

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON HIGHWAYS AND TRANSPORTATION**

Call to Order: By **CHAIRMAN ARNIE MOHL**, on March 6, 2001 at 3:05 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Arnie Mohl, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob DePratu (R)
Sen. Dan Harrington (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Sam Kitzenberg (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Marion Mood, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 391, 2/9/2001; HB 127,
2/9/2001; HB 375, 2/9/2001
Executive Action: HB 375; HB 127; HB 391

HEARING ON HB 391

Sponsor: REP. LARRY CYR, HD 37, BUTTE

Proponents: Col. Bert J. Obert, Montana Highway Patrol
Barry "Spook" Stang, self

**Pat Clinch, Montana State Council, Professional
Firefighters**

Jim Dusenberry, Montana Tow Truck Assn.

Opponents: None

Opening Statement by Sponsor:

REP. LARRY CYR, HD 37, BUTTE, opened by saying that HB 391 was requested by the Department of Justice which felt legislation was needed to protect stationary emergency vehicles and their occupants while performing their duties at the roadside. He turned in **EXHIBIT (his51a01)** from which he read. He pointed to past legislation intended to protect highway construction workers and said it had greatly reduced the number of incidents and injuries.

Proponents' Testimony:

Col. Bert J. Obert, Montana Highway Patrol, also felt that there was a need for legislation to extend protection to emergency responders working on the highways. He stated that with increasing traffic and speed, the danger of emergency personnel being struck was ever increasing. Many motorists failed to slow down and move to an adjacent lane when encountering a stopped emergency vehicle, thereby failing to give emergency personnel room to perform their duties, and putting their lives in danger. He reminded the committee of the many instances where officers and other emergency personnel had been struck while aiding others. He pointed to other states who either have laws or are proposing legislation dealing with this issue. He repeated that HB 391 requires that motorists slow down and move to an adjacent lane wherever possible and safe when approaching a stationary emergency vehicle with flashing lights.

Barry "Spook" Stang, concerned citizen, told of his 18-year experience as a volunteer firefighter in St. Regis, and related incidents where motorists came by the scene of brush or car fires at 80 mph, without any regard for the personnel's safety. He welcomed this bill because he felt it was time to make motorists slow down and impose fines for violations, citing that the last officer struck while writing a ticket alongside the highway was hurt in his district.

Pat Clinch, Montana State Council for Professional Firefighters, stood in support of HB 391, stating that currently, many fire departments in Montana are changing their operating procedures when working on highways by using their fire trucks as barricades to prevent getting hit by inattentive drivers.

Jim Dusenberry, Montana Tow Truck Association, also rose in support of HB 391, citing his own experiences on the highways where cars came into the accident scene at high speeds, making his people jump over the guard rails to get to safety.

Questions from Committee Members and Responses:

SEN. BOB DEPRATU remembered his time as an ambulance volunteer and agreed with the assessments of the previous witnesses. He wondered, though, how the department would go about getting the word out if this legislation passed, asking if there were funds available for educating the public. **Col. Obert** replied that this issue had been discussed, and that the department was willing to extend a six month warning period where people would be stopped and advised of this obligation rather than fined. There also was some funding available which could be used for media announcements as well as safety presentations and articles for local papers. He felt this was a nation-wide concern, saying that a number of states had or were working on similar legislation, and he was sure the information would get out to the public.

SEN. DAN HARRINGTON referred to the ads used for highway construction zones and asked if a similar ad campaign could be devised for this. **Col. Obert** replied that there was some highway traffic safety money which would allow them to make video and newspaper presentations. He stressed that this bill dealt with emergency situations which precluded the emergency personnel from setting up signs; the flashing lights on top of the vehicle should serve to alert the motorist.

VICE CHAIRMAN RIC HOLDEN asked if people are expected to move into the oncoming traffic lane on a two-lane highway, and **Col. Obert** replied that the bill indicates that on a two-lane highway, motorists should only move into the oncoming traffic lane when it is safe; otherwise the motorist should just slow down and proceed with caution.

SEN. VICKI COCCHIARELLA related an incident where a group of fellow senators came upon a stationary emergency vehicle in the passing lane of Interstate 90. Their only warning had been a "wreck ahead" sign but it did not indicate that the hazard was in the passing lane into which everyone had moved, and she wondered who would be in violation of the law in this case. **Col. Obert** explained that current law requires that the driver slow down as soon as he recognizes a hazard, regardless of which lane it is in. This bill requires that traffic move into the adjacent lane and away from the hazard when possible and safe, whether this will mean to the right or left. **SEN. COCCHIARELLA** maintained

that the warning sign was placed too close to the accident area and wondered if there was legislation stating the required distance. **Col. Obert** replied that there is a statute requiring warning signs and thought it stated a distance of 300 feet on a highway, but that law enforcement was exempted from that requirement. **SEN. GLENN ROUSH** wondered if an officer would take poor visibility such as blowing snow or dust into consideration. **Col. Obert** assured him that an officer would take factors like visibility, distance or the elements into consideration in determining where to stop his vehicle so as not to create another hazard.

CHAIRMAN ARNIE MOHL asked the sponsor what the penalties were for a violation, and **REP. CYR** read from statute 61-8-711 as described in Exhibit (1). **CHAIRMAN MOHL** felt this was too lenient. He stated that his people in the contracting business are at risk on a daily basis, working along highways, and he thought the law did not have enough teeth in it.

Col. Obert then showed the committee a short video, depicting a traffic stop in Idaho where the camera mounted on the patrol car's dash caught a semi speeding by; he lost control in a last-minute effort to slow down and ended up skidding down the freeway on its side.

Closing by Sponsor:

REP. CYR closed on HB 391 by expressing hope that the committee pass this bill because officers and emergency responders deserve to be protected.

HEARING ON HB 127

Sponsor: REP. DAVID WANZENRIED, HD 68, MISSOULA

Proponents: Jim Currie, Department of Transportation
Margaret Morgan, MT Petroleum Marketers' Assn.
Barry "Spook" Stang, MMCA

Opponents: None

Opening Statement by Sponsor:

Note: **SEN. BOB DEPRATU**, who will carry this bill on the Senate floor, presented HB 127 for the sponsor, **REP. DAVE WANZENRIED, HD 68, MISSOULA**, who failed to appear before the committee.

SEN. BOB DEPRATU, SD 40, WHITEFISH, stated that HB 127 revises the issuance of gasoline and special fuel distributor licenses, requiring a minimum security bond of \$25,000 from licensed distributors who import or export gasoline or special fuel.

Proponents' Testimony:

Jim Currie, Department of Transportation, explained that HB 127 raises the minimum bond from \$2,000 to \$25,000 for importers and exporters. This is important to the department as it is easy for a taxable transaction to be overlooked, and without having the bond in place, the department is unable to collateralize that bond to recover the taxes owed to the state. He thought that raising the amount for the bond would affect about 53 distributors, and he was told those are all out-of-state distributors. The bill further sets up standard guidelines for situations under which a license could be revoked. Under present law, the department has the ability to do that but there are no guidelines spelling out the kind of circumstances under which this could be done. He referred to **Bob Turner, Bureau Chief of the Fuel Tax Bureau** who would be available to answer questions.

Margaret Morgan, Montana Petroleum Marketers, stated that approximately 60% of their distributors are licensed, representing all of the in-state distributors. Her organization's membership is not affected by HB 127 but felt this was a good idea, saying that tax evasion does not happen when fuel is moved within the state; if it does occur, it will be when fuel is moved across state lines.

Barry "Spook" Stang, MMCA, stated that his organization had some concerns when this bill was first drafted, but the clause on page 2, lines 19 and 20, where it states that "the owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions in this section" eliminated those concerns, and they stood in support of the bill.

Questions from Committee Members and Responses:

SEN. ROUSH wondered if this bill included Canadian fuel coming into Montana, and **SEN. DEPRATU** replied that it not only applied to Canadian fuel but also to that coming in from other states.

SEN. ROUSH addressed **Bob Turner** and wondered whether we tax fuel that is brought into Montana. **Bob Turner** explained that the tax is collected at the distributor level and passed on to the consumers, and that the fuel coming in from Canada is taxed.

SEN. JERRY O'NEIL asked if the department would consider an amendment, adding, on page 2, line 1 "within the previous three

years" to make it compatible with line 3. **Bob Turner** said the department would not have a problem with that. **SEN. O'NEIL** said this would also apply to page 3, line 9, to which **Mr. Turner** said it could be included in the same amendment. **CHAIRMAN MOHL** advised the committee that the amendment issue would be discussed during executive action.

Closing by Sponsor:

SEN. DEPRATU, in closing, stated this was a worthwhile bill for the department in that it helped them to collect unpaid taxes from a distributor.

HEARING ON HB 375

Sponsor: **REP. EILEEN CARNEY, HD 82, LIBBY**

Proponents: **Brenda Nordlund, Department of Justice, MVD**
John Flink, Montana Hospital Association

Opponents: **None**

Opening Statement by Sponsor:

REP. EILEEN CARNEY, HD 82, LIBBY, opened by stating that HB 127 clarified the language in a bill passed by the legislature in the last session. The bill meant to help hospitals and clinics recruit medical personnel by allowing them to exempt employees driving in from adjacent states from paying car registration fees in Montana. The bill as passed stated "medically under-served area" which is very vague, and HB 375, as requested by the DOJ, changes that to "health professional shortage area" which has a legal definition and helps the department implement the program.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, MVD, also referred to SB 13 which was designed to help health care facilities in their recruiting efforts, especially in rural areas. Montana law requires that one registers his vehicle in Montana when employed here. She reminded the committee of the exorbitant license fees two years ago and stated that was why hospital administrators had asked for SB 13, and after it had been in place for some time, the department felt the language as mentioned above was too vague for them to determine if a vehicle should be exempt under these provisions, and asked for this clarification. Neither the county treasurers nor the DMV have the ability to tell whether a healthcare facility is having problems recruiting or retaining

personnel. The amendment uses the "health professional shortage area" and an alternative standard by adding "a critical shortage of nurses" in sections (3) and (5). She entered Amendment #HB037501.ace as **EXHIBIT(his51a02)**, and also offered **EXHIBIT(his51a03)** and **EXHIBIT(his51a04)** which are fact sheets addressing the problems this bill is designed to help. She stated that by using these, the DMV would be able to determine whether an employee qualified for this exemption. **EXHIBIT(his51a05)** offers some background information.

John Flink, Montana Hospital Association, rose in support of HB 375 and the amendment.

Closing by Sponsor:

REP. CARNEY closed on HB 375.

EXECUTIVE ACTION ON HB 375

Motion: **SEN. COCCHIARELLA** moved that **HB 375 BE CONCURRED IN.**

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion that **AMENDMENT #HB037501.ACE BE ADOPTED. Motion carried 9-0.**

Motion/Vote: **SEN. COCCHIARELLA** moved that **HB 375 BE CONCURRED IN AS AMENDED. Motion carried 9-0.**

SEN. COCCHIARELLA offered to carry HB 375 in the Senate.

EXECUTIVE ACTION ON HB 127

Motion: **SEN. DEPRATU** moved that **HB 127 BE CONCURRED IN.**

Substitute Motion: **SEN. O'NEIL** moved that the **PROPOSED AMENDMENT TO HB 127 BE ADOPTED.**

Discussion:

CHAIRMAN MOHL had **Connie Erickson** go over the proposed amendment, and she referred to page 1, line 28 which deals with revoking a license under certain conditions, and the amendment would add "within the previous three years". She said she did not understand the reason for such an amendment, and asked **SEN. O'NEIL** for clarification. **SEN. O'NEIL** explained that if a license can be denied if the distributor has had his license revoked within a three-year period, he did not want to deny him participation for a minor offense, and that was his reason for

requesting this amendment. **SEN. DEPRATU** stated he understood the senator but would have to speak against the amendment. He explained that the state is dependent on receiving the fuel tax for its road programs, and that the bill as written was a good vehicle.

Motion/Vote: **SEN. MOHL** moved that the **PROPOSED AMENDMENT BE ADOPTED**. Motion failed 1-8 with O'Neil voting aye.

Vote: Motion that **HB 127 BE CONCURRED IN** carried 9-0.

SEN. DEPRATU will carry HB 127 on the Senate floor.

EXECUTIVE ACTION ON HB 391

Motion: **SEN. HARRINGTON** moved that **HB 391 BE CONCURRED IN**.

Discussion:

SEN. O'NEIL offered an amendment which, on line 28, would strike "possible" and insert "prudent"; this would allow the committee to strike subsection (b) in its entirety. He felt this would speak to **VICE CHAIRMAN HOLDEN'S** concern about how far off the road a motorist had to drive to avoid a stationary emergency vehicle.

Substitute Motion: **SEN. O'NEIL** moved that **AN AMENDMENT TO HB 391 BE ADOPTED**.

Discussion:

SEN. HARRINGTON said he would resist that because "possible" was very clear. He felt that people would move away as far as possible. **SEN. COCCHIARELLA** asked what **SEN. O'NEIL** was trying to accomplish with this amendment. He replied he wanted to make it clear that a person knows not to put himself in jeopardy by getting so far away from the emergency vehicle that they end up in the barrow pit. He felt the word "prudent" took care of that. **VICE CHAIRMAN HOLDEN** asked why he wanted to eliminate subsection (2), and **SEN. O'NEIL** answered that if it is not prudent to change lanes and go that far, then one would not go that far. **SEN. HARRINGTON** remarked that the word "possible" is used to a great extent in the driver's manual, and it is accepted for what it means. **SEN. DALE BERRY** felt that subsection (b) was merely a repeat of subsection (a) and could be eliminated. **SEN. DEPRATU** advised the committee that subsection (b) could help determine whether a ticket was rightfully issued or not, should there be a dispute. **CHAIRMAN MOHL** had **Connie Erickson** repeat the proposed amendment and then asked for a roll call vote.

Vote: Motion failed 4-5 with Berry, Holden, Mohl, and O'Neil voting aye.

SEN. GERALD PEASE remarked that no one mentioned people whose car was stalled on the shoulder or who are having to change a tire, and wondered if they could be protected as well. **SEN. HARRINGTON** stated that the blinking lights should serve as a warning to other motorists. **VICE CHAIRMAN HOLDEN** agreed with **SEN. HARRINGTON** but he felt that a different bill was needed to address **SEN. PEASE'S** concern since HB 391 dealt with emergency vehicles only.

Vote: Motion that **HB 391 BE CONCURRED IN** carried 9-0.

SEN. HARRINGTON agreed to carry HB 391 on the Senate floor.

ADJOURNMENT

Adjournment: 4:00 P.M.

SEN. ARNIE MOHL, Chairman

MARION MOOD, Secretary

AM/MM

EXHIBIT (his51aad)