

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Rea, on January 20, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Jack "Doc" Rea, Chair (D)
Sen. Francis Koehnke, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Tom Beck (R)
Sen. Betty Bruski-Maus (D)
Sen. Jim Burnett (R)
Sen. Gerry Devlin (R)
Sen. Gary Forrester (D)
Sen. Mike Halligan (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council
David Martin, Committee Secretary

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

Committee Business Summary:

Hearing: HB 37
Executive Action: SB 73, HB 37

EXECUTIVE ACTION ON SB 73

Motion/Vote:

Sen. Devlin moved DO PASS on the amendments to SB 73. The motion CARRIED UNANIMOUSLY.

Discussion:

Sen. Halligan asked for a brief explanation of the amendments. Sen. Devlin briefly explained each amendment. The first amendment called for a penalty and an exemption. It will include areas that do not have to be fenced, i.e. areas where livestock would not be able to pass. The second amendment allows the railroad corporation to construct a fence and receive

reimbursement. Such construction should be pre-approved and can be done by either the rancher or a contractor. Another amendment deals with time limits and will be administered by the Public Service Commission, (PSC). All subsequent complaints would be directed to the PSC. The railroad then has 30 days, weather permitting, to correct the problem. After 30 days there would be a \$100 fine plus \$50 per day, with all work to be completed within 60 days.

Sen. Devlin added that the fencing issue is a statewide problem. SB 73 has railroad support. The only other issue to deal with would be livestock killed by trains. The Committee could decide whether to have the penalty for not repairing fences after 30 days be 10% or prime plus 2%. Either way is acceptable to Sen. Devlin.

Sen. Aklestad inquired as to the prime interest rate. Assuming a 5% or 6% prime, the operator would receive 8% (6% + 2%) and would be below the rate at which most operators could borrow money.

Sen. Pipinich asked for Sen. Devlin's preference on this issue. Sen. Devlin responded that a 10% rate would be fair compensation and roughly equivalent to the bank rate. Sen. Halligan suggested, in the name of consistency, the 10% rate be used to be in line with other standard judgement rates which exist in other Codes. Doug Sternberg, Legislative Council, concurred with this opinion.

Sen. Aklestad asked Sen. Devlin if the 30 day limit to insure fence repair would be adequate. Sen. Devlin said as a first step this would be adequate. Sen. Pipinich pointed out that the railroad asked for a 30 day limit instead of 15. Sen. Devlin again stated that he was comfortable with this limit.

Sen. Rea stated that 30 days was a long period for a fence to remain un-repaired. He asked if the railroad would reimburse the land owner for any work performed, so the problem could be remedied quickly. Sen. Devlin was counting on railroad support and cooperation. If necessary, the penalty could be increased next session.

Sen. Halligan asked about the word "domestic" to make sure it included all animals. Sen. Devlin and Pat Keim, Burlington Northern, said that "domestic" would cover all animals referred to in SB 73.

MOTION/VOTE:

Sen. Pipinich moved DO PASS AS AMENDED on SB 73. The motion CARRIED UNANIMOUSLY.

HEARING ON HB 37

Opening Statement by Sponsor:

Rep. Dave Brown, District 72, stated HB 37 would update a 1907 law increasing the penalty for certain animals unlawfully running at large. Rep. Brown passed out the statute that describes the animals, swine, sheep, llamas, bison and goats (Exhibit #2). The fine would be increased to \$500 from \$10, the 1907 level. HB 37 does not include livestock which are included under another statute. Currently the \$10 fine does not cover the sheriff's time to investigate an offense. This bill was requested by the Board of Livestock. HB 37 does not include Yellowstone Park bison because they are wild and are treated as a managed species. HB 37 does apply to potbellied pigs in the city as they are swine.

Proponents' Testimony:

Cork Mortensen, Executive Secretary, Department of Livestock spoke in favor of HB 37 citing current inadequate fines (Exhibit #3).

Bob Gilbert, Montana Woolgrowers Association, supports HB 37. This bill would insure that sheep are kept on their own pastures and is in line with regulations concerning other animals such as dogs.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Sen. Forrester asked why this bill did not cover horses. Rep. Brown replied horses are covered under other statutes which already carry higher penalties.

Sen. Aklestad pointed out the dramatic fine increase from \$10 to \$500. Rep. Brown said that the \$500 gives leeway to prosecute and is in line with the present economy. Sen. Aklestad stated animosity might be created between neighbors. Rep. Brown replied that law enforcement would have discretion in applying the law. Sen. Aklestad asked about the possibility of lowering the fine. Rep. Brown said a low fine might not cover damage created by animals and the main intent is to deal with serious offenses.

Mr. Mortensen added that the first and second offenses are typically dealt with through the warning procedure. Eight times as many warnings are issued as tickets. HB 37 is designed for repeat offenders and discretion would be used.

Sen. Halligan commented to Sen. Aklestad the \$500 dollar fine would give a judge leverage to insure that an offender would comply with the law. The \$500 fine would be an effective tool to

deal with nuisance cases.

Closing by Sponsor:

Rep. Brown stated HB 37 would allow officials to be more effective in executing their job. Rep. Brown asked Sen. Devlin to carry HB 37 to the floor. Sen. Devlin agreed.

EXECUTIVE ACTION ON HB 37

Motion:

Sen. Devlin moved HB 37 BE CONCURRED IN.

Discussion:


Sen. Aklestad reiterated that the penalty was excessive.

Vote:

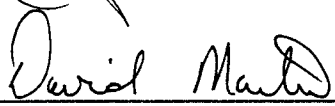
The motion that HB 37 Be Concurred In CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: Meeting Adjourned at 1:32 p.m.



SENATOR REA, Chair



DAVID MARTIN, Secretary

JR/dm

ROLL CALL

SENATE COMMITTEE AGRICULTURE DATE 1/20

NAME	PRESENT	ABSENT	EXCUSED
REA	✓		
KOEHNKE	✓		
AKLESTAD	✓		
BECK	✓		
DEVLIN	✓		
BURNETT	✓		
HALLIGAN	✓		
PIPINICH	✓		
FORRESTER	✓		
Bruski-Maus	✓		


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 20, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 37 (first reading copy -- white), respectfully report that House Bill No. 37 be concurred in.

Signed: Jack "Doc" Rea
Jack "Doc" Rea, Chair

 Amd. Coord.
Sec. of Senate

151419SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 20, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 73 (first reading copy -- white), respectfully report that Senate Bill No. 73 be amended as follows and as so amended do pass.

Signed:  Jack "Doc" Rea, Chair

That such amendments read:

1. Page 1, line 15.

Following: "fences"

Insert: "-- exception"

2. Page 1, line 19.

Following: "pass"

Insert: ", except that a fence is not required in places where water ditches, embankments, terrain, or other sufficient protection prevents domestic animals from straying onto the right-of-way. An affected landowner or lessee may construct, maintain, or repair a fence subject to approval and reimbursement by the railroad corporation."

3. Page 1, line 22.

Following: "cars"

Insert: ", because of the lack of a fence or maintenance of a fence,"

4. Page 2, line 8.

Strike: "A person"

Insert: "An affected landowner or lessee"

5. Page 2, lines 8 and 9.

Strike: "department" on line 8 through "transportation" on line 9


Insert: "public service commission"

6. Page 2, line 10.

Page 2, line 12.

Strike: "department"

Insert: "public service commission"

 Amd. Coord.
Sec. of Senate

151430SC.San

7. Page 2, line 18.

Strike: "15"

Insert: "30"

Following: "days"

Insert: ", weather permitting"

8. Page 2, line 19.

Strike: "15"

Insert: "30"

9. Page 2, line 20.

Strike: "\$500"

Insert: "\$100"

Strike: "\$100"

Insert: "\$50"

10. Page 2, line 21.

Strike: "15th"

Insert: "30th"

-END-

Amendments to Senate Bill No. 73
First Reading Copy

Requested by Sen. Devlin
For the Committee on Agriculture

Prepared by Susan Fox
January 13, 1993

1. Page 1, line 15.
Following: "fences"
Insert: "-- exception"

2. Page 1, line 19.
Following: "pass"
Insert: ", except that a fence is not required in places where water ditches, embankments, terrain, or other sufficient protection prevents domestic animals from straying onto the right-of-way. An affected landowner or lessee may construct, maintain, or repair a fence subject to approval and reimbursement by the railroad corporation."

3. Page 1, line 22.
Following: "cars"
Insert: ", because of the lack of a fence or maintenance of a fence,"

4. Page 2, line 8.
Strike: "A person"
Insert: "An affected landowner or lessee"

5. Page 2, lines 8 and 9.
Strike: "department" on line 8 through "transportation" on line 9
Insert: "public service commission"

6. Page 2, line 10.
Page 2, line 12.
Strike: "department"
Insert: "public service commission"

7. Page 2, line 18.
Strike: "15"
Insert: "30"
Following: "days"
Insert: ", weather permitting"

8. Page 2, line 19.
Strike: "15"
Insert: "30"

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 1/20/93

BILL NO. 73

9. Page 2, line 20.

Strike: "\$500"

Insert: "\$100"

Strike: "\$100"

Insert: "\$50"

10. Page 2, line 21.

Strike: "15th"

Insert: "30th"

81-4-201. Swine, sheep, llamas, bison, and goats running at large.
It is unlawful for any owner or person in control of swine, sheep, llamas, bison,
or goats to willfully permit the same to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907; re-en. Sec. 3393,
R.C.M. 1921; re-en. Sec. 3393, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1945; R.C.M. 1947,
46-1704; amd. Sec. 10, Ch. 166, L. 1989.

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 4/26/93

PL. NO. HB 37

_____ BILL NO.

_____ DATE

_____ EXHIBIT NO.

SENATE AGRICULTURE

*Senate Ag. Comm.
1-20-93
1 PM*

HB 37

Section 81-4-202, MCA was originally enacted in 1895 and re-enacted in 1907. Back then a \$10.00 or \$20.00 fine meant something, but today that fine is woefully inadequate.

If owners of sheep, swine, llamas, bison or goats willfully turn them loose those animals can very quickly destroy or consume far more than any fine which could be imposed.

This bill changes the penalty by giving a judge the discretionary authority to impose up to a \$500.00 fine plus liability for damages on the owner of the animal(s). It is believed that this bill will once again restore proper incentive to owners of these animals to comply with the law.

I thank you for your consideration and your time. If you have any questions or need more information, I should be happy to respond.

Thank you.

*Cork Mortensen
Dept. of Livestock*

SENATE AGRICULTURE

EXHIBIT NO. 3

DATE 1/20/93

BILL NO. HB 37

DATE 1/20/93

SENATE COMMITTEE ON AGRICULTURE

BILLS BEING HEARD TODAY: HB 37

Name	Representing	Bill No.	Check One Support Oppose
E G M			
Cork Mortensen	Dept. of Livestock	37	✓
Bob Gilbert	MT Redgrower Ass	37	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY