

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 9, 1987

The Agriculture, Livestock & Irrigation Committee was called to order by Chairman Rep. Duane W. Compton at 1:00 p.m. in room 317 of the Capitol, Helena, MT on January 9, 1987. All committee members were present, as was Tom Gomez, researcher.

Bills to be heard were HB 59 and HB 61.

HOUSE BILL 61

Rep. Hal Harper, District 44, sponsor, explained HB 61 makes two changes dealing with legislative intent. The present statute provides for a surcharge on herbicides for noxious weeds. HB 61 redefines "herbicides" since there are other types of weeds besides noxious weeds. Under HB 61 herbicide funds and interest are to be committed to the weed fund and unused funds would not revert to the general fund on June 30 of each year. Weed programs are ongoing at that time of the year and need the funding then. This has been the practice of the department through administrative rule, and this bill gives them statutory authority to carry over funds from one year to the next with no reversion. This act would become effective upon passage and approval.

PROPONENTS

Keith Kelly, Director of the department of agriculture and administrator of the noxious weed program explained HB 61 is basically a housekeeping bill to back up legislative intent. It does not change revenue generated by the noxious weed management funding law. It makes definitions consistent with present administrative policies and allows for more efficient expenditure of funds for grant projects. See exhibit #1. Mr. Kelly offered amendments that would accomplish the changes the department of agriculture recommends. See exhibit #2.

William G. Hiatt, Jr., Montana Weed Control Association, supports HB 61 and approves changing the wording of the bill to meet the original intent of the legislation. See exhibit #3.

Stuart Doggett, Montana Chamber of Commerce, supports HB 61.

Gregory Kennett, Missoula County Conservation District, supports HB 61. The intent of the previous legislation was to tax all herbicides. This will clarify the language. See exhibit #4.

OPPONENTS - None

QUESTIONS FROM THE COMMITTEE

No additional revenue would be generated since all herbicides are registered and a surcharge is imposed at the time of registration. About \$250,000 is collected each year, making \$125,000 available for approved grant projects each year.

Rep. Harper closed saying he approves the proposed amendments.

HOUSE BILL 59

Rep. Marian W. Hanson, District 100, sponsor of HB 59, explained this bill would clarify whose responsibility it is to maintain adjoining landowner's fences. Common law provides that each owner fences the right half of coterminous fences. HB 59 would make this statutory.

PROPONENTS

Darrel Hanson, Ashland thinks this bill would be a good addition to the law.

Mons Teigen, Montana Stockgrowers Association, supports the concept, but suggested an amendment which would allow an owner to keep as part of his share the fence he had been already maintaining. See exhibit #1, amendments he proposed. Court costs far exceed the cost of a few rods of fencing. There is some reluctance on the part of some stockgrowers to go along with HB 59 because they do not wish to donate to an adjoining landowner fence they have maintained over a period of years and would now have to maintain the righthand portion of the coterminous fence if they had maintained a different portion before.

Les Graham, Executive Secretary of the Board of Livestock, said the department of livestock becomes involved when livestock trespass. It is costly when their investigators have to go out and identify such livestock. It is also frustrating to reach a fair solution, and if the problem goes into court, it is very costly to all parties involved. See exhibit #2. There needs to be some clarification.

Dennis Hemmer, Commissioner of the State Lands, said his office is also called with trespass problems. The state lands doesn't own any fences. The fences on state leases are owned by the lessees, and they build and maintain them. They are compensated for the fences at the end of any lease by a new lessee. Mr. Hemmer proposed an amendment clarifying that any lessee would be considered to be an owner. See exhibit #3.

Lorna Frank, Montana Farm Bureau, supports HB 59. There is a problem in some areas of the state and a bill like HB 61 is needed when two parties cannot come to a satisfactory agreement. See exhibit #4.

OPPONENTS - None

QUESTIONS FROM THE COMMITTEE

Rep. Corne' asked what 'maintaining' a fence meant. Rep. Hanson replied that maintaining is defined in section 7-16-205. However, most ranchers know what maintaining a fence means. Coterminous owners know they must contribute their share of land, material, and labor for the erection and maintenance of that fence. This bill provides definite determination that each owner is to maintain the righthand portion of an adjoining fence.

Rep. Ellison asked whose responsibility it is to fence a parcel of land completely surrounded by another owner. Mr. Graham said he was not sure about such a statute, but that where subdivisions are concerned, it was the responsibility of the subdivider to fence animals out, but that appears to no longer be the case. Rep. Ellison thought this should be clearly defined by statute.

Rep. Hanson explained HB 59 defines which is your share of a coterminous fence to maintain. It does not say what kind of a fence has to be built and maintained. Mr. Graham said he cannot recall any place in the statutes where a fine would be levied, but such an offense would be a misdemeanor.

Rep. Hanson told Rep. Koehnke that the description of what constitutes a fence was a fence post every rod with 4 wires. HB 59 defines which is your share of the fence to maintain.

The stockgrowers association was concerned that any part of a fence besides the righthand part that had been built and maintained by one owner would now be given to the adjoining owner instead of remaining as part of the share of the maintainer. This would be unfair where a different part of the fence had been maintained.

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Each adjoining owner along a county road owns up to the middle of the road. There are not too many dedicated county roads.

Rep. Ellison suggested that the committee researcher check out highways and county road fencing requirements. See exhibit #5.

Rep. Hanson closed saying there are methods by which collection can be made for maintenance and repair or building of an adjoining fence when the other party won't do his share of the work. You can give a coterminous landowner 5 days notice that the fence must be repaired, and if it is not done within the 5 days, you can go ahead and repair the fence and send a bill for one-half the cost. With 60 days notice you can send him a notice and he will have to repair the fence, and if you have to do the repairing, you can collect. She has no problem with the proposed stockgrowers amendment.

EXECUTIVE SESSION

Rep. Patterson moved that HB 40 DO PASS. Rep. Campbell seconded the motion. Amendment is exhibit #6.

Tom Gomez, researcher, said the fiscal note doesn't change since this is all based on the bill as proposed. The amendment provides that the department shall establish reasonable fees when grading under this marketing program. Those expenditures are reported on the fiscal note.

Rep. Patterson reminded that if the proposed amendment is adopted, a new fiscal note would be required.

Rep. Ellison moved adoption of the amendment, and Rep. Cody seconded the motion. Motion was unanimously adopted.

Rep. Campbell asked that HB 40 be held in committee until a new fiscal note could be prepared.

Ralph Peck, Department of Agriculture, explained that equipment for the marketing and blending standards program would include an automobile, scales, etc.

Rep. Giacometto suggested focusing on what the effect of the bill would be with a new fiscal note.

Rep. Holliday thought it would still be an appropriation.

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Mr. Peck said if this program was not used, there wouldn't be any fees collected. He anticipated the need for an agricultural grader grade 11, and one support clerical staff. If the program isn't utilized very much, temporary help would be present employees. They would need a marketing specialist to go out in the field while one administrative assistant could cover the office functions. That would be the most economical way to administer the program. Many people feel that marketing is the most important effort.

The program would have to be started with general fund money.

Rep. Jenkins asked to have a new fiscal note that would be more in line with the new amendment requirements.

Rep. Cody said there is going to have to be a fiscal note whether the bill is passed or not. Appropriations is going to decide if HB 40 is going to pass. Start up money is necessary before any fees can be collected.

Rep. Compton commented that it takes a lot of grain to put 1-1-1/2 million bushels out to the west coast.

Rep. Patterson moved HB 40 DO PASS AS AMENDED. Rep. Campbell seconded the motion. Motion to do pass as amended was adopted, with 4 voting against the motion. Statement of Intent is to accompany the bill.

HOUSE BILL 61

Rep. Cody moved that the proposed amendment be adopted.
Rep. Bachini seconded the motion.

Discussion was had regarding the necessity of a fiscal note. A fiscal note had been requested and the cost of the program would be zero. Action was delayed to wait for the fiscal note. The department has already been collecting the surcharge fees on all the herbicides registered, so there would be no more funds available than were already being collected.

HOUSE BILL 59

Rep. Hayne moved that HB 59 DO PASS. Rep. Keller seconded the motion. The motion was later withdrawn. Further action will be taken after the researcher has prepared more information on highways and county roads fencing requirements.


Rep. Duane W. Compton, Chairman

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

Date Jan. 9 1987

[illegible]

STANDING COMMITTEE REPORT

January 9

1987

Mr. Speaker: We, the committee on Agriculture, Livestock & Irrigation

report

NB 40

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

Shane M. Campione

Chairman

1. Page 9, line 14.

Following: line 13.

Insert: "Section 7. Establishment of fees -- grain marketing fund account. (1) The department shall by rule establish reasonable fees for the inspection, certification, weighing, and sampling of grain under the program authorized in [section 2]. The department shall design such fees to defray the costs of providing services and carrying out its duties under [this act].

(2) There is a grain marketing fund account in the state special revenue fund. The money in the account is allocated to the department for payment of expenses incurred in the administration of [this act].

(3) All fees collected under [this act] must be deposited in the grain marketing fund account."

Renumber: subsequent sections

B

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color

STATEMENT OF INTENT

HB BILL NO. 40

A statement of intent is required for this bill because it grants the department of agriculture authority to adopt rules for the administration of a 100% Montana limited blended grain marketing program. The rules adopted by the department should supplement and interpret the provisions of this bill. In addition, the rules should govern the inspection and certification of grain under the program.

In adopting its rules, the department of agriculture should consider the following:

- (1) The legislature intends that the department of agriculture establish a program to assist producers, agricultural cooperatives, and commodity dealers in marketing quality-preserved Montana grain in both foreign and domestic markets.

- (2) The legislature intends that, under this program, the department should promote the marketing of Montana grain by distinguishing it as a premium commodity and by ensuring the quality and identity of delivered shipments.
- (3) The program established under this bill is intended to be a voluntary marketing program, and any person who wishes to describe or market grain as 100% Montana limited blended grain is eligible to participate in the program if such person can provide grain that meets the requirements of section 4.
- (4) If necessary, the department may register or issue a certificate of registration for any producer, commodity dealer, warehouseman, grain handler, shipper, or other person who has agreed to provide to buyers grain that meets the requirements of section 4.
- (5) The department may establish standards for all containers, carriers, and other facilities that may be used to store, handle, or transport 100% Montana limited blended grain.

- (6) The department or its designee should inspect and certify all grain described or marketed as 100% Montana limited blended grain to ensure that it meets the requirements for such grain under section 4.
- (7) The department should not require any grading or inspection of grain that conflicts with the United States Grain Standards Act.
- (8) All grain bought and sold in Montana, including 100% Montana limited blended grain, should be graded and inspected in accordance with official federal standards for such grain unless the federal grain inspection service waives the requirement for official federal inspection as provided for in 7 U.S.C. 77.
- (9) The department should appoint personnel to investigate grain marketing and handling practices and to enforce all relevant state laws and regulations.
- (10) The legislature expressly intends that the department of agriculture enter into agreements with other state governments to ensure that 100%

Montana limited blended grain is not intermingled with dissimilar grain or combined with dockage, water, or foreign material, as prohibited under section 4. For this purpose, the department should seek agreements with appropriate governmental agencies in such states as Idaho, Oregon, and Washington.

Montana Stockgrowers Association amendment to House Bill No. 59

Amend line 1, subsection 2, section 1 to read following the word "agreement": "or when it can be clearly proven that one owner owns and has been maintaining the fence in question". The sentence will then read as follows:

(2) Except as provided otherwise by agreement or when it can be proven that one owner owns and has been maintaining the fence in question between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from his land.

EXHIBIT #1
DATE Jan. 9, 1967
HB _____

AMENDMENT TO HOUSE BILL NO. 59

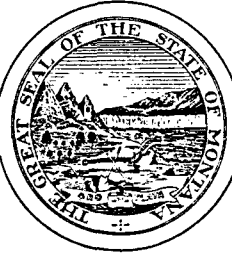
1. Page 1, line 22.
Following: "by"
Insert: "prescription, custom, or"
2. Page 2.
Following: line 6
Insert: "NEW SECTION. Section 2. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

DEPARTMENT OF LIVESTOCK

EXHIBIT # 2

DATE Jan. 9, 1987

HB 59 - Rep. M.W. Hansen



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2023

HELENA, MONTANA 59620

January 9, 1987
House Bill 59
Testimony by Les Graham

- 1.) Our involvement stems from the fact that we get called into these situations because of the trespass of livestock.

We find it costly because our investigators must identify all these livestock.

It always appears that there is no solution and the parties involved are frustrated.

We end up recommending civil action, but attorneys tell us the solution is not always easy to determine.

- 2.) Just finished a tremendous problem here in Lewis & Clark County - Wolf Creek Area. Costly to both the parties involved and the county government.

Call Montana Livestock Crimestoppers 800-647-7464

Dennis Hemmer

EXHIBIT #3

DATE *Jan. 9, 1987*

HB 59- *Rep. M.W. Hance*

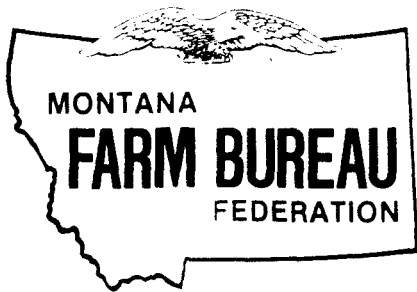
Amendment to House Bill 59

Introduced Bill, Reading copy white, be amended as follows:

1. Page 2, line 6

Following: "land."

Insert: "The term 'owner' as used herein shall include a lessee of state land and such lessee, shall be bound by the provisions of this section."



P.O. Box 6400
~~502 South 10th~~

Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorna Frank
BILL # H. B. 59 DATE 1/9/87
SUPPORT XXX OPPOSE

EXHIBIT #4
DATE Jan 9, 1987
HB 59-Rep Hanson

For the record my name is Lorna Frank, representing
Montana Farm Bureau. We are in support of H.B. 59.
The delegates at our convention this past November
discussed the ownership and maintenance of boundary fences,
apparently there is a problem in some areas and this piece
of legislation is needed when the two parties can not come
to a mutual agreement.

SIGNED: Lorna Frank

EXHIBIT

DATE

HB

#5

Jan. 9, 1987

59-44971-1

RIGHTS AND OBLIGATIONS OF ADJOINING LANDOWNERS
TO BUILD OR MAINTAIN A FENCE

Prepared for the House Agriculture, Livestock,
and Irrigation Committee

By Tom Gomez
Staff Researcher

Montana Legislative Council

January 18, 1987

I. INTRODUCTION

This paper presents a general overview of the rights, duties, and obligations of owners and occupants of land to erect or maintain a fence, including a division fence, and fences intended to prevent animals from trespassing onto adjoining property.

This paper has been written to meet the general information needs of the House Committee on Agriculture, Livestock, and Irrigation. It is not in any way intended to provide an authoritative statement of the fencing laws in Montana, nor is it meant to be a complete treatment of the subject involved.

II. DIVISION FENCES

Rights and Duties Generally

As a general rule, an adjoining landowner has the inherent right to fence his land or to leave the land unfenced, in the absence of a valid statute or contractual restriction to the contrary.¹

With respect to a division fence, which is erected on the dividing line or boundary line between the land of adjoining owners, the right to erect a fence may be unilateral. A landowner may build a division line fence on a boundary line without the consent of the adjoining landowner, although the other party, if he decides to enclose his land, is obligated to pay his share of the cost of building and maintaining the fence.² The adjoining landowner, if he pays for the fence in its entirety, has the right to build the fence on the boundary line though it would straddle one-half upon the neighboring property.³

At common law, a landowner is not bound to establish or maintain a division fence, except by prescription or agreement,⁴ and in the absence of an agreement, an adjoining landowner has no right to build his fence beyond his own land.⁵

State statutes relating to legal fences, which prescribe what such fences are, and defining the duty to maintain and repair a division fence, do not affect the right of an adjoining landowner to build a division fence.⁶

Establishment of Duty by Prescription or Custom

An adjoining landowner may acquire a duty to maintain a division fence by prescription or by custom⁷. Thus, where for a period of 20 years, the owner of adjoining land has continuously and without interruption repaired and maintained the whole of a division fence, a presumption exists that the owner or those from whom he derived title were bound perpetually to make and

maintain the fence, and the existence of a former agreement may also be inferred.⁸

Similarly, where a line fence is built in separate portions by adjoining owners and maintained by them for more than 25 years, some original grant or agreement between the parties by which a legal division of the fence was established will be presumed.⁹

If a partition or division fence is maintained only occasionally, and not continually during the period of prescription, no prescriptive obligation to maintain the fence has been created.¹⁰

State statutes relating to the establishment and maintenance of division fences do not affect a prescriptive obligation of an adjoining landowner to maintain such fence.¹¹

Establishment of Duty by Agreement

Adjoining landowners may make a valid agreement relating to the construction and maintenance of a partition or division fence. The fact that there is a statute governing the building and maintenance of division fences will not preclude the parties from controlling the matter by private agreement.¹²

Hence, when adjoining landowners enter into an agreement concerning the building and maintenance of a division fence, the rights and obligations of each owner are determined by the agreement, and not by the fence statutes or by common-law rules.

Establishment of Duty under Statutes

An adjoining landowner has no obligation to build or maintain a fence absent a duty to do so.¹⁴ However, under Montana law, an adjoining landowner or occupant of land may acquire such duty.

Under section 70-16-205, MCA, the adjoining owners of land "are mutually bound equally to maintain" a division fence between them, and each must contribute his share of the land, material, and labor for its erection and maintenance.¹⁵

However, an adjoining landowner may be relieved of the duty to share or contribute to the construction or maintenance of a division fence if he chooses to let his land lie without fencing, but if such owner afterward encloses his land, he must then provide to his neighbor a just proportion of the value of the division fence at that time.¹⁶

As interpreted by the Supreme Court, the statutory duty to "maintain" a division fence includes the duty to erect such fence, because when a division fence is built, it is for the mutual and equal benefit of adjoining owners, and, therefore, upon the plainest principle of equity the cost and responsibility of building, as well as maintaining the fence, must be borne by each adjoining owner.¹⁷

Sections 70-16-206 and 70-16-207, MCA, impose upon occupants of adjoining land a duty similar to that of coterminous owners. According to the statutes, the occupants of adjoining lands previously enclosed by a division fence must build and maintain such fence in

equal shares so long as each continues to enclose his part of the land. Unless the occupants of adjoining land agree otherwise, a previously established division fence must be kept in good repair.¹⁸

If an occupant of land adjoining the enclosure of another builds a division fence, the other party must within 3 months build his proportion of such fence or pay to the owner of the fence an equal proportion of the value of the division fence.¹⁹

Enforcement of Statutory Duty

Under Montana law, if an owner or occupant of adjoining land neglects or refuses to repair or build a division fence which by law he ought to build and maintain, the owner or occupant of the adjoining land may build or repair the fence, and the party who refuses or fails to participate in building or repairing the fence, after receiving timely notice, is liable for the entire expense of the fence and is also liable for all damages that may be sustained by his neighbor.²⁰

III. FENCING LAWS

Duty to Fence under Common Law

Under common law, the owner or tenant of land is not obligated to fence it, but is bound at his own peril to keep his animals from trespassing onto the land of his adjoining neighbor, or otherwise be held strictly liable for damages caused by his animals to his neighbor's property.²¹

The common law had its origin in the legal principle that every man's land which is not enclosed and set apart from another's land by visible and material fences is encircled by an ideal invisible boundary over which it is as unlawful for beasts of a neighbor to cross as it would be for the neighbor to overleap or tear down a material fence.²²

As a result, under common law, a landowner is not required to fence animals out to prevent their damage to his property; instead, the owner of stock must fence his animals in lest they trespass on his neighbor's property.

Duty under Range Law

In Montana and other western states, the common law rule has been largely abrogated by enactment of range laws. Where under common law livestock has to be fenced in, under range law, livestock has to be fenced out.²³

Under the range law in Montana, one releasing his livestock onto lands where he has a right to do so is under no duty to restrain livestock from entering upon another's unenclosed land. Such livestock owner is not responsible for damage occasioned by the entry of his livestock on such unfenced land, they having been led onto the land by their own natural instincts. The exception is when the owner of stock willfully or intentionally herds or drives livestock onto another's unfenced land or places them so near the adjoining boundary that trespass is bound to occur.²⁴

Under range law, a lawful fence entirely surrounding his land is a condition precedent to the right of a landowner to recover damages from owners of livestock trespassing on his land, except in the case of willful herding or driving of livestock.²⁵

Duty under Laws Relating to Grazing Districts

Under state statute, an owner or lessee of farming lands lying within a grazing district must fence out livestock allowed to run at large or under herd. The state district or its members may not be held liable unless such farming lands are protected by a legal fence.²⁶

Duty under Herd Laws

In Montana, an owner or person in possession of livestock has a duty to keep such livestock from running at large in a herd district.²⁷

If any livestock or other domestic animal breaks into an enclosure protected by a legal fence, the owner of such animal is liable for all damages to the owner or occupant of the enclosure. However, a legal fence is not required in order to maintain an action for injury done by animals running at large contrary to law.²⁸

The adoption of the herd law eliminates the effect of the range or grazing laws and restores common law by cancelling the requirement that the neighbor fence out animals and makes stock owners liable for damage caused by their animals on adjoining property.

Duty on Land Bordering Highway

Section 60-7-103, MCA, requires the Department of Highways to fence the right-of-way of any part of the state highway system that is constructed through open range where livestock present a hazard to the safety of motorists.

Under section 60-7-201, MCA, the duty of a person owning or possessing livestock is not to permit his livestock to graze, remain upon, or occupy a part of the fenced right-of-way of a federal-aid highway.²⁹

Generally, an open range designation implies that an owner is not liable for his wandering livestock. Prior to 1974, a stock owner was liable only for willful failure to keep livestock off a federal-aid primary highway. However, with the 1974 amendment of section 60-7-201, MCA, stock owners are now liable for negligent conduct that results in the presence of their livestock in the right-of-way of a federal-aid highway.³⁰

TG86:7016:eg

NOTES

. Green v. Mutual Steel Co., 268 Ala. 648, 108
337, (1959). This right seems to have its origin
principle of law that guarantees every owner of
property free and undisturbed possession to use
and according to his pleasure.

. Montgomery v. Gehring, 145 Mont. 278, 400
33 (1965).

. Hoar v. Hennessy, 29 Mont. 253, 74 P. 452

. Osgood v. Names, 191 Iowa 1227, 184 N.W. 331

. Hoar v. Hennessy, supra.

. Id.

. McAfee v. Walker, 82 Kan. 182, 107 P. 637

. Knox v. Artman, 37 S.C.L. 283.

reference to real property, "prescription" is a
given to a mode of acquiring title to incorporeal
interests by immemorial or long-continued
possession, such as when a certain man and his ancestors
continually exercise a right of pasture.

"Prescription" has its origin in a grant, evidenced by
"Custom" is a usage or practice which, by
adoption or acquiescence and by long and
existing habit, has become compulsory, and has
acquired the force of a law with respect to the subject
with which it relates. Black's Law Dictionary, 4th ed.

. Titus v. Pennsylvania Railroad Co., 87 N.J.L.
2 A. 944 (1915).

. Knox v. Tucker, 48 Me. 373.

0. Carpenter v. Cook, 71 Vt. 110, 41 A. 1038

1. Osgood v. Names, supra.

2. D'Arcy v. Miller, 86 Ill. 102.

11. Id.
12. Montgomery v. Gehring, supra.
13. Schmuck v. Beck, 72 Mont. 606, 234 P. 477 (1925).
16. Hoar v. Hennessy, supra.
17. Id.
18. Section 70-16-206, MCA.
19. Section 70-16-207, MCA.
20. Hidden Hollow Ranch v. Collins, 146 Mont. 321, 406 P.2d 365 (1965). See also Section 70-16-209, MCA.
21. See Valerie Scott, The Range Cattle Industry: Its Effect on Western Land Law, 28 Mont. L. Rev. 155 (1967).
22. Monroe v. Cannon, 24 Mont. 316, 61 P. 863 (1900).
23. Thompson v. Mattuschek, 134 Mont. 500, 333 P.2d 1022 (1959).
24. Montgomery v. Gehring, supra.
25. Schreiner v. Deep Creek Stock Assn., 68 Mont. 104, 217 P. 663.
26. Section 76-16-322, MCA.
27. Section 81-4-306, MCA.
28. Section 81-4-215, MCA.
29. Section 60-7-201, MCA.
30. Ambrogini v. Todd, 197 Mont. 111, 642 P.2d 1013 (1982).

STATEMENT OF INTENT

HOUSE BILL NO. 59

A statement of intent is desired for this bill to clarify the purpose and operation of 70-16-205(2) with respect to the rights and obligations of coterminous landowners in maintaining a division line fence.

It is the purpose of this bill to provide a method for the assignment to each coterminous owner of land his share of the division fence to maintain. However, the method provided in 70-16-205(2) is not intended to be exclusive. As such, the statute is not intended to affect a prescriptive obligation of a coterminous owner to maintain a fence, nor is the statute intended to preclude parties from establishing and maintaining a division fence by mutual agreement. Furthermore, when it can be clearly proven that one person owns and has been maintaining a particular fence, the rights and obligations of the owner must remain unimpaired by the statute.

Teigen

EXHIBIT # 1
DATE 1/9/87
HB 59-Rep. M. Hanson

AMENDMENT TO HOUSE BILL NO. 59

1. Page 1, line 22.
Following: "by"
Insert: "prescription, custom, or"
2. Page 2.
Following: line 6
Insert: "NEW SECTION. Section 2. Saving clause.
This act does not affect rights and duties that
matured, penalties that were incurred, or
proceedings that were begun before the effective
date of this act."



TED SCHWINDEN
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.

CAPITOL STATION

HELENA, MONTANA 59620-0201

TELEPHONE:
AREA CODE 406
444-3144

KEITH KELLY
DIRECTOR

Testimony of Montana Department of Agriculture
Director Keith Kelly for the House Agriculture,
Livestock and Irrigation Committee on
House Bill 61
Friday, January 9, 1987

Chairman Compton and Members of the Committee. The purpose of House Bill 61 is to clarify the language in the Noxious Weed Management Funding Law. This bill does not affect revenue generated by the Noxious Weed Management Funding Law, but makes definitions consistent with present legislation and allows for more efficient expenditure of funds for grant projects.

House Bill 61 would revise the definition of "herbicide" to correspond with the Montana Pesticides Act and allow for consistency between the two laws. The bill would also allow for one-half of the annual herbicide surcharge revenue to be committed rather than expended for weed grant projects. This revision clarifies the existing language and provides more flexibility for project implementation and completion.

The Noxious Weed Management Funding Law has been successful in increasing awareness of noxious weeds and promoting cooperative weed management projects. House Bill 61 clarifies the existing law and allows for more efficient utilization of funds. The Department of Agriculture requests that this bill be accepted as amended.

EXHIBIT #2
DATE Jan 9, 1987
HB 61 Rep Harper

AMENDMENT TO HOUSE BILL NO. 61

1. Title, line 10.
Following: line 9
Insert: "IMMEDIATE"
2. Page 3, line 9.
Following: "effective"
Strike: "July 1, 1987"
Insert: "on passage and approval"

7011.TXT

Keith Bailey

EXHIBIT #6
DATE 1/9/87
HB 40 Rep W. H. H.

AMENDMENT TO HOUSE BILL NO. 40

1. Page 9, line 14.

Following: line 13.

Insert: " Section 7. Establishment of fees -- grain marketing fund account. (1) The department shall by rule establish reasonable fees for the inspection, certification, weighing, and sampling of grain under the program authorized in [section 2]. The department shall design such fees to defray the costs of providing services and carrying out its duties under [this act].

(2) There is a grain marketing fund account in the state special revenue fund. The money in the account is allocated to the department for payment of expenses incurred in the administration of [this act].

(3) All fees collected under [this act] must be deposited in the grain marketing fund account."

Renumber: subsequent sections

AMENDMENT TO HOUSE BILL NO. 59

1. Page 1, line 22.
Following: "by"
Insert: "prescription, custom, or"
2. Page 2.
Following: line 6
Insert: "NEW SECTION. Section 2. Saving clause.
This act does not affect rights and duties that
matured, penalties that were incurred, or
proceedings that were begun before the effective
date of this act."

WITNESS STATEMENT

NAME William G. Hiett Jr. BILL NO. HB 61
ADDRESS 1510 Chestnut DATE 1/9/87
WHOM DO YOU REPRESENT? MONTANA WEED CONTROL ASSOCIATION
SUPPORT Yes. OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support the wording change of the
bill ~~to~~ in order to meet the
original intent of the legislation.

EXHIBIT # 4
DATE Jan. 9, 1987
HB 61 - Rep. Hal Harper

WITNESS STATEMENT

NAME Gregory Kenneth BILL NO. 61
ADDRESS Huson Mont. DATE 1-9-86
WHOM DO YOU REPRESENT? Missoula Co. Conservation Dist.
SUPPORT Yes OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The intent of the previous legislation was to tax all herbicides. This bill would clarify the language of the existing legislation.

VISITORS' REGISTER

Agriculture, Livestock & Irrig. COMMITTEEBILL NO. HB 59 & HB 61

DATE

Jan. 9, 1987

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Les Graham	Dept. of Livestock	HB 59 ✓	
Darrel Hansen	Ashland Mont	HB 59 ✓	
Bill Hiett	Helena, MT	HB 61	
Gregory Kenneth	Huson MT	✓	
Celestine Lacey	Helena MT.		
Dennis Hemmer	State Lands	HB 59	
Lorna Frank	Mont. Farm Bureau	HB-59	
Spurly Ball	W. I. F. E.	HB 41	
Joe Brunner	Young's Cattle Ranch		
KEITH Kelly	DEPT OF AGRICULTURE	HB 61	
Mons Teigen	MT Stockgrowers	HB 59	
Debi Brammer	MT Assoc. Conservation Dist	HB 59 HB 61	
John Delano	Self		
Stuart Duggell	MT Chamber of Commerce	HB 61	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Agriculture, Livestock & Irrig. COMMITTEEBILL NO. HB 59 + HB 61

DATE

Jan. 9, 1987

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Les Graham</i>	<i>Dept. of Livestock</i>	<i>HB 59</i>	
<i>Darrel Hansen</i>	<i>Ashtand Mont</i>	<i>HB 59</i>	
<i>Bill Hiett</i>	<i>Helena, MT</i>	<i>HB 61</i>	
<i>Gregory Kenneth</i>	<i>Huson MT</i>	<i>✓</i>	
<i>Celestine Lacey</i>	<i>Helena Mt.</i>		
<i>Dennis Hemmer</i>	<i>State Lands</i>	<i>HB 59</i>	
<i>Lorna Frank</i>	<i>Mont. Farm Bureau</i>	<i>HB-59</i>	
<i>Spurly Ball</i>	<i>W. I. F. E.</i>	<i>HB 41</i>	
<i>John Brunner</i>	<i>Henry's Cattlefeeders</i>		
<i>KEITH Kelly</i>	<i>DEPT OF AGRICULTURE</i>	<i>(HB 61)</i>	
<i>Moss Teigen</i>	<i>MT Stockgrowers</i>	<i>HB 59</i>	
<i>Debi Brammer</i>	<i>MT Assoc. Conservation Dist</i>	<i>HB 59</i> <i>HB 61</i>	
<i>John Delano</i>	<i>Self</i>		
<i>Stuart Daggelt</i>	<i>MT Chamber of Commerce</i>	<i>HB 61</i>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.