

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on January 4, 1995,
at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: HB 42, HB 50
Executive Action: None

Tape 1, Side A

CHAIRMAN DICK KNOX held an organizational meeting prior to the hearings. Committee members introduced themselves and identified their districts. **CHAIRMAN KNOX** told the committee that proxies could be made for bills and motions or just for bills. The

proxies need to reflect the committee name, date and the person the proxy has been given to. Proxies will be given to the committee secretary at the conclusion of the executive session. Committee members may choose where they want to sit. The seat chosen for the Friday meeting will become each member's permanent seat.

When a bill is moved there will be discussion if anyone desires. There will not be discussion on any motion to table a bill.

Any questions during committee hearings will be directed through the chair.

There will be times when executive action can be taken on non-controversial bills the same day they are heard. However, if there is one committee member that wants to delay executive action, it will be delayed at least until the next committee meeting. There will be times when individuals other than the committee will be present during executive actions. Some of these individuals will be knowledgeable about the bill that is under discussion and a committee member may at times want their input. This will be allowed only if there is unanimous agreement of the committee.

CHAIRMAN KNOX told the committee coffee would no longer be furnished free and requested a \$2.00 donation from each committee member.

CHAIRMAN KNOX introduced **Debbie Schmidt, Executive Director, Environmental Quality Council**. Ms. Schmidt said she started as a legislative council researcher for the committee and has been director for the last 13 years. She introduced some of her staff, which included **Michael Kakuk, Environmental Researcher, Todd Everts, Resource Policy Analyst/Attorney, Shani Abell, Intern, and Karen Flipovich, Intern**.

HEARING ON HB 42

Opening Statement by Sponsor:

REP. BILL REHBEIN, House District 100, Lambert, said HB 42 is an environmental bill requested by the Department of State Lands. Over the past year the department has become aware of several trespass situations occurring on state trust lands. These trespasses have been reported to the department by lessees and neighbors of state lands. Most of the cases are related to subdivisions and private land adjacent to state land. Developers and contractors have been led to believe that there is no problem in utilizing the state land as part of the development; or they choose to ignore state land regulations. Roads have been constructed for the new development with no consideration of the impact on state land and its uses. In some cases the roads have impacted grazing and farming operations. In one case, a newly

constructed road disturbed a significant archeological site. With proper advance review by the department, impact to state land users and the environment would be minimized, mitigated, or avoided. Taking action against the trespasser by the current trespass law can be lengthy and expensive in both dollars and manpower. In most cases the trespassers have been unwilling to purchase the legal right to utilize the land and have refused to pay for damages that the state and legal users have suffered. This causes losses in trust revenues, or legal action is taken against the trespasser in hopes of recovering an undetermined amount for the trespass use and the damage that has been suffered. HB 42 gives clear authority to the department to pursue trespass situations and will hopefully make it known that trespassing on state land will not be tolerated. Most uses of state land can be obtained legally by advance review and approval by the department.

Proponents' Testimony:

Jeff Hagener, Administrator, Land Administration Division,
Department of State Lands. Written testimony. EXHIBIT 1

Opponents' Testimony:

John Bloomquist, Montana Stockgrowers Association, said he wasn't an opponent to the concept of the bill but mainly to some of the language that the bill contains. Many state land lessees actively made improvements on state lands in the form of fencing or water development. This has been discussed with the sponsor and the department. With some minor changes to make clear that upon the proper authorization for improvements the state land lessees would not be subject to any fees, fines, or penalties imposed by the proposed legislation; and that there is no retroactive applicability, because there are many structures where there are fences and water developments that have been constructed over the past years which may not have had formal authorizations.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. EMILY SWANSON, House District 30, Billings, asked **Mr. Hagener** how enforcement of the trespassing law works. **Mr. Hagener** said at the present time civil action is taken and is handled by the department's staff in Helena.

REP. AUBYN CURTISS, House District 81, Fortine, asked **Mr. Hagener** if a person would have to get a right-of-way permit from the department in order to run electricity across state land for the purpose of accessing water troughs. **Mr. Hagener** said if it is costing the department and not the lessee, the lessee would be required to get a permit by applying for an easement. There is a charge for an easement to compensate the trust for use of the

land. However, if the lessee is paying to install the electricity it could be considered an improvement and there would be no fee. **REP. CURTISS** asked **Mr. Hagener** if a telephone line installed on state land for the purpose of fire control at the expense of the lessee would be considered an improvement. **Mr. Hagener** replied that generally it would not. A telephone line would be considered an extra use of state land and there would be a charge.

REP. JAY STOVALL, House District 16, Billings, asked **Mr. Hagener** how long it takes to obtain a permit. **Mr. Hagener** said it depends on the kind of permit. An easement would take from 60 to 90 days. A license can be obtained in about two weeks. An improvement permit can be obtained in a day or so, depending on the extent of the improvement.

REP. DOUGLAS WAGNER, House District 27, Bozeman, asked **Mr. Hagener** if trespassing cases were due to the fact that the trespassers were not aware they were on state land. **Mr. Hagener** said in most cases it was very obvious that the trespassers knew they were on state land. There have been some cases where incorrect surveys were the issue. **REP. WAGNER** asked **Mr. Hagener** if there would be a loss to the state money-wise if a trespasser fenced off a corner of state land. **Mr. Hagener** said if the land was used for crops, for example, there would be loss of acreage for crops which would result in loss of money. **REP. WAGNER** asked **Mr. Hagener** if the money loss could be made up by increasing the fee for the lease. **Mr. Hagener** said lease contracts are for a period of ten years so the fees can't be increased.

REP. SCOTT ORR, House District 82, Libby, asked **Mr. Hagener** if there was an effective date for HB 42. **Mr. Hagener** said his understanding was that it would be effective upon passage and signing by the Governor and would not be retroactive. **REP. ORR** said lines 18 & 19 of HB 42 were not very clear and asked **Mr. Bloomquist** if the civil money penalty would be three times the full market value for just the portion of land that has been disturbed. **Mr. Bloomquist** said the value would be applied to the portion of disturbed land. An appraisal is taken of the actual market value of that land. **REP. ORR** asked if it was likely as the fiscal note states, that the fines would only be \$500 apiece or is it more likely they will be quite a bit more. **Mr. Bloomquist** said the \$500 figure was used for simplicity because there is going to be a wide variation in the value of land. The \$500 figure is an average.

REP. ROBERT STORY, JR., House District 24, Park City, asked **Mr. Hagener** if there would be appeal rights in the penalty process set up by the Board. **Mr. Hagener** said there is already an administrative appeals process in place.

CHAIRMAN DICK KNOX, House District 93, Winifred, asked **REP. REHBEIN** if he would be willing to work with **Mr. Bloomquist**, opponent of the bill, to come up with an amendment that would put

to rest his concerns about the lessees. **REP. REHBEIN** requested that executive action be delayed until an amendment could be developed to better protect the lessee. **CHAIRMAN KNOX** said executive action would be postponed until the following friday.

Closing by Sponsor:

REP. REHBEIN closed.

HEARING ON HB 50

Opening Statement by Sponsor:

REP. DON LARSON, House District 58, Seeley Lake, said HB 50 is a clean up bill requested by the Department of State Lands regarding the sale of timber on state lands. During the last legislative session a new system was created for financing timber sales. For the first time timber sales were financed by the proceeds of the timber sales and not the general fund. As a result, timber sales were expanded. In 1993 the Department of State Lands put up approximately nineteen million board feet. In 1994 approximately 30 million board feet were taken from state lands, resulting in approximately \$5.5 million in revenue. This bill would eliminate the provision that bidders put up a 20 percent bond. The department is not getting the highest bids for timber sales because many small logging business cannot afford the bond. The bill also establishes the sale price of live timber on state lands at not less than full market value and revises provisions applicable to the timber appraisal process by eliminating the requirement that the appraisal be on a board-foot basis.

Proponents' Testimony:

Bud Clinch, Commissioner, Department of State Lands, said that over the past five to seven years the department has seen an increase in the time it takes to prepare, sell and offer timber sales. Consequently, FY 1993 fell to an all-time low of nineteen million board feet. The 1993 legislature enacted HB 652 which gave the department additional staff and resources to bolster the timber sales program. The six additional positions consisted of four field foresters, one wildlife biologist, one watershed specialist. About one-third of the revenue was dedicated to contracted services. During the past year approximately five million board feet can be attributed to the efforts of HB 652. **Mr. Clinch** said if HB 50 passes, it is anticipated there will be an increase of an additional five million board feet of annual harvest, which would yield \$1,450,000 annually. HB 50 strikes the provision that required a 20 percent deposit by timber purchasers. That provision is no longer necessary and has had a dampening effect on the bidding process. Section 2 removes some archaic language relative to minimum stumpage rates. There is also a provision to eliminate the reference to board foot because

it is sometimes necessary to sell timber by means other than board foot, such as per acre or by weight measurement. **Mr. Clinch** said the department encourages passage of HB 50.

Don Allen, Montana Wood Products Association, said the MWPA thinks the changes made by the HB 50 are good and supports passage of the bill.

Don Waldron, Montana Rural Education Association, said MREA supports and encourages passage of HB 50.

Jim Jensen, Executive Director, Montana Environmental Information Center, said MEIC supports HB 50.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DOUGLAS WAGNER, House District 83, Hungry Horse, asked **Mr. Clinch** if the bill needed a fiscal note. **Mr. Clinch** said a fiscal has been requested and is due by 5:00 p.m. today.

Tape 1, Side B

REP. DAVID EWER, House District 53, Helena, asked **Mr. Clinch** to explain what the repealer is in Section 3 of the bill. **Mr. Clinch** said the repealer is the sunset provision that was in HB 652.

REP. JON ELLINGSON, House District 65, Missoula asked **Mr. Clinch** what costs the department incurs for a typical timber sale. **Mr. Clinch** deferred the question to **Pat Flowers, Chief, Forest Management Bureau, Missoula**. **Mr. Flowers** said the costs are variable. Costs can range from \$2,000 for a salvage sale, on up to \$25,000 for a large sale with a lot of complex analysis.

REP. BOB RANEY, House District 26, Livingston, asked **Mr. Clinch** if the gross and net amounts from timber sales would be on the fiscal note. **Mr. Clinch** said it is difficult to predict the exact amount of timber that will be harvested or what the average stumpage guide will be because there are so many variables. The department will attempt to come up with figures that are as accurate as possible for the fiscal note. **REP. RANEY** asked **Mr. Clinch** if he would compile a report for the committee showing the gross and net amounts from timber sales for the past four years. **Mr. Clinch** said he would.

REP. AUBYN CURTISS, House District 81, Fortine, asked **Mr. Clinch** if a statement of intent was necessary for HB 50. **Mr. Clinch** said there is no intent to have new rulemaking associated with the bill. The bill is to merely put into place the provisions that already exist as a result of HB 652. **REP. CURTISS** said

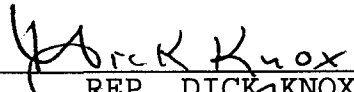
lines 16, 17, and 18 on page 2 of the bill state that the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash. She asked **Mr. Clinch** if a forest improvement fee would be less if the brush and slash were properly disposed of. **Mr. Clinch** said the way the timber sales are set up, the operator is not the one that disposes of the brush and slash. That is usually done by a separate contractor following the completion of the timber sale. The fee is a part of the current law that allows the department to collect the fee and then contract out the brush and slash disposal. The fee would not be less. Harvesting of timber can occur during a different season than the necessary slash preparation. The timber harvester could be completely out of the area at that time.

Closing by Sponsor:

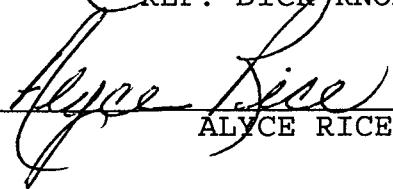
REP. LARSON said HB 50 is an attempt to more effectively manage state lands, increase the revenues from them and defray some of the property tax increases that we are all seeing. **REP. LARSON** urged the committee to pass HB 50.

ADJOURNMENT

Adjournment: 4:10 PM



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 1-4-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

EXHIBIT #1
DATE 1-4-95
HB 42

TESTIMONY OF JEFF HAGENER
ADMINISTRATOR, LAND ADMINISTRATION DIVISION
DEPARTMENT OF STATE LANDS

on

HOUSE BILL 42 - REPRESENTATIVE REHBEIN
HOUSE NATURAL RESOURCES - WEDNESDAY JANUARY 4, 1995

House Bill 42 is being introduced by request of the Department of State Lands to address the increasing number of trespass situations occurring on State Trust Lands. Over the past few years the incidence of trespass primarily associated with new subdivisions and other developments adjacent to state lands has steadily increased. These trespasses include roads, fences, buildings, and utility lines in some instances. These trespasses have impacted the value of the trust land resources and in some cases caused irreparable damage.

Under current laws the Department of State Lands only avenue to pursue these trespass cases is under general trespass laws. Under these laws, the Department is entitled to recover the actual value of the damages to the land and, if the trespass is willful, punitive damages. However, assessment of punitive damages is not required, and in many instances, the only damages for which the trespasser will be liable is no more than the cost of an easement. This creates a situation in which a person may make a financially based decision to install the facility without prior approval of the Board of Land Commissioners. This from a practical standpoint removes the Board of Land Commissioners ability to deny permission to install the facility. More importantly, it greatly hinders the ability of the Board to require a facility to be placed in a location that least interferes with the grazing or agricultural lessee's operation.

HB 42 remedies this situation by providing a civil penalty for trespass and further providing that the Board has the ability to require removal and reclamation of the facility. It is expected that the enactment and implementation of this legislation will act as deterrent to future trespasses and encourage potential trespassers to seek proper permission from the Department before proceeding with developments that impact state trust lands.

The Department of State Lands respectfully requests passage of HB 42.