

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Rea, on February 5, 1993, at 1 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. Gary Forrester (D)
Sen. Mike Halligan (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: Sen. Devlin

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 104, SB 279
Executive Action: None

HEARING ON HB 104

Opening Statement by Sponsor:

Rep. Rose, District 11, said HB 104 involves the seizure and forfeiture of money, equipment and personalty involved in theft and/or transportation of stolen livestock. The income derived from the sale of forfeited property is to be used by the Department of Livestock for personnel training. He stated that HB 104 did not violate civil rights, but any legal action would be a civil suit and go through the courts.

HB 104 came about through an extensive livestock theft ring, which several investigators spent months investigating. Due to the liquidity of the sale of cattle that money was used to purchase narcotics. The federal government and a tri-county task

force entered the investigation which involved about \$80,000 worth of cattle and \$22,000 worth of cash. The other agencies confiscated this property and the Department of Livestock received none of these assets.

HB 104 would allow the Department of Livestock to receive some or all of these assets. A cap of \$20,000 is provided for and would be used in the training of Department of Livestock personnel. Any other funds received, above \$20,000, would go into the general fund.

Proponents' Testimony:

Cork Mortensen, Executive Secretary to the Board of Livestock, supports HB 104. (Exhibit #1)

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen Aklestad asked Rep. Rose what types of properties might be involved with these types of seizures. Rep. Rose replied it does not involve real property but rather saddles, trailers, knives, grinders, or saws. When a person is arrested they are taken to court and the evidence is seized. If convicted the judge may fine them and/or put them in jail, as well as make them provide restitution for the livestock. After they serve their time, the Department must return this confiscated property to the convicted person. Rep. Rose said he views HB 104 as a user's fee. If a person is going to steal livestock then they are going to pay for it.

Sen. Aklestad asked if 90% of these cases involved stolen livestock and if the assets that the person had on them at that time would also be seized. Rep. Rose replied affirmatively. Rep. Rose said that HB 104 would exclude borrowed property from seizure, and allowing only property the criminal authorized for use to be confiscated. He stated HB 104 insures that convicted felons would pay the price for their activities. Sen. Aklestad asked how far the bill would reach. For example, if a person used a \$20,000 pickup with a stock rack to steal a calf then the whole unit could be seized. Rep. Rose replied that this was correct.

Sen. Beck asked about the amended provision that allows the Department of Livestock to retain forfeited property. He wanted to know if that change was reflected in the fiscal note and how retained equipment could be shown on the Department of Livestock's inventory list. Sen. Beck further clarified his

question by asking, if the state could still fund the personnel training and keep the equipment. Rep. Rose said he would defer the question to another person, but added it was thoroughly discussed in the House Committee. Rep. Rose said confiscated property could include a plane that was used for spotting or a \$25,000 pickup. The question arose if the pickup was serviceable would the Department use it. Rep. Rose said he would refer the answer to another person(unspecified).

Sen. Beck asked about the \$20,000 in the revolving account that would be used for personnel training, is there a statutory appropriations account at the current time that provides for that training, or if the state did not sell any property from the seized account would the state still have to fund the personnel training. Lon Mitchell, Staff Attorney for Department of Livestock, replied that there is no statutory funding, to the best of his knowledge. At the current time training comes directly out of the Department of Livestock budget. HB 104 would allow funds obtained through seizure to offset any fees that would come out of the normal budget. If a vehicle was suitable for departmental purposes, then the vehicle could be retained in place of purchasing another vehicle.

Sen. Beck expressed concern that the Department could get close to the maximum on the fund and then start to retain vehicles just to maintain the fund. Sen. Beck stated, he had not seen in the codes, where agencies were allowed to keep vehicles but rather could sell the confiscated property and use the funds.

Sen. Halligan said in the case of drug busts other departments are allowed the discretion to keep the vehicles, which could be used as undercover vehicles. It reduces wear and tear on regular agency vehicles and does not negatively impact the budget. Sen. Halligan said if you receive a usable vehicle it may defer the purchase of a capital expenditure vehicle. He stated that mandatory reduction of property purchased may not be wise. Wise use of property obtained in seizures should also be encouraged, and that may not include disposal of that property.

Lon Mitchell pointed to the provision that stated the Department "may" sell property and is therefore discretionary. Sen. Halligan said that HB 104 said "shall" reduce purchases.

Doug Sternberg, Legislative Council said that Sen. Halligan was correct. He referred to Pg 4, the "new" subsection 2. Under subsection 1, previously the Department was required to sell seized property at public auction. Line 11 would change that to "may". Subsection 2 allows the Department to retain property. If confiscated property is sold, page 5 sets up the new account, for the proceeds from the sale. HB 104 places a \$20,000 cap and the money is to be used for enforcement or personnel training purposes. Any money above and beyond that would go to the general fund. Mr. Sternberg stated retained equipment in subsection 2 is covered by "shall" which calls for a mandatory reduction in

similar purchases by the value of the property. This language gives the Department of Livestock the option to either sell the property or retain it for departmental use. If the equipment is sold, the money goes into the special account, but if retained the Department has to reduce their property purchases by value of the retained property.

Sen. Beck wanted to insure that property is properly appraised, for example, a \$25,000 pick up is not appraised at \$5. If the Department nears the dollar limit of the account, it would encourage the retention of vehicles to keep the account open.

Sen. Halligan said equipment seizure is effective in drug busts and allows law enforcement officers to go after the dealers and use the money. He stated as much discretion as possible should be given to these agencies. The \$20,000 limit may be too restrictive, one vehicle could net \$20,000. Accumulated property will eventually be seen in their budget and thus reduce the budget in other areas. He said seizure should be encouraged and that budgets can be reduced later. He again questioned the placement of a \$20,00 limit.

Closing by Sponsor:

Rep. Rose closed by asking for a Do Pass.

HEARING ON SB 279

Opening Statement by Sponsor:

Sen. Swysgood, District 37, said SB 279 addresses an unclear situation concerning the subdivision of parcels within an irrigation district. When these divisions straddle a section line, problems occur. Sen. Swysgood referred to a map illustrating the situation. Under current law irrigation districts are not notified when the parcel straddles the section line. One irrigation district may not be aware of this and should receive an assessment. One parcel should have some assessment appropriated to it, and there is no way of knowing this. A person may receive a bill for assessment but may not receive any water due to the delivery point of the water. An agreement at the time of sale for the delivery of water would avoid this situation.

SB 279 would have the surveyor notify the appropriate irrigation district as to the existence and the purpose of the survey. This section only requires the surveyor to use public records on hand. Each small individual ditch would not have public records available, but almost every irrigation district has records. This is explained on pg 2 at the top by "(a) traversed by a canal or ditch owned by an irrigation district; or (b) included in an irrigation district".

Sen. Swysgood referred to a provision on page 4, that the irrigation district is not responsible for the "construction, operation, or maintenance of internal delivery systems; or (b) division of irrigation water after the water is delivered to the established project delivery points." This means that buyers and sellers in an agreement are responsible to get the water to a parcel that is sold. The irrigation district is not responsible for construction and maintenance of that delivery point because they do not benefit from it. According to Sen. Swysgood the irrigation district's responsibility ends at the initial point of diversion.

SB 279 would alert the irrigation districts so they could sit down with sellers and buyers to work out these problems out ahead of time. Sen. Swysgood stated people would not be paying for water that they are not receiving, as a result.

Sen. Swysgood said the trial lawyers do not like the word "responsible" on page 4. He had seen an offered amendment and did not have a problem with it, although he would like to see it go back to legislative counsel to be drafted in proper form.

Proponents' Testimony:

Jo Brunner, Executive Director of Montana Water Resources Association, supported SB 279. SB 279 is an effort of the irrigation districts to alleviate some of the problem situations. The irrigation districts are receiving demands to deliver water to small parcels of land that they are not responsible for. Ms. Brunner had seen the amendments and had no problems with them.

Russell Hill, Montana Trial Lawyers Association, offered amendments to SB 279. (Exhibit #2).

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Beck asked Sen. Swysgood if this dealt with irrigators on an adjudicated stream. He asked if "traversed by canal or ditch owned by an irrigator or an irrigation district" could be added to SB 279 or if that would adversely affect the bill. Sen. Swysgood replied that it would adversely affect his bill. These were left out because there were not records by individual irrigators and their inclusion would result in astronomical survey fees.

Sen. Beck asked about the problem with word "responsible". Mr. Russell Hill responded by referring to page 4, line 8. His original concern was that the word responsible could be open to interpretation. If an irrigation district did construct, operate

or maintain an internal delivery system, the district would not be responsible for negligent or grossly negligently actions by doing so. He stated he did not feel this was the intent of the drafters of the bill, and there was not a difference of opinion at this point.

Sen. Koehnke asked how SB 279 would affect the surveyors. Sen. Swysgood replied that the surveyors are supposed to notify the irrigation districts that surveys are in progress and about the purpose of the surveys. This would allow the irrigation districts to work with surveyors.

Sen. Aklestad asked about a person buying a piece of land at the end of the ditch without an agreement with the ditch company. He wanted to know if a piece of land be in jeopardy of not receiving water, and how that would be handled. Sen. Swysgood said that SB 279 would give the purchaser more security than existing law because they would have advance knowledge of the water system and would not be surprised in the future.

Sen. Beck asked Sen. Swysgood why a parcel receiving no water would be charged an assessment, and who would be responsible to make sure this does not happen. Sen. Swysgood replied that it is the responsibility of the buyers and the sellers. The irrigation district has no legal responsibility to supply water to that point in this case.

Jo Brunner stated that irrigation districts have the authority to write rules and regulations for delivery points. If a person has 80 acres and decides to subdivide it, the water rights would not automatically go to smaller parcels sold off the back of that 80 acres. The water assessment remains with the land. It is the responsibility of the subdivider to inform the persons buying the lots that water is not available to the lots, and that they will have to pay the assessments.

Sen. Halligan asked about the original intent of SB 279 to establish survey requirements, and why the last part of the bill is necessary. Sen. Swysgood replied that the irrigation districts wanted to inform the subdivider that it is not the district's responsibility to construct or maintain those waterways and delivery points away from the original delivery point. These issues should be worked out between the developer and other parties. The irrigation district is only responsible for the original delivery point.

Sen. Halligan said the bill should be more specific about the construction and maintenance of internal delivery systems. He asked if that meant irrigation districts are still required to do this within the district but not outside the parcel. Sen. Swysgood referred to Section 4, subsection 2a and 2b, which clarified that the irrigation district is responsible to only deliver water to the original delivery point.

Sen. Beck asked if the district determined that delivery point. Sen. Swysgood replied yes. Ms. Brunner said the subdivider and the irrigation district can determine where those diversion points will be. SB 279 would deal with situations to determine whether the water was going to an 80 acre plot or 10 acre plots.

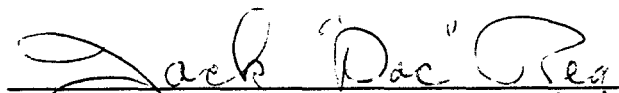
Closing by Sponsor:

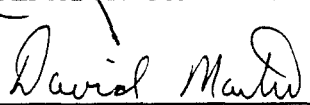
Sen. Swysgood said that SB 279 provides the opportunity for the irrigation districts to review surveys prior to approval. This would allow the district to determine the number of irrigable acres within each section of land. More importantly, it provides early notification to the district that there will be changes in the assessment of water rights and allotments on project lands. The problems of isolating tracts from water sources are obvious: Who pays the costs of additional facilities, Who determines the location of the facilities, How is the water to be measured, and If there are sufficient supplies for weekend demand. These questions should be resolved before the approval of any subdivision plans. SB 279 is designed to iron these problems out ahead of time.

Chair Rea asked if Sen. Swysgood accepted the amendments. Sen. Swysgood replied yes, but he would like the Environmental Quality Council staff look at them.

ADJOURNMENT

Adjournment: Meeting adjourned at 1:41 p.m.


SENATOR JACK "DOC" REA, Chair


DAVID MARTIN, Secretary

JR/dm

ROLL CALL

SENATE COMMITTEE AGRICULTURE DATE 2-5-93

[illegible]

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-5-1993

HB 104

HB 104

AGRICULTURE

NO. _____

Mr. Chairman and members of this committee, for the record my name is Cork Mortensen and I am the Executive Secretary to the Board of Livestock. The Board and Department of Livestock support and urge you to support HB104 for the following reasons:

HB 104 would allow the Department of Livestock to use money accumulated from the forfeiture and sale of personal property used in the theft or transportation of livestock for personnel training and enforcement. This, we believe, would better enable the Department of Livestock to upgrade the expertise and professionalism of its personnel and this would probably increase the efficiency of service to the public and better protect our producers as well as the general public. This Bill also sets a cap on the amount of money that can be used for personnel training and enforcement. Anything over \$20,000 accumulated in any one year would be deposited into the general fund.

The legislative changes we are requesting in this Bill would in no way increase our budgetary operating expenses and, in fact, could save money for the operation of the department. Overall, however, we do not anticipate a large impact in terms of forfeited property and money. That depends upon the honesty and integrity of the citizenry and upon the expertise of the departmental personnel in apprehending those individuals involved in breaking the law.

Thank you for your time and consideration in this matter, and once again urge you to support this legislation. If you have any questions or need more information, I should be glad to respond.

Thank you

Cork -

Cork Mortensen
Executive Secretary
To the Board of Livestock

Proposed Amendments to Senate Bill No. 279
First Reading Copy

Requested by Russell B. Hill
Montana Trial Lawyers Association

Prepared by Russell B. Hill
February 5, 1993

1. Page 4, line 8.

Strike: "not responsible for the"

Insert: "not required to"

2. Page 4, line 9.

Strike: "construction, operation, or maintenance of"

Insert: "construct, operate, or maintain"

3. Page 4, line 11.

Strike: "division of"

Insert: "divide"

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 2-5-93

BILL NO. SB 279