

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on February 9, 1993, at
3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Jaelene Racicot, Committee Secretary

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

Committee Business Summary:

Hearing: HB 290, SB 73
Executive Action: HB 290, SB 73, HB 285

HEARING ON HB 290

Proponents' Testimony:

Jack Sedgwick, Department of Livestock, stated that the sheep permit system statutorily creates the ability for law enforcement to stop and examine vehicles transporting sheep. They can request documentation regarding the shipment, however, without the permit system law enforcement could not legally stop the vehicle. The sheep permit system has created an information resource data bank that had not been available in the past.

Gary Graves, Montana Wool Growers Association, presented written testimony. EXHIBIT 3.

Larry Pilster, Montana Wool Growers Association, stated that Carter County was the second largest sheep producing county in the state. Mr. Pilster urged the committee to pass HB 290 to control sheep theft.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. ROSE asked REP. HIBBARD if one needed a sheep permit to cross county lines. REP. HIBBARD stated that you would need a permit cross to the county line.

REP. ROSE asked if you could get an annual permit. Mr. Sedgwick stated that you could get an annual permit.

REP. LARSON asked Gary Graves how many sheep were lost to theft in Montana. Gary Graves asked REP. HIBBARD to answer. REP. HIBBARD stated that sheep losses, reported losses, and sheep stolen were 3,836 in 1990, 2,784 in 1991, and 1,083 in 1992.

REP. LARSON asked how many sheep were in Montana. Gary Graves stated there were approximately 560,000 sheep.

Closing by Sponsor:

REP. HIBBARD stated that HB 290 was what the sheep industry wanted and that most of the theft occurred in eastern Montana. REP. HIBBARD urged the committee to pass HB 290.

HEARING ON SB 73

Opening Statement by Sponsor:

SEN. DEVLIN, SD 13, Terry, stated that the issue in SB 73 was brought to his attention by a neighbor. The issue has to do with the fencing that the railroad is required to do along the right of ways. SEN. DEVLIN stated that there never was a penalty established to give the railroad an incentive to keep up their

fences. He stated that it takes some time to get payment to the owner whose livestock was maimed or killed, and SB 73 places a penalty on the railroad for failure to comply with the time limit.

Proponents' Testimony:

Pat Keim, Burlington Northern, stated that they worked with Senator Devlin on SB 73 and they believed they could live with the way the bill was drafted.

Russ Ritter, Montana Rail Link, thanked Senator Devlin for his willingness to work with them on the bill and he stated Montana Rail Link supports SB 73.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. LARSON asked about the increased workload on the Public Service Commission. Wayne Budt, Administrator of the Transportation Division of the Public Service Commission, stated that the commission's role is to respond when an owner or lessee calls and tells them the fence is down. Mr. Budt stated that they have five motor carrier enforcement officers and one track inspector and anyone of them can respond in a timely fashion at no additional cost.

REP. LARSON asked if the landowner shared any responsibility for maintaining the fences or if they were entirely the railroad's responsibility. Mr. Keim stated that the railroad had the responsibility under the law. Mr. Keim also stated that SB 73 strengthens the law.

REP. MASON asked why SB 73 was drafted and if there was a problem which existed. Mr. Keim stated that the purpose of the bill was to strengthen the existing law. Mr. Keim stated that the existing law did not have a fine provision.

REP. BACHINI asked if the railroad could not get the fence repaired, would the 30 days apply. SEN. DEVLIN stated that if they failed to repair the fence because of the weather, then they have another 30 days, after that a fine would be levied.

REP. BACHINI asked if there was destruction of the fences caused by cattle, who would be responsible to repair the fence. SEN. DEVLIN stated that currently the railroad would be liable. SEN. DEVLIN, also stated that all SB 73 does is penalize the railroad for not keeping up the fences. Also, SB 73 fines the railroad if the railroad does not pay in a timely fashion for any maimed or killed livestock.

REP. SCHWINDEN asked when the effective date for HB 73 would be. Mr. Keim stated that the effective date would be October 1.

REP. SCHWINDEN said that he was surprised that Mr. Keim was in support of SB 73. Mr. Keim responded that the railroad was currently liable for stock loss, and SB 73 strengthens the old law by adding a fine to it.

REP. LARSON asked if the liability for a fence falling down naturally and a fence that was knocked down by cattle was the same. Mr. Keim stated that the liability was the same.

REP. ROSE asked if snow drifted over the fence and the cattle walked over it, who would be liable if the cattle were hit by a train? Mr. Keim stated that railroad would be.

REP. BACHINI asked if there were a lot of problems with the railroad that would provoke SEN. DEVLIN to have SB 73 drafted. SEN. DEVLIN stated that he had a neighbor with a railroad running through his place and most of the time the rancher ended up fixing the fence himself. SEN. DEVLIN stated that SB 73 came about to penalize the railroad for not fixing the fence.

REP. BACHINI asked how often the railroad inspects the track. Mr. Keim responded by saying the track riders and track inspectors would maintain the fences. He stated that there have been times fences have deteriorated to the point of requiring complete replacement.

REP. REHBEIN stated that they lost approximately one to five cows, yearlings, or calves every year on the railroad tracks. REP. REHBEIN also stated that he thought the railroad would rather buy the stock than fix the fence. He asked if the rancher fixed the fence could the rancher be reimbursed. Mr. Keim stated that there were times a rancher would want to do the fencing and the railroad would provide the materials to fix the fence. Mr. Keim stated that this was done on a individual basis.

REP. MASON asked if it would be cheaper to contract a rancher to fix the fence than pay a crew to fix the fence. Pat Keim stated that it would be, but it was not always possible.

Closing by Sponsor:

SEN. DEVLIN stated that the responsibility of the railroad to fix fences was a result of building their railroads on private land. He said they made commitments a long time ago in order to build the railroad. He said that fixing the fence was just one of those commitments.

REP. REHBEIN was asked to carry SB 73 on the House floor.

EXECUTIVE ACTION ON HB 290

Motion: REP. BACHINI MOVED HB 290 DO PASS.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON SB 73

Motion: REP. BACHINI MOVED SB 73 BE CONCURRED IN for the purpose of discussion.

Discussion: REP. BACHINI asked about the 30 day issue and if the railroad would have 60 days to fix the fence. Connie Erickson stated that if the railroad didn't get the fence fixed in 30 days because of the weather, they would have another 30 days to fix the fence. Ms. Erickson stated the bill was a little difficult to read and she did not know for sure if the railroad would have a total of 60 days to fix the fence.

REP. DAVIS suggested SB 73 should be cleaned up.

REP. STOVALL stated that SEN. DEVLIN and the railroad agreed with the terms in the bill, and he felt it was unnecessary to do anything to the bill.

REP. BIRD asked if any of the proponents wanted to address the concerns the committee had regarding the 30 to 60 day notification to fix the fences. Russ Ritter stated that the 30 to 60 day notification was what the railroads and the landowners could work with.

Motion/Vote: SB 73 BE CONCURRED IN.

Vote: The motion carried with REP. BACHINI voting no.

EXECUTIVE ACTION ON HB 183

Motion: REP. DAVIS MOVED TO TAKE HB 183 OFF THE TABLE FOR DISCUSSION. REP. DAVIS stated that he knew a number of people who wanted to discuss this issue on the House floor.

Discussion: REP. LARSON stated that he was in favor of the motion. REP. LARSON stated that the main issue of HB 183 was the cost associated with properly marking the boundaries. He also said that he was seeking a legal opinion on what constitutes a legal boundary and whether to mark an estimated boundary. REP. LARSON stated there were a couple of pieces of legislation that were directly related to this issue. REP. MOLNAR had a bill that would completely revise the recreational use of state lands. REP. LARSON stated that HB 183 would be a part of the two bills and he urged the committee to bring the bill off the table and let it be discussed.

REP. MASON stated that the committee should look at the other bills before they bring HB 183 off the table.

REP. STOVALL stated that REP. MOLNAR'S bill, HB 352, was tabled on February 8 in another committee.

REP. STOVALL stated the committee has proven HB 183 is unworkable and should be left tabled. REP. STOVALL added that HB 183 had nothing to do with managing state lands; what it did do was mark the boundaries.

REP. DAVIS asked how the Department of State Lands leases these lands where the boundaries are not marked and the Department is not sure where the boundaries are located.

Motion/Vote: Take HB 183 off the table

Vote: The motion failed 11 to 5 with REP. DAVIS, REP. ENDY, REP. LARSON, REP. SCHWINDEN, and REP. STANFORD voting yes.

REP. DAVIS asked the committee if he could submit testimony pertaining to SB 88 on the date of the hearing. REP. DAVIS wanted EXHIBIT 3A placed in the minutes of 1/21/93. The committee had no objection.

EXECUTIVE ACTION ON HB 285

Motion: REP. BACHINI MOVED TO TABLE HB 285.

Discussion: REP. SCHWINDEN stated that the Chairman had said at the beginning of the session that a bill would not be tabled before the bill was moved.

REP. BACHINI WITHDREW HIS MOTION.

Motion: REP. SCHWINDEN MOVED HB 285 DO PASS.

Motion: REP. BACHINI MOVED TO TABLE HB 285 DO PASS.

Motion/Vote: Table HB 285

Vote: The motion carried unanimously.

Connie Erickson stated that she had a draft of the committee bill on the llamas and alpacas. Ms. Erickson stated that wherever "llama" appeared in the livestock laws and in the one section of the tax law, the word "alpaca" would be included.

ADJOURNMENT

HOUSE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

February 9, 1993

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Adjournment: 4:20 P.M.



VERN KELLER, Chairman



JAELENE RACICOT, Secretary

VK/jr

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

2/9/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY	✓		
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.	✓		
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING	✓		
REPRESENTATIVE WAYNE STANFORD	✓		
REPRESENTATIVE JAY STOVALL	✓		
CHAIRMAN VERN KELLER	✓		

HOUSE STANDING COMMITTEE REPORT

February 9, 1993

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Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 73 (third reading copy -- blue) be concurred in .

Signed: _____
Vern Keller, Chair

Carried by: Rep. Grinde

Committee Vote:

Yes 15 No 1

0216566C.HDF

HOUSE STANDING COMMITTEE REPORT

February 9, 1993

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Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that House Bill 290 (first reading copy -- white) do pass .

Signed: _____
Vern Keller, Chair

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 2/9/93 BILL NO. NB 183 NUMBER _____

MOTION: TAKE NB 183 OFF THE TABLE.

Motion failed

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON		✓
REPRESENTATIVE BOB BACHINI		✓
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN		✓
REPRESENTATIVE JODY BIRD		✓
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE		✓
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.	✓	
REPRESENTATIVE GARY MASON		✓
REPRESENTATIVE BILL REHBEIN		✓
REPRESENTATIVE SAM ROSE		✓
REPRESENTATIVE DORE SCHWINDEN	✓	
REPRESENTATIVE WILBUR SPRING		✓
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL		✓
CHAIRMAN VERN KELLER		✓

History: En. Sec. 4, Ch. 80, L. 1931; re-en. Sec. 11552.4, R.C.M. 1935; Sec. 94-35-207, R.C.M. 1947; redes. 46-3008 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3008; amd. Sec. 7, Ch. 563, L. 1985; Sec. 81-5-106, MCA 1983; redes. 81-5-110 by Code Commissioner, 1985.

Cross-References

Sale on execution, Title 25, ch. 13, part 7.

81-5-111. Disposition of proceeds. The officer making the sale, after deducting the expenses of keeping the property and the cost of the sale so far as the balance of sale proceeds permit, shall pay all liens, according to their priorities, which are established, by intervention or otherwise in the proceedings, as being bona fide and as having been created without the lienor having any notice or reasonable cause to believe that the vehicle was being or was to be used for the illegal transportation and shall pay the balance of the proceeds to the treasurer of this state to be credited to the department of livestock fund.

History: En. Sec. 2, Ch. 80, L. 1931; re-en. Sec. 11552.2, R.C.M. 1935; Sec. 94-35-205, R.C.M. 1947; redes. 46-3006 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 200, Ch. 310, L. 1974; R.C.M. 1947, 46-3006; Sec. 81-5-107, MCA 1983; redes. 81-5-111 by Code Commissioner, 1985.

Cross-References

Department of Livestock fund, 17-2-106.

Liens — general provisions, Title 71, ch. 3, part 1.

81-5-112. (Temporary) Permit system for transportation of sheep — penalty. (1) The department shall adopt rules imposing a permit system for the transportation of sheep within or out of the state if it finds that a permit system is necessary to prevent theft of sheep. The rules must establish fees commensurate with the department's cost of operating the permit system.

(2) A person who purposely or knowingly transports sheep in violation of rules adopted under subsection (1) is guilty of a misdemeanor and shall be punished by a fine not exceeding \$1,000 or imprisonment in the county jail for a term not exceeding 6 months, or both. (*Terminates September 30, 1993—sec. 4, Ch. 175, L. 1989.*)

History: En. Sec. 1, Ch. 175, L. 1989.

Part 2**Transportation of Sheep
(Repealed. Sec. 2, Ch. 175, L. 1989)****Part Compiler's Comments***Histories of Repealed Sections:*

81-5-201. (1) En. Sec. 1, Ch. 135, L. 1963; amd. Sec. 110, Ch. 310, L. 1974; Sec. 46-809, R.C.M. 1947; (2) En. Sec. 2, Ch. 135, L. 1963; amd. Sec. 111, Ch. 310, L. 1974; Sec. 46-810, R.C.M. 1947; R.C.M. 1947, 46-809, 46-810.

81-5-202. En. Sec. 3, Ch. 135, L. 1963; amd. Sec. 112, Ch. 310, L. 1974; R.C.M. 1947, 46-811; amd. Sec. 13, Ch. 444, L. 1983.

81-5-203. En. Sec. 4, Ch. 135, L. 1963; amd. Sec. 113, Ch. 310, L. 1974; R.C.M. 1947, 46-812.

81-5-204. En. Sec. 5, Ch. 135, L. 1963; amd. Sec. 114, Ch. 310, L. 1974; R.C.M. 1947, 46-813.



State of Montana
Department of Livestock

SHEEP TRANSPORTATION PERMIT^{HB} 880709011

Code

OWNER _____ COUNTY OF ORIGIN _____

DATE

ADDRESS

CITY

STATE

TRUCKING FIRM

DESTINATION

City

State

[illegible]

I hereby certify under the penalty of perjury that I am the owner or the duly authorized agent for the above described sheep and that the same will be delivered to the destination shown.

TOTAL HEAD		FEE	
1	1	1	1
2	2	2	2
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4	4	4	4
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SIGNATURE OF OWNER OR AGENT

This permit is issued under the provision of 81-5-112 (MCA)
BE-12

SIGNATURE OF INSPECTOR

CODE

EXHIBIT 3

DATE 2/9/93

HB 290

STATEMENT OF SUPPORT FOR HB 290 BY GARY GRAVES, ROUNDUP, MONTANA AS
PRESIDENT OF THE MONTANA WOOL GROWERS ASSOCIATION.

House hearing February 9, 1993

Chairman Keller and members of the committee. For the record I am Gary Graves of Roundup, Montana. I am serving as President of the Montana Wool Growers Association and am actively engaged in sheep and cattle ranching on my ranch north of Roundup. I appear here today representing the association in support of HB 290.

Members of the association at the annual convention held last December passed a resolution in support of removing the sunset clause in current law which addresses a mandatory permit to be in the possession of persons transporting sheep across county lines. The majority of the members, many of whom are not experiencing two legged sheep theft, feel that they should support other members who do have the problem of theft. It is the feeling of a majority of the members that without the permit, law enforcement officers have no tool to work with in investigations of sheep theft. This permit allows law enforcement officers----highway patrolmen, sheriffs deputies, livestock inspectors and hopefully soon GWV officers--to question the ownership and destination of sheep being transported. Law officers need "just cause" to stop a vehicle and this permit gives them that "just cause".

As President of the membership of MWGA, I urge you to give this bill a DO PASS recommendation and am willing to answer any questions. I believe that sponsor Chase Hibbard, and spokespersons for the Department of Livestock have adequately covered the necessity for the permit. I also want to tell you that we have seven of the nine member board of directors present to show support of sheep producers across Montana.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Agriculture

COMMITTEE

BILL NO. _____

DATE

2/9/93

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JAMIE DOGGETT	MT Cattlewomen	SB73	
JACK SEDGWICK	DEPT. OF LIVESTOCK	HB290	
Pat Klein	Burlington Brothers	SB72	
Gordon Danterton	Montana R. Holgrens	HB290	
John O'Hara	F C	HB290	
Gary J. Graves	MWGA	HB290	
Larry Pilster	MWGA	HB290	
Wick Whiteside	MWGA	HB290	
JACK McRAE	MWGA	HB290	
Annette Lamkins	MWGA	HB290	
Russ Rutter	MRL	SB72	
Jim [Signature]	MSG A	SB72	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.