

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 2, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: Senator Hager, Senator Toews.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

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

Committee Business Summary:

Hearing: HB 300, HB 292, HB 139
Executive Action: HB 292, HB 300

HEARING ON HB 300

Opening Statement by Sponsor:

Representative Emily Swanson, House District 79, stated HB 300 was a "housekeeping" bill. She stated HB 300 would extend the length of time for a person to apply for a refund of a telephone exchange access from two to five years. She stated the change was included on line 19 of HB 300.

Proponents' Testimony:

Charlotte Maharg, Department of Revenue, stated the Department was in support of HB 300. She stated HB 300 would align the requirements for refunding the "911 fee" with the rest of the taxes administered.

Dan Walker, U.S. West, stated his support of HB 300.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Representative Swanson if there was a problem with the two-year deadline. Representative Swanson stated the extension was to make it more convenient for the consumers.

Closing by Sponsor:

Representative Swanson closed on HB 300.

HEARING ON HB 292**Opening Statement by Sponsor:**

Representative Don Larson, House District 65, stated HB 292 had been drafted at the request of the Public Service Commission (PSC). He stated HB 292 would allow the PSC to have rule making authority over the adoption of the national protection and safety codes, rules, regulations and guidelines. He stated the state had adopted the national rules in 1917, and the utility companies have operated under the guidelines of the national code. He stated the codes need to be updated quite often, and the PSC is asking for rule making authority to adopt the rules without having to go through the legislature.

Proponents' Testimony:

Ivan Evilsizer, Montana Public Service Commission, read from prepared testimony in support of HB 292 (Exhibit #1).

John Alke, Montana/Dakota Utilities, stated his support of HB 292 for the reasons explained by Mr. Evilsizer.

Gene Phillips, Pacific Power and Light (PPL), stated HB 292 is important to PPL and stated his support of HB 292.

Dan Walker, U.S. West, stated his support of HB 292.

Gary Willis, Montana Power Company (MPC), stated MPC's support of HB 292.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Larson stated he would ask Senator Klampe to carry HB 292 on the floor of the Senate if it were to pass Committee.

HEARING ON HB 139

Opening Statement by Sponsor:

Representative Larry Grinde, House District 30, stated HB 139 was brought to him by the surveyors of Montana. He stated MCA 69-450-2 called for the notification of underground utility digging. He stated the surveyors would like to be exempt from the law because they don't dig deep enough to hit utility lines. He stated HB 139 would save the surveyors time. Representative Grinde referred to page 1, line 24 and 25 and stated the surveyors were allowed only to "hand dig for shallow monuments and to no greater depth than 12 inches". He stated the original law was appropriate for underground digging, but the surveyors do not dig deep enough to make it hazardous. He stated the amendments on page 2, lines 3 and 4, were to attain approval through the proper office. He stated there was a liability section placed by the House which would exempt the governing authority and the utility companies.

Proponents' Testimony:

Bill Bucher, Montana Association of Registered Land Surveyors, read from prepared testimony in support of HB 139 (Exhibit #2).

Gary Willis, Montana Power Company (MPC), stated his support of HB 139. He stated the underground transformers are placed at the corner pins of the property. He stated MPC's concern would be if a surveyor were to come off of the corner pins they would like them to assume all risks.

Dan Walker, U.S. West, stated he supported HB 139.

Gene Phillips, PPL, stated his support of HB 139.

John Alke, Montana/Dakota Utilities, stated his support of HB 139.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, read from prepared testimony in opposition to HB 139 (Exhibit #3).

Questions From Committee Members and Responses:

Senator Harding asked Mr. Hill how he would change the title to make it proper. Mr. Hill stated the title refers to "determining liability for damages incurred or suffered by land surveyors", and HB 139 also covers damages caused by the surveyors. He stated the points he stated were an inconsistency in the title.

Senator Rea asked Representative Grinde what type of liability would be covered if the utility lines were buried 24 inches and the surveyors were only digging 12 inches. Representative Grinde stated the concern was if something were to happen, the liability issue had to be addressed. He stated the chances of liability were not high.

Senator Lynch asked Representative Grinde asked if the title needed to be changed. Representative Grinde stated he would leave the title change to the Committee.

Closing by Sponsor:

Representative Grinde closed on HB 139, stating the surveyors weren't doing excavation and should be exempt.

EXECUTIVE ACTION ON HB 292

Motion/Vote:

Senator Harding moved HB 292 be CONCURRED IN. The motion CARRIED UNANIMOUSLY. Senator Klampe was assigned to carry HB 292.

EXECUTIVE ACTION ON HB 300

Motion/Vote:

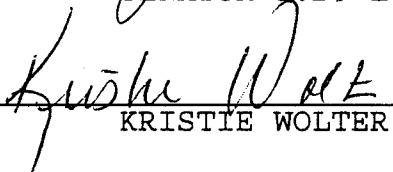
Senator Mesaros moved HB 300 be CONCURRED IN. The motion CARRIED UNANIMOUSLY. Senator Mesaros was assigned to carry HB 300.

ADJOURNMENT

Adjournment: 10:25 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 3/2/92

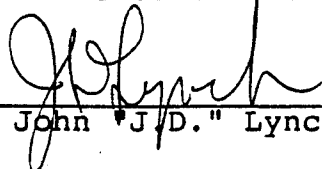
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager		✓	
Senator Harding	✓		
Senator Kennedy	✓	att	
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews		✓	
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 292 (first reading copy -- blue), respectfully report that House Bill No. 292 be concurred in.

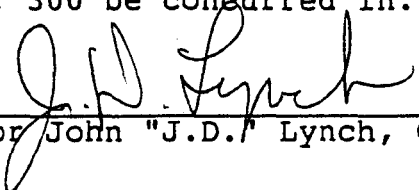
Signed: 
Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 300 (first reading copy -- blue), respectfully report that House Bill No. 300 be concurred in.

Signed: 

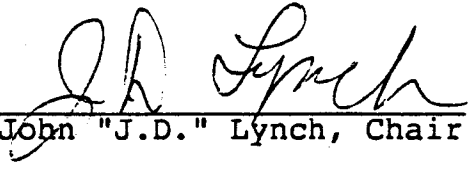
Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 3, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 339 (first reading copy -- blue), respectfully report that House Bill No. 339 be amended as follows and as so amended be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 4.
Following: "EXEMPTING"
Insert: "PETROLEUM"

2. Title, line 6.
Following: "EXEMPTING"
Insert: "PETROLEUM"

3. Page 2, line 2.
Following: "(c)"
Insert: "petroleum"

4. Page 3, line 8.
Following: "of"
Insert: "petroleum"

-END-

 M- Amd. Coord.

Sec. of Senate


Senator Carrying Bill

481520SC.Sma

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 3/2/93

BILL NO. HB 292

HOUSE BILL NO. 292

NATIONAL ELECTRICAL SAFETY CODE

PSC STATEMENT IN SUPPORT

My name is Ivan Evilsizer and I am appearing here today on behalf of the Montana Public Service Commission (PSC) in support of the passage of House Bill No. 292.

This Bill will grant specific rulemaking authority to the PSC, to allow it to adopt revised editions of the National Electrical Safety Code (N.E.S.C.), as periodically published by Institute of Electrical and Electronic Engineers, Inc. This Code sets national standards governing the construction, operation and maintenance of electric supply stations and lines, and communication lines. A revised edition of the Code is usually published every three years. Amendments are made in each edition, in order to enhance the health and safety of the public.

The PSC has the duty to enforce the N.E.S.C. pursuant to Section 69-4-201, MCA. However, the PSC is legally restricted to enforcing the provisions of the 1977 edition of the Code; based upon the 1979 amendments to Section 69-4-201, MCA. The constitutional delegation doctrine prevents either the Montana Legislature or an administrative agency from prospectively adopting revised editions of a Code issued by a private organization. See generally State v. Holland, 37 Mont. 393 (1908) and Lee v. State, 195 Mont. 1 (1981). Therefore, subsequent editions of the N.E.S.C. can only be enacted as Montana law by the

Legislature itself, or an administrative agency pursuant to rulemaking authority delegated by the Legislature.

Since the N.E.S.C. is amended approximately every three years by the N.E.S.C. Code Committee, it would be most efficient for the Legislature to delegate rulemaking authority in this area to the PSC. This Bill would ensure that the appropriate standard in this area can be efficiently adopted as Montana law by PSC rulemaking, and thereby better protect the health and safety of Montana citizens.

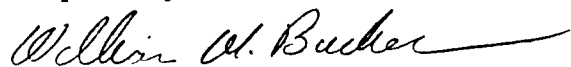
**TESTIMONY IN SUPPORT OF HOUSE BILL NO. 139
PREPARED BY WILLIAM H. BUCHER, P.L.S., REPRESENTATIVE OF
THE MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS**

The Montana Association of Registered Land Surveyors supports House Bill No. 139 which exempts land surveyors who are hand digging for certain purposes from the provision requiring excavators to obtain information on the location of utilities. The existing law requires all persons to obtain information on the location of underground utilities before excavation in public right-of-ways. We feel that this requirement is unduly restrictive to the practice of land surveying and unnecessary for the following reasons:

1. Land Surveyors are required to find existing survey monuments when performing a new survey. These monuments are often located at street intersections or at the edge of public right-of-ways and are often buried.
2. Land surveyors can not predict which street monuments will have to be sought before beginning the survey. Although it may be clear that certain monuments will be required from the beginning, often these monuments are missing and the surveyor must seek further to find adequate monumentation to perform the survey. If surveyors needed to have utilities located at all points that might eventually be used, we would have to have an extensive area marked for utilities or proceed step-by-step over a period of weeks on a survey that should take one day.
3. Utilities are normally buried at depths of 24 inches or greater. The proposed legislation would allow surveyors to excavate to 12 inches which should prevent disturbance of utilities. This is a sufficient depth to find most survey monuments.
4. The proposed legislation clearly states that the surveyor will be liable for damages to public utilities just as any other excavator would be if a utility were damaged. It will be the surveyor's decision to determine if he needs the additional protection of having utilities located before digging.

In closing, we feel that land surveyors need this modification to existing legislation to allow our work to proceed in an efficient, orderly, and legal manner.

Respectfully submitted;



William H. Bucher, P.L.S.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3/2/93
BILL NO. HB 139

Montana Trial Lawyers ASSOCIATION

Directors:

Wade Dahood
Director Emeritus
Monte D. Beck
Thomas J. Beers
Michael D. Cok
Michael W. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Paul M. Warren
Michael E. Wheat

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March 2, 1993

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Governor
Paul M. Warren
Governor

Sen. J.D. Lynch, Chair
Senate Business and Industry Committee
Room 410, State Capitol
Helena, MT 59624

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 3/2/93
BILL NO. HB 139

RE: HB 139

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to those portions of House Bill 139 which alter liability for damages caused by certain land surveyors. MTLA opposes those provisions for several reasons:

1. The first provision regarding liability (page 2, lines 6-9) completely immunizes governing authorities from any responsibility for damages caused by a registered land surveyor, even though the provision immediately preceding it (page 2, lines 3-5) requires that surveyor to "obtain proper approval from the appropriate governing authority regarding safety and pavement repair . . ." [emphasis added] By expressly authorizing registered land surveyors to dig "below the road surface of a highway or at the intersection of the center lines of public streets" (page 2, lines 1-2), HB 139 substantially increases the potential for causing serious bodily injury and property damage in circumstances particularly within the responsibility of government. The Legislature will not encourage governing authorities to properly approve such digging and properly prescribe safety and repair measures if it immunizes those governing authorities which fail to do so.

2. Not even legitimate interests in relaxing procedures for hand digging shallow survey monuments justify the provisions of HB 139 which completely immunize governing authorities, public utilities, municipal corporations and other persons (page 2, lines 6-9; page 2, lines 11-16) for all damages suffered by registered land surveyors or anyone under their supervision. If a surveyor is injured because a governing authority improperly approved of his hand digging without informing him of special dangers within

its knowledge, or because a public utility improperly buried its underground cables or pipelines or allowed them to fall into disrepair, then that governing authority or public utility should be responsible for the consequences of its mistake. This Legislature should not permit special constituencies, even registered land surveyors themselves, to barter away the rights of their peers, their assistants, and others.

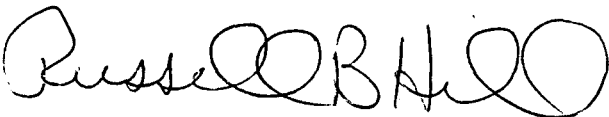
3. By immunizing governing authorities from liability for damages caused by registered land surveyors, HB 139 shifts the entire burden of liability for such damages--and the corresponding increase in liability premiums--onto those surveyors.

4. As originally introduced and posted for hearing, HB 139 contained no language in either its title or body regarding liability for damages. The provisions regarding liability were only inserted after the House Local Government Committee hearing on the bill. Consequently, this hearing before the Senate Business and Industry Committee is the first--and only--opportunity for public hearing on the new liability provisions.

5. The current title of HB 139 refers only to "liability for damages incurred or suffered by land surveyors." However, the new language regarding liability refers not only to damages incurred or suffered by land surveyors but also to damages caused by land surveyors (page 2, line 7). Similarly, the new language regarding liability refers not only to damages incurred or suffered by land surveyors but also to damages incurred or suffered by "any person under the supervision of the registered land surveyor" (page 2, lines 8-9) and "any person under the control of the registered land surveyor" (page 2, lines 15-16). The title of the bill, therefore, fails to give adequate notice of the bill's content to interested citizens.

Thank you for considering these comments. If I can provide additional information or assistance, please contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell B. Hill", with a stylized, cursive script.

Russell B. Hill
Executive Director

DATE March 2, 1993

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 139 HB 292 HB 300

Name	Representing	Bill No.	Check One Support Oppose	
William Bucher	MARLS	139	X	
Chuck Evilsizer	PSC	292	X	
Char Maharg	DOR	300	X	
Bruce Berrett	MDT	139	X	
GENE PHILLIPS	PP&L	139	X	
" "	"	292	X	
Russell B Hill	Mont Inial Lampers	HB 139		✓
Gary Willis	M.P.C.	H.B. 139	X	
" "	"	H.B. 292	X	
John Alke	MDY	HB 292	X	
John Alke	MDY	HB 139	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY