

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on April 6, 1993, at 10:04 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
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. Brown

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: HB 570
Executive Action: NONE

HEARING ON HB 570

Opening Statement by Sponsor:

Representative Grinde, District 30, submitted an amendment. (Exhibit #1) and a handout which compared how other states are involved in this type of legislation. (Exhibit #2) Rep. Grinde submitted a letter he wrote to the editor, which appeared in numerous newspapers around Montana. (Exhibit #3) Rep. Grinde then read an excerpt from the United States Constitution. "No person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation." He also quoted section 29 of the Montana Constitution on eminent domain. "Private property

shall not be taken for public use without just compensation to the full extent of the loss having been first made to or paid into the court to the owner." In 1922 the Supreme Court of the United States recognized that government regulations alone, without physical occupation, could eliminate the value of private property. Therefore, it went beyond the actual physical taking of private property, so if there was economic value loss it would be considered a taking. If there are statutes, rules, or regulations that go beyond the physical occupation of land, government should consider the impacts of constitutionally protected interests of private property ownership. Private ownership of land is important. Private property ownership forms the basis of a free enterprise economy. Rep. Grinde said the taking of private property by government erodes the very foundation of which this country, its principles, freedoms, and economic base. Rep. Grinde argued that HB 570 strengthens the right to own property, which was granted in the United States Constitution and the Montana Constitution. HB 570 would make agencies take a longer look at their actions and how it would affect the citizens of Montana that own private property. HB 570 would head off litigation that could arise in Montana's future because of a growing nationwide trend. Rep. Grinde urged support for HB 570.

Proponents' Testimony:

Senator Beck, District 24, told the Committee that he worked with Rep. Grinde with the hope of protecting private property. Senator Beck told the Committee that several lawsuits have been developed in various states against state government. As a result, there was a change in law. The intent of HB 570 is to identify the impacts on private property. Senator Beck urged the Committee to support HB 570.

Peggy Trenk, Western Environment Trade Association, told the Committee that she was in a committee on the deauthorization of the Endangered Species Act. Ms. Trenk told the Committee that she felt the Endangered Species Act is the toughest national environmental law. Ms. Trenk said the committee would be looking at the changes in the Endanger Species Law to assess what the impact might be on takings or whether it would create taking situations. Ms. Trenk supported HB 570. Ms. Trenk submitted testimony from a group called Grassroots for Multiple Use. (Exhibit #4)

Hertha Lund read from prepared testimony. (Exhibit #5)

David McClure read from prepared testimony. (Exhibit #6)

John Bloomquist, Montana Stockgrowers Association, read from prepared testimony. (Exhibit #7)

Ed Lord, President of the Montana Stockgrowers Association, read from prepared testimony. (Exhibit #8)

Tom Hopgood, Montana Association of Realtors, supports HB 570 because it protects private property rights. Mr. Hopgood urged the Committee to concur in HB 570.

David Owen, Montana Chamber of Commerce, urges the Committee to concur in HB 570.

Don Allen, Montana Wood Products Association, supports HB 570.

Gary Langley, Montana Mining Association, supports HB 570.

Robert Van Deren read from prepared testimony. (Exhibit #9)

Nancy Griffin, Montana Building Industry Association, supports HB 570.

Linda Ellison, Montana Trail Vehicle Riders Association, read from prepared testimony. (Exhibit #10)

James Hanson read from prepared testimony. (Exhibit #11)

Jake Cummins, Farm Bureau, supports HB 570. Mr. Cummins told the Committee that he believes in the fundamental importance of private property to our society and its economy. The protection, which is already afforded for private property in the United States Constitution and Montana Constitution, is often used as a reason why another law protecting property rights should not be passed. However, the citizens of Montana and the United States need to know that basic protections afforded by the constitution have not been forgotten by the elected representatives. Mr. Cummins said it is important that the elected representatives will not let the value of the land, owned by their constituents, be stripped away and given to public interest groups. Mr. Cummins said HB 570 would cost the government \$40,000, which is a small price to ensure against litigation which would cost, he thinks, millions of dollars. Mr. Cummins urges the Committee to concur with HB 570.

Tack Van Cleve told the Committee that 340 years ago his ancestors left Holland because they were deprived of their private property for political reasons. Forty years later, Mr. Van Cleve's ancestors left Long Island and 600 acres because they refused to swear allegiance to the English crown. Mr. Van Cleve told the Committee that his family has since prospered because of private property right protections. Mr. Van Cleve said he strongly supports any measure that would reinforce private property rights.

Don Jules Marchesseault read from prepared testimony. (Exhibit #12)

Dan Davis, Lewis and Clark Farm Bureau, supports HB 570.

John Youngberg, Montana Farm Bureau Federation, read from

prepared testimony. (Exhibit #13)

Opponents' Testimony:

Beth Baker, Department of Justice, submitted information on the regulatory takings law in Montana. (Exhibit #14) Ms. Baker was neither an opponent or proponent.

Stan Bradshaw, Montana Trout Unlimited, told the Committee that he worked for many years as an attorney for a regulatory agency at the state level. Mr. Bradshaw said HB 570 would change substantively takings law. A great deal has been said today about the fundamental importance of private property rights, which Mr. Bradshaw agrees with. However, private property rights have never been absolute. There has been no discussion about how private property is regulated and used. Mr. Bradshaw said there are a number of problems with HB 570. The first problem is the definition of takings. The definition of takings is defined on page 5 of HB 570. "Taking is depriving a property owner of either ownership of the private property or a portion of or all of the economic value of the private property." Mr. Bradshaw said he looked at the Montana cases and could not find anywhere where they use the language "a portion of the economic value." Mr. Bradshaw told the Committee that the definition runs counter to years of judicial doctrine which recognizes the balance between the use of property rights, the responsibility to others, and the police power to protect against irresponsible use. The definition also over simplifies what is applied at the federal and state court level for takings. Takings is not a only a reduction in a portion of the economic value. Courts also look at the remaining use available to the land owner and the nature of interference with the overall rights of the property owner to use the property. Mr. Bradshaw said when legislation interprets the constitution, the courts have an obligation to pay attention to the interpretation. Mr. Bradshaw said if the definition of takings was enacted, the courts would change the existing interpretations. Mr. Bradshaw suggested getting rid of the definition of takings. Mr. Bradshaw said there were also a lot of problems with the assessment requirement. Mr. Bradshaw said liability would be created if HB 570 was passed. If a state agency does not do the assessment or follow the provisions for the assessment, the state could be faced with a claim. Mr. Bradshaw told the Committee that section 4 of HB 570 says that the state "shall" do an assessment. Mr. Bradshaw said "shall" would create a cause of action. The substantive changes for HB 570 would be costly to state and local government. Mr. Bradshaw told the Committee that HB 570 purports to solve a problem that does not exist. Mr. Bradshaw suggested the Committee kill HB 570.

Bob Wood, City of Helena, said the City of Helena opposed HB 570 because of the definition of takings.

Paul Stahl, Deputy Lewis and Clark County Attorney, also opposed

HB 570 because of the definition of takings. Mr. Stahl asked the Committee to leave local government out of HB 570 if it is to be passed.

Don Judge, Montana State AFL-CIO, read from prepared testimony. (Exhibit #15)

Janet Ellis, Montana Audubon Legislative Fund, read from prepared testimony. (Exhibit #16)

Ted Lange, Northern Plains Resource Council, read from prepared testimony. (Exhibit #17)

Jim Jenson, Montana Environmental Information Center, told the Committee that HB 570 is unnecessary. Mr. Jenson said HB 570, as written, was a polluter protection act which denied legitimate public rights and interest in Montana. Mr. Jenson said HB 570 should be defeated.

Bob Barry, Montana Alliance for Progressive Policy, read from prepared testimony. (Exhibit #18)

Jim Emerson opposed HB 570.

Questions From Committee Members and Responses:

Senator Blaylock asked Rep. Grinde about the problems which resulted in HB 570. Rep. Grinde said he looked at the trend that is going on in this country and the amount of litigation over the past five years. Rep. Grinde believes litigation will continue to happen because people are upset with government regulating their lives.

Senator Blaylock asked Rep. Grinde if Montana had a problem with takings. Rep. Grinde said yes. Anytime the government is allowed to regulate the citizens, it is possible for a claim to be filed against the State of Montana.

Senator Blaylock asked Rep. Grinde about the intention of HB 570. Rep. Grinde said HB 570 would reassure private property owners and prevent the state of Montana from entering into a lot of litigation because of rules that were enacted.

Chair Yellowtail asked Mr. Bloomquist about the prohibition denying governmental action in HB 570. Mr. Bloomquist said there was no prohibition.

Senator Doherty told the Committee that he read the Lucas Vs. South Carolina case and that there was discussion about the \$1 million award the State of South Carolina would have to pay. Senator Doherty asked Beth Baker if Lucas Vs. South Carolina was remanded to a lower court to make a determination of whether all economic use had been taken. Ms. Baker said yes.

Senator Doherty asked Ms. Baker about the payment in the Lucas case. Ms. Baker said South Carolina did not have to pay as a result of the Supreme Court decision. Ms. Baker was not aware of any further developments in the Lucas case.

Senator Doherty asked Kathern Orr, Department of Health, about the fiscal note. Ms. Orr said the Department of Health drafted the fiscal note. In order to do an assessment, it would take about 40 to 80 hours per rule set and about eight to sixteen hours to do an assessment.

Senator Doherty asked Rep. Grinde about the right of mining companies to condemn private land. Rep. Grinde said mining companies would have to compensate those people whose land was taken.

Senator Doherty asked Rep. Grinde if mining companies should be allowed to make money with the property they condemn. Rep. Grinde said that under law, mining companies would have a right to make money on the property.

Senator Rye asked Mr. Bloomquist about takings in Montana. Mr. Bloomquist told the Committee that there was a partial taking recognized in Billings as a result of a change in the zoning. Mr. Bloomquist told the Committee that there have been several takings claims in other states.

Senator Rye asked Ms. Baker about striking section 6. Ms. Baker told the Committee that section 6 was removed so there would be no cause of action for damages and its removal would give the Department of Justice relief as a state agency. However, HB 570 provides that a state agency shall prepare an assessment and failure to do that could well result in further legal action against the state.

Chair Yellowtail asked Ms. Lane about a cause of action brought against the legislature. Ms. Lane told the Committee that the legislature would be subject to different rules than those applied to a state agency. Legislative immunity would apply and protect the legislature from a cause of action.

Senator Grosfield asked Mr. Bloomquist about the definition of takings. Mr. Bloomquist said the Montana Constitution is more expansive, in the area of takings with reference to damages, than the United States Constitution. Damaging implies a partial taking and has been looked at by courts in two instances in Montana. One case in 1903 and the other in 1992 referred to diminution of value as compensable under the Montana Constitution. Mr. Bloomquist said there was an effort to show the definition in the bill. The bill is not trying to expand what the definition of a taking. The language was added that as the Montana Supreme Court would interpret the constitution would be the guidelines what takings would be.

Senator Grosfield asked Mr. Bloomquist if the intent of HB 570 was not to expand the definition of takings beyond what was already established by the Supreme Court definition. Mr. Bloomquist said correct.

Chair Yellowtail asked Mr. Bloomquist a hypothetical question. "Supposing there is a taking under the Streamside Management Zone Act, would there be relief under HB 570 or where would the offended party seek relief?" Mr. Bloomquist said if the party pursued a takings claim the relief would be with the courts under the constitution.

Chair Yellowtail asked Mr. Bloomquist about relief under HB 570. Mr. Bloomquist told the Committee that HB 570 would not provide any new relief.

Senator Bartlett asked Rep. Grinde about the inconsistencies with HB 570 when talking about use and value. Rep. Grinde said he would like to work with the Committee on the inconsistencies.

Senator Bartlett asked Rep. Grinde about use and value. Rep. Grinde told the Committee that "use" would determine the takings process and "value" would determine the value of what would be compensated.

Senator Bartlett asked Rep. Grinde if assessments would need to be done if governmental actions enhanced someone's property value. Rep. Grinde said yes.

Closing by Sponsor:

Rep. Grinde told the Committee that HB 570 was not introduced for political purposes. Also, if HB 570 passes, it would not require the government to look at rules or laws that are presently on the books as Mr. Judge indicated. Rep. Grinde told the Committee about a study conducted by the Soviet Academy of Sciences. Four questions were asked to the people in the Soviet Union. "Do you want complete freedom of press, radio, and television?" 58% responded yes. 36% responded no. "Do you want Russia to be able to govern itself and succeed from the USSR?" 70% said yes. 19% said no. "Do you want a form of government other than socialism?" 70% said yes. 17% said no. "Do you want private property ownership of the land?" 85% said yes. Rep. Grinde said private property ownership of the land was very important to the Soviet people. Rep. Grinde said private property ownership is very important to the people of the United States. The type of property system that our country has is what makes us so great as compared to other nations. HB 570 would protect Montana homeowners, businessmen, farmers, and ranchers from takings that could occur in the future. Rep. Grinde said the right to own property is the American dream. Rep. Grinde quoted from an article he ran across while researching for HB 570. "In our communist system everything resembled one huge enterprise. It

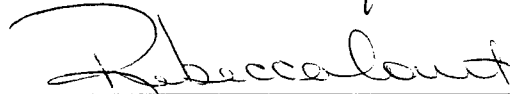
somehow did hold in one piece. It did go on working, but now we know that it did not operate to well. Now we know that private property is the right solution and the right system." Rep. Grinde urged the Committee to concur with HB 570.

ADJOURNMENT

Adjournment: 11:51 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE

4-6-93

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		

FC8

Attach to each day's minutes

PROPOSED AMENDMENT
HOUSE BILL 570
THIRD READING COPY

1. Page 4, line 21.
Following: "over"
Insert: "service," line 22.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 4-6-93

BILL NO. HB 570

State Legislation Protecting Property Rights

Side by Side Comparison

	Idaho - SB 1439 (1992)	Arizona - SB 1005 (1992)	Maryland - SB 289 (1991)	Vermont - SB 120 (1990)
Short Title:	Idaho Regulatory Takings Act	None	Maryland Private Land Rights Protection Act	Vermont Private Property Protection Statute
Agencies Covered:	State Executive Branch	State Executive Branch	State Legislative and Executive Branches	All "governmental units" within the State
Private Property Defined:	Real Property protected by Constitution	Real or Personal Property protected by Constitution	Real Property protected by Constitution	Real Property
How "Takings" Determined:	Attorney General develops guidelines	Attorney General develops guidelines with the following statutory guidance: <ul style="list-style-type: none"> burden-of-proof lies with State agencies, all physical invasions or diminutions in property value are suspect takings can be "partial" or "temporary" public health and safety regulations are given latitude, but must meet minimum requirements delays in "normal government processes" may constitute a taking takings are "inadvertent" and are not contingent on an agency's prior intent to acquire property 	Attorney General develops guidelines <div> <div>COMMITTEE ON PROPERTY RIGHTS</div> <div>COMMITTEE NO. 2</div> <div>DATE 4-6-93</div> <div>FILE NO. HB 570</div> </div>	Defined in statute as any regulation producing a 50% diminution in "fair market value."
Annual Review?	Yes	Yes	Yes	No
Who makes determination:	An employee appointed within each Agency	An Assistant Attorney General appointed for each agency	An Assistant Attorney General who is counsel for each agency	State Courts
Alternatives to taking:	Must consider if State's "legal obligations" would be satisfied, but impact on property owner and risk of taking are reduced	Must consider if "legal obligations" would still be satisfied, impact on property owner and the risk of taking are reduced	Must consider if State's "legal obligations" would be satisfied, but impact on land owner and risk of taking are reduced	"Regulatory rollback", or relaxing of regulations allowed for governmental units unwilling to pay takings claim

Disposition of determination:	Submitted to Agency Director and appropriate financial management authority before new regulation can take effect	Submitted to Governor and Joint Budget Committee before new regulations can take effect	Legislative: Attached to any bill under consideration, without which no committee vote may be taken, Executive: Submitted to the Secretary or Director of the State Agency and the Secretary of Budget and Fiscal Planning before new regulation is implemented	If a taking is found, proof of claim is established; if no taking found, plaintiffs claim is dismissed
Is determination requirement retroactive to previously issued regulations?	No	No, with regard to rule-making generally, Possible application to existing licensing and permitting activities, as well as any existing dedications or exactions from owners of private property	No	Yes
Emergency Clause?	No	Yes, determination may be made subsequent to the effective date of an emergency rule-making if there is an immediate threat to health and safety	No	No
Source of funding identified:	By regulating agency making determination, out of own budget	By Assistant Attorney General making determination, out of regulating agency's budget	By regulating agency in budget submissions to the Governor, and by the Governor in annual budget for the State	None
Other:	Effect of takings should be reflected in value assessments for property taxes, etc.	Statutory criteria governing all rule-makings generally: <ul style="list-style-type: none"> • permit conditions must relate to reason for permit • penalties must be proportionate to harm or damage • the length of time in governmental processes should be kept to a minimum • health and safety regulations should meet minimum risk avoidance justification 	None	Governmental units are prohibited from seeking conditional waivers of rights to compensation under the Act The statute of limitations for rights under the Act is the same as for ordinary actions resulting from equivalent injuries to real property

A bill for private property

This article addresses a piece of legislation I believe in very strongly. As a rancher, citizen of Montana, businessman, representative to Central Montana, and the House Majority Leader. I am sponsoring House Bill 570, Private Property Assessment Act.

To set the record straight, my bill does not encourage litigation. Representatives Toole, Harper and others who voice that opinion are misinformed of the bill's purpose. HB570 does not create one iota of increased litigation and is in fact designed to prevent expensive takings litigation. Litigation that would cost both the taxpayers and the property owners lots of money.

The sole purpose of HB570 is to get government entities to take a look before they leap and violate either the Montana or the United States Constitution. Takings law is well established in constitutional law. In the latest Supreme Court decision on takings law, South Carolina ended up compensating a landowner almost \$2 million for his losses due to a government regulation that went too far. If South Carolina would have had legislation such as HB570, it is very likely that the state would not have had to shell out almost \$2 million in compensation.

HB570 DOES NOT enhance current takings law; it simply requires government entities to assess their actions before they expose the state to huge takings claims. My bill is patterned after the presidential order on takings, which was written by past Assistant Attorney General Roger Marzulla. Mr. Marzulla said he wrote the order after litigating hundreds of cases to enforce the Clean Air Act, the Clean Water Act, the National Environmental Policy Act and many others. He realized that regulations were starting to cross the takings threshold set by the Supreme Court. Marzulla said, "environmental protection need not suffer from compliance with Rights. Whether environmental enforcement can retain its vitality in the face of constitutional limitations depends upon the creativity and dedication of those who administer such programs throughout government."

Note that these constitutional limitations are not



REP. LARRY GRINDE of Lewistown is majority floor leader of the Montana House of Representatives.

neous assumptions. It seems as though private property is at the nexus of an ongoing value battle between those who own land and those who want to control what others own. Those who own land believe that they know best how to care for that land and that they paid for that right.

I am a strong believer in personal ownership versus community ownership as the best way to protect the environment.

History has proven over and over again that private property ownership is by far the most successful means to ensure property will be cared for and improved.

To some this may seem a black and white issue; evil versus good. I don't believe it is only big business, the mining industry, agri-business or evil corporate interests that support property rights. I have been contacted by literally hundreds of Montana citizens who support my bill. These supporters don't understand why some environmental groups and media stories portray them as being evil and wanting to trash the environment. This is not fact.

CITIZENS WHO SUPPORT HB570 are simply people who are concerned that government regulation is on the verge of going too far and violating liberties guaranteed by the United States Constitution. Many of the supporters believe they can care for property better than government bureaucracy. They are strong supporters of a clean, healthy environment; however, I believe that private ownership versus central government control is by far the proven method to succeed.

My bill makes the state government more accountable for their actions. HB570 does require government entities to take into consideration all the facts before regulating. It is my hope HB570 will alleviate the state from continuing to have to go to court and paying millions of dollars to mistreated landowners of Montana.

YOUR TURN

'It makes government accountable, and will prevent litigation'

newly created; the limitations date back to the conception of the United States and the Montana Constitutions. Our forefathers and many other great leaders declared the right to own property as central to all liberties. My bill does not create a new right to property or even enhance existing rights. HB570 simply requires government entities to examine certain actions to see if those actions violate constitutional takings law.

The purpose of the bill is to nip takings suits in the bud before the state ends up paying out millions of dollars for unwarranted, unplanned takings of private property. I am well aware of, and agree with nuisance law that allows the state to use police power to intervene in the use of private property. Nuisance law will still protect those situations when state action is needed to protect the public health and welfare.

I have heard many arguments against my bill and most are simply **SENATE JUDICIARY COMMITTEE**

EXHIBIT NO. 3

DATE 4-6-93

BILL NO. HB570

TO USE
— NOT ABUSE



TO CONSERVE
— NOT PRESERVE

PLEASE REPLY TO:
1034 Hamilton Heights
Corvallis, MT 59828
PH: 406-961-3300
FAX: 406-961-4770

April 3, 1993

The Honorable Bill Yellowtail, Chairman
Montana Senate Judiciary Committee
Montana State Capitol, Room 325
Helena, Montana 59620

Dear Mr. Chgairman and Committee Members:

My name is Merle Lloyd, Executive Director, Grassroots for Multiple Use, Incorporated in Montana and Idaho, where we have more than 2,000 members.

We urge you to vote favorably on H.b. 570. This is very important to the recognition and preservation of Private Property Rights and to protection of legitimate investments and the well being of the State of Montana.

Hurried decisions by Agencies of Government, without due consideration to all possible results of their actions, can cause citizens loss of investment, hardship and despair. At present, the only avenue for the citizen is costly litigation, using Executive Order 12630, which might end as being very expensive for the State and the taxpayer. HB 570 paves the way to lessen hasty decisions and offers method of settlement.

Respectfully submitted,

Merle D. Lloyd

Merle D. Lloyd
Executive Director

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MDL*
MDL/a

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 4-7-93
BILL NO. HB 570

EXHIBIT NO. 5
DATE 8-6-93
BILL NO. HB570

Testimony on HB 570 before the Senate Judiciary Committee

Chairman Yellowtail and members of the committee, I am Hertha Lund a law school student at the University of Montana. Before going to law school, I worked for four years as a journalist. The most recent one and half years were spent working in Washington D.C. writing on public policy issues affecting agriculture. During my work in Washington D.C., I had a first ring seat to watch the private property rights debate unfold at the national level. I heard the oral arguments when the Supreme Court decided a trilogy of property rights cases last year and I attended hearings in the House and Senate where the issue was debated.

I understand that in debate in the House, some members thought this legislation was ahead of its time, or a solution looking for a problem. I would suggest that those members are simply not aware of the recent Supreme Court decisions, nor are they aware of how timely it is to address this problem now, before the state is saddled with a million dollar award as was South Carolina in the Lucas case. Lucas was the most recent Supreme Court decision, in which the landowner, David Lucas, was awarded almost \$2 million in compensation for a taking caused by a Coastal Commission regulation.

To me, it is a bit cavalier to suggest that the state of Montana should have to pay out millions of dollars in compensation before the legislature requires government entities to assess their actions before they take them. It is simply common sense to "look before you take."

Some may wonder why we need this legislation in Montana, since we have had only a handful of takings cases in the past five years.. Well, the answer is again very simple. In law school one of my professors said we used to be in the era of common law, then it was the era of legislation, and now, she went so far as to say that we are in the era of regulation law. Today we have more and more regulations affecting our lives. In 1990 alone, the federal government issued more than 63,000 pages of new, revised and proposed administrative regulations. This does not include state and local ordinances and regulations. A side note, we could save the forests and workers at the same time, if we didn't use up so many logs for paper to print all of the regulations.

To further illustrate the growth in controversy because of the huge increase in regulations at every level of government, this year there are 120-150 takings cases sitting before the U.S. Court of Federal Claims, compared to 52 in 1991. Granted, these are not Montana cases. However, to suggest that the state of Montana does not bear the same amount of liability is to suggest that the state of Montana does not have ever increasing regulations. Montana is at the tip of the iceberg. The Montana takings law is stronger than the United States law and the court has awarded takings claims. Looking at the Montana Supreme Court's history and the recent Supreme Court's

decision in Lucas, we can predict that there will be takings awards in Montana if regulations go too far and take private property. Hopefully, wise legislators will enact legislation that requires government entities to at least consider whether their regulations are going to cost the taxpayers millions of dollars before they act. Crafters of property rights legislation do not intend to stop government regulation. The goal is to provide the government protection all Montanans want, while protecting constitutional guarantees and the treasury. It may call for creativity, but it can be done.

Another argument I have heard against the bill, is that it would create legislation. Maybe I am only a first year law student, but I don't get it. If I wanted to create work for my future, I would lobby hard against this bill because by the time I get out of law school the trend of ever increasing regulation most likely will have ripened many takings cases against the state of Montana. Being a smart lady, who wants a ranch again, I could take cases on a contingency fee basis. Instead of asking for one-third of the monetary award, maybe I could simply have property owners deed me some land. However, if this bill passes, there should be no unplanned takings cases. Government entities will have assessed their actions and will not be exposing the government to takings claims. Note I said there should be no unplanned takings. If the government wants to take property, this bill will not stop that action. This bill does not extend or tighten current law, it simply requires government agencies to look before they take. As you can see, I am working against my own best interests as a budding lawyer, but I suppose landowners and taxpayers interests are more important. I'll just have to make my first million elsewhere.

Today you will hear various testimony about how this bill will create red tape, prohibit clean water, impede protection of wildlife habitat, and just play general havoc on all Montanans. Simply ridiculous. After watching public policy at the state and federal level for the last ten years, I am still amazed at how people can say such things not based on fact; however, I am beginning to understand. During a special brown bag luncheon at the law school, lawyers who work in the natural resource area of law addressed law school students. An interesting contrast arose between lawyers working on the environmental movement side and the defense side. When asked what was the best background for prospective lawyers to have, the defense-side lawyer answered that it was best to have a strong background in science. The environmental movement lawyers said it was best to have a background in shaping public policy, lobbying, or working for a senator or congressman. PR types of jobs, not science. This suggests to me that one side is based on emotion and not science. In a recent taped version of an environmental movement meeting on the East Coast, the discussion evolved around how they had to keep on portraying the grassroots movement that wanted protection of property rights as extremists. The speakers at the meeting recognized that it was just grassroots Americans who were supporting property rights; however, they also recognized that they would lose the public policy argument if they didn't use emotionalism and contort the facts. The reality is that most Americans are environmentalists, yet

they don't want to be regulated out of their constitutional guarantees that make this country the greatest place on earth.

If you base your actions on common sense, reality and common law, there is no way you can go against this bill. I urge you to quickly pass HB 570 in order to create a government process to assess government actions before the taxpayers end up paying for something they didn't bargain for, like a several million dollar takings claim against the state of Montana.

EXHIBIT 5
DATE 4-6-93
HB 570



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 4-6-93

BILL NO. HB 570

PRESIDENT DAVE MCCLURE

TESTIMONY ON HB-570

MONTANA PRIVATE PROPERTY ASSESSMENT ACT

SENATE JUDICIARY COMMITTEE

APRIL 6, 1993

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM DAVE McCLURE, PRESIDENT OF THE MONTANA FARM BUREAU FEDERATION AND A BOARD MEMBER OF THE AMERICAN FARM BUREAU FEDERATION. THE AMERICAN FARM BUREAU FEDERATION REPRESENTS MORE THAN 4 MILLION MEMBERS FROM THROUGHOUT AMERICA, IN MONTANA WE HAVE MORE THAN 4,500 MEMBER FAMILIES.

MY WIFE AND I RUN A DIVERSIFIED FARMING OPERATION 10 MILES WEST OF LEWISTOWN. AS THE REPRESENTATIVE OF MONTANA FARM BUREAU MEMBERS , A LANDOWNER AND A TAXPAYER, I STRONGLY SUPPORT H.B. 570.

IT IS IMPORTANT TO THE ECONOMY IN MONTANA THAT GOVERNMENT ENTITIES BE REQUIRED TO ASSESS THEIR ACTIONS BEFORE A TAKING OF PRIVATE PROPERTY OCCURS. THIS LEGISLATION IS A WISE LOOK AHEAD TO STOP UNPLANNED, UNWARRANTED GOVERNMENT SPENDING FOR UNWISE REGULATION OF PRIVATE PROPERTY.

IF SOUTH CAROLINA WOULD HAVE HAD SUCH LEGISLATION IN PLACE, THE STATE WOULD NOT HAVE BEEN HIT WITH AN UNBUDGETED TAKINGS COST OF ALMOST \$2 MILLION. IN THAT SITUATION, A PRIVATE LANDOWNER, DAVID LUCAS, PLANNED TO BUILD TWO HOUSES ON BEACH-FRONT LOTS. IN THE MEANTIME, THE STATE GOVERNMENT PASSED LEGISLATION THAT FORBID BUILDING THAT CLOSE TO THE OCEAN, EVEN THOUGH LOTS ON EITHER SIDE OF LUCAS'S LOTS HAD HOUSES UPON THEM. THE SUPREME COURT RULED THAT THE LEGISLATION RESULTED IN A TAKING OF PRIVATE PROPERTY AND THEREFORE THE STATE OF SOUTH CAROLINA HAD TO COMPENSATE DAVID LUCAS.

LUCAS IS JUST ONE OF MANY LANDOWNERS, WHO WILL NOT STAND FOR UNWARRANTED, UNCOMPENSATED TAKING OF PRIVATE

PROPERTY. I AND OTHER LANDOWNERS WOULD GO TO COURT, IF THE GOVERNMENT TOOK OUR LAND WITHOUT DUE COMPENSATION. THIS LEGISLATION WOULD WARD OFF FUTURE TAKINGS LAWSUITS. THIS WOULD SAVE THE GOVERNMENT AND LANDOWNERS THE UNNEEDED EXPENSE OF LITIGATION.

SOME WILL MOST LIKELY SAY THAT REQUIRING THE GOVERNMENT TO ASSESS THEIR ACTIONS WILL RESULT IN ENVIRONMENTAL DEGRADATION. THAT IS SIMPLY RIDICULOUS. H.B. 570 WILL NOT CHANGE CURRENT OR FUTURE GOVERNMENT REGULATION TO PROTECT THE ENVIRONMENT. IT WILL SIMPLY REQUIRE GOVERNMENT AGENCIES TO ASSESS THEIR ACTIONS TO KEEP THEM WITHIN BOUNDS OF THE MONTANA AND THE UNITED STATES CONSTITUTIONS. PRIVATE PROPERTY RIGHTS ARE PROTECTED BY BOTH DOCUMENTS AND RECENT SUPREME COURT DECISIONS INDICATE THAT THE PROTECTION OF PRIVATE PROPERTY WILL BE UPHOLD JUDICIALLY. H.B. 570 WILL KEEP GOVERNMENT FROM OVERSTEPPING CONSTITUTIONAL BOUNDARIES WHILE UPHOLDING LEGISLATIVE INTENT.

THIS BILL WILL NOT INTERFERE WITH GOVERNMENT ACTION OR REGULATION; HOWEVER, WE DO WANT GOVERNMENT TO ASSESS ACTIONS BEFORE CAUSING LANDOWNERS AND THE STATE TO ENTER INTO LENGTHY, EXPENSIVE COURT BATTLES.

ON A SIDE NOTE, AS A LANDOWNER I WOULD SUBMIT THAT PRIVATE OWNERSHIP IS STILL THE BEST WAY TO PROTECT PRIVATE PROPERTY. I AM AN ENVIRONMENTALIST AND I AM CONCERNED ABOUT THE CONDITION OF MY LAND. I HAVE NOT SEEN WHERE GOVERNMENT REGULATION HAS RESULTED IN GREAT ENVIRONMENTAL BENEFITS. I HAVE SEEN MY LAND AND MY NEIGHBORS LAND IMPROVE THROUGHOUT THE YEARS AS WE LABOR TO PASS ON, TO OUR CHILDREN, LAND IN BETTER CONDITION THAN WHEN WE ACQUIRED IT. IT IS IMPORTANT

TO MOST LANDOWNERS TO PASS ON CHERISHED LAND IN IMPROVED CONDITION TO OUR CHILDREN.

ON THE CONTRARY, IN COUNTRIES WHERE THE GOVERNMENT DID NOT GUARANTEE PRIVATE PROPERTY RIGHTS THE LAND DIMINISHED IN ENVIRONMENTAL VALUE. JUST LOOK AT THE SOVIET UNION AND EASTERN EUROPE TO SEE GOVERNMENTAL REGULATION AND CONTROL GONE AMUCK. HISTORY HAS PROVEN THAT PRIVATE OWNERSHIP IS THE BEST WAY TO PROTECT THE ENVIRONMENT.

AS THE ENGLISH AUTHOR, ARTHUR YOUNG, ONCE SAID, "GIVE A MAN THE SECURE POSSESSION OF BLEAK ROCK, AND HE WILL TURN IT INTO A GARDEN; GIVE HIM A NINE YEARS LEASE OF A GARDEN, AND HE WILL TURN IT INTO A DESERT." THE MAGIC OF PROPERTY OWNERSHIP TURNS SAND INTO GOLD.

THE PRIVATE PROPERTY ASSESSMENT ACT IS NEEDED TO HELP CURB GOVERNMENT OVER-REGULATION OF PRIVATE PROPERTY. THE LEGISLATURE SHOULD AFFIRM THAT PRIVATE PROPERTY RIGHTS ARE PROTECTED SO THAT PROPERTY OWNERS WILL CONTINUE TO IMPROVE, CONSERVE, AND INVEST IN THEIR PROPERTY INTERESTS.

ALL ACROSS AMERICA, 30 STATES ARE OR HAVE CONSIDERED SIMILAR LEGISLATION. ARIZONA AND DELAWARE PASSED LEGISLATION LAST YEAR WHILE THE STATE OF WASHINGTON ALREADY HAD SIMILAR LEGISLATION ON THE BOOKS. IT IS A NATURAL, COMMON SENSE APPROACH TO PROVIDE A BALANCE BETWEEN GOVERNMENT REGULATIONS AND CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS. I PREDICT THAT IN YEARS TO COME, THOSE STATES THAT THOUGHT AHEAD TO REQUIRE SUCH ASSESSMENTS ARE GOING TO REAP FISCAL BENEFITS FOR THEIR WISDOM.

TO QUOTE FROM THE U. S. EXECUTIVE ORDER, "RESPONSIBLE FISCAL MANAGEMENT AND FUNDAMENTAL PRINCIPLES OF GOOD

GOVERNMENT, REQUIRE THAT GOVERNMENT DECISION-MAKERS EVALUATE CAREFULLY THE EFFECT OF THEIR ADMINISTRATIVE, REGULATORY, AND LEGISLATIVE ACTIONS ON CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS. EXECUTIVE DEPARTMENTS AND AGENCIES SHOULD REVIEW THEIR ACTIONS CAREFULLY TO PREVENT UNNECESSARY TAKINGS AND SHOULD ACCOUNT IN DECISION-MAKING FOR THOSE TAKINGS THAT ARE NECESSITATED BY STATUTORY MANDATE."

IT HAS BEEN SAID THAT THE RIGHT TO OWN AND CONTROL PROPERTY IS THE FOUNDATION OF ALL OTHER INDIVIDUAL LIBERTIES. THE SUPREME COURT HAS SAID, "PROPERTY DOES NOT HAVE RIGHTS. PEOPLE HAVE RIGHTS. THE RIGHT TO ENJOY PROPERTY WITHOUT UNLAWFUL DESTRUCTION, NO LESS THAN THE RIGHT TO SPEAK OR THE RIGHT TO TRAVEL, IS IN A TRUTH A PERSONAL RIGHT ...IN FACT, A FUNDAMENTAL INTERDEPENDENCE EXISTS BETWEEN THE PERSONAL RIGHT TO LIBERTY AND PERSONAL RIGHT TO PROPERTY."

EVEN THOUGH THIS LEGISLATION WILL NOT STRENGTHEN OR EXTEND EXISTING TAKINGS LAW, IT WILL HELP ALL PROPERTY OWNERS AND ALL CITIZENS OF MONTANA BECAUSE IT WILL REQUIRE THE GOVERNMENT TO KNOW THE RESULTS OF GOVERNMENT ACTIONS BEFORE SADDLING THE STATE WITH A HUGE COMPENSATION BILL.

WE IN FARM BUREAU STRONGLY SUPPORT H.B. 570, AS A RESULT OF ITS POTENTIAL TO WARD OFF EXPENSIVE LITIGATION AND ITS POTENTIAL TO PROTECT AGAINST AN UNPLANNED, UNWARRANTED DRAIN ON THE PUBLIC TREASURY.

SINCERELY,

DAVID McCLURE, PRESIDENT MONTANA FARM BUREAU FEDERATION

EX-103 6
4-6-93
HB 570

TESTIMONY ON HOUSE BILL 570
ACT REQUIRING AN ASSESSMENT OF GOVERNMENTAL
ACTIONS THAT AFFECT USE OF PRIVATE PROPERTY
SENATE JUDICIARY COMMITTEE
APRIL 6, 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS JOHN BLOOMQUIST, I AM THE ATTORNEY AND SPECIAL ASSISTANT FOR THE MONTANA STOCKGROWERS ASSOCIATION. THE MONTANA STOCKGROWERS ASSOCIATION IS AN ORGANIZATION OF OVER 3,500 RANCHERS AND PROPERTY OWNERS LOCATED THROUGHOUT MONTANA. I AM TESTIFYING BEFORE YOU TODAY IN SUPPORT OF H.B. 570.

THE STOCKGROWERS SUPPORT OF THIS LEGISLATION STEMS FROM THE PROCESS THAT IT CREATES. THIS BILL, IN PROVIDING AN ASSESSMENT BY GOVERNMENT ENTITIES WHEN THEY TAKE ACTION WHICH AFFECTS THE USE OF PRIVATE PROPERTY WHICH MAY RESULT IN A COMPENSABLE TAKING, CREATES AN IMPORTANT PROCESS NECESSARY IN GOOD GOVERNMENT PLANNING. IN OTHER AREAS, GOVERNMENT ACTIONS ARE ANALYZED AND PROCESSES EXIST FOR PLANNING THE IMPACTS OF THOSE ACTIONS ON CERTAIN AMENITIES. FOR EXAMPLE, WHEN GOVERNMENT TAKES AN ACTION WHICH AFFECTS THE QUALITY OF THE HUMAN ENVIRONMENT, AN ANALYSIS IS PREPARED FOR ANALYZING ENVIRONMENTAL IMPACTS. THIS PROCESS UNDER MEPA (MONTANA ENVIRONMENTAL POLICY ACT), AND OTHER PROCESSES AND ANALYSIS DONE BY GOVERNMENT ENTITIES ARE IMPORTANT IN PLANNING THE OVERALL RAMIFICATIONS OF GOVERNMENTAL ACTION. THIS BILL REPRESENTS THE PLANNING PROCESS WHEREBY GOVERNMENT ENTITIES ANALYZE THE AFFECTS OF THEIR ACTIONS ON PRIVATE PROPERTY INTERESTS. THE ANALYSIS PRESCRIBED IS NOT OVERLY BURDENSOME AND WILL BE BASED UPON TESTS DEFINED BY THE MONTANA AND U.S. SUPREME COURTS. SUCH A PROCESS DOES NOT PRESENTLY EXIST AND IS OFTEN OVERLOOKED BY GOVERNMENT ENTITIES WHEN ENACTING STATUTES AND RULES.

THIS BILL REPRESENTS AN IMPORTANT AND NECESSARY PLANNING PROCESS FOR GOVERNMENT. BECAUSE PRIVATE PROPERTY INTERESTS ARE CONSTITUTIONALLY PROTECTED UNDER BOTH THE UNITED STATES AND MONTANA CONSTITUTIONS, AND BECAUSE ACTIONS TAKEN BY GOVERNMENT WHICH REQUIRE COMPENSATION FOR THE TAKING OF PRIVATE PROPERTY MAY SUBJECT THE PUBLIC TREASURY TO LIABILITY, THIS BILL CREATES A TOOL FOR GOVERNMENT TO PLAN ITS ACTIONS. AS THE BODY OF REGULATORY TAKINGS LAW EXPANDS, AND AS PUBLIC FINANCES DWINDLE, NOW IS THE TIME FOR GOVERNMENT ENTITIES TO ANALYZE THE POTENTIAL FISCAL IMPACTS OF THEIR ACTIONS SHOULD PRIVATE PROPERTY INTERESTS BE IMPACTED.

VERY SIMPLY THAT IS THIS BILL. THE BILL IS A PLANNING PROCESS, A TOOL FOR ANALYSIS, AND CREATES A PROCESS SIMILAR TO OTHER GOVERNMENT ASSESSMENTS. THIS BILL DOES NOT EXPAND IN ANY MANNER LIABILITY TO GOVERNMENT. THIS BILL WILL NOT DEFINE WHEN COMPENSATION IS DUE, AS THAT IS A COURT'S DECISION AS SUCH A FINDING IS A CONSTITUTIONAL INTERPRETATION. THE BILL DOES NOT STRENGTHEN EXISTING TAKINGS LAW BUT SIMPLY PROTECTS GOVERNMENT AND INDIVIDUALS FROM UNPLANNED TAKINGS OF PRIVATE PROPERTY. THE BILL WILL NOT WEAKEN GOVERNMENT REGULATION IN ANY MANNER. IN FACT, REGULATION IMPOSED BY GOVERNMENT WHICH IMPACTS PRIVATE PROPERTY WILL BE MORE PLANNED AND CONSIDERED UNDER THIS BILL.

THE OPPONENTS OF THIS BILL MAY ALSO STATE THAT THIS PROCESS CREATES MORE "RED TAPE" AND IT WILL BE A TREMENDOUS EXPENSE TO GOVERNMENT. WHILE AN ANALYSIS IS REQUIRED, MOST GOVERNMENT ENTITIES HAVE ON HAND STAFF ATTORNEYS COMPETENT TO PROVIDE GUIDELINES FOR THE ASSESSMENT PROCESS. THE BILL IN FACT COULD SAVE STATE FUNDS RATHER THAN COSTING IT DOLLARS. UNPLANNED TAKINGS, OR UNANALYZED GOVERNMENT ACTIONS WHICH RESULT IN COMPENSABLE TAKINGS, MAY BE DISCOVERED AND PREVENT LIABILITY TO THE PUBLIC. THE LEGISLATION WILL ALSO ALLOW GOVERNMENT TO CONSIDER ALTERNATIVES AND MAY IN FACT RESULT IN REDUCING POTENTIAL LIABILITY BY

HAVING GOVERNMENT PLAN ANY IMPACTS ON PRIVATE PROPERTY INTERESTS. FURTHERMORE, THE BILL WILL ALLOW FOR GOVERNMENT ACTIONS TO ACHIEVE THE DESIRED RESULTS IN THE LEAST INTRUSIVE MATTER TO PRIVATE PROPERTY INTERESTS AND THE CITIZENRY.

THIS BILL REPRESENTS A SOUND APPROACH TO PLANNING IN GOVERNMENT. LEGISLATION AND RULES WHICH IMPACT PRIVATE PROPERTY RIGHTS SHOULD BE CAREFULLY CONSIDERED AND ANALYZED SO AS NOT TO SUBJECT DWINDLING PUBLIC FUNDS TO CONSTITUTIONALLY REQUIRED COMPENSATION AS A RESULT OF POORLY PLANNED GOVERNMENT ACTION. AS GOVERNMENT GROWS, AND AS REGULATION EXPANDS, THE BODY OF TAKINGS LAW AND THE DEGREE OF COMPENSATION OF GOVERNMENT ACTIONS TO PRIVATE PROPERTY OWNERS PROTECTED UNDER THE CONSTITUTION WILL SURELY GROW AS WELL. IT IS TIME FOR GOVERNMENT TO ANALYZE ITS ACTIONS ON PRIVATE PROPERTY INTERESTS AND FOLLOW A PROCESS SIMILAR TO OTHER GOVERNMENT PROCESSES AND ANALYZE THE IMPACT OF ITS POLICIES.

MSGA STRONGLY URGES A VOTE OF DO PASS ON H.B. 570. THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 4-6-93
BILL NO. HB 570

TESTIMONY ON HOUSE BILL 570
ACT REQUIRING AN ASSESSMENT OF GOVERNMENTAL
ACTIONS THAT AFFECT USE OF PRIVATE PROPERTY
SENATE JUDICIARY COMMITTEE
APRIL 6, 1993

CHAIRMAN YELLOWTAIL, LADIES AND GENTLEMEN OF THE COMMITTEE, FOR THE RECORD MY NAME IS ED LORD. I AM A PROPERTY OWNER FROM PHILIPSBURG, MONTANA. I AM ALSO PRESIDENT OF THE MONTANA STOCKGROWERS ASSOCIATION. WE URGE YOU TO PASS H.B. 570.

AS THE FEDERAL GOVERNMENT CONTINUES TO GROW AND THE STATE GOVERNMENT CONTINUES TO EXPAND INTO NEW AREAS, MORE AND MORE SITUATIONS ARE CREATED WHERE GOVERNMENT CAN INFRINGE ON PRIVATE PROPERTY RIGHTS. IF WE ARE GOING TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT OR AN ENVIRONMENTAL ASSESSMENT, THEN IT IS ONLY LOGICAL THAT WE ALSO DO A PRIVATE PROPERTY RIGHTS ASSESSMENT. MANY OF US CONSIDER PRIVATE PROPERTY RIGHTS EQUAL TO A CLEAN ENVIRONMENT ON OUR SENSE OF VALUES SCALE.

THE STATES OF ARIZONA, UTAH, DELAWARE AND WASHINGTON HAVE ALREADY PASSED SIMILAR LEGISLATION AND IT IS BEING CONSIDERED IN 27 OTHER STATES. I THINK WE WOULD BE PROUD IF MONTANA COULD JOIN THIS LIST OF STATES THAT HAVE PASSED THIS IMPORTANT PRIVATE PROPERTY RIGHTS LEGISLATION. THANK YOU.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 4-6-93

April 6, 1993

TESTIMONY ON HB 570

HB 570

Chairman Yellowtail , and members of the Senate Judiciary Committee:

My name is Robert Van Deren. My parents and I own and operate Open A Ranch, north of Dillon. We currently sell hay and winter pasture for up to 2500 head of cattle. I am also the President of Beaverhead County Farm Bureau.

I am here representing myself, my family's business, Open A Ranch, Beaverhead County Farm Bureau's 127 member families and Madison County Farm Bureau's 86 member families.

We believe in the American capitalistic, private, competitive enterprise system in which property is privately owned, privately managed and operated for profit and individual satisfaction. Experience has shown that an improving environment is dependent upon economic productivity, and that economic productivity is dependent upon private ownership of the means of production.

Property owners in Montana are continually being expected to bear the costs of various property restrictions based on such increasingly nebulous terms as hydromodification and viewshed protection. Recent court cases have indicated that some of these restrictions are takings and should be compensated for under the United States Constitution. The Montana Private Property Assessment Act provides an orderly method whereby state agencies are able to evaluate their proposed actions in light of official guidelines based upon these property takings cases.

HB 570 simply requires the State of Montana to assess

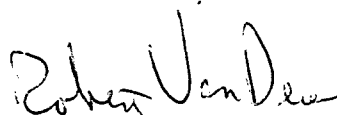
governmental actions that have a reasonable possibility of affecting the use and value of private property. This assessment process will insure that state agencies receive timely legal guidance so they can make an informed decision to minimize, or avoid inadvertant takings of private property.

This process will keep Montana from having the kind of wrecks South Carolina had last year, and the United States has yearly. In Lucas v. South Carolina Coastal Commission, the State of South Carolina had to pay almost \$2 million for the regulatory taking of two beach front lots. It is my understanding that the U.S. Claims Court pays out about \$1 Billion annually in takings compensation.

We believe HB 570 will protect Montanan's constitutionally guaranteed property rights, the Montana Treasury from the unanticipated and unnecessary costs of litigation and compensation, and insure Montanans a clean and healthy environment.

For these reasons, we urge you to vote "do pass" on this legislation.

Thank you for the opportunity to testify on this important piece of legislation.



Robert Van Deren, President
Beaverhead County Farm Bureau
P.O. Box 525
Dillon, MT 59725-0525

MONTANA TRAIL VEHICLE RIDERS ASSN.

Linda Y. Ellison

Land Use Coordinator

3301 W. Babcock

Bozeman, MT 59715

(406) 587-4505

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

April 6, 1993

RE: House Bill 570, The Montana Private Property Assessment Act

MTVRA firmly believes that government regulations should take into account their impact on private property.

Montana needs to supplement their environmental policies so that we don't pit private citizens against environmentally sound management practices.

Granted, trail building is a very minor part of Montana's land management picture. However, the integrity of the OHV trail building program, and all other programs like it, are challenged whenever private landowners are reluctant to cooperate based on "what if... horror stories."

Suppose we do an Environmental Assessment on a trail re-route and stumble on to a nest of red-cockaded woodpeckers. Given the rash of "protectionist" regulation that immediately takes effect regardless of its personal economic consequences, is the private land cooperator going to let one be found on his land?

Sound efforts to build and restore Montana's natural environments are being hampered by the current system of doing business which promotes a "Shoot, shovel and shut-up" attitude among private interests.

If we are ever going to make any headway on environmental issues, Montana needs a process such as that set forth in HB 570 to be assured that governmental decision makers really are taking into account the economic stake of private interests in environmental actions.

Sincerely,



Linda Ellison

Testimony on HB 570

Since it has been proven in free countries around the world that ownership of private property is the best way to care for the land, I believe we must do everything we can to protect these rights.

To those of you on the committee who are opposed to this bill I think you should reconsider. Instead of opposing it you should be amending it to cover all private property including everything each and everyone of us owns, such as your house and your car. How would you like it if the EPA says your car is polluting too much and has it towed away! That would be taking of private property.

To those of you who say our property rights are plenty well protected under the State and U.S. Constitutions, then why has the U.S. government lost over 1 billion dollars in recent court cases on private property takings. This type of legislation could save the state much more money than it would cost.

I urge you to have the courage to amend this bill to put more teeth back into it.

And finally, another reason I'm here today is I'm sick and tired of seeing our country

to Senator Yellowstone
to members of Judiciary Committee

Senate Judiciary Committee

April 6, 1993

As a taxpayer and landowner in Montana, I think the private property right assessment act (HB 570) makes good sense.

Currently, we have a big deficit and this legislation would help to curtail unwarranted, unplanned drains on the state's already "in the red" bank account.

Recently the Supreme Court ruled that regulations restricting building houses on a beachfront lot were a taking of private property. The Fifth Amendment of the Constitution forbids the taking of private property without just compensation. In this case, the state of South Carolina ended up paying almost \$2 million to the owner for that lot.

This legislation would prevent a similar happening in Montana because the government entities would be required to do an assessment before they took action.

As a landowner, I strongly believe that the takings aspect of private property should be assessed before the regulation or government action takes place. I don't want to have to sue the government or spend money and time in court.

I strongly support the Private Property Right Assessment Act (HB 570) and urge all who want to see good government to do the same.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 4-6-93
BILL NO. HB570

Sincerely,

Don Jules Marchesseault
Don Jules Marchesseault

P O Box 1146

Dillon, MT 59725



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 4-6-93

BILL NO. HB 570

April 6, 1993

Mr. Chairman, members of the Judiciary committee. For the record my name is John Youngberg, I represent the more than 4500 member families of the Montana Farm Bureau Federation.

Today I rise in support of HB 570.

Not long ago a friend of mine asked me what the Private Property Assessment Bill was all about. He being an opponent, asked, behind all the smoke and BS what is the bottom line?

The bottom line is people, people just like you and me. Folks doing the best that they can to make a living for themselves and their families. I travel the state doing membership work for Farm Bureau. I have the opportunity to talk to farmers and ranchers, not at hearings or forums, But where things really count, over kitchen tables, and pickup beds. Montana people are scared to death that as the population shifts to urban areas, and government continues to grow, more and more rules and laws will be implemented that effect their ability to use their property in the most effective manner. They fear that many of these rules and laws will be the product of emotion rather than scientific fact.

Probably the easiest way to tell you what HB 570 is all about is to tell you what it is not about. This legislation is not about litigation, it is about people that are realizing that they have the right to be compensated for the taking of their property.

It is not about communism or socialism, but is about people who are fortunate enough to own land not wanting to bear the burden of laws and rules for the good of the people. If it is for the good of the people then the people should be willing to pay also.

It is not about giving people the right to pollute streams, destroy timber, dry up wetlands, or destroy endangered species. It is about the farmer near Scobey, who had a sandy hillside designated as wetland thus taking that ground out of hay production, even though it has never had water standing on it. It is about the rancher in Phillips county who could lose the use of his farmground because the Prairie Dog colony there is Ferret habitat. It is about farmers and ranchers in Montana who fear that they will have to fence the rivers and streams because some group or another feels that cattle destroy riparian areas in all cases. It is about folks in Western Montana who own land around lakes that see the government controlling more and more of the property that they pay for and pay taxes on. It is about balance between environmental concerns, and private property rights.

We in Montana have been fortunate that we have not had to pay large amounts in takings compensation. This bill is preventative medicine for takings, \$40,000 worth of prevention worth several million dollars of cure.

It comes down to a matter of trust, can they trust a government that a few years ago was paying them to drain swamps, and now puts them in jail for doing just that.

When you were young your parents told you to count to ten before you hit someone. That is all that this legislation is asking you to do. When you pass legislation or rules that effect private property, first look to see if there is another way to accomplish the task, if not how much will it cost, and if it is worth the cost to the people then continue.

Please count to ten then pass HB 570.



John E. Youngberg

John Youngberg

Director Member Relations

13
4-6-93
HB 570

REGULATORY TAKINGS LAW IN MONTANA

DATE

4-6-93

Prepared by Department of Justice, April 1993

BILL NO.

HB570

Article II, section 29, Montana Constitution:

Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Matter of Adjudication of Yellowstone River Water Rights, 253 Mont. 167, 832 P.2d 1210 (1992):

Montana Supreme Court held that forfeiture of water rights for failure to file a timely claim does not constitute a taking without just compensation. The court applied a "threshold inquiry" to determine whether the statute is a constitutionally valid exercise of the state's police power.

The police power of the state is that which enables states to pass regulations for the health, safety and general welfare of the people. ... The police power regulation: must be reasonably adapted to its purpose and must injure or impair property rights only to the extent reasonably necessary to preserve the public welfare. ... Compensation is due ... in cases which exceed regulation or impairment and there is an appropriation of property which amounts to a taking or deprivation of property for public use. [Emphasis added.]

McElwain v. County of Flathead, 248 Mont. 231, 811 P.2d 1267 (1991):

Enactment of septic regulations by Flathead County held not to constitute a taking without just compensation even though the effect was to diminish the value of plaintiff's property.

[T]he question to determine whether a land-use regulation is properly invoked is whether the regulation is substantially related to the legitimate State interest of protecting the health, safety, morals, or general welfare of the public, and utilizes the least restrictive means necessary to achieve this end without denying the owner economically viable use of his or her land.

Because legislative enactments are presumed constitutional, the plaintiff bears the burden of proving that the governmental regulation constitutes a taking without just compensation.

Court careful to limit its holding to peculiar facts "where a physical taking across the street occurred."

State Department of Highways v. City of Helena, 193 Mont. 441, 632 P.2d 332 (1981):

Statute requiring relocation of city-owned utilities held not to constitute taking even though City was required to bear 25% of the cost. "The benefit to the public as a whole outweighed the temporary deprivation and inconvenience suffered by the City." The required relocation of the City's utilities was not a "taking in the constitutional sense, but rather a legitimate use of the police power for which no compensation is required."

Yellowstone Valley Electric Cooperative, Inc. v. Ostermiller, 187 Mont. 8, 608 P.2d 491 (1980):

Court held that statute requiring electric utilities and rural electric cooperatives to provide wire-raising services without reimbursement did not constitute a taking of property. Threshold inquiry is in determining whether the statute "is an exercise of the police power or, rather, sounds in the principles of eminent domain." The two principles were distinguished as follows:

In the exercise of the police power, due process requirements of the Fourteenth Amendment may be met without just compensation. Eminent domain, however, is the right of the state to take private property for public use. ... In the exercise of the power of eminent domain, just compensation is required.

The court concluded that the statute in question was a valid exercise of the police power because it served several vital public interests, both in preventing harm to the public and in conferring public benefit. The court noted the "well settled" general rule that "acts conducted in the proper exercise of police power do not constitute a taking of property and do not entitle the owner of such property to compensation for the regulation or impairment thereof. Compensation is due, however, in cases which exceed regulation or impairment and there is an appropriation of property which amounts to a taking or deprivation of property for public use."

McTaggart v. Montana Power Co., 184 Mont. 329, 602 P.2d 992 (1979):

Statutes allowing relocation of overhead utility line on petition by agricultural landowner held to constitute a permissible public purpose for eminent domain, but requiring the utility to pay half the cost of relocation was not just compensation.



Montana State AFL-CIO

Donald R. Judge
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 4-6-93

BILL NO. HB 570

Testimony of Don Judge on HB 570 Before the Senate Judiciary Committee, Tuesday, March 6, 1993

Mr. Chairman, members of the committee, for the record, my name is Don Judge and I'm here representing the Montana State AFL-CIO.

Trade unionists in Montana and across the country oppose these so-called "takings" bills in their many forms because they do just what the name implies: they "take."

These bills are not designed to protect private property owners from having things taken from them -- the U.S. and Montana Constitutions already do that.

These bills, which have been tried in nearly 30 states and have failed in most, are a "wise use movement" strategy designed to make it easier for a few unscrupulous property owners to take things from you and me. Mostly, they're designed to prohibit any new rules to protect public health and safety and to pick our pockets if we dare write any such rules.

Let me provide a little background.

The prime motivation of those groups and organizations -- primarily members of the "Wise Use Movement" (funded in part by the Rev. Sun Myung Moon's American Freedom Coalition) -- who advocate this kind of legislation is to block the implementation of regulatory programs that they oppose, and which they don't have the political power to block in any other way.

The seed for all of these bills -- HB 570 and many other bills in state legislatures across the West -- is Executive Order 12630, signed by President Reagan in 1988. That order requires federal agencies to examine the extent to which proposed regulatory actions might interfere with private property rights. The historical record clearly shows that members of the Reagan Administration developed the "takings" scheme not out of concern for individual rights, but rather as a pretext for blocking regulatory objectives with which they disagreed on policy grounds.

Interestingly, the Executive Order that started all this foolishness is likely to be repealed by President Clinton.

The AFL-CIO doesn't oppose the idea of cutting down the number of rules and regulations floating around state government. The fewer the better, quite frankly, as long as the ones we have do the job of protecting the public health, welfare and safety, an obligation you members of the Legislature are constitutionally sworn to uphold.

But we do object to adopting laws such as this for problems that are vague or non-existent, and at a cost that some Montana state agencies have labeled "incalculable."

In Wyoming, their Legislature faced a similar bill earlier this year, and they defeated it rather handily. They weren't convinced that there were any significant takings occurring under current Wyoming law, and they were horrified at the financial and regulatory burden this kind of legislation might create.

In Colorado, they're considering a similar bill, but they're finding the fiscal notes a little hard to swallow -- the agency-by-agency fiscal notes say that it will cost literally millions of dollars of state funds and thousands of hours of staff time to go back and review every state law and regulation to see if it might possibly maybe someday cause a taking.

Montana Audubon Legislative Fund

P.O. Box 595 • Helena, MT 59624 • 443-3949

Testimony on HB 570
Senate Judiciary Committee
April 6, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 4-6-93
BILL NO. HB 570

Mr Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the 2,500 members of the Montana Audubon Legislative Fund. We oppose HB 570.

This bill should be dubbed the "polluter protection law" as it has been in other states.

As amended by the House Appropriations Committee, HB 570 would help protect polluters over all other private property right holders. The reason for this is that government regulations written to protect the public's health, safety and welfare will now need to be examined (and potentially tested in a court of law) to assess their private property rights "takings." The only people in this state that will potentially benefit from this law are the regulated. This does not make sense since adjacent property owners and the public's health, safety and welfare do not stand to benefit from the law.

For example:

- a. A law is passed to protect groundwater from cyanide heap leach pads created by a gold mine. An assessment has to be completed, assessing the impact on the regulation to mining companies. Ironically, the property of landowners that live next to a permitted mine is not "assessed" for the "takings" that the mining company might do to its land. Additionally, the public's health, safety and welfare "takings" are not assessed if ground or surface waters become polluted.
- b. A law is passed to regulate the use of hazardous waste. An assessment must be done, assessing the "takings" of the waste users. Ironically, property owners adjacent to the hazardous waste user receive no consideration in the assessment. Additionally, the public's health, safety and welfare "takings" is not assessed if soils and/or water becomes polluted.
- c. An air quality law is passed to protect the public's health. An assessment must be done on the polluter, assessing the "takings" of his industry. Ironically, adjacent property owners receive no consideration in the assessment - as well as the public's health, safety and welfare.
- d. A law is passed to protect workers from hazardous working conditions. An assessment must be done on the "taking" from the industry. Ironically, worker safety receives no consideration in the assessment.
- e. A law is passed to protect water quality from poor logging practices. An assessment must be done on the "taking" from the landowner cutting the trees. Ironically, the downstream water users - and the public - receive no consideration in the assessment.

Given the assessment, and the policy statement of HB 570, polluters would be given a compelling reason to seek compensatory damages under this act. It does not make sense that polluters should have their rights held above everyone else in the state.

We oppose this bill and urge you to do the same.

Northern Plains Resource Council

Testimony of the Northern Plains Resource Council

In Opposition to HB 570
Senate Judiciary Committee
4/6/93

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 4-6-93

BILL NO. HB570

Mr. Chairman and members of the Committee,

My name is Ted Lange and I am speaking to on behalf of the Northern Plains Resource Council, in opposition to HB 570.

Twenty-one years ago, NPRC was founded by Eastern Montana ranchers and farmers who found their property rights threatened by massive-scale strip mining proposals. For some, the mining companies' power of eminent domain threatened to displace them from land that their families had lived and worked on for generations. Many others were deeply concerned about potential impacts to the water resources on which their operations depended. If groundwater quality and quantity were depleted, would their water be replaced? Would they be compensated?

Last fall NPRC passed a resolution in anticipation of "Takings" legislation. Our resolution states our belief that takings legislation must not "exempt companies or individuals from responsibility for damage to others' property". NPRC opposes HB 570 because it fails this test.

NPRC has always worked for the establishment and enforcement of government regulations that ensure that, as development takes place, agriculture and other existing economies (and the property rights on which they depend) are not harmed. We believe that HB 570 is not balanced legislation. By defining a constitutional takings as an action which takes a "portion of the economic value" of private property, the bill creates a situation where the state may have to compensate property owners every time it restricts the use of their property in order to protect the public health, safety and environment. NPRC believes that property rights are limited, and some regulation is necessary, because what one property owner does on their property can affect the property (and other) rights of their neighbors.

HB 570 includes no mechanism for assessing the impacts on private property, or for compensating property owners, for impacts resulting from *failure to implement a government action*. In other words, instead of requiring a cost-benefit analysis, HB 570 requires only an assessment of an action's costs but not its benefits.

Supporters of this legislation claim that it is a private property protection bill, yet the bill contains no definition of private property rights. We believe that including such a definition is essential in order to protect private property rights. We ask the committee to consider amending HB 570 to

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 18
DATE 4-6-93
NO. HB 570

TESTIMONY ON HOUSE BILL 570 PREPARED FOR PRESENTATION
BEFORE THE SENATE JUDICIARY COMMITTEE HEARING 4/6/93.

Mr. chairman, members of the committee, I'm Bob Barry representing the Montana Alliance for Progressive Policy.

The great Montana regulatory takings problem is a myth!

If there really were a Montana regulatory takings problem, the proponents of this bill could have to come to this legislature with a long list showing names, dates and dollars collected by property owners in takings suits. In this age of computerized legal records this list would be easy to produce. Faced with such a list, this legislature would have no choice about enacting takings legislation.

The proponents have produced no such list. Instead, when challenged to show that there is a problem that this bill would solve, they have told us about how people are "mad as hell" about their property being taken by federal laws such as those dealing with wetlands and endangered species.

Apparently lacking any Montana cases that clearly support their agenda, they have had to go clear back to South Carolina to find an emotionally loaded case where the property owner won a spectacular judgment. Whatever its precise legal meaning, this case, *Lucas V. South Carolina*, clearly proves one thing, that existing takings law works just fine.

The proponents even resort to deceptive statements like this one, which recently appeared in a guest editorial in the *Independent Record*:

"It is my hope HB 570 will alleviate the state from continuing to have to go to court and paying millions of dollars to mistreated landowners of Montana."

When essentially the same statement was made during House debate, the person making it was forced to admit that he could not even cite a single specific case in support of his statement, and turned instead to predicting that Montana soon would see an onslaught of takings cases.

If you want to see that prediction come true, just pass this bill! Even if, as the proponents claim, it doesn't expand takings law, just the confusion it creates will generate plenty of litigation. When lawyers disagree about legislative language—suits happen!

Better yet, you could recognize this horrible, terrible, awful, Montana regulatory takings problem for what it is—a political fairy tale—and send this bill, appropriately, to Never Never Land.

NAME Barton R Cooper

ADDRESS Box C Boulder Mont 59632

HOME PHONE 225-3886 WORK PHONE _____

REPRESENTING Self

APPEARING ON WHICH PROPOSAL? HB 570

DO YOU: SUPPORT ☒ OPPOSE _____ AMEND _____

COMMENTS:

I believe as a Property owner I need Protection
so I do not ~~lose~~ my Property with out due Process.
I think this bill gives me the right to own Property
and use it as I see fit with in the existing laws
I strongly believe the government is responsible to the
People of the state, when Property is taken, then the Property
owners are entitled to due Process; under the law and
HB 570 provides this protection.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 4-6-93SENATE COMMITTEE ON JudiciaryBILLS BEING HEARD TODAY: HB 570

Name	Representing	Bill No.	Check One	
			Support	Oppose
David Owen	MT Chamber	HB 570	✓	
Lynn Frank	MT Farm Bureau	HB 570	✓	
Jim Richard	MT Wildlife Fed	570		✓
Ed Lord	MSGA	570	✓	
Tommy Starn	Self	570	✓	
Robt A. McHugh	Public Service Comm	570		W
Don Allen	Mont. Wild. Product Assn	570	✓	
Barton L. Cooper	Self	570	✓	
Don Judge	MT STATE AFL-CIO	HB 570		X
Janet Ellis	MT Audubon Leg Fund	HB 570		X
TACK VAN CLEVE	Self	HB 570	X	
James G. Harrison	Self	HB 570	X	
Don to Naven	Farm Bureau	HB 570	X	
Don J. Marchesseault	Farm Bureau	HB 570	✓	
Ray Barker	✓	HB 570	X	
Diane McElroy Pros	Mont Farm Bureau	HB 570	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 4-6-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 570

Name	Representing	Bill No.	Check One	
			Support	Oppose
Hertha Lund	self HB	570	X	
Joyce Baker	self HB	570	X	
Jayne Griffith	self NB	570	X	
GENE GRIFFITH	self HB	570	X	
Linda Ellison	MT Trail Vehicle Riders Assn	570	X	
Robert Van Dusen	Beaverhead & Madison Fair Bank	570	X	
Paul Stahl	Beaverhead County	570		X
Gloria Korman	MT Cultural Ctr	570		X
Bob Wood	City of Helena	570		X
Jim Jensen	MEIC	570		X
Janice Neubauer	MWIT MT Women in Timber	570	X	
Laurie Hunter	MWIT "	570	X	
Michelle Furg	MT Market Dev Co	570	X	
David A. Dawson	Self HB	570	X	
Fred E. Brown	Self	570	X	
ANN FEUNUSKE	PEOPLE FOR THE WEST	570		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 4-6-93SENATE COMMITTEE ON JUDICIARYBILLS BEING HEARD TODAY: HB 570

Name	Representing	Bill No.	Check One	
			Support	Oppose
Bob Barry	MAPP	HB 570		X
Peggy Trenk	WETA	HB 570	X	
Jake Gannon	FARM BUREAU	HB 570	X	
Robert Hanson	Farm Bureau	HB 570	✓	
GARY LANGLEY	MONTANA MINING ASSN.	HB 570	✓	
Barbara Clark	Farm Bureau	HB 570	✓	
David P CLARK	FARM BUREAU	HB 570	✓	
Colaine Clark	Farm Bureau	HB 570	✓	
CLIFF COX	FARM BUREAU	HB 570	✓	
Tom Asay	Self	HB 570	✓	
Ted Lange	Northern Plains Resource Council	HB 570		X
Tom Hopgood	MT. Assoc. Realtors	HB 570	✓	
Nancy Gwynn	Mont. Building Industry Assoc.	HB 570	✓	
Ken Hoovestol	MT. Snowmobile Assn	570	X	
Bob Stephens	Int. Snowmobile Assn	570	✓	
Mike O'Sullivan	ASARCO MT. DIRTY MEN'S ASS.	570	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

BILLS BEING HEARD TODAY: HB 570

Name

570

Representing

Bill
No.

Check One

Support Oppose

[illegible]

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY