

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on January 21, 1997, at 1:00 pm, in Room 410.

ROLL CALL

Members Present:

Sen. Arnie A. Mohl, Chairman (R)
Sen. Mack Cole, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Bob DePratu (R)
Sen. John R. Hertel (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Connie Erickson, Legislative Services Division
Phoebe Kenny, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 82 and SB 86; Posted 1-8-97
Executive Action: SB 29

HEARING ON SB 86

Sponsor: SENATOR WILLIAM CRISMORE, SD 41, Libby

Proponents:

Frank Cote, Deputy Insurance Commissioner
Craig Reap, Colonel MT Highway Patrol

Opening Statement by Sponsor:

SENATOR WILLIAM CRISMORE, SD 41, Libby, today I bring you Senate Bill 86 by request of the State Auditors office. This bill is to clarify the rule of unmarked intersections. The law has always

read that the person on the right entering the intersection had the right of way. There is some confusion at times about who was there first, and there can be some controversy. We have tried to add some clarifying language, and the amendment actually becomes the bill. **EXHIBIT 1.**

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, This bill, with the amendment that was proposed by the sponsor, will make it so you must stop for the vehicle on the right. If you are on the left you are at fault.

Colonel Craig Reap, MT Highway Patrol, I support this bill. The law is vague and makes it hard to take any enforcement action. We see this as a way to make it easier and more understandable to the people involved in the crash.

Questions From Committee Members and Responses:

SENATOR MACK COLE, do you have a lot of accidents because of the confusion in the old bill or is this just a clarification.

Colonel Reap, I don't know that this will reduce the number of accidents, it will take care of a lot of confusion on the enforcement standpoint.

SENATOR COLE, this is more for insurance purposes?

Colonel Reap, that is correct.

Closing by Sponsor:

SENATOR CRISMORE, I do think that this makes it easier for a law enforcement officer. This might not stop the accident, but it will stop the arguing.

HEARING ON SB 82

Sponsor: **SENATOR DALE MAHLUM, SD 35, Missoula**

Proponents:

Chris Gollus, MT Chamber of Commerce
Patricia Saindon, MT Department of Transportation
Beverly Gibson, MT Association of Counties
John Talbot, Save Scenic Montana
Ben Havdahl, MT Motor Carriers Association
Pam Dale, Helena Citizens Council
Clair Strickler, Citizens for a Better Flathead
Chris Imhoff
Matthew Cohn, Department of Commerce
Daphne Jones, Montana Preservation Alliance
Louise Bruce, Scenic Byway Advisory Council

Bud Williams, Inn Keepers Association
Karolin Loendorf, L&C County Commissioner
David Dittloff, MT Audubon Association
Sarah Busey, Save Scenic Montana

Opponents:

Jim Pannell, MYHRE Advertising
Tom Harrison
Gail Abercrombie, MT Petroleum Association

Opening Statement by Sponsor:

SENATOR DALE MAHLUM, SD 35, Missoula, EXHIBIT 2.

Proponents' Testimony:

Chris Gollus, MT Chamber of Commerce, we support this bill, we think that the Scenic Byways program would be beneficial for the State of Montana. We do however feel that this bill should not now or ever be used as a vehicle to restrict other commercial activity that is equally important.

Patricia Saindon, Department of Transportation, I am here as a proponent of SB 82. This is relatively a simple bill. It gives authority to the Transportation Commission to do three things. It allows the commission to designate or delete roads from a Scenic Historic Byways Program. The commission will not arbitrarily designate or delete these roads. It is envisioned that these roads will be nominated and come through an application and selection process that has the concurrence of both local governments and agencies who are responsible for the maintenance and operation of the road. This will authorize the commission to delegate to the Department of Transportation, responsibilities for establishing the criteria for which these Scenic and Historic Byways are selected. This section also gives the authority to the Department of Transportation to adopt rules to administer the program. The third thing is to give authority to the Transportation Commission to appoint an advisory committee to assist the Department of Transportation in screening and recommending nominations to the Scenic and Historic designation or deletion of roads from this program. The people on this advisory committee will be appointed for technical purposes. It is envisioned that they be people who have expertise that is not currently available either within local government or within the Department of Transportation. I encourage the committee to look favorably on this bill.

Beverly Gibson, MT Association of Counties, we would like to enter a resolution supporting legislation supporting a Scenic Historic Byways Program. **EXHIBIT 3.**

John Talbot, Save Scenic Montana, submitted written testimony, **EXHIBIT 4.**

Ben Havdahl, MT Motor Carriers Association, we want to go on record in support of SB 82 provided that this committee passes a small amendment to the bill. The amendment would go on the end of the bill and would add a subparagraph that says the Scenic Historic Byways Program established by the commission must include a plan to accommodate commerce and commercial vehicles, maintaining a safe and efficient level of highway service.

Pam Dale, Helena Citizens Council, we are an elected advisory body of citizens who act as an advisory body to the city commission. In December our group made the decision to pass a resolution to urge you to support this bill. I want to point out a couple key points. This is a terrific opportunity for local stake holders to attract more tourism to their areas. This is not something that anyone is going to have thrust down their throat. This is an opportunity for people who are already in the area to take advantage of nation-wide advertising that promotes their areas. We can always use more tourism. Let's get on the band wagon with the forty-four other states that have Scenic Byway programs. Everyone has a lot to gain from participating. I urge you to support this bill.

Clair Stickler, Citizens for a Better Flathead, submitted written testimony **EXHIBIT 5.**

Chris Imhoff, submitted written testimony, **EXHIBIT 6.**

Matthew Cohn, Department of Commerce, we stand in support of SB 82.

Daphne Jones for Derek Strahn, submitted written testimony **EXHIBIT 7.**

Louise Bruce, Scenic Byway Advisory Council, submitted written testimony, **EXHIBIT 8.**

Bud Williams, Inn Keepers Association, we are pleased to stand in support of SB 82.

Karolin Loendorf, L & C County Commissioner, stands in support of SB 82, **EXHIBIT 9.**

David Dittloff, MT Audubon Association, submitted written testimony **EXHIBIT 10.**

Sarah Busey, Save Scenic Montana, submitted written testimony **EXHIBIT 11.**

Opponents' Testimony:

Jim Pannell, MYHRE Advertising, submitted written testimony **EXHIBIT 12.**

Tom Harrison, if the bill is amended appropriately as indicated by Ben Havdahl or Jim Pannell or both then the bill is fine. We think that property rights and the right to advertise need to be protected.

Gail Abercrombie, MT Petroleum Association, we have concerns that permitting agencies could be influenced by a scenic highways designation. During the public comment period all oil and gas activities are required to be reviewed. The permitting agency likely will be faced with the rationale of disallowing an activity because of the visual impacts from a designated roadway. We are under many restrictions as to where activities can take place. We do take some solace in the statement of intent, but still have some concern because in many areas those surface areas are public lands, therefore the argument could be made that we need to protect those public lands and those private property rights or mineral rights could be segregated to the surface. We do hope that if this program is approved that the advisory council person with the economic development expertise has Natural Resource development knowledge, and appreciation of the economic benefits derived from Natural Resources.

John Wagner, I hope that this committee would study this carefully and understand the ramifications of what this could do to personal property rights, to small business people and to the State of Montana. I urge you to investigate this before making decisions.

Larry Brown, Agriculture Preservation Association, I would like to go on record as neither an opponent or proponent but would like to raise some points. The private property rights and land use restrictions are a concern to our organizations from the standpoint of both public and private lands. I think it is important that language be built into this bill that doesn't provide a vehicle for litigation down the road for someone who doesn't particularly like the way something looks along the highway. I would also like to mention that some of the proponents give a good reason for not having this program, it encourages the influx of development. That is a concern particularly to our agricultural people. Development means change. What they are trying to promote is a scenic status quo. Thank you.

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 2 Minutes}

SENATOR REINY JABS, how long does the average tourist stay in Montana right now?

Matt Cohn, approximately three and one half days.

SENATOR JABS, have there been studies done that this program could keep them here longer?

Matt Cohn, the studies that were done show that one of the top reasons people come here is for scenic driving. I would tend to think that yes it would get some people off the main corridors and into the rural areas.

SENATOR JABS, do you know of any incidents where commercial trucks were banned after the development of this program that weren't banned before?

Ben Havdahl, I don't know of any specific incident that has happened along that line.

SENATOR LARRY BAER, in the bill as part of the statement of intent it says, it in no way can be construed to interfere with private property rights. I think that we are missing something here in as much as we do have the definitions in this bill one of them being eminent domain. Eminent domain is a legal doctrine where by government can take your property if they find it to be a public necessity and there are other factors involved. I would like Tom Harrison to verify my reasoning behind this, that eminent domain is not a violation of property rights but supersedes property rights. There is the possibility here of government claiming an eminent domain, situation. They may seek to condemn a private property owners property to further their goals. I want to emphasize that there is always the possibility of loosing your property, by way of this legal procedure.

Tom Harrison, I think that is very true. I think that the hope is that we put some segmentation language in and acknowledge that this won't happen and that it is not legislative intent, and see what good comes from the rest of it.

SENATOR BOB DEPRATU, could you see a situation in this bill the way it is being presented, where if someone on the east shore of Flathead Lake has a two acre orchard and has used it as such, but decide to sell it to someone who wants to do away with the orchard and build a home there, could this be prevented because it would ruin the view of the orchard.

Tom Harrison, I guess I have a hard time visualizing that. It is possible they could condemn the cherry orchard, but not likely.

SENATOR DEPRATU, would the department have any objections if it was designated by this body what the make-up of the advisory committee would be?

SENATOR DALE MAHLUM, I don't think there would be a problem with that. We want a committee make up of all factions.

SENATOR GREG JERGESON, because items are included in the definition section, doesn't mean that they are necessarily included in the implementation section of the bill, does it?

Tom Harrison, I don't think there is any direct tie in the bill, but I think that just by going to the eminent domain or condemnation sections of the law it says that the statutes can be used for any public purpose and many private purposes. As long as you denominate the creation and retention of a Scenic Byway as a public purpose I think it would just get swept into the regular statute of eminent domain.

SENATOR "SPOOK" STANG, are there federal criteria that we will have to meet, or are there criteria in other parts of the code that these people will have to go by to designate these as scenic highways?

Pat Saindon, the State of Montana has the ability to develop the Scenic Byways program in any way that they want to develop it. If we want our road to be eligible for a National Scenic Byways designation, then our program would have to closely mirror the national program. We did do a feasibility study in 1994, and hashed out a lot of the issues, but have not actually developed a program because we don't have the authority from you.

SENATOR STANG, I would like to see what you think that program might look like before I would vote on this bill. If you have the guidelines that you would propose to us after we give you the authority, that would be a great help. I have a real hang up about giving an agency the authority to do something without knowing what they are going to do first.

Pat Saindon, We have copies of the feasibility study that we could get to you, it discusses the issues but doesn't spell out what the program will look like. We don't want to spend money to develop a program, and then have you tell us we can't operate it.

SENATOR STANG, in the hand-out that was given to us (**EXHIBIT 13**) from the feasibility study it says that one of the goals of a Scenic Byway is to create visual access to scenic and interesting sites. Therefore it is critical to design and maintain the road to maximize visual resources. Does this mean that the department of transportation is going to have to redesign roads at a time when our reconstruction trust fund will be broke in two years.

Pat Saindon, please remember what this program is supposed to do is give local governments the authority to nominate a road that there community wants to be put on the Scenic Byway Program. There is not intent in this program for us to go out and develop new roads.

SENATOR STANG, a number of the roads that I can picture in my area that would be designated as Scenic Byways are in disrepair. If they were designated, is the highway department going to have to come in and bring those roads up to a better standard?

Pat Saindon, the process for identifying roads for reconstruction or repair is already established by the department. This is not another criteria for the program.

SENATOR STANG, in our area we have a couple of roads that are designated as Forest Scenic Highways. That was done with very little public input and along those roads they have restricted timber harvest, the access to the river, and how close to the river people can build houses. That highway already has markers that tell you about the scenery. The state was not involved in this so why do we need the state, is it to prevent further erosion of the property rights?

Pat Saindon, the Federal Forest Byway Scenic program is just that, they have the authority to designate scenic routes on their property.

SENATOR STANG, if they own the highways, how come the Montana Department of Transportation is maintaining these roads?

Pat Saindon, if the road is designated by the Federal program they are constructed with Forest Highway funds.

SENATOR COLE, what effect will this have on the highways as far as what people could do along the sides? Can you guarantee that it won't have any impact for future improvements or developments along that road?

Sarah Busey, in the Scenic Byways Programs that I am familiar with there are no restrictions or limitations based on the Scenic Byways.

SENATOR COLE, then you are saying that there is no impact at all on how it would effect your private rights along that road.

Sarah Busey, I can't say that there won't be changes along the Scenic Byway, we all know what growth has done. That has happened without any designation. There will be changes along any road when ever there is development.

SENATOR STANG, under the current bill board law that we have now, you can only put signs with in 600 feet of a business along the same side of the road. If there is nothing in this proposal to limit someone from coming in and building a business on the Scenic Byway, and if they don't change any of the Montana laws that designate where you can put an sign along the highway, what is it in this bill that worries you?

Jim Pannell, when you talk about outdoor advertising, many communities have there own sign code, then we have state law. We would worry that if a community is on a scenic highway that it be segmented out, so that we could follow the signing laws of the state and that community, and then the scenic highway designation would pick up again after you got through the area.

{Tape: 2; Side: A

SENATOR JERGESON, are the circumstances of eminent domain clearly defined under the statutes as far as what the Transportation Department is allowed to do?

Nick Rotary, Department of Transportation, on page three of this bill, subsection 24 defines the Scenic-Byways program. What it does is authorize the department and the Transportation Commission to have such a program. Also in that statute is other existing authority that this department enjoys, one being the power of eminent domain. What I had hoped to achieve in drafting this bill was in the statement of intent. One of the things that I thought would work here is if the state wants to use the right of eminent domain they must show necessity.

SENATOR JERGESON, does the authority in statutes that you have to build a road specifically describe your ability to use the power of eminent domain?

Nick Rotary, I feel that it is in title 70 of eminent domain one of the requirements is to be able to show public necessity. You must do that before you can get what we call a preliminary order of condemnation. The Montana Supreme court has made it very clear about where the transportation commission or the department can exercise the power of eminent domain.

SENATOR MOHL, on the fiscal note it says federal funds are anticipated to be available, it doesn't say they are.

Pat Saindon, the ISTEA bill is in its last year of authorization. In October of 1997 that will have to be reauthorized by congress. At this time we don't have any idea what that bill will entail.

SENATOR MOHL, on this chart it says one of the goals of a Scenic Byway is to create visual access to scenic and interesting sights. Therefore, it is critical to design and maintain the road to maximize visual resources. How are we funding this?

Pat Saindon, the funding that is anticipated to be used for local governments to maximize their programs is through the Community Transportation Enhancement program. Moneys are authorized out of ISTEA that can be used for enhancement.

SENATOR MOHL, is there any limit on how many roads you can turn into scenic byways.

Pat Saindon, this bill just gives the authority to the department to develop the program. It is more important to have a quality program with a few roads than a program with a great quantity of roads which they can't administer.

SENATOR MOHL, there was a statement in the Big Fork Eagle that talked about monies that were privately donated could be used as an easement to prevent a property owner from building a house.

Clair Strickler, If it is the same article that I read there were many statements made that were not correct.

SENATOR MOHL, could the committee and Department of Transportation guarantee this committee that you will not interfere with any private property or impact the ability to make future improvements along a scenic byway.

Clair Strickler, it would probably just end up being a turn out along the side of the road, it would not effect private property rights.

Closing by Sponsor:

SENATOR MAHLUM, the opponents bring up some things that we need to work on to make this bill a workable solution. If this bill is to become law everyone has to be able to say that they are comfortable with it. We think that if this bill is done right it will be good for the advertising people in several ways. The same with the commercial trucking. I can't say much about condemnation but I think that this bill would enhance our state. You don't have to be a part of the program unless you request it. I think we should start small. I think this will let us as Montanans show the pride we have in our state. It will showcase our states finest attractions. Tourists will tell their friends and neighbors and people will want to come and spend their money, and we will reap monetary benefits for our economy.

EXECUTIVE ACTION ON SB 29

Motion: **SENATOR COLE**, moved that the committee revisit SB 29.

Discussion:

SENATOR STANG, wanted to know why we were going to revisit it.

SENATOR COLE, said that the reason was to take the contingency voidance amendment off.

Vote: The motion PASSED. **SENATOR STANG AND JERGESON** voted NO.

Motion: **SENATOR COLE** moved to remove the contingency voidance from SB 29.

Discussion: **SENATOR STANG**, what bill increases the revenue, and why wasn't it spelled out in this bill?

SENATOR MOHL, I feel that the contingency voidance is not needed on this bill because it is less than one tenth of one percent of

their budget, and the restricted route is actually an illegal procedure.

SENATOR NELSON, I would like to hear more about the other bill that will offset this.

SENATOR BAER, if you look at SB 12 also introduced by **SENATOR SWYSGOOD**, we have a revenue increase of almost \$400,000. Much more than needed to offset the decrease of revenue in the bill we are reconsidering.

SENATOR JERGESON, SB 12 is one-time money. The loss of revenue in SB 29 is a permanent loss, so although for this biennium SB 12 will recover the loss of revenue in SB 29 it is not a situation that will exist in the next biennium. As I understand the contingency voidance clause applies to House Bill 2 and does not apply to this.

SENATOR STANG, are you saying that we want to strip all the amendments off this bill or just the contingency voidance.

SENATOR COLE, just the contingency voidance.

Vote: The motion to **AMEND SB 29 PASSED UNANIMOUSLY.**

Motion/Vote: **SENATOR COLE**, moved SB 29 DO PASS AS AMENDED. CARRIED.

ADJOURNMENT

Adjournment: 3:00 PM



SEN. ARNIE MOHL, Chairman



PHOEBE KENNY, Secretary

AM/PK