

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By Senator Yellowtail, on December 17, 1993, at 5:20 p.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. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Fredella D. Haab, Committee Secretary

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

Committee Business Summary:

Hearing: None
Executive Action: HB 72

EXECUTIVE ACTION ON HOUSE BILL 72

Discussion: Senator Grosfield said he had some concerns about Section 2 in response to Jim Jensen's testimony as well as one or two that weren't really expressed in the hearing. The language "wrongfully delayed" and it seemed to him that in every case that is going to involve the separate legal determination whether something is wrongfully delayed and I don't think that is very artful language. He said he had an amendment (exhibit 1) which would do several things. It sets the amount of the security at the lesser of \$5,000 or 1%. The introduced version was 10% and this amendment would drop it to 1% of the appraised value or purchased price, whichever is greater. So it would be the lesser

or \$5,000 or 1%. Number 5 in the amendments says the court shall decide the amount of security to be considered by the amount of damage specific to the case. Another problem with the House language was by the way it said it had to be based on the damage. How do you even know what the damage is if you don't know how long the delay is going to be.

Senator Grosfield said this bill does not respond to the constitutional issue. The 8th amendment says that in any case, the court in its discretion may waive the security in the interest of justice. That is basically the language lifted out of the statute that Rep. Brandewie referred to. It is not really clear in that section what happens if the person brings the suit, deposits some security and then the person wins the suit. It is not clear what happens to that security. I'm saying if they win, they get it back. That's #9 in the amendments.

Motion: Senator Grosfield moved to amend HB 72. (exhibit 1)

Discussion: Senator Halligan said he believed Senator Blaylock had asked the question on where the money went and was told the money actually went to the I&I fund, not the trust fund. Senator Grosfield said #7 in his amendment says the money will go to an account in the state treasury to the credit of the department.

Ms. Lane said she had talked to the Bureau Chief in the Accounting Division of the Dept. of Administration and that is the generic language they would prefer to see used.

Senator Halligan said when you file in a normal civil action, the judge can waive a security bond at his discretion in the interest of justice, and that is pretty broad if you get a conservative judge that does not like environmental groups or whatever, also he believed a low income person should not have to file a financial affidavit. The court could say that, based on the financial affidavit, they could do anything.

Senator Grosfield asked how he would modify it and Senator Halligan said he would have to think about it. Senator Towe said that language is in the injunction statutes now. They have the authority to hold discretion to waive security and sometimes do so, it is up to the discretion of the judge. He agreed it was not something that was good to leave with a judge, but did not know how else it could be done.

Senator Halligan asked how one could get to the judge to determine whether they should waive security or not. Senator Towe said you apply for an injunction giving the judge the reasons for granting this injunction which you feel are so compelling it would be appropriate to waive the bond. The opposing counsel says he does not think it should be done and if the injunction should be granted, they should put up a bond. The judge then decides the issue.

Senator Doherty said he objected to the amendments in their entirety. There is a significant difference between seeking an injunction and attempting to file a law suit. This would bar entry to the courtroom; by allowing the judge in his/her discretion to waive that has a chilling effect on people's right to go to court. When you ask for an injunction, you ask for the court to intervene and prevent something from happening. In this case they already have it. In this instance State Lands could be sued because someone said they did a rotten job on an EIS. They have done so in the past and although they were the last year's winner of EQC awards for getting their act cleaned up and doing it better, if someone asked for an injunction, they would still possibly have to file a bond in this case. Senator Doherty said there is talk about bills that come up all the time limiting access to the courts and we found out that there were four suits affecting four million board feet out of 16 million board feet that are sold every year in Montana. This is not a real problem and the department itself said that the suits weren't frivolous. In the whole supposition of this bill there is no grounding factor in reality for this action. You are limiting people's access to the courts and if they've got a frivolous law suit the department ought to go in and you can get costs and attorneys fees and sanctions and he would encourage the department to do that. He did not believe there is any reason for the bill and that security in advance of going into court no matter how you try to dress it up is a chilling of constitutionally protected rights.

Vote: The motion to amend HB 72 (exhibit 1) failed, 7 voting no, 5 voting yes, roll call vote.

Motion/Vote: Senator Doherty moved to amend HB 72. (exhibit 2) which would remove Section 2 in it's entirety. The motion passed 7 voting yes, 5 voting no, roll call vote.

Motion: Senator Towe moved to delete lines 16-23 on page 3. (exhibit 3)

Discussion: Senator Towe said although folks that testified on environmental matters were not too excited about this provision, he would like to explain what it does. It says in effect, that if the department does something which prevents the whole income producing activity or reduces the income to meeting societal goals, whatever societal goals are, we have to reimburse the Trust. He believed what they are saying is if you allow some activity on state lands that has some forest activity that will interfere with the whole production of that forest, we will have to put money into the Trust to make up for the loss. Just trying to figure out what it means and how to determine the amount of compensation is an absolute impossibility and he did not believe it was needed. He would urge you support his motion.

Senator Grosfield said we have to remember we are dealing with land that, in the Enabling Act, is designated as income producing

property for the State. We have language and constitutional maximum and all that sort thing. It is long term so you can't rape and pillage the land but believed the land board needs to be considering those kinds of trade offs in order to meet its constitutional obligations. So they can devise the maximum amount of return from these lands.

Senator Towe said if, after doing an EIS, it was determined that we should not cut timber on a particular area in order to preserve an endangered species of fowl or animal of some sort that we then have to reimburse the School Trust because we made that decision. He asked if that was the understanding of what would be required. Senator Grosfield said this starts off by saying except as provided by state or federal law. If we are dealing with MEPA compliance, it still has to be done.

Vote: The motion to delete lines 16-23, page 3 passed with 7 voting yes, 5 voting no, roll call vote.

Senator Doherty said he had forgotten that HB 488 was dealing with the dead and dying timber and the DSL is under direction from us as to what is to be done. They can already apply for rules that would categorically exclude MEPA from dead and dying timber sales. He pointed out that this bill might pass and not be too objectionable, but was like a declaration of war which is not needed. We do not need this bill.

Senator Crippen asked about the bonding and Senator Towe said it is already in HB 488 and taken care of there.

Motion: Senator Doherty moved to amend HB 72. (exhibit 2)

Discussion: Senator Doherty explained his amendments. (exhibit 2)

Vote: The amendments (exhibit 2) passed 7 voting yes, 5 voting no, roll call vote.

Some discussion was held on amending a bill and then tabling it, and whether it would be objectional if Section 2 were removed. Senator Blaylock said SB 424 was passed last session and as a result this bill is unnecessary. He pointed out that a lot of the problems DSL has is because the Legislature will not stop meddling in it. SB 424 put all the authority for handling our state lands with the State Land Board which is the five top elected officials in the state and they are the ones who really should be handling our lands, forest lands, grazing lands, cabin leases and farming lands. We really should go ahead and let them run it. He said in addition to the Board, Senator Mesaros put an advisory council in the bill, of which Senator Blaylock is a member, and they will be working on these things, including the forest lands.

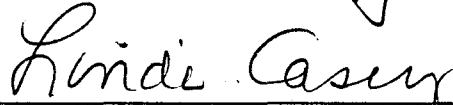
Motion/Vote: The motion to table HB 72 passed with 7 voting yes, 5 voting no, roll call vote.

ADJOURNMENT

Adjournment: 5:50 p.m.



SENATOR DOHERTY, Vice Chair



LINDA CASEY, WPC Supervisor

SD/11c

ROLL CALL

SENATE COMMITTEE JUDICIARY DATE 12/17/93
#2 HB 72

NAME	PRESENT	ABSENT	EXCUSED
SENATOR YELLOWTAIL, Chair	✓		
SENATOR DOHERTY, V. C.	✓		
SENATOR BARTLETT	✓		
SENATOR BLAYLOCK	✓		
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR FRANKLIN	✓		
SENATOR GROSFIELD	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR RYE	✓		
SENATOR TOWE	✓		

Attach to each day's minutes

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

BILL NO. HB72 Amend. #

DATE 12-12-93

TIME 5:30

A.M. P.M.

NAME	YES	NO
SENATOR DOHERTY, V.C.		✓
SENATOR BARTLETT		✓
SENATOR BLAYLOCK		✓
SENATOR BROWN	✓	
SENATOR CRIPPEN	✓	
SNATOR FRANKLIN		✓
SENATOR GROSFIELD	✓	
SENATOR HALLIGAN		✓
SENATOR HARP	✓	
SENATOR RYE	✓	
SENATOR TOWE		✓
SENATOR YELLOWTAIL, Chair		✓

Fredella P. Host
SECRETARY

CHAIR

MOTION: To accept Senator Grosfield's
amendment - failed 7-5

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

BILL NO. HB 72 Amend # 2

DATE 5/2-17-93 TIME 5:40 A.M. P.M.

NAME	YES	NO
SENATOR DOHERTY, V.C.	✓	
SENATOR BARTLETT	✓	
SENATOR BLAYLOCK	✓	
SENATOR BROWN		✓
SENATOR CRIPPEN		✓
SNATOR FRANKLIN	✓	
SENATOR GROSFIELD		✓
SENATOR HALLIGAN	✓	
SENATOR HARP		✓
SENATOR RYE		✓
SENATOR TOWE	✓	
SENATOR YELLOWTAIL, Chair	✓	

Ludella D. Hook
SECRETARY

CHAIR

MOTION: To pass Senator Doherty's amendment
passed 7-5.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

BILL NO. HB 72

DATE 12-17-93 TIME 5:45 A.M. (P.M.)

NAME	YES	NO
SENATOR DOHERTY, V.C.	✓	
SENATOR BARTLETT	✓	
SENATOR BLAYLOCK	✓	
SENATOR BROWN		✓
SENATOR CRIPPEN		✓
SNATOR FRANKLIN	✓	
SENATOR GROSFIELD	✓	
SENATOR HALLIGAN		✓
SENATOR HARP		✓
SENATOR RYE		✓
SENATOR TOWE	✓	
SENATOR YELLOWTAIL, Chair	✓	

Luella Hunt
SECRETARY

CHAIR

MOTION: to table HB 72 Vote 7-5 in
favor of tabling HB 72

Amendments to House Bill No. 72
Third Reading Copy (blue)

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
December 17, 1993

1. Title, line 11.
Strike: "REQUIRING"
Insert: "PROVIDING FOR"
2. Page 3, line 24.
Strike: "required"
3. Page 4, line 4.
Strike: "shall"
Insert: "may"
4. Page 4, line 7.
Following: "~~greater~~"
Insert: "in an amount that is the lesser of \$5,000 or 1% of either the appraised value of the timber or the purchase price of the sale, whichever is greater"
5. Page 4, lines 7 and 8.
Following: "." on line 7
Strike: remainder of line 7 through "THAN" on line 8
Insert: "In establishing the amount of the security to be required, the court shall consider"
6. Page 4, line 10.
Following: "IS"
Strike: "FOUND TO HAVE BEEN WRONGFULLY"
7. Page 4, lines 11 and 12.
Following: first "in" on line 11
Strike: remainder of line 11 through "held" on line 12
Insert: "an account in the state treasury to the credit of the department"
8. Page 4, line 12.
Following: "."
Insert: "In any case, the court in its discretion may waive the security in the interest of justice."
9. Page 4, line 18.
Following: "is"
Insert: ": (a) not approved by the court, the amount deposited as security must be returned to the person making the deposit; or
(b) "
10. Page 5, line 18.

SEARCHED

INDEXED

12-17-93

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EXHIBIT 2
12-17-93
HB 72

Amendments to House Bill No. 72
Third Reading Copy (blue)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
December 17, 1993

1. Title, lines 11 and 12.
Following: line 10
Strike: line 11 through "LANDS;" on line 12
2. Page 2, line 14.
Strike: "[sections 2(2) and 3] require"
Insert: "[section 2] requires"
3. Page 2, line 15.
Following: "["
Strike: "sections"
Insert: "section"
Following: "2"
Strike: "and 3"
4. Page 2, lines 16 through 19.
Following: line 15
Strike: lines 16 through 19 in their entirety
5. Page 2, line 20.
Strike: "3"
Insert: "2"
6. Page 3, line 24 through page 4, line 23.
Strike: section 2 in its entirety
Renumber: subsequent sections
7. Page 5, line 11.
Page 5, line 13.
Following: "[Sections 1"
Strike: "through 3"
Insert: "and 2"
8. Page 5, line 19.
Strike: "2(2) and 3"
Insert: "2"
Strike: "5"
Insert: "4"
9. Page 5, line 21.
Strike: "[Sections 1 and 2(1)] are"
Insert: "[Section 1] is"

SENATE JUDICIARY
COMMITTEE NO. 2
DATE 12-17-93
HB 72

Amendments to House Bill No. 72
Third Reading Copy (blue)

Requested by Senator Doherty and Towe
For the Committee on Judiciary

Prepared by Valencia Lane
December 17, 1993

1. Title, lines 11 and 12.
Following: line 10
Strike: line 11 through "LANDS;" on line 12
2. Page 2, line 14.
Strike: "[sections 2(2) and 3] require"
Insert: "[section 2] requires"
3. Page 2, line 15.
Following: "["
Strike: "sections"
Insert: "section"
Following: "2"
Strike: "and 3"
4. Page 2, lines 16 through 19.
Following: line 15
Strike: lines 16 through 19 in their entirety
5. Page 2, line 20.
Strike: "3"
Insert: "2"
6. Page 3, lines 16 through 23.
Following: line 15
Strike: lines 16 through 23 in their entirety
7. Page 3, line 24 through page 4, line 23.
Strike: section 2 in its entirety
Renumber: subsequent sections
8. Page 5, line 11.
Page 5, line 13.
Following: "[Sections 1"
Strike: "through 3"
Insert: "and 2"
9. Page 5, line 19.
Strike: "2(2) and 3"
Insert: "2"
Strike: "5"
Insert: "4"
10. Page 5, line 21.
Strike: "[Sections 1 and 2(1)] are"
Insert: "[Section 1] is"

STATE JUDICIARY
BILL NO. 3
DATE 12-17-93
BY HB 72

DATE 12-17-93

SENATE COMMITTEE ON Judicial

BILLS BEING HEARD TODAY: HB 72

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Cary Hegreberg	MT wood Products	72	X	
Brad Griffin	MT Retail Assoc	72	X	
Jim Jensen	MEIC	72		X
Vicki Watson	myself	72		X
Don Allen	MT Wood Products	72	X	
Jack Mahon	R. Y. Timber Inc.	72	X	
Sen Ed Kennedy	Senator	72		
Don Waldron	MREA	72	✓	
Bob Anderson	MSBA	72	✓	
Stan Frasier	MYWF	72		X
Richard Prokes	self	HB-72		✓
John North	DSL	72		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY