

MINUTES

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

FREE CONFERENCE COMMITTEE ON SENATE BILL 252

Call to Order: By Senator Steve Doherty, on April 14, 1993, at 12:20 p.m.

ROLL CALL

Members Present:

Senator Steve Doherty (D)
Senator Bill Yellowtail (D)
Senator John Hertel (R)
Representative Royal Johnson (R)
Representative Ray Brandewie (R)

Members Excused: Diana Wyatt

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Sylvia Kinsey, Secretary

Discussion:

Chair Doherty explained the bill as exempting a professional land surveyor or other qualified person from the criminal trespass law when entry to land is for survey purposes and providing liability for damages and injury occurring on the land during the survey.

Representative Brandewie was concerned about landowner liability during a survey. He pointed out he felt the surveyor should be liable for damage done to a landlord's property during the survey. He pointed out that if a surveyor went into a pasture with cattle it was common sense to realize there could be a bull in the pasture and the landowner should not be liable if he surveyor is injured by a bull in that case. A surveyor on land should be responsible for trees damaged or cut, run away vehicles, and common sense.

Senator Hertel read parts of Section 2 (3) of the bill, reference copy. He said the approval of the land owner is required, Section 2 (7) for the clearing of trees, brush or other vegetation.

Representative Brandewie said he thought the language should be changed a little but the surveyor should be held responsible for anything that happens on the land while he is there.

Representative Johnson asked Ms. Lane about the language in the House amendment 4, green copy attached to bill, and she said the language as originally drafted had been taken out of the bill and common law would now apply.

Representative Brandewie defended his amendment saying it put language in the bill to make sure the landowner was protected. Ms. Lane said she believed the language that was in here was limiting the liability of a surveyor. The language that was originally drafted was removed by the Senate and if we do not put anything in the bill, she believed common law would take care of it, but putting this amendment language in puts a limitation on the liability because it says liable for "actual" damages only.

Representative Brandewie said this amendment protects the land owner from action. Ms. Lane explained the language in the bill and the addition of the amendment again.

Representative Brandewie read the amendment again and said he did not believe there should be any cause for action by someone if he is on your property and he falls or stumbles over an old barbed wire fence and the land owner should not be liable for this type of accident.

There was further discussion on whether the land owner or the surveyor should be protected. Representative Brandewie asked which gave the land owner the most protection. He said he could not see why he should have any liability because a surveyor came on his property because a neighbor was surveying a property line. He said he would like to strike everything on line 8 through "land" on line 10 (page 5) and beginning with "A" on line 10 through "lessee" on line 16.

Ms. Lane said you have two provisions. The first is limiting the liability of the surveyor and if we take that sentence out then the surveyor would be subject to common law. The second sentence relates to the liability of the land owner and the way it is written it is pretty protective of the land owner, but you have to consider do you want to protect the land owner to the total exclusion of the surveyor. The policy decision to be made is if you take the first sentence, you are not talking about the surveyor's liability any more, you are only talking about a policy decision on how you want to address the landowner's liability.

Representative Johnson asked if the surveyor's liability is covered anywhere else in the bill and Ms. Lane answered no.

Chair Doherty said that is the whole issue. The purpose of the bill is that surveyors need access on occasion. But adding the whole question of liability, one way or the other, you are changing the common law and if you change the common law he said it would be his preference that you change it so it is even up on both sides. If a surveyor causes problems to the land owner the

surveyor is liable and if the land owner in some way causes problems for the surveyor, by adding this in, if you start messing with the liability with the one, you have to deal with the liability of the other.

Senator Yellowtail said his question would be, under the existing liability law, what is the exclusion of the surveyor in the first place. Russell Hill, Trial Lawyers, said he believed the issue is the land owner liability and the terms "purposely and knowingly" are out of criminal law. He gave the example if a land owner left traps and knows where they are but forgets to tell the surveyor, under the language now the land owner will not be liable to that surveyor, whereas a trespasser on the land he could be. The removal of the language "purposely and knowingly" would take care of that problem.

Representative Brandewie said the surveyor should have some protection against damages that were purposely and knowingly caused, but he was talking about the unknown. The things that can happen out there and the land owner cannot be responsible to know every hazard there is on a large piece of property.

Ms. Lane said the land owner would not be liable for negligence, but would be if the surveyor were injured by the landowner acting knowingly and willingly. The surveyor would have to prove a point, almost to the point where the land owner intended to harm him, under this language. Under this law the landowner would have to be aware the danger was there and you would have to prove a high standard. Under the current law the land owner would be in the same position as anyone else that crossed your land. They would all be under the same standard.

Senator Hertel said the purpose of this bill is the speed of the process for the surveyor. We are not out there trying to gain advantage over the land owner. His suggestion is to try to get some conditions in law.

Chair Doherty said the way to go back to the original law is to strike the whole section dealing with immunity, either for the surveyor or for the land owner.

Senator Yellowtail said he is persuaded in the existing law, as described here, the land owner is well and adequately protected for liability and thought there was a need to further elaborate on that here and set up some limitations on the land owners protection.

Representative Brandewie pointed out that if someone did get injured, attorneys for both sides gain and the land owner loses. There is no way the land owner can win in this, he was just trying to make sure he didn't lose. He thought the land owner needs some consideration in this bill.

Representative Johnson asked, since the intent of the bill is to

speed up the process, how does this bill do it.

Senator Hertel said a surveyor can get access to land by going to the land owner by just a request. There is a certain procedure if the land owner will not give him access. You are trying to circumvent that procedure. Representative Johnson said it seemed to him that was the land owner's prerogative. He said he had never seen a surveyor that didn't get access. He had spent money on surveying and couldn't see the problem. If he had not wanted him on the land he could have said so.

Senator Yellowtail said you could vote against the bill if you wish, but the issue in front of this conference committee is this matter of liability separate from the issue you just described.

Representative Brandewie referred to language on page 5. Chair Doherty asked if he was suggesting taking the first sentence out and was told yes. He said he had some language that talks about a rebuttable presumption and maybe have two options. One could take out "purposely and knowingly" and the other talks about creates a "rebuttable presumption" that the landowner or lessee properly protected the person against personal injury. He thought that gives the presumption to the land owner that the land owner is protected but still allows the surveyor the opportunity to overcome that presumption.

Chair Doherty asked Ms. Lane to get the amendment on rebuttable presumption worked up and it could be looked at and evaluated. If it is okay we can go ahead and if it needs some changes we can meet again tomorrow.

A copy of the proposed amendment (exhibit 1) was given to the secretary on April 15 and is attached to the minutes.

ADJOURNMENT

Adjournment: 1:12 p.m.



STEVE DOHERTY, Chair



SYLVIA KINSEY, Secretary

SD/sk

Amendments to Senate Bill No. 252
Reference (as amended) Reading Copy

Requested by Free Conference Committee on SB 252

Prepared by Valencia Lane
April 15, 1993

1. Title, lines 10 through 12.

Following: "~~SURVEY,~~" on line 10

Strike: remainder of line 10 through "SURVEY;" on line 12

Insert: "CREATING A REBUTTABLE PRESUMPTION REGARDING A
LANDOWNER'S LIABILITY TO A SURVEYOR ON LAND FOR SURVEYING
PURPOSES;"

2. Page 5, lines 8 through 10.

Following: "(9)" on line 8

Strike: remainder of line 8 through "LAND." on line 10

3. Page 5, line 10.

Strike: "A"

Insert: "Entry upon land for survey purposes by a"

4. Page 5, lines 11 through 16.

Following: "(1)" on line 11

Strike: remainder of line 11 through "LESSEE" on line 16

Insert: "creates a rebuttable presumption that the landowner or
lessee properly protected the person against personal injury
or property damage while the person was on the land"