

**MINUTES**

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

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Doherty, on February 5, 1993, at 10:08 a.m.

**ROLL CALL**

**Members Present:**

Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** Sen. Yellowtail

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 252  
SB 251  
SB 258

Executive Action: SB 251

**HEARING ON SB 252**

**Opening Statement by Sponsor:**

Senator Hertel, District 15, said SB 252 is important to land surveyors. The title of SB 252 is an act exempting a professional surveyor or other qualified persons from the criminal trespass law when entry to land is for survey purposes." When conducting a land survey, a surveyor must go on the property adjacent to the land being surveyed, to find the monuments or

stakes. Surveyors have to use these monuments to complete the survey. The surveyor must be licensed or an employee of the licensed surveyor. Before entering the land adjacent to the property being surveyed, the surveyor must let the land owner know of the desired date of entry and meet all requirements for conducting a survey. The surveyor is liable for damages and injuries occurring on the land during the survey. Senator Hertel said there is a need for SB 252 because there have been instances when surveyors were not able to perform a proper survey without a great deal of problems. SB 252 enables the surveyors to complete their project and conduct an accurate survey for those involved. Senator Hertel proposed and explained an amendment. (Exhibit #1)

**Proponents' Testimony:**

Stewart Nash, Montana Association of Registered Land Surveyors, read from prepared testimony. (Exhibit #2) Mr. Nash submitted letters. (Exhibit #3, Exhibit #4)

Virginia Mueller, Montana Association of Registered Land Surveyors, reiterated Mr. Nash's testimony. Ms. Mueller said state statutes require land surveyors to follow federal instructions when performing surveys. It is not often land surveyors are denied access in Montana. Ms. Mueller said in 18 years that she has been a land surveyor she has been denied access to someones property three times. Ms. Mueller said in one instance she had to commit a minor trespass to conduct a survey. Ms. Mueller said when land surveyors are denied access to a property, the surveys cannot be performed until there is permission to go on the property, which in some instances must be court ordered. Ms. Mueller said SB 252 would facilitate the work of land surveyors and would appreciate the support in the passage of SB 252.

**Opponents' Testimony:**

Russell Hill, Montana Trial Lawyers Association, read from prepared testimony. (Exhibit #5) Mr. Hill submitted amendments for consideration. (Exhibit #6)

**Questions From Committee Members and Responses:**

Senator Grosfield asked Mr. Nash about page 4, line 11 and 12. Mr. Nash said at one time land surveyors cut trees in order to keep a straight line. Today, land surveyors do not cut trees down because of new technology and methods that are used. Mr. Nash said there may be some limbing of trees in order to see a line of sight, but that is limited. When a final line is established, the land surveyors mark the trees without cutting any of the trees down. Land surveyors are very careful on private lands.

Senator Halligan asked Senator Hertel if SB 252 would exempt land surveyors from criminal and civil actions. Senator Hertel said

the intent of the title was to eliminate criminal action, but the feels civil actions should be included.

Senator Towe asked Mr. Nash about instruments that are used in conducting land surveys. Mr. Nash said the instruments used turn angles and measure distances in a reflected prism. The prism reflects a direct beam of light into the instrument and measures the distance. Mr. Nash said the instruments are very precise.

Senator Towe asked Mr. Nash about surveying adjoining land. Mr. Nash said if a client owned part of a southwest and southeast corner of a section and wanted the boundaries marked, the only way to determine where the boundaries are is to go to all four section corners outside the property, and all four quarter section corners, to mark the section. Mr. Nash said in order to conduct those surveys permission would be needed from all the land owners to gain access to their land. Mr. Nash said permission is often given, but there are some instances when permission is not given.

Senator Towe asked Mr. Nash about land surveyors damaging a persons property. Mr. Nash said occasionally land surveyors have to dig for a corner to find the original stones or markers, which sometimes is in a yard or field. Mr. Nash said costs should be given to a person if damage was done to their property. Mr. Nash said that would be the only damage that would be caused by land surveyors.

Senator Towe asked Mr. Nash about digging up sacred sights. Mr. Nash said if a monument is set below the surface, the best method to eliminate more surveys would be to dig up the monument and reference it with pins and other types of monuments outside of that area. Mr. Nash said then other surveyors would not have to dig up the monument again.

Senator Bartlett asked Mr. Nash about the amendments proposed by the Montana Trial Lawyers Association. Mr. Nash said the amendments sounded as if the land surveyors and the land owners were not protected for a for civil action. Mr. Nash said SB 252 allows land surveyors to obtain access to a property to find a survey monument. Mr. Nash said land surveyors work to serve clients and the public, and are not there to destroy property. If a land surveyor makes an error, they would be held responsible. SB 252 covers damages, and would hold a surveyor liable for any damage that occurs. SB 252 protects the land owners and land surveyors.

Senator Halligan asked Mr. Nash about incidents of lawsuits against surveyors for damage of land. Mr. Nash was not aware of any lawsuits.

Senator Halligan asked Mr. Nash what the land surveyors wanted. Mr. Nash said land surveyors want access to land that is to be

surveyed. If denied access, they want a legal way to obtain access without having to go through a court procedure to get on that property within a reasonable amount of time.

Senator Doherty asked Mr. Nash about limiting liability to actual damages if a land surveyor caused a fire on property that was being surveyed. Mr. Nash said many surveyors have contracts with the National Forest Service and are liable for fires that they start in a National Forest. Mr. Nash said the surveyors know the consequences and do not see a problem with limiting liability to actual damages.

Senator Doherty asked Mr. Nash if land owners would like to have damages limited. Mr. Nash said that the land owners would probably not want them limited.

**Closing by Sponsor:**

Senator Hertel said there is a need for SB 252. Senator Hertel said SB 252 would not be detrimental to adjoining land and land owners. Surveyors are trying to cooperate to the full extent with the land owners. Senator Hertel asked the Committee to support SB 242 with a DO PASS recommendation.

**HEARING ON SB 251**

**Opening Statement by Sponsor:**

Senator Towe, District 46, said Section one of SB 251 brings in city court judges as well as justices of the peace, for the issuance of summons so city court judges can issue a summons out of a county. The second part of SB 251 deals with the Landlord Tenant Act of 1977. It brings the city court and justice court in as the court of original jurisdiction for disputes between landlords and tenants.

**Proponents' Testimony:**

Craig Hoppe, Montana Magistrates Association, said SB 251 addresses the area in which city courts have concurrent jurisdiction. SB 251 states that city courts have concurred jurisdiction and provides for the mechanism by which city courts operate.

**Opponents' Testimony:**

NONE

**Questions From Committee Members and Responses:**

NONE

**Closing by Sponsor:**

Senator Towe closed SB 251.

**EXECUTIVE ACTION ON SB 251**

**Motion/Vote:**

Senator Towe moved SB 251 DO PASS. The motion CARRIED UNANIMOUSLY.

**HEARING ON SB 258**

**Opening Statement by Sponsor:**

Senator Harp, District 4, opened SB 258.

**Proponents' Testimony:**

Laurence Hubbard, State Compensation Mutual Insurance Fund, supports SB 258 with an amendment. (Exhibit #7) Mr. Hubbard said the present bill goes beyond a supreme court decision in second sentence of section six A, which permits subrogation when allowed against the entire settlement for award regardless of the nature of the damages. Allowing subrogation against the entire settlement, regardless of the nature of the damages, is consistent with supreme court decisions. Prior law which was codified in sub section six A, was not touched by the Supreme Court, which is what is being addressed today. The State Compensation Mutual Insurance Fund believes the second sentence, which is presently omitted, should be reinserted to read "the insurer may subrogate against the entire settlement for award of a third party claim brought by a plaintiff or their personal representative without regard to the nature of the damages."

Oliver Goe, Montana Municipal Insurance Association, Montana Association of Counties, Montana School Groups Insurance Authority, supports SB 258 with the amendment proposed by the State Fund. Mr. Goe said subrogation has interfered with the ability to collect from a third party. Mr. Goe feels that SB 258 may not go far enough to insure that workers compensation insurers would be entitled to subrogation.

Jacqueline Lenmark, American Insurance Association, reiterated the proponents comments. Ms. Lenmark asked the Committee for a DO PASS recommendation.

**Opponents' Testimony:**

Russell Hill, Montana Trial Lawyers Association, told the Committee he would be reserve judgement on the amendments.

**Questions From Committee Members and Responses:**

Senator Halligan asked Mr. Goe to elaborate on SB 258. Mr. Goe said the problem with subrogation is that it limits the circumstances in which an insurer can obtain subrogation. Most Supreme Court decisions are premised on that a portion of the Montana Constitution regarding full legal redress. That impacts the ability of the claimant who is paying full legal redress against the third party in a district court. After a proceeding to figure out how much the person was damaged, what the person has received, and what they would receive under workman's compensation, then the insurer has subrogation rights. Mr. Goe said at the present time most insurers do not pursue subrogation. Mr. Goe said SB 258 would help those insurers with subrogation.

Senator Doherty asked Mr. Goe to define subrogation. Mr. Goe said subrogation is a concept which means that the insurer could recover benefits that were paid out to a claimant, from a third party who was responsible for the injury.

Senator Towe asked Mr. Hubbard about the proposed amendment. Mr. Hubbard said the intent of the amendment is so a third party would not be able to designate a recovery when the insurer is entitled to subrogation. The supreme court, in the past, allowed subrogation regardless of how the parties designated a third party's settlement for damages.

Senator Towe asked Mr. Hubbard if that was why the language says "without regard to the nature of damages." Mr. Hubbard said that was correct.

Senator Towe asked Mr. Hubbard if the Supreme Court used that language to authorize settlements. Mr. Hubbard said before the statute, the Supreme Court held that regardless of how the parties designated damages, subrogation would apply to the entire amount.

Senator Towe asked Mr. Hubbard with regard to subrogation, about workman's compensation and a third party paying for damages. Mr. Hubbard said the legislature intended to grant subrogation regardless whether the worker could demonstrate damages in excess of the compensation benefits and third party recoveries. The courts did not agree. The court held that workers were entitled to be made whole for the full extent of their injuries. The present statute attempts to clarify the language by inserting the word "unless," and striking "even though."

Senator Towe asked Mr. Hubbard about payment by workman's compensation. Mr. Hubbard said the theory of the subrogation statute is, if a worker can prove they were not made whole by recovery, of the workmans compensation benefits, subrogation would not be available to the insurer.

Senator Towe asked Mr. Hubbard whether the rule about notification by the Workers Compensation Division was still in

the statute. Mr. Hubbard said the rule was still in the statute. Mr. Hubbard said subrogation should be based on total recovery, regardless of how the private parties decide to attribute damages. Mr. Nash said that is why the amendment was proposed.

Senator Bartlett asked Mr. Hubbard about the proposed amendment and inserting "if subrogation was allowed." Mr. Hubbard said that is the intent of SB 258. Mr. Hubbard said in cases where subrogation is allowed and obtained that sentence would apply, and it would be without regard to the nature of the damages for the third party.


Senator Rye asked Russell Hill about the amendments. Mr. Hill said he looked at the amendments, and feels that anytime law remains the way it is, something is gained.

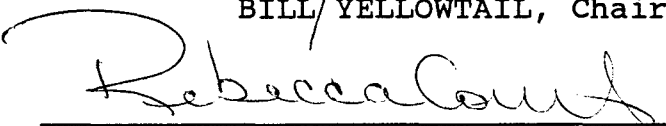
Closing by Sponsor:

Senator Harp closed.

ADJOURNMENT

Adjournment: 11:15 a.m.

  
BILL YELLOWTAIL, Chair

  
REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-5-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail			X
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 5, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 251 (first reading copy -- white), respectfully report that Senate Bill No. 251 do pass.

Signed: Wm. Yellowtail  
Senator William "Bill" Yellowtail, Chair

AW Amd. Coord.  
Sec. of Senate

291128SC.San

Amendments to Senate Bill No. 252  
White Reading Copy

Requested by Tom McNab  
For the Committee on Judiciary

Prepared by Doug Sternberg, Council Staff

February 5, 1993

1. Page 4, line 22.

Following: "land"

Insert: ", except for damages caused by the introduction or  
spread of noxious weeds when a landowner has inspected the  
person's vehicle in accordance with subsection (8)"

COMMITTEE ON JUDICIARY  
FILE NO. 1  
2-5-93  
SB252

## CONCERNING AN EXEMPTION TO THE CRIMINAL TRESPASS LAWS FOR CERTAIN

## INDIVIDUALS WHO ENTER PROPERTY FOR SURVEY PURPOSES

The absence of the right of entry to the Registered Professional Land Surveyor of Montana, or those who are under the direct supervision of such a person as an employee, agent or representative denies them one of the basic tools by which to competently complete their work and remain within the laws and abide by the rules governing surveys.

Many surveyors have been denied access to private lands, at one time or another, in attempting to conduct surveys for their clientele. This denial may occur at some point of time after a previous illegal trespass by an inconsiderate surveyor, or because of poor relationships between neighbors, a "bad" survey by a previous surveyor - therefore they are all incompetent, or I just don't like the Highway Department and the power company charges too much.

*for the denial*  
Whatever the reason, the land surveyor cannot always determine accurate property corners and boundaries of their client and adjoining properties without having all of the controlling corners and evidence at their disposal.

The Montana Corner Recordation Act 70-22-102 gives the following as its purpose  
It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

When this purpose is denied by a land owner, it is also a denial for the land surveyor to carry out the guidelines as outlined in the Professional Engineers and Land Surveyors Laws and Rules Sub Chapter 12, Rules of Professional Conduct 8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

(1) Registrants shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.

(a) Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgement is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.

*Access denial to perform accurate surveys is overruling the surveyor's best judgement and is a detriment to the public's welfare.*  
The following State and Federal regulations including pertinent definitions are the basic laws in which a Registered Professional Land Surveyor must adhere to, in effort to carry out the previous regulation.

PROFESSIONAL ENGINEERS AND LAND SURVEYORS LAWS AND RULES

Definitions 37-67-101(7) "Practice of Land Surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences and:

- a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;
- (b) measurement and allocation of lines, angles, elevations and coordinate systems'
- c) monumenting of property boundaries;

Definitions 70-22-103

- (1) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.
- (2) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question. *These controlling corners are the key to most surveys*
- (3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.
- (4) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.
- (5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.
- (6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.
- (7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

MONTANA'S SUBDIVISION AND SURVEYING LAWS AND REGULATIONS

Chapter 3, Part 4 - Survey Requirements 76-3-402(3) All divisions of sections into aliquot parts and retracement of lines must conform to United States Bureau of Land Management instructions, *over*

SUB-CHAPTER 30 - UNIFORM STANDARDS FOR MONUMENTATION, CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS.

8.94.3001 (c) Prior to the filing of any subdivision plat or certificate of survey for record the land surveyor shall confirm the location of sufficient monuments to reasonably assure the perpetuation or reestablishment of any corner or boundary or retracement of the survey -----.

(e) The plat or certificate shall clearly show the relationship of all adjacent monuments of record and the relationship of the monuments of record to monuments set after filing.

(h) If the land surveyor uses any previously established monument he must confirm the location of the monument. If properly confirmed and shown and described on the filed certificate or plat, such a monument shall be considered a monument of record.

CORNER RECORDATION ACT

70-22-110 Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

MANUAL OF SURVEYING INSTRUCTIONS 1973  
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,

THE DEPENDANT RESURVEY

6-25 The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified original corners and other acceptable points of control, and, second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey.

5-6 The recovery of previously established corners is simplified by projecting retracements from known points. The final search for a monument should cover the zone surrounding one, two, three, or four points determined by connection with known corners. These corners will ultimately control the relocation in case the corner being searched for is declared lost.

5-8 No decision should be made in regard to the restoration of a corner until every means has been exercised that might aid in identifying its true original position. The retracements will indicate the probable position and will show what discrepancies are to be expected. Any supplemental survey record or testimony should then be considered in the light of the facts thus developed.

The supplement to the 1973 Manual "Restoration of Lost or Obliterated Corners and Subdivision of Sections " States on page 25 under FUNCTION OF THE LOCAL SURVEYOR. --- His work may be simple, or quite complex, depending largely upon the existence of the original corner monuments or acceptable perpetuations of the corner positions.

Since the corners established in the original survey are controlling, it is essential that these corners be found, or properly restored, before the actual field work involving the subdivision-of-section is undertaken. The section boundaries should be retraced to develop the actual bearing and lengths of the lines between the corners. *back*

These regulations are paramount procedures by which the professional land surveyor performs their field work. The necessity to gain entry onto any lands that contains evidence which will aid in the proper restoration or identification of corners and monuments, is of the utmost importance.

By gaining this much needed tool, the surveying profession will be obligated to exercise care and proper restraint, respecting the property over which they perform surveys. They should be held responsible for any damages incurred upon entering private lands and should enter only after proper notification.

The following proposed bill is a serious attempt to address these concerns.

20443 2  
2-5-93  
SB 252

# DEPARTMENT OF STATE LANDS



STAN STEPHENS, GOVERNOR

CAPITOL STATION

## STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE  
HELENA, MONTANA 59620

December 4, 1992

Stewart Nash  
Past President  
P.O. Box 631  
Lewistown, MT 59457

SENATE JUDICIARY  
EXHIBIT NO. 5  
DATE 2-5-93  
BILL NO. SB252

RE: Proposed legislation for trespass for survey purposes.

Dear Mr. Nash:

The Department of State Lands (DSL) has reviewed the proposed legislation you asked us to review. The DSL legal staff saw no obvious legal pitfalls and did not see any reason why we could not support the legislation.

The Land Administration Division also reviewed and felt the proposed language looked good. The Division did have some comments which you may wish to consider:

The ten day response time may not be sufficient for public agencies. It may be difficult in some situations for the DSL to respond regarding any stipulations within ten days. You may wish to consider extending this time frame.

A common concern of landowners is off-road vehicle travel. You may wish to consider adding a restriction that vehicular trespass by surveyors is limited to established roads unless pre-approved by the landowner.

Does the "damages" provision include clearing of shrubs, trees and other vegetation? Should this type of activity require pre-approval of the landowner?


Another common concern of landowners regarding trespass is with the spread of noxious weeds. Does the "damages" provision cover the noxious weed issue or should it be covered separately?

Perhaps another consideration which might make the proposal more palatable to landowners would be to provide a copy of the completed surveys to the landowner.

Stewart Nash  
December 4, 1992  
Page 2

Thank you for the opportunity to review and comment on this proposed legislation. Feel free to contact me if you have questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Jeff Hagener", with a stylized, sweeping flourish at the end.

M. Jeff Hagener, Administrator  
Lands Administration Division

c. Marylee Norris



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE

P.O. BOX 110

LEWISTOWN, MONTANA 59457

(406) 538-8706



February 4, 1993

Senator John Hertel  
Capital Station  
Helena, Mt 59620

Re: Senate Bill 252 To Exempt Professional Land Surveyors from Criminal Trespass Law

Dear Senator Hertel:

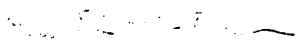
The U.S. Fish and Wildlife Service supports the effort to create a law to exempt professional land surveyors from criminal trespass. The FWS had to survey property in Garfield County last year to locate the property line between the Government and a hostile landowner. The potential threat of trespass charges prevented the surveyors from locating survey monuments within the private property. The situation required locating more distant monumentation on Federal land to complete the survey. This caused the survey work to cost more because substantial additional time was required. Had the situation been a little different and alternate monumentation not been available, it would have been impossible to complete the survey.

In addition to the legal aspects of being able to do a survey, the surveyors were subjected to harassment by the land owner. This included threats of trespass charges if they crossed onto the owners property and an on site visit by the County Sheriff.

A law to protect surveyors from trespass charges is essential if they are going to be able to perform the necessary work expected of their profession.

If you wish to discuss this further please give me a call.

Sincerely,

  
John R. Foster  
Refuge Manager

cc: (blind) Pat Carson, Reg. Office, Denver  
Stewart Nash, Nash Surveying  
Craig Roberts, Dept State Lands

SENATE JUDICIARY  
EXHIBIT NO. 4  
DATE 2-5-93  
FILE NO. SB252



# Montana Trial Lawyers ASSOCIATION

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Wade Dahood  
Director Emeritus  
Monte D. Beck  
Thomas J. Beers  
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Michael W. Cotter  
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Michael E. Wheat

Executive Office  
#1 Last Chance Gulch  
Helena, Montana 59601  
Tel: 443-3124

February 5, 1993

## Officers:

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Paul M. Warren  
Governor

Sen. Bill Yellowtail, Chair  
Senate Judiciary Committee  
Room 325, State Capitol  
Helena, MT 59624

RE: SB 252

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's qualified opposition to SB 252, which establishes civil liability for damages and injury occurring during a land survey. MTLA opposes SB 252 because of several concerns:

1. MTLA believes that SB 252 limits the liability of both parties governed by the bill. It apparently limits the liability of surveyors to "actual damages caused during entry to and stay on the land" (page 4, lines 21-22). Thus, a surveyor apparently incurs no liability for causing non-economic damages such as emotional distress, and he or she apparently incurs liability for "actual damages" only when those damages are caused by "entry to and stay on" the land [emphasis added]. At the same time, even when that surveyor obtains the permission of the landowner and provides extensive information about the survey, he or she apparently has no cause of action for injury or damage caused (but not "purposely or knowingly") by a grossly negligent landowner.

2. MTLA believes that insulating parties such as surveyors and landowners from the consequences of their wrongful acts actually discourages cooperation among those parties, even when they are mutually and equally insulated. On the contrary, MTLA believes that civil liability and enforceable standards of conduct promote cooperation between parties such as surveyors and landowners.

3. MTLA believes that the respective rights and duties of surveyors and landowners can be better balanced in SB 252 by means of the following amendments:

SENATE JUDICIARY  
TRANS. NO. 5  
FEB 2-5-93  
SB 252

Amendments to Senate Bill No. 252  
First Reading Copy

Requested by Russell B. Hill  
Montana Trial Lawyers Association

Prepared by Russell B. Hill  
February 5, 1993

1. Page 4, line 21.

Strike: "actual"

2. Page 4, line 24.

Following: "purposes"

Insert: "pursuant to this section"

3. Page 5, line 2.

Strike: "purposely or knowingly"

SENATE JOURNAL  
FEBRUARY 5, 1993  
6  
2-5-93  
SB252

Amendments to S.B. 258

1. Page 3, line 14

Following: "combined."

Insert: "The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative without regard to the nature of the damages."

SENATE JUDICIARY

EXHIBIT NO. 7

DATE 2-5-92

FILE NO. SB258

DATE 2-5-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 251 - True S.B. 252 - Hurd  
SB 258 - Harp

Name	Representing	Bill No.	Check One Support Oppose	
TOM McNALO	Montana Technical Council	SB 252	<input checked="" type="checkbox"/>	
STEWART NASH	Montana Assoc. of Registered Land Surveyors	252	<input checked="" type="checkbox"/>	
HARRY C. STRONG	MT. ASS. REGISTERED LAND SURVEYORS	252	<input checked="" type="checkbox"/>	
JEAN E. STRONG	LAND SURVEYOR	SB 252	<input checked="" type="checkbox"/>	
CRUC. L. LEOPE	MT. MAGISTRATES ASSN	SB 251	<input checked="" type="checkbox"/>	
LAURENCE A. HUBBARD	State Fund	SB 250	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Virginia Muller	MT Assoc. of Land Surveyors	SB 252	<input checked="" type="checkbox"/>	
Jaqueline J. Gunnmark	American Trl. Assoc	SB 258	<input checked="" type="checkbox"/>	
John [Signature]	MMIA, MSGIA, MACO	" "	<input checked="" type="checkbox"/>	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY