

HOUSE BILL NO. 104

INTRODUCED BY ROSE
BY REQUEST OF THE DEPARTMENT OF LIVESTOCK

IN THE HOUSE

JANUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. FIRST READING.
JANUARY 23, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 25, 1993	PRINTING REPORT.
JANUARY 26, 1993	SECOND READING, DO PASS.
JANUARY 27, 1993	ENGROSSING REPORT.
JANUARY 28, 1993	THIRD READING, PASSED. AYES, 95; NOES, 2. TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. FIRST READING.
MARCH 1, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 2, 1993	SECOND READING, CONCURRED IN.
MARCH 3, 1993	THIRD READING, CONCURRED IN. AYES, 47; NOES, 1. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 6, 1993	RECEIVED FROM SENATE. SECOND READING, AMENDMENTS CONCURRED IN.
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MARCH 9, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 104
2 INTRODUCED BY ROSE
3 BY REQUEST OF THE DEPARTMENT OF LIVESTOCK
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
6 SEIZURE AND FORFEITURE OF MONEY, EQUIPMENT, AND PERSONALTY
7 INVOLVED IN THE TRANSPORTATION OF STOLEN LIVESTOCK; ALLOWING
8 INCOME DERIVED FROM THE SALE OF FORFEITED PROPERTY TO BE
9 USED BY THE DEPARTMENT OF LIVESTOCK FOR PERSONNEL TRAINING;
10 AND AMENDING SECTIONS 81-5-104, 81-5-109, 81-5-110, AND
11 81-5-111, MCA."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 **Section 1.** Section 81-5-104, MCA, is amended to read:
15 "81-5-104. Stolen livestock -- seizure and forfeiture
16 of vehicle and certain other property used to transport. (1)
17 The use of any vehicle, money, equipment, or personalty for
18 the transportation of any stolen mule, horse, mare, colt,
19 foal, filly, sheep, lamb, cow, calf, heifer, steer, bull,
20 llama, bison, hogs, poultry, or the products of any thereof
21 stolen livestock is unlawful, and such the vehicle, money,
22 equipment, or personalty shall must be forfeited to the
23 state. Any vehicle, money, equipment, or personalty found in
24 such-use used for unlawful transportation or upon probable
25 cause believed to be devoted wholly or in part to such-use

1 ~~shall~~ unlawful transportation must be seized and held.
2 (2) Within 45 days after the seizure, any peace officer
3 or officer of the agency that seizes any property shall file
4 a petition to institute forfeiture proceedings with the
5 clerk of the district court of the county in which the
6 seizure occurs. The clerk shall issue a summons at the
7 request of the petitioning party, who shall cause the same
8 summons to be served upon all owners or claimants of the
9 property by one of the following methods:
10 (a) upon an owner or claimant whose address is known,
11 by personal service of a copy of the petition and summons as
12 provided in the Montana Rules of Civil Procedure;
13 (b) upon an owner or claimant whose address is unknown
14 but who is believed to have an interest in the property, by
15 publication of the summons in one issue of a newspaper of
16 general circulation in the county where the seizure occurred
17 or, if there is no such newspaper of general county
18 circulation, by publication in one issue of a newspaper of
19 general circulation in an adjoining county, and by mailing a
20 copy of the petition and summons to the most recent address
21 of such the owner or claimant, if any, shown in the records
22 of the division of motor vehicles.
23 (3) A vehicle is not subject to forfeiture under this
24 section if:
25 (a) it is a stolen vehicle at the time it is used for

1 such unlawful transportation; or

2 (b) the vehicle owner thereof is not in collusion with
3 the party or parties guilty of the theft."

4 **Section 2.** Section 81-5-109, MCA, is amended to read:

5 "81-5-109. Presumption -- hearing -- disposition of
6 vehicle and other property. (1) There is a rebuttable
7 presumption of forfeiture as to all property used for the
8 transportation of the livestock as provided in 81-5-104.

9 (2) If a verified answer to the petition is not filed
10 within 20 days after the service of the petition and
11 summons, the court upon motion shall order the property
12 forfeited to the state.

13 (3) If a verified answer is filed within 20 days, a
14 hearing on the petition for forfeiture must be set without a
15 jury not less than 60 days after the answer is filed. Notice
16 of the hearing must be given in the manner provided for
17 service of petition and summons.

18 (4) If the court finds that a vehicle, money,
19 equipment, or personalty was not used for the purpose
20 charged or that it was used without the consent or knowledge
21 of the owner, it shall order the property released to the
22 owner of record on the date of the seizure. If the court
23 finds that the vehicle, money, equipment, or personalty was
24 used for the purpose charged and was used with the knowledge
25 and consent of the owner, the property must be ordered

1 forfeited."

2 **Section 3.** Section 81-5-110, MCA, is amended to read:

3 "81-5-110. Sale at public auction. Vehicles, equipment,
4 and personalty forfeited under 81-5-109 ~~shall~~ must be sold
5 at public auction in the manner of sales of personal
6 property under execution and may be sold by any sheriff,
7 livestock inspector, or other peace officer."

8 **Section 4.** Section 81-5-111, MCA, is amended to read:

9 "81-5-111. Disposition of proceeds. The officer making
10 the sale, after deducting the expenses of keeping the
11 property vehicle, money, equipment, or personalty and the
12 cost of the sale so far as the balance of sale proceeds
13 permit, shall pay all liens, according to their priorities,
14 which that are established, by intervention or otherwise in
15 the proceedings, as being bona fide and as having been
16 created without the lienor having any notice or reasonable
17 cause to believe that the vehicle, money, equipment, or
18 personalty was being or was to be used for the illegal
19 transportation and shall pay the balance of the proceeds to
20 the treasurer of this state to be credited to the department
21 of livestock fund. The proceeds may be used by the
22 department for personnel training."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0104, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

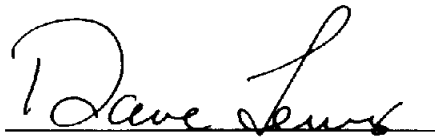
An act providing for the seizure and forfeiture of money, equipment, and personalty involved in the theft of or transportation of stolen livestock; allowing income derived from the sale of forfeited property to be used by the Department of Livestock for personnel training.

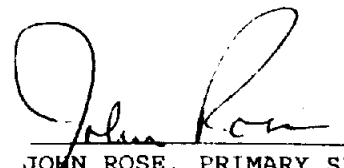
ASSUMPTIONS:

1. This bill expands the forfeiture to include personal property used in the theft of or transportation of stolen livestock.
2. Any revenue derived will be requested for appropriation to be used for improved training of personnel.
3. It is impossible to ascertain the amount of revenue which may be available to training because of the uncertainty of the subject matter, the nature of the crime and the variables involved.

FISCAL IMPACT: Unable to project in advance.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Better trained and more professional personnel will improve protection for the producers and the public.

 1-11-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/11/93
JOHN ROSE, PRIMARY SPONSOR DATE
Fiscal Note for, HB0104 as introduced

HB 104

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
AND IRRIGATION

HOUSE BILL NO. 104

INTRODUCED BY ROSE

BY REQUEST OF THE DEPARTMENT OF LIVESTOCK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE SEIZURE AND FORFEITURE OF MONEY, EQUIPMENT, AND PERSONALTY INVOLVED IN THE THEFT OF LIVESTOCK OR THE TRANSPORTATION OF STOLEN LIVESTOCK; ALLOWING THE DEPARTMENT OF LIVESTOCK TO RETAIN FORFEITED PROPERTY; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; ALLOWING INCOME DERIVED FROM THE SALE OF FORFEITED PROPERTY TO BE USED BY THE DEPARTMENT OF LIVESTOCK FOR PERSONNEL TRAINING; AND AMENDING SECTIONS 17-7-502, 81-5-104, 81-5-109, 81-5-110, AND 81-5-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 81-5-104, MCA, is amended to read:

"81-5-104. Stolen livestock -- seizure and forfeiture of vehicle and certain other property used to--transport IN THEFT OR TRANSPORTATION. (1) The use of any vehicle, money, equipment, or personalty for the THEFT OR transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, bison, hogs, poultry, or the products of any thereof stolen livestock is unlawful, and such the vehicle, money, equipment, or

personalty shall must be forfeited to the state. Any vehicle, money, equipment, or personalty found-in-such-use used for THE THEFT OR unlawful transportation or upon probable cause believed to be devoted wholly or in part to such-use-shall THE THEFT OR unlawful transportation must be seized and held.

(2) Within 45 days after the seizure, any peace officer or officer of the agency that seizes any property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the same summons to be served upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper of general county circulation, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address

of ~~such~~ the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for ~~such~~ unlawful transportation; or

(b) the vehicle owner ~~thereof~~ is not in collusion with the party or parties guilty of the theft."

Section 2. Section 81-5-109, MCA, is amended to read:

"81-5-109. Presumption -- hearing -- disposition of vehicle and other property. (1) There is a rebuttable presumption of forfeiture as to all property used for the THEFT OR transportation of the livestock as provided in 81-5-104.

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, a hearing on the petition for forfeiture must be set without a jury not less than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of petition and summons.

(4) If the court finds that a vehicle, money, equipment, or personalty was not used for the purpose

charged or that it was used without the consent or knowledge of the owner, it shall order the property released to the owner of record on the date of the seizure. If the court finds that the vehicle, money, equipment, or personalty was used for the purpose charged and was used with the knowledge and consent of the owner, the property must be ordered forfeited."

Section 3. Section 81-5-110, MCA, is amended to read:

"81-5-110. Sale at public auction -- RETENTION OF PROPERTY. (1) Vehicles, equipment, and personalty forfeited under 81-5-109 ~~shall~~ must MAY be sold at public auction in the manner of sales of personal property under execution and may be sold by any sheriff, livestock inspector, or other peace officer.

(2) THE DEPARTMENT MAY RETAIN THE VEHICLES, EQUIPMENT, AND PERSONALTY FORFEITED UNDER 81-5-109 FOR OFFICIAL USE BY THE DEPARTMENT, INCLUDING PERSONNEL TRAINING. IF THE DEPARTMENT RETAINS FORFEITED PROPERTY THAT IT DETERMINES TO BE SUITABLE FOR EVERYDAY USE BY DEPARTMENT PERSONNEL, THE DEPARTMENT SHALL REDUCE SIMILAR PROPERTY PURCHASES ACCORDINGLY."

Section 4. Section 81-5-111, MCA, is amended to read:

"81-5-111. Disposition of proceeds -- SPECIAL REVENUE ACCOUNT. ~~The--officer--making--the--sale--after~~ (1) AFTER deducting the expenses of keeping RETAINING the property

1 vehicle, money, equipment, or personalty and the cost of the
 2 sale so far as the balance of sale proceeds permit, THE
 3 OFFICER MAKING THE SALE OR THE DEPARTMENT, IF IT RETAINS THE
 4 VEHICLE, MONEY, EQUIPMENT, OR PERSONALTY, shall pay all
 5 liens, according to their priorities, which that are
 6 established, by intervention or otherwise in the
 7 proceedings, as being bona fide and as having been created
 8 without the lienor having any notice or reasonable cause to
 9 believe that the vehicle, money, equipment, or personalty
 10 was being or was to be used for the THEFT OR illegal
 11 transportation and shall pay the balance of the proceeds to
 12 the treasurer of this state to be credited to the department
 13 of livestock fund. The proceeds may be used by the
 14 department for personnel training.

15 (2) THERE IS AN ACCOUNT IN THE STATE SPECIAL REVENUE
 16 FUND. THE PROCEEDS FROM THE SALE OF VEHICLES, EQUIPMENT, AND
 17 PERSONALTY PROVIDED FOR IN 81-5-110 MUST BE DEPOSITED IN THE
 18 ACCOUNT. AN AMOUNT UP TO \$20,000 EACH YEAR IS STATUTORILY
 19 APPROPRIATED, AS PROVIDED IN 17-7-502, AND MUST BE USED BY
 20 THE DEPARTMENT FOR PERSONNEL TRAINING OR ENFORCEMENT
 21 PURPOSES. FUNDS IN EXCESS OF THE STATUTORILY APPROPRIATED
 22 \$20,000 PER YEAR MUST BE DEPOSITED IN THE GENERAL FUND."

23 **SECTION 5. SECTION 17-7-502, MCA, IS AMENDED TO READ:**

24 **"17-7-502. Statutory appropriations -- definition --**
 25 **requisites for validity. (1) A statutory appropriation is an**

1 appropriation made by permanent law that authorizes spending
 2 by a state agency without the need for a biennial
 3 legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be
 5 effective, a statutory appropriation must comply with both
 6 of the following provisions:

7 (a) The law containing the statutory authority must be
 8 listed in subsection (3).

9 (b) The law or portion of the law making a statutory
 10 appropriation must specifically state that a statutory
 11 appropriation is made as provided in this section.

12 (3) The following laws are the only laws containing
 13 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 14 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 15 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
 16 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 17 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
 18 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
 19 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 20 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 21 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 22 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 23 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
 24 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206;
 25 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;

1 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;
2 81-5-111; 82-11-136; 82-11-161; 85-1-220; 90-3-301;
3 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

4 (4) There is a statutory appropriation to pay the
5 principal, interest, premiums, and costs of issuing, paying,
6 and securing all bonds, notes, or other obligations, as due,
7 that have been authorized and issued pursuant to the laws of
8 Montana. Agencies that have entered into agreements
9 authorized by the laws of Montana to pay the state
10 treasurer, for deposit in accordance with 17-2-101 through
11 17-2-107, as determined by the state treasurer, an amount
12 sufficient to pay the principal and interest as due on the
13 bonds or notes have statutory appropriation authority for
14 the payments. (In subsection (3): pursuant to sec. 7, Ch.
15 567, L. 1991, the inclusion of 19-6-709 terminates upon
16 death of last recipient eligible for supplemental benefit;
17 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
18 22-3-811 terminates June 30, 1993.)"

-End-

1 HOUSE BILL NO. 104

2 INTRODUCED BY ROSE

3 BY REQUEST OF THE DEPARTMENT OF LIVESTOCK

4
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6 SEIZURE AND FORFEITURE OF MONEY, EQUIPMENT, AND PERSONALTY
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22 any stolen mule, horse, mare, colt, foal, filly, sheep,
23 lamb, cow, calf, heifer, steer, bull, llama, bison, hogs,
24 poultry, or the products of any thereof stolen livestock is
25 unlawful, and such the vehicle, money, equipment, or

1 personalty shall must be forfeited to the state. Any
2 vehicle, money, equipment, or personalty found-in-such-use
3 used for THE THEFT OR unlawful transportation or upon
4 probable cause believed to be devoted wholly or in part to
5 such-use-shall THE THEFT OR unlawful transportation must be
6 seized and held.

7 (2) Within 45 days after the seizure, any peace officer
8 or officer of the agency that seizes any property shall file
9 a petition to institute forfeiture proceedings with the
10 clerk of the district court of the county in which the
11 seizure occurs. The clerk shall issue a summons at the
12 request of the petitioning party, who shall cause the ~~same~~
13 summons to be served upon all owners or claimants of the
14 property by one of the following methods:

15 (a) upon an owner or claimant whose address is known,
16 by personal service of a copy of the petition and summons as
17 provided in the Montana Rules of Civil Procedure;

18 (b) upon an owner or claimant whose address is unknown
19 but who is believed to have an interest in the property, by
20 publication of the summons in one issue of a newspaper of
21 general circulation in the county where the seizure occurred
22 or, if there is no such newspaper of general county
23 circulation, by publication in one issue of a newspaper of
24 general circulation in an adjoining county, and by mailing a
25 copy of the petition and summons to the most recent address

of such the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for such unlawful transportation; or

(b) the vehicle owner thereof is not in collusion with the party or parties guilty of the theft."

Section 2. Section 81-5-109, MCA, is amended to read:

"81-5-109. Presumption -- hearing -- disposition of vehicle and other property. (1) There is a rebuttable presumption of forfeiture as to all property used for the THEFT OR transportation of the livestock as provided in 81-5-104.

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, a hearing on the petition for forfeiture must be set without a jury not less than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of petition and summons.

(4) If the court finds that a vehicle, money, equipment, or personalty was not used for the purpose

charged or that it was used without the consent or knowledge of the owner, it shall order the property released to the owner of record on the date of the seizure. If the court finds that the vehicle, money, equipment, or personalty was used for the purpose charged and was used with the knowledge and consent of the owner, the property must be ordered forfeited."

Section 3. Section 81-5-110, MCA, is amended to read:

"81-5-110. Sale at public auction -- RETENTION OF PROPERTY. (1) Vehicles, equipment, and personalty forfeited under 81-5-109 shall must MAY be sold at public auction in the manner of sales of personal property under execution and may be sold by any sheriff, livestock inspector, or other peace officer.

(2) THE DEPARTMENT MAY RETAIN THE VEHICLES, EQUIPMENT, AND PERSONALTY FORFEITED UNDER 81-5-109 FOR OFFICIAL USE BY THE DEPARTMENT, INCLUDING PERSONNEL TRAINING. IF THE DEPARTMENT RETAINS FORFEITED PROPERTY THAT IT DETERMINES TO BE SUITABLE FOR EVERYDAY USE BY DEPARTMENT PERSONNEL, THE DEPARTMENT SHALL REDUCE SIMILAR PROPERTY PURCHASES ACCORDINGLY."

Section 4. Section 81-5-111, MCA, is amended to read:

"81-5-111. Disposition of proceeds -- SPECIAL REVENUE ACCOUNT. The--officer--making--the--sale,--after (1) AFTER deducting the expenses of keeping RETAINING the property

vehicle, money, equipment, or personalty and the cost of the sale so far as the balance of sale proceeds permit, THE OFFICER MAKING THE SALE OR THE DEPARTMENT, IF IT RETAINS THE VEHICLE, MONEY, EQUIPMENT, OR PERSONALTY, shall pay all liens, according to their priorities, which that are established, by intervention or otherwise in the proceedings, as being bona fide and as having been created without the lienor having any notice or reasonable cause to believe that the vehicle, money, equipment, or personalty was being or was to be used for the THEFT OR illegal transportation ~~and shall pay the balance of the proceeds to the treasurer of this state to be credited to the department of livestock fund. The proceeds may be used by the department for personnel training.~~

(2) THERE IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND. THE PROCEEDS FROM THE SALE OF VEHICLES, EQUIPMENT, AND PERSONALTY PROVIDED FOR IN 81-5-110 MUST BE DEPOSITED IN THE ACCOUNT. AN AMOUNT UP TO \$20,000 EACH YEAR IS STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, AND MUST BE USED BY THE DEPARTMENT FOR PERSONNEL TRAINING OR ENFORCEMENT PURPOSES. FUNDS IN EXCESS OF THE STATUTORILY APPROPRIATED \$20,000 PER YEAR MUST BE DEPOSITED IN THE GENERAL FUND."

SECTION 5. SECTION 17-7-502, MCA, IS AMENDED TO READ:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an

appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;

1 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;
 2 81-5-111; 82-11-136; 82-11-161; 85-1-220; 90-3-301;
 3 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

4 (4) There is a statutory appropriation to pay the
 5 principal, interest, premiums, and costs of issuing, paying,
 6 and securing all bonds, notes, or other obligations, as due,
 7 that have been authorized and issued pursuant to the laws of
 8 Montana. Agencies that have entered into agreements
 9 authorized by the laws of Montana to pay the state
 10 treasurer, for deposit in accordance with 17-2-101 through
 11 17-2-107, as determined by the state treasurer, an amount
 12 sufficient to pay the principal and interest as due on the
 13 bonds or notes have statutory appropriation authority for
 14 the payments. (In subsection (3): pursuant to sec. 7, Ch.
 15 567, L. 1991, the inclusion of 19-6-709 terminates upon
 16 death of last recipient eligible for supplemental benefit;
 17 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
 18 22-3-811 terminates June 30, 1993.)"

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 15, 1993

Page 2 of 2
February 15, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 104 (first reading copy -- blue), respectfully report that House Bill No. 104 be amended as follows and as so amended be concurred in.

Signed: 
Senator Jack "Doc" Rea, Chair

That such amendments read:

1. Page 1, line 25 through page 2, line 1.
Following: "unlawful"
Strike: remainder of line 25 through "state" on Page 2, line 1
2. Page 4, following line 21.
Insert: "(3) Money forfeited under 81-5-109 must be placed in the special revenue account created in 81-5-111(2) for use by the department for personnel training or enforcement purposes."
3. Page 5, line 1.
Strike: "money,"
4. Page 5, line 2.
Following: "sale"
Strike: "so far as the balance of sale proceeds permit"
5. Page 5, line 4.
Strike: "MONEY,"
6. Page 5, line 5.
Following: "liens"
Insert: "to the extent the balance of sale proceeds permit"
Following: "to"
Strike: "their"
Insert: "the lien"
Following: "priorities"
Strike: " ,"

7. Page 5, lines 6 and 7.
Following: "established" on line 6
Strike: " ,"
Following: "otherwise" on line 6
Strike: remainder of line 6 through "being" on line 7
Insert: ". A lien must be"
Following: "and" on line 7
Strike: "as having"
Insert: "have"

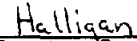
8. Page 5, line 9.
Strike: "money,"

9. Page 5, line 18.
Following: "ACCOUNT"
Strike: ". AN AMOUNT UP TO \$20,000 EACH YEAR IS"
Insert: " , are"

10. Page 5, lines 21 and 22.
Strike: "FUNDS" on line 21 through "FUND." on line 22

-END-

m- Amd. Coord.
33 Sec. of Senate


Senator Halligan
Senator Carrying Bill

371638SC.Sma

SENATE
HB 104
371638SC.Sma

1 HOUSE BILL NO. 104

2 INTRODUCED BY ROSE

3 BY REQUEST OF THE DEPARTMENT OF LIVESTOCK

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
6 SEIZURE AND FORFEITURE OF MONEY, EQUIPMENT, AND PERSONALTY
7 INVOLVED IN THE THEFT OF LIVESTOCK OR THE TRANSPORTATION OF
8 STOLEN LIVESTOCK; ALLOWING THE DEPARTMENT OF LIVESTOCK TO
9 RETAIN FORFEITED PROPERTY; ESTABLISHING A SPECIAL REVENUE
10 ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; ALLOWING
11 INCOME DERIVED FROM THE SALE OF FORFEITED PROPERTY TO BE
12 USED BY THE DEPARTMENT OF LIVESTOCK FOR PERSONNEL TRAINING;
13 AND AMENDING SECTIONS 17-7-502, 81-5-104, 81-5-109,
14 81-5-110, AND 81-5-111, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:17 **Section 1.** Section 81-5-104, MCA, is amended to read:

18 "81-5-104. Stolen livestock -- seizure and forfeiture
19 of vehicle and certain other property used to--transport IN
20 THEFT OR TRANSPORTATION. (1) The use of any vehicle, money,
21 equipment, or personalty for the THEFT OR transportation of
22 any stolen mule, horse, mare, colt, foal, filly, sheep,
23 lamb, cow, calf, heifer, steer, bull, llama, bison, hogs,
24 poultry, or the products of any thereof stolen livestock is
25 unlawful,--and--such the vehicle,--money,--equipment,--or

1 personalty shall must be--forfeited--to--the--state. Any
2 vehicle, money, equipment, or personalty found-in-such-use
3 used for THE THEFT OR unlawful transportation or upon
4 probable cause believed to be devoted wholly or in part to
5 such-use-shall THE THEFT OR unlawful transportation must be
6 seized and held.

7 (2) Within 45 days after the seizure, any peace officer
8 or officer of the agency that seizes any property shall file
9 a petition to institute forfeiture proceedings with the
10 clerk of the district court of the county in which the
11 seizure occurs. The clerk shall issue a summons at the
12 request of the petitioning party, who shall cause the same
13 summons to be served upon all owners or claimants of the
14 property by one of the following methods:

15 (a) upon an owner or claimant whose address is known,
16 by personal service of a copy of the petition and summons as
17 provided in the Montana Rules of Civil Procedure;

18 (b) upon an owner or claimant whose address is unknown
19 but who is believed to have an interest in the property, by
20 publication of the summons in one issue of a newspaper of
21 general circulation in the county where the seizure occurred
22 or, if there is no such newspaper of general county
23 circulation, by publication in one issue of a newspaper of
24 general circulation in an adjoining county, and by mailing a
25 copy of the petition and summons to the most recent address

1 of such the owner or claimant, if any, shown in the records
2 of the division of motor vehicles.

3 (3) A vehicle is not subject to forfeiture under this
4 section if:

5 (a) it is a stolen vehicle at the time it is used for
6 such unlawful transportation; or

7 (b) the vehicle owner thereof is not in collusion with
8 the party or parties guilty of the theft."

9 **Section 2.** Section 81-5-109, MCA, is amended to read:

10 "81-5-109. Presumption -- hearing -- disposition of
11 vehicle and other property. (1) There is a rebuttable
12 presumption of forfeiture as to all property used for the
13 THEFT OR transportation of the livestock as provided in
14 81-5-104.

15 (2) If a verified answer to the petition is not filed
16 within 20 days after the service of the petition and
17 summons, the court upon motion shall order the property
18 forfeited to the state.

19 (3) If a verified answer is filed within 20 days, a
20 hearing on the petition for forfeiture must be set without a
21 jury not less than 60 days after the answer is filed. Notice
22 of the hearing must be given in the manner provided for
23 service of petition and summons.

24 (4) If the court finds that a vehicle, money,
25 equipment, or personalty was not used for the purpose

1 charged or that it was used without the consent or knowledge
2 of the owner, it shall order the property released to the
3 owner of record on the date of the seizure. If the court
4 finds that the vehicle, money, equipment, or personalty was
5 used for the purpose charged and was used with the knowledge
6 and consent of the owner, the property must be ordered
7 forfeited."

8 **Section 3.** Section 81-5-110, MCA, is amended to read:

9 "81-5-110. Sale at public auction -- RETENTION OF
10 PROPERTY. (1) Vehicles, equipment, and personalty forfeited
11 under 81-5-109 ~~shall must~~ MAY be sold at public auction in
12 the manner of sales of personal property under execution and
13 may be sold by any sheriff, livestock inspector, or other
14 peace officer.

15 (2) THE DEPARTMENT MAY RETAIN THE VEHICLES, EQUIPMENT,
16 AND PERSONALTY FORFEITED UNDER 81-5-109 FOR OFFICIAL USE BY
17 THE DEPARTMENT, INCLUDING PERSONNEL TRAINING. IF THE
18 DEPARTMENT RETAINS FORFEITED PROPERTY THAT IT DETERMINES TO
19 BE SUITABLE FOR EVERYDAY USE BY DEPARTMENT PERSONNEL, THE
20 DEPARTMENT SHALL REDUCE SIMILAR PROPERTY PURCHASES
21 ACCORDINGLY.

22 (3) MONEY FORFEITED UNDER 81-5-109 MUST BE PLACED IN
23 THE SPECIAL REVENUE ACCOUNT CREATED IN 81-5-111(2) FOR USE
24 BY THE DEPARTMENT FOR PERSONNEL TRAINING OR ENFORCEMENT
25 PURPOSES."

Section 4. Section 81-5-111, MCA, is amended to read:

"81-5-111. Disposition of proceeds -- SPECIAL REVENUE ACCOUNT. ~~The--officer--making--the--sale,--after~~ (1) AFTER deducting the expenses of keeping RETAINING the property vehicle, money, equipment, or personalty and the cost of the sale so--far--as--the--balance-of-sale-proceeds-permit, THE OFFICER MAKING THE SALE OR THE DEPARTMENT, IF IT RETAINS THE VEHICLE, MONEY, EQUIPMENT, OR PERSONALTY, shall pay all liens TO THE EXTENT THE BALANCE OF SALE PROCEEDS PERMIT, according to their THE LIEN priorities, which that are established, by intervention or otherwise in--the proceedings,--as--being. A LIEN MUST BE bona fide and as having HAVE been created without the lienor having any notice or reasonable cause to believe that the vehicle, money, equipment, or personalty was being or was to be used for the THEFT OR illegal transportation and ~~shall pay the balance-of-the-proceeds-to-the-treasurer-of-this-state-to-be credited-to-the-department-of-livestock-fund--The--proceeds may-be-used-by-the-department-for-personnel-training.~~

(2) THERE IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND. THE PROCEEDS FROM THE SALE OF VEHICLES, EQUIPMENT, AND PERSONALTY PROVIDED FOR IN 81-5-110 MUST BE DEPOSITED IN THE ACCOUNT,--AN--AMOUNT--UP--TO--\$20,000--EACH--YEAR--IS, ARE STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, AND MUST BE USED BY THE DEPARTMENT FOR PERSONNEL TRAINING OR

ENFORCEMENT PURPOSES. FUNDS--IN--EXCESS--OF--THE--STATUTORILY APPROPRIATED--\$20,000--PER--YEAR--MUST--BE--DEPOSITED--IN--THE GENERAL-FUND."

SECTION 5. SECTION 17-7-502, MCA, IS AMENDED TO READ:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;

1 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 2 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 3 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 4 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
 5 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206;
 6 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;
 7 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;
 8 81-5-111; 82-11-136; 82-11-161; 85-1-220; 90-3-301;
 9 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

10 (4) There is a statutory appropriation to pay the
 11 principal, interest, premiums, and costs of issuing, paying,
 12 and securing all bonds, notes, or other obligations, as due,
 13 that have been authorized and issued pursuant to the laws of
 14 Montana. Agencies that have entered into agreements
 15 authorized by the laws of Montana to pay the state
 16 treasurer, for deposit in accordance with 17-2-101 through
 17 17-2-107, as determined by the state treasurer, an amount
 18 sufficient to pay the principal and interest as due on the
 19 bonds or notes have statutory appropriation authority for
 20 the payments. (In subsection (3): pursuant to sec. 7, Ch.
 21 567, L. 1991, the inclusion of 19-6-709 terminates upon
 22 death of last recipient eligible for supplemental benefit;
 23 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
 24 22-3-811 terminates June 30, 1993.)"

-End-