

48TH LEGISLATIVE SESSION

MINUTES OF
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

February 4, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order by Senator Harold L. Dover, Chairman, on Friday, February 4, 1983 at 1:00 pm in Room 405, Capitol Building, Helena, MT.

ROLL CALL: Roll was called, a quorum was not present to start the meeting and Senator Stephens sat on the Committee until members arrived. Senator Keating was excused. All other members were present with the exception of Senator Manning, during the remainder of the meeting.

SENATE BILL 270: Chairman Dover called on Senator Pat Regan, sponsor. Senator Regan stated this is a simple bill, allowing the state lab to set fees for water analysis. There is an amendment being offered which was suggested by the Legislative Fiscal Analyst, which on page 3, line 16 would add "fees charged should reflect the actual costs of the tests or services provided". The intent of this amendment is to give direction to the lab to set fees at cost. If the bill is not passed, funds will have to be appropriated from the general fund. The fiscal note shows \$99,854 per year, as this amount is what would be generated. There is also a technical amendment to be made, page 3, line 20, to strike "earmarked" and insert "special". Senator Regan stated representatives of the Budget and Program Planning office and Health Department were present for further questions. She had another testimony to give and would close her statements.

PROPOSERS: Chairman Dover called for proponents. Ron Weiss, Budget and Program Planning office stated this bill had been proposed to bring the Health Department laws in line with what actually has to be expended. The money would be collected and any additional would revert to the general fund. There were no further proponents.

OPPOSERS: No one spoke in opposition.

Chairman Dover inquired if the committee had questions. Senator Etchart asked Mr. Weiss as to earmarked funds. Mr. Weiss stated the department has authority to charge now for water testing and those funds they can expend. This bill will allow to charge for services rendered that would normally go to the general fund to be made available to the department. This bill would allow to deposit those funds in a special revenue account and to expend those as well.

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SB 270 (cont.)

Senator Etchart inquired if this would be in competition with private labs. Yvonne Sylva of the Dept. of Health and Environmental Science stated the \$99,000 would not put the lab in competition with private labs. It is for fees that are generated primarily through water tests.

Senator Story inquired as to the effect of the second amendment. Ray Hoffman, also of DHES, stated this merely is a technical amendment.

Senator Van Valkenburg stated he recalled a great deal of discussion during the first special session on the same issue, and that it was pointed out if fees are charged for the Dept. of Health lab services, they probably wouldn't be asked to do those services. He inquired of Dr. Drynan of the Dept. of Health as to his position. Dr. Drynan stated that discussion had been around the microbiological area. This bill only allows for fees on water testing for private individuals, cities and counties.

Senator Story stated many people had said they didn't want the state lab in competition with private labs and wondered if that was what this bill does. Mr. Hoffman stated it would not, that fees would make the tests be run elsewhere. He pointed out determining costs of the tests would also be difficult to compute unless there were a way to determine the fee based on actually doing the tests rather than based on the previous year. There were no further questions and hearing was closed on SB 270.

HOUSE BILL 154: Chairman Dover called on Rep. Gary Spaeth, Dist. 71, sponsor. Rep. Sapeth stated the bill was at the request of the Dept. of State Lands, and relates to requirement of a new lessee purchasing improvements from a former lessee of state lands. Present law provides for appointment of arbitrators by each party, and when they fail to do this, the system falls down. This bill would provide for the Dept. to appoint an arbitrator should the parties fail to do so. The House had amended the bill to clarify it in relation to HB 155, which is a closely associated bill. He called on Dennis Hemmer of the Dept. of State Lands for further explanation.

PROPOSERS: Dennis Hemmer, Commissioner, State Lands, explained the reasons for the request of the bill, that it is to encourage lessees to carry out the process of determining value of improvements when land changes hands. His testimony is attached as Exhibit '1'

OPPOSERS: No opponents desired to speak.

Senator Lee inquired which House committee had heard the bills, it was Administration.

(HB 154, cont.)

Senator Eck' stated during the last water conference, it had been discussed that arbitration and determination of environmental conflicts solving needed to be resolved. At that time it had been suggested that state agencies set up a training course in these areas, to prepare people trained in solving disputes through negotiation rather than conflict, and that there might not be so many disputes. She inquired if this had been done. Rep. Spaeth stated he did not know of anything in this area.

Senator Tveit stated he didn't realize the law was on the books like this, that two years ago there had been an area of state land on which improvements had been made and the department released the lease. The improvements were not taken into consideration. Rep. Spaeth pointed out this is to solve the conflicts that come between lessees. Mr. Hemmer stated that the subject being discussed is a separate process from this bill, that when land goes out at the end of a lease, the current lessee can meet a higher bid if he chooses, and if he doesn't agree with the price being charged can request a hearing. If he chooses not to retain the lease, this bill deals with the method of his being compensated for his improvements.

Senator Eck inquired if a lessee has to have approval of the Dept. of State Lands to install improvements, Mr. Hemmer stated they do.

There was no further discussion and hearing was closed on House Bill 154.

HOUSE BILL 155: Chairman Dover called on Rep. Spaeth, also sponsor of this bill. Rep. Spaeth stated this bill is very closely related to the previous bill. At the present time a person obtaining a right of way easement on state lands is supposed to compensate the lessee. There is currently no process for arbitration on these easements. This bill will settle disputes in a more timely manner. He stated this is also a request of the Dept. of State Lands and asked Dennis Hemmer to speak to the bill.

PROPOSERS: Chairman Dover inquired of proponents. Dennis Hemmer, State Lands Commissioner stated this bill is at their request to provide a process for ascertaining damages caused by granting of an easement and for arbitration process to be certain the lessee will be compensated in a timely manner. His testimony is attached, Exhibit '2'.

John Alkey, MDU, stated that in Eastern Montana, they have used a form that requires settlement by an arbitrator. He suggested an amendment to the bill related to the department requiring posting of bond to insure that the lessee receives

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HB 155 (cont.)
just settlement. His proposed amendment is attached as
Exhibit '3'.

OPPONENTS: Chairman Dover called for opponents, there were none.

Senator Etchart inquired as to how this bill would relate to seismographic crews and noted that they can do quite a bit of damage on grazing land, and how that would be handled. Rep. Spaeth stated the bill is really dealing with easements.

Dave Woodgerd stated this doesn't cover seismographic crews expressly, however they would have to have a permit from the state on state leased land. Before the permit is issued they have to settle damages with the lessee. Senator Etchart gave an example that they may have paid \$50 to the state and asked what portion would go to the lessee. Mr. Woodgerd said the \$50 would be kept by the state and in addition they have to pay the lessee an amount that covers any damages to his interest or improvements.

Senator Tveit stated the proposed amendment would make that settlement after the fact. The MDU representative stated this was because they can't tell what costs of damages will be until after they have done their work. Senator Tveit asked whose benefit this would be? Mr. Alkey stated it would benefit both parties. Senator Tveit cited an example of a case where a crew might pull out after the work was done and conveniently forget to pay. Mr. Hemmer of the Dept. of State lands stated that might be workable, but he wouldn't suggest the amendment.

Senator Dover inquired as to how the proposed amendment would relate to the bill, that it currently says they have to wait for a permit until damages are paid. There was discussion of whether payment should be made ahead and whether there would be retroactive damages, such as when gates are left open on land. There was further discussion of the proposed amendment, Rep. Spaeth stated he would rather not see the amendment, it would involve a great change to the bill and the title as well. Hearing was then closed on HB 155.

ACTION ON HOUSE BILL 154: There was no further discussion, Senator Shaw moved that House Bill 154 Be Concurred In, all voted 'aye' and motion carried.

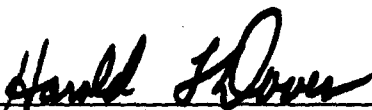
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ACTION ON HOUSE BILL 155: Senator Lee suggested that more time be given on consideration of the amendment to see how the bill would work out as written. Senator Lee then moved that House Bill 155 Be Concurred In as written, all voted 'aye' and motion carried.

ACTION ON SENATE BILL 270: Senator Story stated that during the last two sessions there had been discussion on this subject, that there was a problem on how to determine what should be charged, that the amendment would provide direction to set the fees at actual costs. Senator Van Valkenburg suggested the amendment read: Page 3, line 16, following "(b)" insert, "Fees, established on an annual basis, should reflect the actual costs of the tests or services provided."; and further on page 3, line 20, strike "earmarked" and insert "special". Senator Eck moved the bill be amended with this wording given by Sen. Van Valkenburg. All voted 'aye' and motion carried. Senator Eck then moved that Senate Bill 270 Do Pass as Amended, all voted 'aye' and motion carried.

There being no further business to come before the committee the meeting was duly adjourned at 2:00 p.m.



SENATOR HAROLD L. DOVER, CHAIRMAN
SENATE NATURAL RESOURCES COMMITTEE



Patricia Hatfield
Committee Secretary

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2-4-83

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)			✓
LEE, Gary P. (R)	✓		
MANNING, Dave (D)		✓	
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓		
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

Stephens, Stan

✓

DATE _____

COMMITTEE ON

VISITORS' REGISTER

[illegible]

February 4, 1983

PROPOSED AMENDMENT TO SENATE BILL 270 (White copy)

1. Page 3, line 16.

Following: "(b)."

Insert: "Fees charged should reflect the actual costs of the tests or services provided."

This amendment will give direction to the lab to set fees at costs, not under costs.

*Fees, established on an annual basis,
should reflect the actual costs of the
tests or services provided.*

and further,

Page 3, Line 20

Strike: "parmarked"

Insert: "special"

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 154

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

House Bill 154 is by the request of the Department of State Lands. The purpose of the bill is to provide a solution to a problem which has caused the loss of revenues to the state and its school trust income fund.

The problem arises when a lease of State school trust land for agricultural or grazing purposes is transferred to a new lessee. The former lessee has the right pursuant to section 77-6-203 MCA to be paid for the reasonable value of the improvements which exist on the lease. The statute also provides that if the former lessee and the new lessee cannot agree, the value of the improvements shall be ascertained and fixed as provided in section 77-6-306, MCA. This statute is the one which the department is requesting be amended.

Section 77-6-306 MCA as it currently exists provides for the appointment of persons to act as arbitrators, in order to ascertain the value of the improvements. The new lessee and the former lessee each are required to appoint an arbitrator and these two arbitrators then appoint a third arbitrator.

This system is fair and works well in most cases. The problem that occurs is when either the new lessee or former lessee fails to appoint an arbitrator in a timely manner. According to section 77-6-305 MCA, the department cannot issue a lease until the former lessee has been compensated. Thus, if one party fails to appoint an arbitrator, the state land must remain unleased. The new lessee cannot use the land and the state cannot collect rentals until the lease is issued.

The solution to the problem, as proposed by the department, is to amend section 77-6-306 MCA to allow the Commissioner of State Lands to appoint an arbitrator if any party refuses to do so. It is hoped that the Commissioner will never have to use this authority; however, without this authority there is no incentive for a recalcitrant lessee to appoint an arbitrator and settle the matter so that a lease can be issued.

The bill as originally proposed was amended in the House State Administration Committee to specifically provide that the final decision by the department as to the value of the improvements can be appealed to District Court. The department supported this amendment.

The passage of this bill will not prejudice the rights of former or new lessees but only encourage them to carry out the process of ascertaining the value of improvements in a timely manner. When the process is not carried out in a timely manner, the State may lose revenue and the rights of the parties may be prejudiced.

The Department of State Lands urges this committee to vote in favor of passage of this bill as amended.

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 155

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

House Bill 155 is at the request of the Department of State Lands. The purpose of the bill is to provide a process for ascertaining and fixing the damages caused to a state grazing or agricultural lessee by the granting of an easement on the state land. The statute currently requires that a lessee be compensated for damages before an easement is issued but does not provide a procedure for determining the amount of the damages.

The amendment provides an arbitration process to determine such damages in a fair and timely manner. This procedure will benefit all parties. The lessee will receive just compensation in a timely manner, the easement will be issued to the applicant in a timely manner and the state will have a procedure which will settle disputes with less problems.

The procedure requested by the department is identical to the procedure now used to settle the value of improvements on state leases with the addition of the amendment contained in House Bill 154. This procedure has worked in the past and guarantees the parties a fair and equitable system of determining the value of the damages.

The bill as originally proposed was amended in the House State Administration Committee to specifically provide that the final decision by the department as to the amount of damages can be appealed to District Court. The department supported this amendment.

The Department of State Lands urges the Committee to vote in favor of passage of this bill.

AMENDMENT TO HOUSE BILL 155

Strike subsection (2) in its entirety and reinsert in its place a new subsection (2) as follows:

(2) The department may by rule require the posting of a reasonable bond to insure that the party receiving a right-of-way easement makes just settlement with the lessor of the state lands for damages.

STANDING COMMITTEE REPORT

February 4 19 81

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration House Bill No. 154

Spaeth (Tveit)

Respectfully report as follows: That House Bill No. 154

BE CONCURRED IN
DO PASS

ALC.

STANDING COMMITTEE REPORT

February 4 19 83

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration House Bill No. 135

Spaeth (realt)

Respectfully report as follows: That House Bill No. 135

BE CONCURRED IN
UNANIMOUSLY

STANDING COMMITTEE REPORT

February 23, 1961

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 270

Respectfully report as follows: That SENATE Bill No. 270

introduced bill, be amended as follows:

1. Page 3, line 16.

Following: "(b)"

Insert: "Fees, established on an annual basis, should reflect the actual costs of the tests or services provided."

2. Page 3, line 20.

Strike: "earmarked"

Insert: "special"

And, as so amended,
DO PASS

He.