

MINUTES

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

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN KENNETH "KEN" MESAROS**, on January 10, 1997, at 1:00 p.m., in Room 413/415.

ROLL CALL

Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Gerry Devlin (R)
Sen. Don Hargrove (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Walter L. McNutt (R)
Sen. Linda J. Nelson (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Services Division
Angie Koehler, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 43;1/07/97, SB 53;1/07/97
Executive Action: SB 53 DO PASS.

Introductory Meeting and Procedures Discussion

CHAIRMAN KEN MESAROS welcomed everyone and referred committee members to the procedures manual. He would like to start the committee on time, executive action will be taken on a bill if there is no opposition. The committee discussed the handling of absentee votes and proxies. **CHAIRMAN MESAROS** asked that the proxies be in writing and given to either himself or the secretary. If a member is absent the vote will be held open for 24 hours.

HEARING ON SB 53

Sponsor: SENATOR JOHN HERTEL, SD 47, MOORE

Proponents: Ralph Peck, MT Department of Agriculture
Janet Ellis, MT Audubon Legislative Fund
Larry Brown, Agricultural Preservation Association
Bob Stephens, MT Grain Growers Association

Opponents: None

SEN. HERTEL, SD 47, MOORE: I would like to present SB 53. This is a simple bill, but very important. It will take the Montana Department of Agriculture quarantine authority and remove it from the nursery law and place it as a separate statute in Title 70. This legislation clarifies that quarantine and pest management authority is available when needed to protect, not only nursery products, but all agricultural commodities including nursery stock, grain, potatoes and cherries.

SB 53 allows for receiving funds for quarantine actions and maintaining existing enforcement authority as it exists today. Montana had two examples of the need to use quarantines to protect our industry this past year. At the request of the potato industry, the Department instituted a quarantine to protect producers from *late blight disease* in potatoes which could have significant impact on our valuable seed potato industry and potatoes grown for domestic retail sales and homeowner garden potato production. Also, you may have heard of *karnal bunt*, a disease in wheat, which if the Bunt was present in Montana grain would have devastated the international marketing of our grain. Montana's actions of emergency quarantine protected our grain producers and maintained our international markets.

This bill is supported by many Montana agricultural organizations, the Montana Grain Growers Board of Directors voted unanimously to work with the Montana Department of Agriculture in requesting SB 53. They have been joined by the Montana Farm Bureau, Montana Farmer's Union, Women Involved in Farm Economics, Montana Nursery Association and others. I reserve the right to close.

{Tape: 1 of 1; Side: A; Approx. Time: 1:05 p.m.}

Ralph Peck, MT Department of Agriculture: (EXHIBIT 1) We support the bill. The quarantine statute has been caught up by the nursery statute so we have to classify grain and potatoes as nursery products. Our attorney felt he could defend it, but it was very gray so he recommended that we take the quarantine statute and remove it from the nursery bill and place it as an independent statute in Title 80. That is the purpose of this bill and it will do one other thing. It allows the Department to do a Pest Management Action whether it's for a weed, an insect or

a plant disease without calling it a quarantine. For instance, if you have a small area that a fruit fly is in, you wouldn't have to quarantine the area. You could do a Pest Management Action to take care of it without bringing national and international attention to the fact that Montana put a quarantine on. We could walk through the bill section by section if you'd like. I have just summarized it. It's your option.

CHAIRMAN MESAROS: I think a summary is appropriate unless there are questions.

Mr. Peck: The written testimony I have handed out does walk through the bill. I am submitting a letter from the Montana Association of Nurserymen, Inc. (**EXHIBIT 2**) and the Montana Potato Improvement Association (**EXHIBIT 3**).

Janet Ellis, MT Audubon Legislative Fund: (**EXHIBIT 4**) We support this bill. The quarantines can also be used to control noxious weeds. The Audubon is very concerned about the spread of noxious weeds because of the effect on wildlife and wildlife habitat.

Larry Brown, Agricultural Preservation Association: We support this bill.

Bob Stephens, MT Grain Growers Association: We support this bill.

CHAIRMAN MESAROS: Are there any more proponents or opponents? Does the committee have any questions?

SEN. DEVLIN: Is the nursery taken out of the fund?

Mr. Peck: They pulled the reference to the quarantine section out of that. The nursery program is still self-supporting. It pulls the reference out of Section 80-7-121.

SEN. HERTEL: This bill has a great deal of importance to our agricultural commodities. With the authority that this bill gives to the departments I think more protection will be given to our producers. I strongly recommended a DO PASS on SB 53.

CHAIRMAN MESAROS: We will close the hearing on SB 53 and open the hearing on SB 43 sponsored by **SEN. HOLDEN**.

{Tape: 1 of 1; Side: A; Approx. Time: 1:15 p.m.}

HEARING ON SB43

Sponsor: SENATOR RIC HOLDEN, SD 1, GLENDIVE

Proponents: None

Opponents: **John Bloomquist, MT Stockgrowers Association**
 Larry Brown, Agricultural Preservation Association
 Marc Bridges, MT Department of Livestock
 Don Allen, MT Wood Products Association
 Tim Reardon, MT Department of Transportation

SEN. HOLDEN, SD 1, GLENDIVE: I am handing out the statutes on this Section (**EXHIBIT 5**) and presenting SB 43. There's an old saying that says, "strong fences make good neighbors" and that's truly an accurate statement. It's a very tense situation when you have other people's cattle or stock coming onto your property or yours are crossing onto someone else's property. Those of us in agriculture take fencing very seriously and the impacts that fencing have on our industry.

I think you'll find that as Montana grows and expands, the cities enlarge into the agricultural areas of the state and it becomes more critical that we clarify the old laws from the 1890's as we try to determine how they're going to work for agriculture in the future. Livestock owners in a herd district have an obligation to fence their livestock in. They are required to keep them in or they may be subject and liable for damages their livestock do on other people's property if they get out. How do you realistically do this when your neighbor may not choose to maintain his half of the fence or even build his half of the fence? We have current statutes that refer to this.

Section 70-16-205 was carried into legislature by **REP. MARIAN HANSON** and passed in 1989. It clearly explains the mutual obligations of adjoining landowners and that they must maintain boundary fences between their properties. It explains how you go to the mid-point of a mutual boundary fence and build to the right. If you look through the statutes and you want to get out of that obligation to maintain, you'll probably find that you could under Section 70-16-206. It has become more and more apparent that it presents a loophole for somebody that doesn't want to be the good neighbor. The law was primarily implemented in the 1890's and had to deal with lands not totally enclosed.

In the proposed legislation, Section 70-16-206 in SB 43, I have tried to clarify what the obligations of adjoining landowners are. The end of that amended Section specifically refers you to Section 70-16-210 which describes the proper method of letting land lie idle. It is my contention that 70-16-206, because it hasn't been addressed for a long time, has served as more of a loophole or a confusion to the existing statutes. This was probably overlooked in 1989 with passage of the other provisions of the law.

The other part of this bill deals with Section 81-04-201. The problem is when livestock or animals described in this Section get out of a fenced area. The key words become "willfully permit". What is willfully? Landowners on either side of the fence will debate that time and time again. The insertion of

lines 23 and 24 help to describe when you are willfully not doing your neighborly part of maintaining the fence. It specifically refers to 70-16-206, the existing statutes that tell you what your obligations are. If you aren't doing those neighborly obligations already in current statute then you would be found to be willfully letting these animals run at large. I will take comments or questions on it and reserve the right to close.

Proponents' Testimony: None

Opponents' Testimony:

John Bloomquist, MT Stockgrowers Association: I am an opponent at this point. I can see **SEN. HOLDEN'S** point, particularly in the area of subdivisions and small tracts next to agricultural operations, and the intent to try to get some cost sharing and some obligations on fencing. We do have some questions about this bill. I urge the committee to take a careful look at the statutes **SEN. HOLDEN** provided and try to see some potential ramifications of the proposed change. Requiring a subdivision next to an agricultural operation to share in the cost of the fencing is a good idea. Requiring all adjacent landowners to pay for fences dividing property may not enhance neighborly relations and, in certain instances, create animosity and areas of potential abuse between adjoining landowners.

There are a lot of variables where there may not be fencing between the adjoining landowners. If the areas are enclosed then 70-16-206 creates the obligation. If they're not enclosed, are we opening up a blanket obligation among adjoining landowners to fence. If that's the case, you can envision potential conflict. Landowner A is sitting in the middle of landowner B, either A or B could force the other to pay for half of the fence under this particular provision.

Another area in question would be a landowner who has deeded ground adjacent to state land where the landowner is lessee of the state land and there is no fence there. There are instances in Montana where this is present. Let's envision the state land being accessible state land, a county road or otherwise. If the landowner who has the lease loses it to another lessee, would that lessee be able to use this statute as an occupant of adjoining land to require the landowner to fence and pay for half of the fence. Now, if the subsequent lessee wanted to put up a fence, they could but would pay for it and if the lease was lost they would get reimbursement from subsequent lessee. I think there are some questions and issues about this bill that need some clarification or need to be discussed. I think that removing the enclosure language from 206 and basically putting the obligation on adjoining landowners to fence, some of these scenarios could develop.

Larry Brown, Agricultural Preservation Association: I would like to echo some things that **John Bloomquist** said and would be happy

to work with **SEN. HOLDEN** in terms of resolving some of the language. An example I have is that one member of our association by Bozeman is adjacent to Ted Turner's Flying D Ranch where they raise bison. In Section 201 there is reference to bison. I don't believe it would be a good idea for our member to have to foot the bill to build a bison proof fence or half the bill to protect his adjacent land from the bison. I know it's a tough situation and I can appreciate what the senator is trying to do here. We'd be happy to try to come to some mutual agreement on some language here.

Marc Bridges, MT Department of Livestock: The Department is neither a proponent or opponent to the introduced bill. In the area of enforcing and looking at trespassing livestock complaints, we feel that any clarification or assistance that is fair and equitable for both parties concerned would certainly be a great enhancement to the ever-growing urbanization of Montana. I would be glad to assist **SEN. HOLDEN** in some further clarification. Under Section 1, I question, "What is a fence?" Under 81-04-101, we have a definition of legal fence that may be interpreted into Title 70 because it does not reflect the definition of what a legal fence is within that title. The present Section 81-04-201, lines 21 and 22 "animals running at large", read without the proposed amendment is present law. To clarify, it does not include cattle, horses or sheep, under the control of a herder. That means, if I wish to raise llamas, bison, ostriches, sheep, swine, etc., I am responsible to keep those animals in.

The enforcement division is responsible, if they get out, to prove to the county attorney that whomever is raising them is willfully permitting them to run at large by not maintaining their fences. What I question is that if you insert 70-16-205, does that make the other co-terminous owner equally responsible for his half of that fence?

Don Allen, MT Wood Products Association: I'm not sure if I'm an opponent or a proponent. I understand what **SEN. HOLDEN** is attempting to do, but there are a lot of unanswered questions. Some of the timber landowners in the state are concerned as well as the farming and ranching side. A question I have about the bill is "shall build and maintain throughout the year". I'm not sure what that means and about "land lying idle". I grew up on a farm, I know what you mean when you talk about land lying idle. I'm not sure what you would do with forest land. There are a lot of different uses, recreational and so forth. I received a call from a timber landowner who has an elk farm adjoining his place. He has been wanting to expand and it would be right on the elk farm border. The question is, could he put up an elk proof fence and hand them a bill for half of it even though, from their standpoint, they shouldn't have to pay for that? The blanket obligation to fence is probably the biggest question I would have. Also, the enclosure language from 206 is a big concern.

Tim Reardon, MT Department of Transportation: After listening to the explanation of the bill, I can safely say the Department neither supports or opposes the bill. There are questions about some of the language changes. In terms of right-of-way fences, we often negotiate with landowners when we acquire right-of-way and a good portion of the time we're obliged to relocate fences. This may all be part of the acquisition of a certain strip of land. Part of this process includes the landowner taking over the responsibility to maintain it. The changes in this bill, as proposed, concern us because we don't know how it would affect us. We don't think it was **SEN. HOLDEN'S** intent to get into highway right-of-way. We're just looking for clarification and would be willing to assist if there is input we can provide.

SEN. LINDA NELSON: **SEN. HOLDEN**, say a grain farmer, who has no cattle, lives in a herd district and his neighbor has cattle so there is a fence to keep his cattle in. Does that mean the farmer is equally responsible for maintaining the rancher's fence.

SEN. HOLDEN: No, you go to existing statutes, 70-16-210, which my bill doesn't address. It says that if the landowner in that scenario chooses to let his land lie idle he does not need to maintain the fence until the time that he brings in livestock and activates the pasturage clause which is under the fencing obligation in 70-16-205. The cattle owner in a herd district, under your scenario, has to maintain the whole fence line, but he is able to recover half of the fence line repair and maintenance costs over the period of years if the owner on the other side starts bringing in livestock.

SEN. NELSON: If he is just a grain grower and only has crops, then that absolves him of liability for that fence.

SEN. HOLDEN: That's right. He doesn't have to maintain in a herd district. You have to fence your cattle or sheep in.

CHAIRMAN MESAROS: That is current law?

SEN. HOLDEN: It is current law. This bill does not address any of that.

SEN. TOM BECK: I've always understood that in our area it's basic principle for us to fence the other person's cattle out. If we don't want the cattle bothering us we have to put the fence up to keep the cattle out, especially along a county road or something of that nature.

SEN. HOLDEN: You're talking about open range and that's a different scenario. If you're in an open range area, the obligation of the cattle owner or the grain grower is to fence the cattle out of his property. That is existing statute.

SEN. BECK: I notice that it says "partition fences". I've always understood that if you were talking separation of a neighbor with a boundary fence instead of a partition fence, it was referred to as a cross fence or something like that.

SEN. HOLDEN: I would like the legal staff to make that clarification to **SEN. BECK** if possible.

DOUG STERNBERG: To clarify your question, are you asking if there is a difference between a boundary fence and a partition fence?

SEN. BECK: Yes.

DOUG STERNBERG: Not that I'm aware of.

SEN. HOLDEN: That was my understanding as well.

SEN. GERRY DEVLIN: What prompted this bill? Is there a problem in your area that this would correct and what was the problem?

SEN. HOLDEN: I've received calls from people, particularly in the Gallatin Valley and the Yellowstone Valley and around Billings where these cities are starting to expand into agricultural areas. I live in a highly concentrated area around Glendive in an irrigation project. We see more and more people from out of state and from the cities moving into these areas and building subdivisions. The mutual obligation of being a good neighbor and taking care of your half doesn't seem to follow with these people. Unfortunately, when they don't want to do their neighborly thing, they look for a way out. This seemed to be the section of law they could put their finger on and say, we're looped out, take care of the problem.

SEN. DEVLIN: Are they exempted from all the law that is existing now? Those subdivisions and so on that you're talking about? Can they be prosecuted under existing law?

{Tape: 1 of 1; Side: A; Approx. Time: 1:45; Comments: End of tape, lost some testimony.}

SEN. HOLDEN: No. If you look at the existing statutes that **REP. HANSON** brought in, the explanation under 70-16-205, Part B, is that if someone chooses to let their land lie idle, they basically do not have to do anything until they decide to use it. If you're talking about a subdivision area where people have a small acreage, chances are they may never run cattle or sheep or anything in there. They may just grow flowers.

SEN. DEVLIN: Say that outside the subdivision someone runs cows. There is no herd law on cows yet, so could they prosecute him just because they haven't built their fence or their half of the fence because they want it idle? Could they prosecute?

SEN. HOLDEN: I feel they certainly would initiate legal action or litigation against the cattle owner in your scenario.

SEN. REINY JABS: Someone brought something up that affects us, leased land. It says occupants, is that the person that occupies the land or is it the landowner? Who is obligated with that?

SEN. HOLDEN: What are you pointing at exactly?

SEN. JABS: The occupant of adjoining land means the person living there. I realize that is current statute. Is that the renter or the owner of land who has to maintain the fence?

SEN. HOLDEN: That is current law. I wouldn't expect it to change under the passage of this legislation. Whatever the court system has ruled in the past concerning the word occupants, that would still hold today.

SEN. JABS: As it was brought up by **Mr. Bloomquist**, one could give up a piece of land because you don't want to bid that high and then have to spend \$2,000 more to fence it. I just wondered how that's interpreted.

CHAIRMAN MESAROS: Are you requesting a legal interpretation?

SEN. JABS: Either now or later on.

SEN. NELSON: I would like to hear it.

DOUG STERNBERG: Section 205 deals with co-terminus owners and this section deals with landowners. It sets out the obligation of co-terminous landowners to maintain fences, monuments and boundaries between them. Sections 206 and 207 have been on the books a long time. It appears to me there is a difference between a landowner and an occupant. An occupant could be a lessee, it could be someone that the owner has legally given permission to occupy the land. The section we're dealing with is one of the older sections. It would appear to require occupants of adjoining lands to build and maintain throughout the year, partition fences. That basically requires, not necessarily the landowner, but the lessee who is legally engaged in a lease, or someone who has control of that property that doesn't necessarily own it to build and maintain that partition fence.

SEN. BECK: I would think it basically goes back to the landowner. It is his responsibility to maintain that fence in the event that you can put it up, but I thought there were laws on the books that you could assess him on his tax rolls to reimburse you for your cost of that fence.

SEN. NELSON: I wanted to ask **Doug Sternberg** about 70-16-205. Surely this wasn't all done in 1989. Which portion was? Do you recall?

DOUG STERNBERG: I can check exactly which portions of that Section were handled in 1989. It seems to me that the grazing and pasturage section language in Sub 1B has been on there for a long time. I think there is some clarification in Sub-Section 2 about maintenance responsibilities. I can check and find out exactly what amendments were added.

SEN. WILSON: I've got a few acres up on Dalton Mountain Road in the Lincoln area. I've built a pole fence and every year cattle run through it and I go out and repair it all the time. Do I understand, in current law or whatever you're doing here, that the rancher can be held responsible for the damage to my fence? Or is it like **SEN. BECK** thought, that it was the responsibility of the landowner to keep the cattle out.

SEN. HOLDEN: Is your land located in an open range or herd district area?

SEN. WILSON: I think they lease the land from the Forest Service. They are running free up there.

SEN. HOLDEN: I'll answer that question on the basis that it is my interpretation that your land sits in an open range area. If it's an open range area, livestock is allowed to run at large. If you don't want them on your land, you need to maintain the fence.

SEN. BECK: Open range, and what was the other term you used?

SEN. HOLDEN: Herd district.

SEN. BECK: Tell me the difference.

SEN. HOLDEN: On open range, cattle are allowed to roam at large and in a herd district, the cattle owner is required to fence them in.

SEN. BECK: How many herd districts are in the state of Montana?

SEN. HOLDEN: Many, many.

SEN. BECK: What does it take to establish a herd district?

SEN. HOLDEN: You go to your county commissioners and there are statutes on the book that outline the procedures of going to your neighbors with a petition and setting up a herd district in your area.

SEN. BECK: Is it a record in the county courthouse? I don't think that's very common in the western part of the state.

SEN. DEVLIN: Is a herd district set up when there are two or more owners going to run in common?

SEN. HOLDEN: No. That's definitely not a herd district. That is open range. A herd district is of the opposite philosophy. You want your cattle contained within certain parameters and not allowed to go onto other peoples' property.

DOUG STERNBERG: There are some specific statutory criteria that apply to the establishment of a herd district. It may be created in any county in the state of Montana upon petition of owners or possessors of 55 percent of the land in the district and providing 25 percent or more of the land in the district is in actual cultivation or being used for residential purposes. Districts must contain 12 square miles or more, lying not less than one mile in width outside the incorporated cities except that herd districts may be created containing not less than six or more than 54 square miles lying not less than two miles in width when the territory joins and is contiguous with the boundaries of a city population of 10,000 or more and the territory to be created in a herd district has a suburban population of not less than 200 people. That's the basic outline.

SEN. BECK: There are many of these?

DOUG STERNBERG: I presume there are quite of few. Perhaps our representative from the livestock department could clarify a number.

Mr. Bridges: In Ravalli county there are 32 herd districts. A lot of them were created in the 1920's and 1930's when orchards were there. In Sanders County there are two and there are a couple in Missoula. Mostly it's connected to or close to urban areas. Some of them are horse herd districts, some are cattle herd districts, some are combined districts. They can be for six months or all year; they can exclude the grazing season; there is a multitude of variables that can exist with the creation of a herd district. It just depends on how the petition is presented to the county commissioners when they are created. I might add that some of those districts, Ravalli County in particular, have been found to be created illegally. Maybe the land didn't quite meet the right requirements when they were created. They really set specific leads for the petitioners.

SEN. BECK: So these statutes really do disqualify for a herd district which I'm not familiar with. Is that what you're saying
SEN. HOLDEN?

SEN. HOLDEN: I should ask **Mr. Sternberg**. The practical application may be more towards a herd district area. This is an 1800's law that's in the statutes. I would say no. Is that right?

DOUG STERNBERG: Yes.

SEN. HOLDEN: It wouldn't specifically address herd districts?

DOUG STERNBERG: No, 206 is general statute and general application. Herd districts more or less maintain their own fencing requirements. There is a penalty provision for allowing your cattle to run at large in a herd district. There are also provisions for when animals do trespass in a herd district. The persons on whose property the animals trespass can retain those animals and be compensated for keeping those animals until they are reclaimed by the owner. If they get in there and cause damages, the person who allowed those animals to trespass is liable for damages and so on. Also, it's unlawful to introduce certain livestock into a herd district. It's kind of a livestock maintenance district too so that people who are members of the district know what animals are there and what animals are coming and going. It's an attempt, I think, within the parameters of that particular district to control animal trespass and importation/exportation, etc.

SEN. BECK: Does this apply to the open range law?

DOUG STERNBERG: The provisions of 206 that are covered in this bill would apply to any property.

SEN. BECK: Regarding the section, "all animals running at large", in present law, certain animals can't run at large such as swine, etc. Cattle can and I believe, horses can.

DOUG STERNBERG: On the open range, yes.

SEN. BECK: Right. Now, what we're saying in this law is that the owner or person in control of these animals will not be considered to be willfully permitting animals to run at large. So, they can run at large.

DOUG STERNBERG: You have to finish the sentence. If the owner or the person in control is in compliance with the fencing statute. **SEN. HOLDEN** is attempting to say that if you are complying with the fencing statutes and you have properly fenced your land then you're not considered to be willfully allowing your animals to run at large. If they somehow get out inadvertently and it's not due to the fact that you're not maintaining your fence, then that's not considered to be willfully allowing your animals to run at large. The willfulness of allowing your animal to run at large is contingent on whether you keep up your fence.

SEN. NELSON: I have a question. I'm a farmer living in a herd district and I have my crop planted. My neighbor has ostriches and they clomp all over the fence, come onto my land and cause considerable damage. He's kind of kept his fence up, it's just that the ostriches tore it down. He's not liable because he has made a reasonable attempt to keep his fence up. Who's to say? He would claim that he had a good fence, but obviously it wasn't good enough.

SEN. HOLDEN: When the complaint was filed, the Department of Livestock would examine it like they do any other complaint.

SEN. BECK: It is my understanding that a proper fence could be a four or a five wire fence equivalent to hold out large animals such as cows and horses. It's up to the owner to fence out hogs and that sort of thing. Am I understanding that if this statute is put in that way, then I have to put in a woven wire fence to keep those animals from getting on my property?

SEN. HOLDEN: Absolutely not. In talking about fences and fencing law you have to consider the definition of what a legal fence is. To help clarify, the Department of Livestock has an amendment they suggested on line 14 of this bill. The insertion of the word "legal" fences would take away the ambiguity you are expressing. Even if that word was not inserted, you still have to go to the definition of what a fence is in Montana.

SEN. JABS: Have there been problems through the years defining who is responsible? The occupant, the renter, the owner or who?

Mr. Bridges: What does help clarify is Sub-Section 2 of 205. It states that if the land of one owner is entirely surrounded by the land of another...

{Tape: 1 of 1; Side: B; Approx. Time Count: 2:15 p.m.; Comments: Talking covers testimony.}

That seems to define who is responsible for what fence. Before, it was "I've been fixing this fence for 40 years and this guy has been fixing this fence for 40 years" and then one chunk of ground is sold and the new guy says "well I'm responsible for this fence and you're responsible for that fence". It ends up creating some animosity between the two neighbors.

SEN. JABS: That is clear, but on 206 it says occupants and on 205 it says owner. I can understand owners.

Mr. Bridges: To be honest about it, the Department nor its employees have been put in the position to have to determine that. It's been determined through some civil litigation. We identify the livestock and tell whoever made the complaint who owns the livestock. Retention of trespassing stock is the impound law and we reference them to that. It ends up being the civil type situation.

That part is existing statute. To answer your question, we haven't been put in the position to determine who is actually responsible for what fence. The judicial system determines that or the parties reach some type of mutual agreement.

CHAIRMAN MESAROS: **SEN. HOLDEN,** there are obviously a lot of questions surrounding this issue. I think it would be good if

you discussed some of these issues with the people who oppose the bill in the interest of resolving some things. We will not take executive action until some of these questions are answered.

SEN. HOLDEN: **SEN. JABS** brings up an issue that may well be addressed in 1997. It is whether or not we should change an 1895 law to read owner instead of occupant. The Department has already said they haven't had the problem of determining that part of the existing statutes in about 100 years. In the Executive Session we could decide if occupant should be changed to landowner.

In my particular instance we have agreements and lease land, and although the landowner may own the section of grass, I may maintain the fence. Other people have agreements where the landowner takes care of the fencing and you just bring your cattle in. These are things we do in agriculture all the time with a handshake.

Some things that **Mr. Bloomquist** brought up have a lot to do with open range. This bill doesn't go into the open range laws or change any of the old agreements and how people run their livestock on open range. Another item that was brought up several times from the opponents is that they don't want to force landowners to build a fence. Again, we haven't done that in Montana because we have the statute on the book in existing law, 70-16-210, which allows people to let their land lie idle. I don't think you'll be forcing people to build fences as long as that current statute is on the books. I can't think of a time when maintaining a common fence line between two people isn't the fair and right thing to do. I will close with that.

CHAIRMAN MESAROS: We will close the hearing on SB 43. Since there were no opponents to SB 53, do any members have any objection to taking Executive Action?

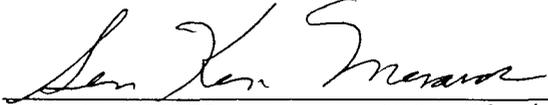
Motion/Vote:

SEN. GERRY DEVLIN: **MOVED DO PASS on SB 53. THE MOTION CARRIED.**

CHAIRMAN MESAROS: We will hold executive action on SB 43 at a later meeting.

ADJOURNMENT

Adjournment: 2:30 p.m.



SEN. KENNETH MESAROS, Chairman



ANGIE KOEHLER, Secretary

KM/AK