

SENATE BILL NO. 73

INTRODUCED BY DEVLIN, SWYSGOOD, BECK,
NATHE, KASTEN, TUNBY, M. HANSON, GRINDE

IN THE SENATE

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| JANUARY 2, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. |
| JANUARY 4, 1993 | FIRST READING. |
| JANUARY 9, 1993 | SPONSORS ADDED. |
| JANUARY 21, 1993 | COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. |
| JANUARY 22, 1993 | PRINTING REPORT. |
| | SECOND READING, DO PASS. |
| JANUARY 23, 1993 | ENGROSSING REPORT. |
| | THIRD READING, PASSED. AYES, 45; NOES, 1. |
| | TRANSMITTED TO HOUSE. |

IN THE HOUSE

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| JANUARY 25, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. |
| | FIRST READING. |
| FEBRUARY 11, 1993 | COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. |
| MARCH 27, 1993 | ON MOTION, CONSIDERATION PASSED FOR THE DAY. |
| MARCH 29, 1993 | ON MOTION, CONSIDERATION PASSED FOR THE DAY. |
| MARCH 30, 1993 | SECOND READING, CONCURRED IN. |
| APRIL 1, 1993 | THIRD READING, CONCURRED IN. AYES, 69; NOES, 26. |
| | RETURNED TO SENATE. |

APRIL 2, 1993

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 73
INTRODUCED BY DEVLIN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PENALTY FOR FAILURE OF A RAILROAD CORPORATION TO MAINTAIN FENCES; CREATING A PROCESS OF NOTIFICATION TO A RAILROAD CORPORATION WHEN FENCES ARE IN DISREPAIR; SETTING A TIME LIMIT FOR PAYMENT ON A JUDGMENT OF LIABILITY FOR THE VALUE OF A KILLED OR MAIMED ANIMAL AND PROVIDING FOR CHARGING INTEREST WHEN THAT TIME LIMIT IS EXCEEDED; AND AMENDING SECTION 69-14-701, MCA."

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

Section 1. Section 69-14-701, MCA, is amended to read:

"69-14-701. Maintenance of fences -- penalty. (1) Railroad corporations ~~must-make~~ shall build and maintain a good--and legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass.

(2) ~~In--case-they-do-not-make~~ If a railroad corporation does not build and maintain such the fence and guards,--if and their its engines or cars shall kill or maim any cattle or other domestic animals upon their its line of road, they it must pay to the owner of such the cattle or other domestic animals, in all cases, a fair market price for the

same animal, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed; provided, that however, nothing herein-shall in this section may be construed so--as to prevent any a person from recovering damages from any a railroad corporation for its negligent killing or injury to any cattle or other domestic animals at spurs, sidings, Y's Ys, crossings, and turntables.

(3) A person may file a complaint with the department of transportation when a fence is in disrepair or in need of maintenance. The department shall certify that the fence is in need of repair and notify the railroad corporation responsible for the fence. The department shall forward a copy of the complaint, a certification that the fence is in need of repair, and a verification that the railroad corporation was notified to the county attorney of the county within which the site of the fence in disrepair is located. Upon notice, the railroad corporation responsible for the fence shall repair the fence within 15 days. A railroad corporation failing to repair the fence within 15 days of notification shall pay a fine of \$500 plus \$100 a day each day after the 15th day of notification, for failure to repair the fence. The fine must be recovered in a civil action and deposited in the county general fund. It is the duty of the county attorney of the county within which the site of the fence in disrepair is located to prosecute the

1 action."

2 NEW SECTION. Section 2. Payment of claim -- penalty.

3 Upon determining liability for the amount of the value of an
4 animal killed or maimed under the circumstances described in
5 69-14-701, the railroad corporation shall pay the plaintiff
6 within 30 days. Upon failure to pay the plaintiff within 30
7 days, interest at a rate of 10% a year accrues on the amount
8 due until the claim is paid.

9 NEW SECTION. Section 3. Codification instruction.

10 [Section 2] is intended to be codified as an integral part
11 of Title 69, chapter 14, part 7, and the provisions of Title
12 69, chapter 14, part 7, apply to [section 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0073, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill creating a penalty for failure of a railroad corporation to maintain fences; creating a process of notification to a railroad corporation when fences are in disrepair through the department of transportation; setting a time limit for payment on a judgment of liability for the value of a killed or maimed animal and providing for charging interest when that time limit is exceeded.

ASSUMPTIONS:

Any effect on the workload of the Department of Transportation would be negligible.

FISCAL IMPACT:

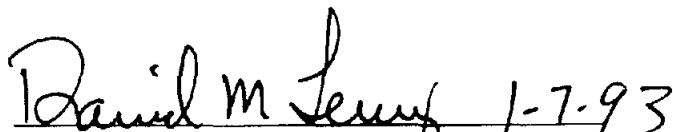
NONE


EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No significant impact is anticipated.

TECHNICAL NOTES:

There may be a drafting error in Section 1, subsection 3: "A person may file a complaint with the department of transportation when a fence is in disrepair or in need of maintenance.". The bill sponsor has indicated to the Department of Transportation that amendments are being prepared to replace the Department of Transportation with the Public Service Commission.


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


Gerry Devlin, PRIMARY SPONSOR DATE
Fiscal Note for SB0073, as introduced

SB 73

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

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"69-14-701. Maintenance of fences -- EXCEPTION -- penalty. (1) Railroad corporations must-make shall build and maintain a good-and legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass, EXCEPT THAT A FENCE IS NOT REQUIRED IN PLACES WHERE WATER DITCHES, EMBANKMENTS, TERRAIN, OR OTHER SUFFICIENT PROTECTION PREVENTS DOMESTIC ANIMALS FROM STRAYING ONTO THE RIGHT-OF-WAY. AN AFFECTED LANDOWNER OR LESSEE MAY CONSTRUCT, MAINTAIN, OR REPAIR A FENCE SUBJECT TO APPROVAL AND

REIMBURSEMENT BY THE RAILROAD CORPORATION.

(2) ~~in--case-they-do-not-make~~ If a railroad corporation does not build and maintain such the fence and guards,--if and their its engines or cars, BECAUSE OF THE LACK OF A FENCE OR MAINTENANCE OF A FENCE, ~~shall~~ kill or maim any cattle or other domestic animals upon their its line of road, they it must pay to the owner of such the cattle or other domestic animals, in all cases, a fair market price for the ~~same~~ animal, unless it occurred through the neglect or fault of the owner of the animal ~~so~~ killed or maimed; ~~provided,--that however,~~ nothing herein-shall in this section may be construed so--as to prevent any a person from recovering damages from any a railroad corporation for its negligent killing or injury to any cattle or other domestic animals at spurs, sidings, ~~Y's~~ Ys, crossings, and turntables.

(3) ~~A-person~~ AN AFFECTED LANDOWNER OR LESSEE may file a complaint with the ~~department--of--transportation~~ PUBLIC SERVICE COMMISSION when a fence is in disrepair or in need of maintenance. The ~~department~~ PUBLIC SERVICE COMMISSION shall certify that the fence is in need of repair and notify the railroad corporation responsible for the fence. The ~~department~~ PUBLIC SERVICE COMMISSION shall forward a copy of the complaint, a certification that the fence is in need of repair, and a verification that the railroad corporation was

1 notified to the county attorney of the county within which
 2 the site of the fence in disrepair is located. Upon notice,
 3 the railroad corporation responsible for the fence shall
 4 repair the fence within ±5 30 days, WEATHER PERMITTING. A
 5 railroad corporation failing to repair the fence within ±5
 6 30 days of notification shall pay a fine of \$500 \$100 plus
 7 \$100 \$50 a day each day after the ±5th 30TH day of
 8 notification, for failure to repair the fence. The fine must
 9 be recovered in a civil action and deposited in the county
 10 general fund. It is the duty of the county attorney of the
 11 county within which the site of the fence in disrepair is
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13 NEW SECTION. Section 2. Payment of claim -- penalty.
 14 Upon determining liability for the amount of the value of an
 15 animal killed or maimed under the circumstances described in
 16 69-14-701, the railroad corporation shall pay the plaintiff
 17 within 30 days. Upon failure to pay the plaintiff within 30
 18 days, interest at a rate of 10% a year accrues on the amount
 19 due until the claim is paid.

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 21 [Section 2] is intended to be codified as an integral part
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(3) A-person AN AFFECTED LANDOWNER OR LESSEE may file a complaint with the department--of--transportation PUBLIC SERVICE COMMISSION when a fence is in disrepair or in need of maintenance. The department PUBLIC SERVICE COMMISSION shall certify that the fence is in need of repair and notify the railroad corporation responsible for the fence. The department PUBLIC SERVICE COMMISSION shall forward a copy of the complaint, a certification that the fence is in need of repair, and a verification that the railroad corporation was

1 notified to the county attorney of the county within which
 2 the site of the fence in disrepair is located. Upon notice,
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 5 railroad corporation failing to repair the fence within 15
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