -- exception
21 to the basic rule. The ~~attorney--general~~ director of
22 transportation shall declare by proclamation filed with the
23 secretary of state a speed limit for all motor vehicles on
24 all public streets and highways in the state whenever the
25 establishment of such a speed limit by the state is required

1 by federal law as a condition to the state's continuing
 2 eligibility to receive funds authorized by the Federal Aid
 3 Highway Act of 1973 and all acts amendatory thereto or any
 4 other federal statute. Such speed limit may not be less than
 5 that required by federal law, and the ~~attorney-general~~
 6 ~~director~~ shall by further proclamation, change the speed
 7 limit adopted pursuant to this act to comply with federal
 8 law. Any proclamation issued pursuant to this act becomes
 9 effective at midnight of the day upon which it is filed with
 10 the secretary of state. A speed limit imposed pursuant to
 11 this act is an exception to the basic rule requirements of
 12 section 32-2144 and a speed in excess of the speed limit
 13 established pursuant to this act is unlawful notwithstanding
 14 any provision of that section."

15 Section 21. Section 32-2203, R.C.M. 1947, is amended
 16 to read as follows:

17 "32-2203. General definitions. Subject to additional
 18 definitions contained in this Title which are applicable to
 19 specific chapters or sections, and unless the context
 20 otherwise requires, terms are defined as follows:

21 (1) "Abandonment"--Cessation of use of right of way
 22 (easement) or activity thereon with no intention to reclaim
 23 or use again. (Sometimes called "vacation.")

24 (2) "Auditor"--County auditor.

25 (3) "Board"--Board of county commissioners.

1 (4) "Bridge"--Includes rights of way or other interest
 2 in land, abutments, superstructures, piers, and approaches
 3 except dirt fills.

4 (5) "Clerk"--County clerk and recorder.

5 (6) "Commission"--Highway Transportation commission
 6 provided for in ~~section-82A-706~~ 82A-120.

7 (7) "Committee"--Local improvement district committee
 8 of supervisors.

9 (8) "Condemnation"--Taking by exercise of the right of
 10 eminent domain.

11 (9) "Construction"--Supervising, inspecting, actual
 12 building, and all expenses incidental to the construction or
 13 reconstruction of a highway, including locating, surveying,
 14 and mapping, costs of right of way or other interests in
 15 land and elimination of hazards at railway-grade crossings.

16 (10) "Control of access"--The condition in which the
 17 right of owners or occupants of abutting land or other
 18 persons to access, light, air, or view in connection with a
 19 highway is fully or partially controlled by public
 20 authority.

21 (11) "County road"--Any public highway opened,
 22 established, constructed, maintained, abandoned, or
 23 discontinued in accordance with chapters 31 and 40 of this
 24 title.

25 (12) "Department"--Department of highways

1 ~~transportation~~ provided for in ~~Title 02A, chapter 7~~ 82A-711.

2 (13) "Director"--Director of ~~highways~~ transportation, a
3 position provided for in ~~section 02A-701~~ 82A-713.

4 (14) "Easement"--A right acquired by public authority
5 to use or control property for a designated purpose.

6 (15) "Eminent domain"--The right of the state to take
7 private property for public use.

8 (16) "Federal-aid highway"--Any public highway which is
9 a portion of any of the federal-aid highway systems.

10 (17) "Federal-aid highway systems"--All of the systems
11 named hereafter and their urban extensions.

12 (18) "Federal-aid interstate system"--That system of
13 public highway selected by the commission in co-operation
14 with adjoining states, subject to the approval of the
15 secretary of commerce as provided in the Federal Highway
16 Act, as amended.

17 (19) "Federal-aid primary system"--That system of
18 connected public highways designated by the commission
19 subject to the approval of the secretary of commerce, as
20 provided in the Federal Highway Act, as amended.

21 (20) "Federal-aid secondary system"--That system of
22 public highways not on the federal-aid primary or interstate
23 systems selected by the commission in co-operation with the
24 boards of county commissioners, subject to the approval of
25 the secretary of commerce, as provided in the Federal

1 Highway Act, as amended.

2 (21) "Fee simple"--An absolute estate or ownership in
3 property including unlimited power of alienation.

4 (22) "Highway"--Includes rights of way or other
5 interests in land, embankments, retaining walls, culverts,
6 sluices, drainage structures, bridges, railroad-highway
7 crossings, tunnels, signs, guardrails, and protective
8 structures.

9 (23) "Highway," "road," "street"--Whether they appear
10 together or separately or are preceded by the adjective
11 "public," these are general terms denoting a public way for
12 purposes of vehicular travel, including the entire area
13 within the right of way.

14 (24) "Highway authority (ies)"--The entity (ies) at any
15 level of government authorized by law to construct and
16 maintain highways.

17 (25) "Maintenance"--Preservation of the entire highway,
18 including surface, shoulders, roadsides, structures, and
19 such traffic-control devices as are necessary for its safe
20 and efficient utilization.

21 (26) "Public highways"--All streets, roads, highways,
22 bridges, and related structures, which have been or shall
23 be:

24 (a) Built and maintained with appropriated funds of
25 the United States or the state or any political subdivision

1 thereof.

2 (b) Dedicated to public use.

3 (c) Acquired by eminent domain.

4 (d) Acquired by adverse user by the public,
5 jurisdiction having been assumed by the state or any
6 political subdivision thereof.

7 (27) "Right of way"--A general term denoting land,
8 property, or any interest therein, usually in a strip,
9 acquired for or devoted to highway purposes.

10 (28) "State highway"--Any public highway planned, laid
11 out, altered, constructed, reconstructed, improved,
12 repaired, maintained, or abandoned by the department.

13 (29) "Superintendent"--County road superintendent.

14 (30) "Supervisor"--County road supervisor.

15 (31) "Surveyor"--County surveyor.

16 (32) "Toll bridge"--Any bridge constructed by the
17 department, together with all appurtenances, additions,
18 alterations, improvements, replacements, and the approaches
19 thereto, lands used therefor, and improvements thereon.

20 (33) "Treasurer"--County treasurer."

21 Section 22. Section 72-101.1, R.C.M. 1947, is amended
22 to read as follows:

23 "72-101.1. Definitions and terms. (1) This act
24 applies to the transportation of passengers and property
25 between points in this state, and to the receiving,

1 switching, delivering, storing, and handling of property,
2 and to charges connected therewith, and applies to railroad
3 companies, express companies, car companies, sleeping-car
4 companies, freight and freight-line companies, and to any
5 shipments of property made from one point in this state to
6 another point in this state, whether the transportation of
7 it is wholly in this state, or partly in this state and
8 partly in an adjoining state or states. (2) Unless the
9 context requires otherwise, in Title 72: (a)
10 "Transportation" includes instrumentalities of shipment or
11 carriage. (b) "Railroad" means a corporation, company, or
12 individual owning or operating a railroad, in whole or in
13 part, in this state. The term also includes express
14 companies and sleeping-car companies. (c) "Commission" or
15 "board" means the public-service--commission transportation
16 ~~commission, provided for in section 82A-1702~~ 82A-720. This
17 act applies to all persons, firms, or companies,
18 incorporated or otherwise, that do business as common
19 carriers on any of the lines of railroad in this state."

20 Section 23. Section 72-136, R.C.M. 1947, is amended to
21 read as follows:

22 "72-136. Acceptance of favors and gratuities from
23 railroads prohibited. A public--service transportation
24 commissioner or the secretary may not, directly or
25 indirectly, solicit or request from or recommend to any

1 railroad corporation, or any officer, attorney, or agent
 2 thereof, the appointment of any person to any place or
 3 position. Nor shall any railroad corporation, its attorney,
 4 or agent, offer any place, appointment, or position or other
 5 consideration to such commissioners, or either of them, nor
 6 to any clerks or employees of the commission; neither shall
 7 the commissioners, or either of them, nor their secretary,
 8 clerks, agents, employees, or experts, accept, receive, or
 9 request any pass from any railroad in this state, for
 10 themselves or for any other person, except as herein
 11 otherwise provided, or any present, gift, or gratuity of any
 12 kind from any railroad corporation; and the request or
 13 acceptance by them, or either of them, except as herein
 14 specified, of any such place or position, pass, presents,
 15 gifts, or other gratuity, shall work a forfeiture of the
 16 office of the commissioner or commissioners, secretary,
 17 clerk or clerks, agent or agents, and employee or employees,
 18 expert or experts, requesting or accepting the same. Any
 19 person violating any of the provisions of this section is
 20 guilty of a misdemeanor."

21 Section 24. There is a new R.C.M. section that reads
 22 as follows:

23 Intent. (1) It is not the intent of this act to repeal
 24 or amend any laws relating to fundtions performed by an
 25 agency, unless specifically provided in this act or unless

1 there is a irreconcilable conflict between this act and
 2 those laws.

3 (2) The provisions of Title 82A, chapter 1, insofar as
 4 they refer to that title are intended to apply to this act.
 5 Section 25. Severability. If a part of this act is
 6 invalid, all valid parts that are severable from the invalid
 7 part remain in effect. If a part of this act is invalid in
 8 one or more of its applications, the part remains in effect
 9 in all valid applications that are severable from the
 10 invalid applications.

11 Section 26. Repealer. Sections 32-2404, 72-105,
 12 72-107, 72-112, 72-113, 72-139, 82A-701, 82A-701.1,
 13 82A-706.1, 82A-709, 82A-905, 82A-1204, 82A-1205, and
 14 82A-1206, R.C.M. 1947, are repealed.

15 Section 27. Effective date. This act is effective upon
 16 the date the governor signs an executive order implementing
 17 the act or on September 1, 1977, whichever occurs first.

-End-

1 SENATE BILL NO. 440

2 INTRODUCED BY FASBENDER,

3 ROBERTS, HAZELBAKER, MATHERS, REGAN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPROVE AND MAINTAIN
6 QUALITY TRANSPORTATION SERVICES IN MONTANA BY CREATION OF A
7 DEPARTMENT OF TRANSPORTATION AND A TRANSPORTATION
8 COMMISSION; TRANSFERRING ALL STATE TRANSPORTATION FUNCTIONS
9 TO THE DEPARTMENT OR THE COMMISSION; AMENDING SECTIONS
10 1-322.1, 8-103, 8-118, 32-2144.1, 32-2203, 72-101.1, 72-136,
11 AND 82A-901.1, R.C.M. 1947; AND REPEALING SECTIONS 32-2404,
12 72-105, 72-107, 72-112, 72-113, 72-139, 82A-701, 82A-701.1,
13 82A-706.1, 82A-709, 82A-905, 82A-1204, 82A-1205, AND
14 82A-1206, R.C.M. 1947; AND PROVIDING FOR AN EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. There is a new R.C.M. section numbered
18 82A-710 that reads as follows:

19 82A-710. Declaration of policy. It is the purpose of
20 the legislature in this act to provide the means to plan for
21 the present and future transportation needs of the citizens
22 of Montana, so that transportation will remain viable in the
23 private sector of the economy and will be able to provide
24 energy-efficient, ecologically compatible transportation
25 services with optimum efficiency, effectiveness, and economy

There are no changes in SB 440 and due to length will not
be rerun. Please refer to yellow copy for complete text.

1 through the creation of a department of transportation
2 within the executive branch of Montana government. It is
3 hereby declared to be the policy of the state of Montana
4 that adequate, safe, and efficient transportation facilities
5 and services of all modes are essential to the economic
6 growth of the state and the well-being of its people and
7 that the planning and development of such facilities and
8 services shall be coordinated by a state department of
9 transportation with overall responsibility for balanced
10 transportation policy and planning.

11 Section 2. There is a new R.C.M. section numbered
12 82A-711 that reads as follows:

13 82A-711. Department of transportation -- creation --
14 head. There is created a department of transportation. The
15 department head is the director of transportation provided
16 for in 82A-713.

17 Section 3. There is a new R.C.M. section numbered
18 82A-712 that reads as follows:

19 82A-712. Department of highways abolished -- functions
20 transferred to department. (1) The department of highways is
21 abolished, and its functions, as listed below, are
22 transferred to the department of transportation created in
23 this act:

24 (1) assist municipalities with road construction
25 (1-801);

1 (b) contracting with cities on construction (11-1023);
 2 (c) aid fish and game department in enforcement
 3 (26-1705);
 4 (d) speed and traffic regulations (Title 32, chapters
 5 11 and 21);
 6 (e) designation and construction of federal-aid and
 7 state highways (Title 32, chapters 24, 26, and 39);
 8 (f) state vehicle fees (Title 32, chapters 32 through
 9 34);
 10 (g) letting contracts for highway construction (Title
 11 32, chapter 41);
 12 (h) regulation of encroachments (Title 32, chapter
 13 44);
 14 (i) regulation of junkyards (Title 32, chapter 45);
 15 (j) regulation of outdoor advertising (Title 32,
 16 chapter 47);
 17 (k) highway construction in coal impacted areas (Title
 18 50, chapter 17);
 19 (l) state motor pool (Title 53, chapter 5);
 20 (m) motor vehicle reciprocity (Title 53, chapter 7);
 21 (n) park and highway connecting roads (62-307);
 22 (o) railroad grade crossings (84-1840.1);
 23 (p) collection of tax on liquid petroleum powered
 24 vehicles (84-1862);
 25 (q) custom combine identifying device (84-6015); and

1 (r) contracts for use of railroad right-of-way
 2 (89-3310).
 3 (2) Unless inconsistent with this act, any reference
 4 in the Revised Codes of Montana, 1947, to the department of
 5 highways means the department of transportation.
 6 Section 4. There is a new R.C.M. section numbered
 7 82A-713 that reads as follows:
 8 82A-713. Director of transportation -- appointment --
 9 duties. (1) The director shall be appointed by the governor
 10 in the manner set forth in 82A-106 for directors who are
 11 department heads.
 12 (2) Section 82A-107 applies to the director as a
 13 department head, subject to the concurrence of the
 14 transportation commission in designating all or part of
 15 those ~~THEIR~~ powers and duties as applicable.
 16 (3) The director is the chief administrative officer
 17 of the department and shall perform those functions that are
 18 assigned by law or delegated to him by the commission.
 19 Section 5. There is a new R.C.M. section numbered
 20 82A-714 that reads as follows:
 21 82A-714. Director of highways abolished -- functions
 22 transferred. (1) The position of director of highways is
 23 abolished, and its functions are transferred to the director
 24 of transportation.
 25 (2) Any reference to the director of highways in the

HOUSE OF REPRESENTATIVES

March 28, 1977

Committee of the whole amendment to SENATE BILL NO. 440, third reading copy.

1. Amend title, line 8.

Following: "FUNCTIONS"

Insert: "EXCEPT THE DIVISION OF MOTOR VEHICLES"

2. Amend title, lines 13 and 14.

Following: "82A-709"

Strike: ", "

Insert: "AND"

Following: "82A-905,"

Strike: "82A-1204, 82A-1205, AND 82A-1206,"

3. Amend pages 7 and 8, section 9, lines 4 through line 7 on page 8.

Following: line 3

Strike: section 9 in its entirety

Renumber: subsequent sections

4. Amend page 26, section 26, lines 13 and 14.

Following: "82A-709"

Strike: ", "

Insert: "and"

Following: "82-905,"

Strike: "82A-1204, 82A-1205, and 82A-1206,"

AS AMENDED BE CONCURRED IN

AMENDMENTS CONCURRED IN ON SECOND READING
BILL FAILED SECOND READING

HOUSE OF REPRESENTATIVES

March 29, 1977

COMMITTEE OF THE WHOLE amendment to SENATE BILL NO. 440, as follows:

1. Amend page 5, section 7.

Following: line 20

Insert: "(1) Aeronautics (Title 1, chapters 1 to 9);"

AS AMENDED BE CONCURRED IN

AMENDMENTS CONCURRED IN ON SECOND READING
BILL FAILED SECOND READING

HOUSE OF REPRESENTATIVES

March 29, 1977

COMMITTEE OF THE WHOLE AMENDMENTS TO SENATE BILL NO. 440,
AS FOLLOWS:

1. Amend title, line 10.

Following: line 9

Strike: "1-322.1,"

2. Amend title, line 13.

Following: "82A-709,"

Strike: "82A-905,"

3. Amend page 6, section 8, lines 7 through 14.

Following: line 6

Strike: lines 7 through 14 in their entirety

Renumber: subsequent subsections

4. Amend page 10, section 11, line 18.

Following: "Transportation"

Strike: "air,"

5. Amend page 12.

Following: line 7

Strike: lines 8 through 19 in their entirety

Renumber: subsequent sections.

6. Amend page 14.

Following: line 12

Strike: line 13 through 24 in their entirety

Renumber: subsequent sections

7. Amend page 26, section 26, line 13.

Following: "82A-709,"

Strike: "82A-905,"

AS AMENDED

BE CONCURRED IN

AMENDMENTS CONCURRED IN ON SECOND READING
BILL FAILED SECOND READING