

THE MINUTES OF THE MEETING OF THE AGRICULTURE COMMITTEE
February 4, 1981

The meeting was called to order by CHAIRMAN SMITH on February 4, 1981, in room 431 of the House at 12:30 p.m.

Roll call was taken and all members were present except REPRESENTATIVE MANUEL.

HOUSE BILL 467 (EXHIBIT A) "AN ACT TO CREATE A MONTANA ALFALFA SEED COMMISSION TO RESEARCH AND ADVERTISE THE STATE'S ALFALFA SEED INDUSTRY; ESTABLISHING ITS FUNCTIONS AND METHODS OF OPERATION; AND LEVYING AN ASSESSMENT ON ALFALFA SEED PRODUCERS," was presented by its sponsor, REPRESENTATIVE SIVERTSON, stating there was some problem in the bill the way the commission is to be set up. Therefore, he asked MR. MCOMBER, of the Department of Agriculture, to give an explanation of the bill and its changes.

MR. MCOMBER praised the fact that an organization would be willing to put up its own money to promote its production, and believes it is proper for the state to give legal status to this commission to allow them to utilize the authority of the state to collect their assessments and to enforce the rules that go with them. As there are several other bills of this type pending before the legislature now, it would be advantageous from an administrative point of view to have them follow pretty much the same format. Some of the issues the department would like to address were:

Page 2, line 9, subsection (5): "The commission is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121."

Page 4, line 13, subsection (3): The bill gives the Commission the right to "employ and at pleasure discharge" the people they wish.

Mr. McOmber read Section 215,122 of the law pertaining to allocation for administrating purposes only, saying: "This is responsibility charged to the department. The department shall provide staff for the agency unless indicated in this chapter. The agency may not hire its own personnel." Therefore, the bill conflicts with this portion of the law.

Page 7, line 12, section 9 was brought to the committee's attention. This indicates that assessments levied and imposed under must be paid to the commission, etc., and that this is also in conflict with the law that states the department shall collect all assessments and deposit them into that fund.

Mr. McOmber stated that if the legislature wished they could change the laws that conflict with this bill.

One other problem that he saw with the bill was the restriction of the right of the department to use committee fees for administrative purposes and thus submitted the Attorney General's opinion that spells out carefully that the legislature has the right to take reasonable fees out of these fees.

BOB BRASTRUP, representing the MONTANA WHEAT RESEARCH AND MARKETING COMMISSION, presented their position in supporting House Bill 467 (EXHIBIT B). Mr. Brastrup also referred to the fiscal note that says, in regard to fiscal impact one simple word, "None."

REPRESENTATIVE SIVERTSEN then introduced MR. ART SHAW, representing PRIVATE SEED and the MONTANA ALFALFA SEED ASSOCIATION. Mr. Shaw said that in the 1920's Montana was an important alfalfa seed producing state nationally, and in the 1950's it declined; now it is on the uprise again. Now there are a number of private producers coming into the state of Montana, and with this there is also an IPM program, (Integrated Pest Management program), initiated in the past two years in Montana, which will have an impact in improving the environment in Montana through the reduced usage of pesticides, insecticides, etc. for the control of insects and diseases which are very important in the successful production of seed.

The seed production was up and down due to the fact that they were not applying the management necessary to produce alfalfa seed successfully in Montana.

CHARLEY EMMONS of Olive, Montana, and president of the MONTANA ALFALFA SEED ASSOCIATION, asked for the committee's support of HB 467 and yielded to Steve McDonald.

STEVE MCDONALD of Three Forks, Montana, also representing MONTANA ALFALFA SEED ASSOCIATION, stated that they comprise a small portion of the overall agriculture, but it is a rapidly growing business. Because they are a small organization, they do not get much money. Mr. Emmons asked for the committee's support for this bill.

There being no more proponents and no opponents, discussion was called for by the chairman.

REPRESENTATIVE HOLLIDAY asked if it was Mr. McOmber's intention to strike section 5 on page 2, and also section 9 on page 7.

The representative from the Department of Agriculture said he did not believe it was his intention to strike either.

REPRESENTATIVE HOLLIDAY then asked if there were already statutes set up that would refer to these statutes.

The answer was, that this is to clean up the language problem and have the language uniform with all of the commission bills.

REPRESENTATIVE ERNST asked how many members were in the statewide organization.

TOM DEVENEY of the Seed Association stated that there were between 100 and 150.

REPRESENTATIVE JENSEN asked about the caluclation of 111 pounds per acre.

MR. BRADSTRUP stated that some of the modern cultural practices have gone up from 500 pounds to 1,000 pounds per acre, but not everyone uses those methods.

REPRESENTATIVE BENGTSON asked if they used the language compatible with the law regarding the administrative end of this; in other words, this could be patterned after the Wheat and Marketing. This was confirmed and the legal counsel said he would look into this matter.

It was asked if it would be marketed under an association name or trade name. This answer was "no", that the purpose of the bill was just for research purposes.

REPRESENTATIVE SMITH asked if it took 51% of the people to agree to this to put it into force.

REPRESENTATIVE SIVERTSEN stated that it would not, referring to section 10 on the bottom of page 7, where it provides for a refund for any person who requests all or a portion of their money.

REPRESENTATIVE SIVERTSEN closed by indicating that he

appreciated the consideration and will offer any help or answer any other questions regarding this bill.

REPRESENTATIVE SCHULTZ asked if he would like to have this bill taken over to Agriculture or get a subcommittee to do this in order to draw up the amendments.

REPRESENTATIVE CONROY and BOB PERSON, committee staff, will write this up and take it over to Agriculture.

The meeting was closed on HB 467.

SENATE BILL 136 was introduced by sponsor, SENATOR ETCHART, being "AN ACT TO AMEND SECTION 76-16-106, MCA, TO INCREASE THE FEE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY IMPOSE AGAINST THE STATE GRAZING DISTRICTS FROM 10 CENTS PER ANIMAL UNIT TO 15 CENTS PER ANIMAL UNIT," (EXHIBIT C, includes fiscal note). Senator Etchart introduced Ray Beck.

RAY BECK, Executive Secretary of the MONTANA ASSOCIATION OF STATE GRAZING DISTRICT, stated that it was the association that asked that this be introduced and are putting an increase upon themselves and ask for a Do Pass.

REPRESENTATIVE FEDA asked to be put on the record as a verbal proponent.

REPRESENTATIVE BRIGGS asked if there were any state grazing districts around Dillon.

SENATOR ETCHART stated that the state grazing district boom was scattered pretty much in the eastern part of the state.

RAY BECK presented the committee with a confirmation letter from the Montana Association of State Grazing Districts as to motion and approval of SB 136, (EXHIBIT D).

There being no opponents to the bill, the meeting went into Executive Session.

REPRESENTATIVE McLANE made a MOTION that SB 136 'do pass'. Motion was seconded and all members voted that this bill DO PASS Unanimously.

HOUSE BILL 452 was taken up. First the amendments (EXHIBIT E) were reviewed and each individual amendment read and marked by each representative on his copy of the bill.

REPRESENTATIVE HOLLIDAY made a motion that amendments to H.B. 452 'do pass'.

Question was asked.

REPRESENTATIVE SCHULTZ asked for the interpretation on page 15 regarding the commercial applicator, and it was mentioned it was for aerial sprayers that traveled more than one county.

REPRESENTATIVE CONROY stated that he believes anyone flying pesticides or herbicides must have a permit.

There is still a major concern about the legality and also where cases could and could not be tried.

REPRESENTATIVE JACOBSEN MOVED that on page 15, line 3, after the word "makes" that the words "on a commercial basis" be inserted. Motion was withdrawn.

There was still a question surrounding this same word "commercial" and REPRESENTATIVE SCHULTZ suggested a postponement until the wording could be investigated.

REPRESENTATIVE JENSEN then made a MOTION that the proposed amendment show, after the word "application," on page 15, line 4, "in one or more county", and after the added phrase, "on a commercial basis". MOTION PASSED.

Question was asked on REPRESENTATIVE HOLLIDAY's motion that amendments to H.B. 452 'do pass'. MOTION PASSED UNANIMOUSLY.

A MOTION was made by REPRESENTATIVE BRIGGS that H.B. 452 'do pass' AS AMENDED. A roll call vote on H.B. 452 and all amendments was taken.

Smith	No	McLane	Yes
Schults	Yes	Bengtson	Yes
Ernst	Yes	Jacobsen	Yes
Jensen	Yes	Robbins	Yes
Ellerd	Yes	Holliday	Yes
Ryan	Yes	Conroy	No
Briggs	Yes	Manuel	Absent
Underdal	Yes	Feda	Excused
		Roush	Excused

THE MINUTES OF THE MEETING OF THE AGRICULTURE
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The meeting adjourned at 2:15 p.m., February 4, 1981



CARL SMITH, CHAIRMAN

lmw

VISITORS' REGISTER

HOUSE

COMMITTEE

BILL SB 136
 SPONSOR _____

Date 2/4/81

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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INTRODUCED BY

HOUSE BILL NO. 467

Lee *Barlow* *Robt. Roth* *Light* *James* *Hard*

Barlow *Robt. Roth* *Light* *James* *Hard*

Barlow *Robt. Roth* *Light* *James* *Hard*

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A MONTANA

ALFALFA SEED COMMISSION TO RESEARCH AND ADVERTISE THE

STATE'S ALFALFA SEED INDUSTRY; ESTABLISHING ITS FUNCTIONS

AND METHODS OF OPERATION; AND LEVYING AN ASSESSMENT ON

ALFALFA SEED PRODUCERS."

SECTION 1. Montana alfalfa seed commission --

composition -- allocation. (1) There is a Montana alfalfa

seed commission composed of seven members appointed by the

director of agriculture.

(2) Each of the appointed members shall be a citizen

of Montana actively engaged in the growing of alfalfa seed

within the state or deriving a substantial portion of his

income from handling, packing, shipping, buying, or selling

alfalfa seed or acting as a broker or factor of alfalfa

seed. These qualifications of members must continue during

their terms of office.

(3) A list of nominees for appointment may be

submitted to the director by the Montana alfalfa seed

council, the Montana seed trade association, the Montana

seed association, and any other organization representing

alfalfa seed growers or dealers. Names of nominees shall be submitted at least 71 days before the expiration of a commission member's term. The director shall appoint members from among the persons nominated.

(4) The appointed members shall serve staggered terms of 3 years. The initial appointments shall be as follows: two members for 1-year terms, two members for 2-year terms, and three members for 3-year terms.

(5) The commission is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

Section 2. Short title. [Sections 2 through 14] may be cited as the "Alfalfa Seed Industry Act".

Section 3. Findings -- purpose. (1) The legislature finds that:

(a) it is in the best interest of all the people of Montana that the abundant natural resources of the state be protected, fully developed, and uniformly distributed;

(b) economic waste threatens the alfalfa seed industry in Montana because of lack of proper advertising and dissemination of information necessary for the development and promotion of alfalfa seed grown in the state and because of lack of facilities and funds for research to:

(i) develop and improve control measures for diseases and pests which attack alfalfa seed pollinators;

1 (ii) improve alfalfa seed growing culture; and

2 (iii) disseminate information to the growers; and

3 (c) it is in the interest of the people and general
4 welfare of the state that this avoidable economic waste be
5 eliminated by the growers having at their disposal all
6 available information on the best and most advanced methods
7 of culture, growing, harvesting, and marketing of alfalfa
8 seed.

9 (2) The purpose of [sections 2 through 14] is to
10 promote the general welfare of the people of the state by
11 improving the culture and production of and expanding the
12 market for alfalfa seed grown in the state.

13 Section 4. Definitions. As used in [sections 2 through
14 14] the following definitions apply:

15 (1) "Commission" means the Montana alfalfa seed
16 commission established in [section 1].

17 (2) "Dealer" means any person, partnership,
18 association, corporation, cooperative, or other business
19 unit or device that first handles, packs, ships, buys, and
20 sells alfalfa seed or that acts as sales or purchasing
21 agent, broker, or factor of alfalfa seed.

22 (3) "Grower" means any landowner personally engaged in
23 growing alfalfa seed, a tenant personally engaged in growing
24 alfalfa seed, or both the owner and the tenant jointly, and
25 includes a person, partnership, association, corporation,

1 cooperative organization, trust, sharecropper, or any and
2 all other business units, devices, and arrangements that
3 grow alfalfa seed or are engaged in the pollination of
4 alfalfa seed.

5 (4) "Handled in the primary channels of trade" means
6 the time when any alfalfa seed is delivered under a sales
7 contract, sold, or delivered for shipment and sale.

8 Section 5. Powers of the commission. The commission
9 may:

10 (1) administer and enforce [sections 2 through 14];

11 (2) enter into contracts in the name of the
12 commission;

13 (3) employ and at pleasure discharge a research
14 director, research staff, a secretary, advertising manager,
15 advertising agents, agents, attorneys, and such clerical and
16 other help as it considers necessary and control their
17 powers and duties and fix their compensation;

18 (4) keep books, records, and accounts of all its
19 dealings, which books, records, and accounts shall be open
20 to inspection and audit by the state auditor at all times;

21 (5) purchase or authorize the purchase of all office
22 equipment or supplies and incur all other reasonable and
23 necessary expenses and obligations required for the proper
24 carrying out of the provisions of [sections 2 through 14];

25 (6) become a member of and purchase membership in

1 trade organizations and subscribe to and purchase trade
2 bulletins, journals, and other trade publications;

3 (7) plan and conduct a research program to improve the
4 quality of alfalfa seed, develop and improve control
5 measures for disease and pests which attack alfalfa and
6 alfalfa seed pollinators, improve alfalfa growing culture,
7 disseminate such information among the growers and dealers
8 of the state, and make such research contracts and other
9 agreements as may be necessary;

10 (8) plan and conduct a publicity and sales promotion
11 campaign to increase the sale and use of Montana alfalfa
12 seed and make such publicity and sales promotion contracts
13 and other agreements as may be necessary;

14 (9) establish and maintain the executive offices of
15 the commission at any place within the state, which
16 designated place may be changed at the discretion of the
17 commission;

18 (10) adopt and from time to time alter, rescind,
19 modify, or amend all proper and necessary rules and orders
20 for the exercise of its power and the performance of its
21 duties, in accordance with the Montana Administrative
22 Procedure Act;

23 (11) cooperate with any local, state, or national
24 organization or agency, whether voluntary or created by the
25 law of any state or the United States government, engaged in

1 work or activities similar to the work and activities of the
2 commission and enter into contracts or agreements with such
3 organizations or agencies for carrying on a joint campaign
4 of research, education, product protection, publicity, and
5 reciprocal enforcement of these objectives;

6 (12) investigate violations of [sections 2 through 14];

7 (13) protect brands, marks, packages, brand names or
8 trademarks being promoted by the commission; and

9 (14) accept grants, donations, and gifts from any
10 source for expenditure for any purpose consistent with
11 [sections 2 through 14], which may be specified as a
12 condition of any grant, donation, or gift.

13 Section 6. Compensation -- per diem. Each commission
14 member is entitled to \$25 compensation for each day he is
15 engaged in the transaction of official business, together
16 with actual and necessary travel expenses, as provided for
17 in 2-18-501 through 2-18-503.

18 Section 7. Liability of state. The state of Montana is
19 not liable for the acts or omissions of the commission or
20 any member, officer, agent, or employee thereof.

21 Section 8. Assessment on alfalfa seed. (1) There is
22 hereby levied upon all alfalfa seed grown in this state and
23 sold through commercial channels an assessment of 1/2 of 1¢
24 of the grower's price received at the point of first sale.

25 (2) If it appears from an investigation that the

1 revenue from the assessment levied under subsection (1) is
 2 inadequate to accomplish the purposes of [sections 2 through
 3 14], the commission shall file with the director of
 4 agriculture a report showing the necessity of the industry,
 5 extent of public convenience, interest, and necessity, and
 6 probable revenue from the additional assessment desired to
 7 be levied. The director of agriculture may thereupon
 8 increase the assessment to a sum not to exceed 1% of the
 9 grower's price received at the point of first sale. No
 10 increase may be made prior to filing of the report and
 11 recommendation by the commission.

12 Section 9. Payment of assessment. All assessments
 13 levied and imposed under [section 8] must be paid to the
 14 commission by the person, either grower or dealer, by whom
 15 the alfalfa seed is first handled in the primary channels of
 16 trade and must be paid at such times as the commission may
 17 by rule prescribe, but not later than 60 days from the date
 18 on which the grower received payment for the alfalfa seed.
 19 If the party first handling the alfalfa seed in the primary
 20 channels of trade is a person other than the grower, he may
 21 charge against or recover from the grower of such alfalfa
 22 seed the full amount of any assessment levied and imposed
 23 under [section 8].

24 Section 10. Refund of assessment. Any person who has
 25 paid assessments to the commission may require the

1 commission to refund all or any portion of the assessment
 2 levied under the rules of the commission and paid by the
 3 producer. All such requests must be in writing, filed not
 4 later than August 1 of each calendar year, and must be on
 5 forms to be available without cost to all producers who pay
 6 assessments.

7 Section 11. Deposit and disbursement of funds --
 8 records -- bond requirements. (1) As soon as possible after
 9 receipt, all money received by the commission from the
 10 assessment levied under [section 8] and all other money
 11 received by the commission shall be deposited in one or more
 12 separate accounts in the name of the commission in one or
 13 more banks or trust companies. The commission shall
 14 designate such accounts at such banks or trust companies.

15 (2) No money may be withdrawn or paid out of such
 16 accounts except upon order of the commission and upon checks
 17 or other orders upon such accounts signed by a member of the
 18 commission whom the commission shall designate, and
 19 countersigned by such other member, officer, or employee of
 20 the commission whom the commission designates. A receipt,
 21 voucher, or other written record, showing clearly the nature
 22 and items covered by each check or other order, must be
 23 kept.

24 (3) All money referred to in subsection (1) of this
 25 section may be used by the commission only for the payment

1 of expenses of the commission in carrying out the powers
2 conferred on the commission.

3 (4) The commission may require any commission member
4 or agent or employee appointed by the commission to give a
5 bond payable to the commission in the amount and with the
6 security and containing the terms and conditions the
7 commission may prescribe. The cost of such bond is an
8 administrative cost under [sections 2 through 14].

9 Section 12. Records required. Every dealer shall
10 maintain accurate records of all alfalfa seed handled,
11 packed, shipped, or processed by him. The records shall be
12 in such form and contain such information as the commission
13 may by rule prescribe, shall be preserved for a period of 2
14 years, and are subject to inspection at any time upon
15 request of the commission or its agents.

16 Section 13. Penalty for nonpayment. Any grower or
17 dealer who fails to make collection or pay any assessment
18 within the time required pursuant to [sections 2 through 14]
19 is subject to a penalty of 5% of the amount of the
20 assessment determined to be due, as provided in [sections 2
21 through 14], plus 1% of such amount for each month of delay
22 or fraction thereof after the expiration of the month after
23 such assessment became due. The commission, if satisfied
24 that the delay was excusable, may remit all or any part of
25 such penalty. The penalty must be paid to the commission and

1 disposed of as provided in [section 11].

2 Section 14. Penalty. In addition to the penalty
3 specified in [section 13] any person who violates or aids in
4 a violation of any of the provisions of [sections 2 through
5 14] or any of the rules or orders of the commission adopted
6 under [sections 2 through 14], upon conviction thereof, is
7 punishable by a fine not to exceed \$500 or by imprisonment
8 not to exceed 90 days, or both. All fines collected shall be
9 deposited as provided in [section 11].

10 Section 15. Severability. If a part of this act is
11 invalid, all valid parts that are severable from the invalid
12 part remain in effect. If a part of this act is invalid in
13 one or more of its applications, the part remains in effect
14 in all valid applications that are severable from the
15 invalid applications.

16 Section 16. Codification instruction. (1) Section 1 is
17 intended to be codified in Title 2, chapter 15, part 30.

18 (2) Sections 2 through 14 are intended to be codified
19 as Title 80, chapter 11, part 3.

--End--

I am Bob Brastrup, executive secretary of the Montana Wheat Research and Marketing Committee, a division of the Montana Department of Agriculture.

I am here today to support House Bill 467, the Alfalfa Seed Industry Act, in its principal objectives to disseminate information necessary to develop and promote alfalfa seed and to provide for research to control diseases and to improve the growing culture.

In its 13½ years of existence, our own organization -- popularly known as the wheat commission -- has registered substantial success in these same areas on behalf of Montana's grain growers.

The same basic approach requested in House Bill 467 on behalf of this state's alfalfa seed producers has been used by the wheat commission to enhance the production of our wheat and barley and gain a prominent position in the domestic and foreign markets for our Montana grain.

The promotional capabilities made available to the industry through our legislation and the bill now before you is an important adjunct to achieving the research, production and marketing goals.

The alfalfa seed industry in Montana certainly is of sufficient quantity and value to deserve the special protection and support that this proposed legislation would provide.

Averaging the last five years, alfalfa seed producers annually harvest 33,200 acres and produce 3,605,000 pounds of seed, bringing a return of \$95.40 per acre and a total crop value of \$3,212,000 each year.

Although about one-half of this production and value is from the seven southeastern counties of Carter, Custer, Fallon, Powder River, Prairie, Rosebud and Wibaux, there is additional production in 23 other counties, giving the industry statewide impact.

Most importantly, this legislation -- as with the wheat commission -- is a "self-help" approach by the producers themselves.

Although every Montanan benefits when our largest single industry of agriculture benefits, you will note the producers are assessing only themselves to bring about those benefits.

I'm certain that as legislators you are pleased to see fiscal notes such as the one accompanying House Bill 467 that says in regard to fiscal impact a simple one word: None!

I do understand there are some departmental concerns in regard to staffing and fiscal procedures provided in the bill, and I'm willing to answer any questions about the operation of the wheat commission in those areas, if it would be helpful to your committee.

Thank you for hearing me out and for your interest in and support of agriculture in Montana.

###

NAME Bob Brastrup BILL No. HB 467
ADDRESS Gt Falls DATE Feb 4, 1981
WHOM DO YOU REPRESENT Mont Wheat Res Mktg Comm.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Arthur F. Shaw BILL No. HB 467

ADDRESS 1209 W Koch, Bozeman, MT DATE 2-4-81

WHOM DO YOU REPRESENT Mont. Alfalfa Seed Assoc.

SUPPORT yes OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Charley Emmons BILL No. HB 467
ADDRESS Olive, mt DATE 2-4-81
WHOM DO YOU REPRESENT Montana Alfalfa Seed Association
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Steve McDonnell BILL No. HB467
ADDRESS Three Forks DATE Feb 4, 1951
WHOM DO YOU REPRESENT Mont. Alfalfa Seed Growers Ass
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Thomas A. Darity BILL No. H.B. 417
ADDRESS Pt. 2 Foyth DATE _____
WHOM DO YOU REPRESENT Lead Assoc.
SUPPORT Support OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HOUSE COMMITTEE

LL HB 467
SPONSOR _____

Date _____

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

1
2 INTRODUCED BY Robert Graham 136
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 76-16-106, MCA, TO INCREASE THE FEE THE DEPARTMENT OF
6 NATURAL RESOURCES AND CONSERVATION MAY IMPOSE AGAINST THE
7 STATE GRAZING DISTRICTS FROM 10 CENTS PER ANIMAL UNIT TO 15
8 CENTS PER ANIMAL UNIT."
9

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

11 Section 1. Section 76-16-106, MCA, is amended to read:
12 "76-16-106. Department fees. (1) The department may
13 impose fees against the several state grazing districts of
14 the state in an amount not in excess of ~~10~~ 15 cents per
15 animal unit, based upon the number of animal units per year
16 for which the district grants permits, to defray expenses
17 incurred by the department in carrying out its powers and
18 duties under this chapter.

19 (2) These fees shall be held in the earmarked revenue
20 fund to be expended by order and direction of the department
21 for the administration of the department's functions under
22 this chapter.

23 (3) If a state district fails or refuses to pay the
24 fee on or before October 1 of each year and after the
25 district is provided with a full report from the department

1 of all money collected and expended by it for its fiscal
2 year next preceding that date, the department may compel and
3 levy collection and payment by writ of mandate or other
4 appropriate remedy against the state district."

-End-

-2- THIRD READING

SB 136

C

STATE OF MONTANA

REQUEST NO. 108-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 16, 1981, there is hereby submitted a Fiscal Note for Senate Bill 136 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation:

Senate Bill 136 would amend Section 76-16-106, MCA, to increase the fee the Department of Natural Resources and Conservation may impose against the State grazing districts from 10 cents per animal-unit to 15 cents per animal-unit.

Assumptions:

1. Fees will be received for approximately 180,000 animal-units each fiscal year.
2. The proposed legislation will be effective July 1, 1981.

Revenue Impact:

	<u>FY 82</u>	<u>FY 83</u>	<u>Total Biennium</u>
Fees collected under current law	\$18,000	\$18,000	\$36,000
Fees collected under proposed law	<u>27,000</u>	<u>27,000</u>	<u>54,000</u>
Increase in fees collected	<u>9,000</u>	<u>9,000</u>	<u>18,000</u>

Daniel M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-20-81

D

MONTANA ASSOCIATION OF STATE GRAZING DISTRICTS

7 Edwards, Helena, Montana 59601
443-5711

SB 136

During the December Board of Directors meeting of the Montana Association of State Grazing Districts a motion was made and approved to ask for legislation to increase the animal unit fee on grazing districts from 10¢ to 15¢.

The Montana Association of State Grazing Districts request a "Do Pass" on SB 136.

Also the Montana Stockgrowers Association would like to go on record in support of SB 136.



RAY BECK
Executive Secretary

RB:dv

Amend House Bill 452

Page 3, line 24

Following: "permits"

Strike: remainder of line 24 and line 25 through line 6 on page 4.

Page 7, line 25

Following: "made"

Insert: "false or misleading"

Following: "statements"

Strike: "intended to overcome any concern expressed by a customer about"

Page 8, line 1

Preceding: "the"

Insert: "concerning"

Page 8, line 2

Following: line 1

Strike: "application of pesticides"

Insert: "pesticide or its application"

Page 12, line 21

Following: "(e)"

Strike: "sample"

Page 13: line 8

Following: "exercised"

Insert: "over persons not possessing a required license or permit"

Page 14, line 9

Following: "involved."

Insert: "Odor is specifically exempted from the provisions of this subsection."

Page 15, line 4

Following: "applications"

Insert: "in more than one county" *on a commercial basis*

Following: "permit or"

Insert: "operates"

Page 15, line 5

Following: "department"

Insert: "in more than one county"

Amend House Bill 452

Page 14, line 4

Following: "formulate,"

Strike: "use,"

Insert: "or"

Following: "store,"

Strike: "apply, or attempt to apply"

1 HOUSE BILL NO. 452
 2 INTRODUCED BY *Meyer Ernst Hoff*
 3 *Baughman*
 4 REQUEST OF THE DEPARTMENT OF AGRICULTURE

5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR A GENERAL REVISION
 6 OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND
 7 PENALTIES PROVISIONS; AMENDING SECTIONS 80-8-204, 80-8-207,
 8 80-8-209, 80-8-211, AND 80-8-301 THROUGH 80-8-306, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 80-8-204, MCA, is amended to read:

12 "80-8-204. Application for applicator's license. (1)
 13 Application for a pesticide applicator's license provided
 14 for in 80-8-203 shall be made annually to the department
 15 before applying pesticides in any calendar year, provided
 16 that pesticide applicators applying for renewal of license
 17 shall do so on or before May 1 of that calendar year. Any
 18 applicator applying for renewal of license after May 1 shall
 19 be assessed a \$15 late licensing fee.

20 (2) ~~if the application is made an individual applying~~
 21 for a license to engage in aerial application of pesticides,
 22 ~~the applicant shall first meet~~ certify on the application
 23 ~~that he has met all of the requirements of the federal~~
 24 ~~aviation agency administration and the department of~~
 25 ~~community affairs to operate the equipment described in the~~

1 ~~application requirements for aerial pesticide applicators.~~
 2 Section 2. Section 80-8-207, MCA, is amended to read:
 3 "80-8-207. Dealers. (1) It is unlawful for a dealer
 4 ~~any person~~ to sell, offer for sale, deliver, or have
 5 delivered within this state any pesticide without first
 6 procuring a license from the department of agriculture for
 7 each calendar year or portion thereof. A separate dealer's
 8 license and fee shall be required for each location or
 9 outlet from which pesticides are distributed, sold, held for
 10 sale, or offered for sale. Pesticide fieldmen or salesmen
 11 employed directly out of the same location or outlet and
 12 under a licensed dealer shall not be required to obtain a
 13 license. The dealer shall furnish the department the names
 14 and addresses of its fieldmen and salesmen selling
 15 pesticides within the state.

16 (2) The application for a license shall be accompanied
 17 by a fee of \$15. Dealers applying for renewal of license
 18 shall do so on or before May 1 of that calendar year. Any
 19 dealer applying for renewal of license after May 1 shall be
 20 assessed a \$15 late licensing fee.

21 (3) The dealer shall require the purchaser of any
 22 restricted pesticide to exhibit his license or permit issued
 23 under authority of this chapter before completing a sale.

24 (4) Dealers may make one application for two annual
 25 licenses if the application is accompanied by a \$15

1 licensing fee for each year of the state biennium.

2 (5) Pharmacists licensed as provided for in 37-7-302
3 and 37-7-303, veterinarians licensed as provided for in
4 37-13-302 and 37-18-303, and certified pharmacies licensed
5 under 37-7-321 shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department each year.
8 However, the certified pharmacies and veterinarians shall be
9 required to meet all other requirements concerning the
10 commercial sale of pesticides. The department shall take
11 into account the professional licensing requirements of
12 pharmacists, certified pharmacies, and veterinarians when
13 adopting rules."

14 Section 3. Section 80-8-209, MCA, is amended to read:
15 "80-8-209. Farm applicators. (1) Farm applicators
16 shall obtain a certificate or special-use permit prior to
17 purchasing and using any pesticide designated by the
18 department as a restricted-use pesticide. The certificate
19 to be issued for 5 calendar years, must be renewed annually
20 by the department or its authorized representative. The
21 5-year certificate period shall commence on January 1,
22 1970. The special-use permit shall be effective for 5
23 calendar years. The department may establish a staggered
24 years system of issuing permits by agricultural districts so
25 that all permits issued in one of the five agricultural

1 districts will be renewed in the same year but permits from
2 only one district will be renewed in any 1 year. Permits
3 issued in the course of a given district's 5-year effective
4 period will be effective only for the duration of the 5-year
5 period and then will be renewable for 5 years at the same
6 time as all other permits issued in the same district.

7 (2) Restricted pesticides may not be utilized by farm
8 applicators or their employees except for the purpose of
9 producing or protecting any agricultural commodity on
10 property owned, leased, or rented by such applicator or as
11 provided in (6) of this section.

12 (3) Farm applicators shall qualify for the certificate
13 or permit by either passing a graded written examination or
14 attending a training course approved by the department with
15 or without and taking an ungraded written examination. The
16 examination or examinations and course shall include require
17 and demonstrate practical knowledge as to of the
18 applicator's ability to:

19 (a) recognize common pests to be controlled and damage
20 caused by them;

21 (b) read and understand the label and labeling
22 information, including the common name of the pesticide(s)
23 applied, pest(s) to be controlled, timing and methods of
24 application, safety precautions, any preharvest or reentry
25 restrictions, and any specific disposal procedures;

1 (c) apply pesticides in accordance with label
 2 instructions and warnings, including the ability to prepare
 3 the proper concentration of pesticides to be used under
 4 particular circumstances, taking into account such factors
 5 as area to be covered, speed at which application equipment
 6 will be driven, and the quantity dispersed in a given period
 7 of operation;

8 (d) recognize local environmental situations that must
 9 be considered during application to avoid contamination; and
 10 (e) recognize poisoning symptoms and procedures to
 11 follow in case of a pesticide accident.

12 (4) The department may require farm applicators to
 13 attend a mandatory training session and pass a written
 14 examination for those restricted pesticides that are
 15 extremely toxic or for which an effective antidote is not
 16 available. The department may require farm applicators
 17 handling these pesticides to maintain use records.

18 (5) Farm applicators having---verified manifesting
 19 reading disabilities may become certified to use up-to as
 20 many as two restricted-use pesticides by passing a specific
 21 oral examination on the particular pesticide(s) if the
 22 applicator documents that a certified applicator in the
 23 immediate vicinity can advise him.

24 (6) Provisions of this chapter relating to
 25 certification of farm applicators do not apply to any farm

1 applicator applying nonrestricted pesticides on his own land
 2 or on lands of his neighbors if he:
 3 (a) operates farm property and operates and maintains
 4 pesticide application equipment primarily for his own use;
 5 (b) is not regularly engaged in the business of
 6 applying pesticides for hire and does not publicly hold
 7 himself out as a pesticide applicator;

8 (c) operates his pesticide application equipment only
 9 in the vicinity of his own property and for the
 10 accommodation of his immediate neighbors."

11 Section 4. Section 80-8-211, MCA, is amended to read:

12 "80-8-211. Revocation of licenses and permits. (1) The
 13 department shall establish the policy and procedures on the
 14 revocation of licenses or permits. The department may refuse
 15 to grant, renew, or may revoke ~~or~~ modify a license or
 16 permit, as the case may require, when the department is
 17 satisfied that the licensee or holder of a permit is not
 18 qualified to sell, use, or apply pesticides under the
 19 conditions in the locality in which he operates or has
 20 operated or that he has committed any of the following acts,
 21 each of which is declared to be a violation of this chapter:

22 (a) made false or fraudulent claims or recommendations
 23 through any media misrepresenting the effect of materials or
 24 methods to be utilized;

25 (b) applied ~~or~~ sold unapproved or illegal materials or

1 applied or sold a pesticide without possessing a current and
2 appropriate license or permit;

3 (c) operated in a faulty, careless, or negligent
4 manner;

5 (d) operated faulty or unsafe equipment;

6 (e) refused or neglected to comply with the provisions
7 of this chapter, the rules adopted hereunder, or any lawful
8 order of the department;

9 (f) refused or neglected to keep and maintain the
10 records required by this chapter or to make reports when and
11 as required;

12 (g) made false or fraudulent records or reports;

13 (h) operated equipment for the commercial application
14 of a pesticide without having a license or permit;

15 (i) used fraud or misrepresentation in making an
16 application for a license or permit or renewal of a license
17 or permit;

18 (j) used or applied a registered pesticide
19 inconsistent with its labeling or the label or the
20 department restrictions on the use of that pesticide;

21 (k) made false or misleading statements in connection
22 with a pest inspection of land, crops, yards, or any
23 premises in an attempt to induce any person to engage his
24 services to eliminate controls or mitigate the alleged pest
25 or ~~make~~ statements intended to overcome any concern

copying

1 expressed by a customer about the effectiveness of any
2 ~~application of pesticides~~ *

3 (2) Decisions of the department relating to the
4 issuing of licenses or permits may be appealed."

5 Section 5. Section 80-8-301, MCA, is amended to read:
6 "80-8-301. Report of loss or damage -- effect of
7 failure to report. (1) A person suffering loss or damage
8 resulting from the use or application of any pesticide by
9 any person shall, within 30 days from the time the
10 occurrence of the loss became known to him, file with the
11 department of agriculture a verified report of loss setting
12 forth, so far as known to the claimant, the following:

13 (a) name and address of claimant;

14 (b) type, kind, and location of property alleged to be
15 injured or damaged;

16 (c) date the alleged injury or damage occurred;

17 (d) name of person applying the pesticide and
18 allegedly responsible for the loss or damage;

19 (e) name of the owner or occupant of the property for
20 whom such pesticide application was made.

21 (2) The filing of such a report or the failure to file
22 such a report shall not be alleged in any complaint which
23 might be filed in a court of law, and the failure to file
24 shall not of itself be considered any bar to the maintenance
25 of any criminal or civil action.

1 (3) The failure to file such a report shall not be a
 2 violation of this chapter. However, if the person failing to
 3 file such report is the only one injured from such use or
 4 application of a pesticide by any person, the department may
 5 refuse to hold a hearing for the denial, suspension, or
 6 revocation of a license issued under this chapter until such
 7 report is filed. The filing of such report shall not
 8 constitute institution of a civil or criminal suit in any
 9 court, state or federal."

10 Section 6. Section 80-8-302, MCA, is amended to read:

11 "80-8-302. Sampling and analysis. (1) The department
 12 shall have the authority to sample, inspect, make analysis
 13 of pesticides or devices distributed within this state at
 14 such time and place and to such extent as it may deem
 15 necessary to determine whether such pesticides or devices
 16 are in compliance with the provisions of this chapter. The
 17 department is authorized with a warrant or the consent of
 18 the inhabitant or owner to enter upon any public or private
 19 premises including any vehicle of transport in order to have
 20 access to pesticides or devices and to records relating to
 21 their distribution.

22 (2) The methods of sampling and analysis shall be
 23 those adopted by the department from sources such as the
 24 Journal of the Association of Official Analytical Chemists.

25 (3) In all administrative or legal actions involving

1 the composition, identification, or quantification of a
 2 pesticide, a certified copy of the official analysis signed
 3 by the department's authorized chemist shall be accepted as
 4 prima facie evidence of the determinations set forth
 5 therein."

6 Section 7. Section 80-8-303, MCA, is amended to read:
 7 "80-8-303. Embargo. (1) Whenever a duly authorized
 8 agent of the department of agriculture finds or has probable
 9 cause to believe that any pesticide or device is adulterated
 10 or misbranded, has not been registered under the provisions
 11 of 80-8-201(5), fails to bear on its label the information
 12 required by this chapter, or is a white powder pesticide and
 13 is not colored as required under this chapter, he shall
 14 affix to such article a tag or other appropriate marking
 15 giving notice thereof and stating that the article has been
 16 detained or embargoed and warning all persons not to remove
 17 or dispose of such article by sale or otherwise until
 18 permission for removal or disposal is given by such agent or
 19 the court. It is unlawful for any person to remove who
 20 removes or dispose disposes of such detained or embargoed
 21 article by sale or otherwise, without such prior permission,
 22 or to remove removes or alter alters the tag or marking, is
 23 guilty of a misdemeanor and may be charged accordingly or
 24 may be subjected to appropriate administrative proceedings,
 25 or both.

1 (2) When an article detained or embargoed under
 2 subsection (1) has been found by such agent to be in
 3 violation, if after 30 days the violation has not been
 4 resolved, he may petition the district court in whose
 5 jurisdiction the article is detained or embargoed for a
 6 condemnation of such article. When such agent has found that
 7 an article so detained or embargoed is not adulterated or
 8 misbranded, he shall remove the tag or other marking.

9 (3) If the court finds that a detained or embargoed
 10 article is in violation of this chapter or rules adopted
 11 thereunder, such article shall after entry of the decree be
 12 destroyed at the expense of the claimant thereof, under the
 13 supervision of such agent, and all court costs and fees and
 14 storage and other proper expenses shall be assessed against
 15 the claimant of such pesticide or device or his agent,
 16 provided that when the adulteration or misbranding can be
 17 corrected by proper labeling or processing of the article,
 18 the court, after entry of the decree and after such costs,
 19 fees, and expenses have been paid and a good and sufficient
 20 bond has been executed, conditioned upon the proper labeling
 21 or processing of such pesticide or device, may by order
 22 direct that such article be delivered to the claimant
 23 thereof for such labeling or processing under the
 24 supervision of an agent of the department. The expense of
 25 such supervision shall be paid by claimant. The article

1 shall be returned to the claimant of the pesticide or device
 2 on the representation to the court by the department that
 3 the article is no longer in violation of this chapter, and
 4 that the expenses of such supervision have been paid."
 5 Section 8. Section 80-8-304, MCA, is amended to read:
 6 "80-8-304. Enforcement Investigation and enforcement
 7 authority. (1) In enforcing this chapter, the department or
 8 its duly authorized agents, upon reasonable cause, may enter
 9 upon private and public premises and property with a warrant
 10 or consent of the inhabitant or owner to inspect or
 11 investigate at reasonable times:
 12 (1) equipment subject to this chapter used for
 13 applying pesticides;
 14 (2) actual or reported adverse effects caused by
 15 pesticides in humans, crops, animals, land, or other
 16 property;
 17 (3) records on the selling or use of pesticides and
 18 the person's stock of pesticides;
 19 (4) storage and disposal of pesticides by persons
 20 licensed or regulated under this chapter; any person;
 21 (5) ~~sample~~ pesticides being applied or to be
 22 applied and to sample the pesticides; or
 23 (6) the use and application of a pesticide; or
 24 (g) the environment alleged to have been exposed to
 25 pesticides and to collect and analyze environmental samples.

1 (2) The department is authorized to investigate all
 2 incidents involving the application, introduction, or
 3 utilization of registered pesticides or compounds capable of
 4 acting in the manner of pesticides when the incidents have a
 5 reasonable potential to adversely affect the public
 6 environment or persons other than the applicator.

7 (3) The investigation authority provided for in this
 8 section may be exercised ~~only upon receipt of a complaint or~~
 9 ~~report of an incident.~~

10 Section 9. Section 80-8-305, MCA, is amended to read:
 11 "90-8-305. ~~Regarding pesticides~~ General violations.

12 (1) It shall be unlawful for any person
 13 (a) to discard any pesticide or pesticide container in
 14 such a manner as to cause injury to humans, domestic
 15 animals, or wildlife, or to pollute any waterway in a way
 16 harmful to any wildlife therein or to the environment;

17 (b) to handle, transport, store, display, or
 18 distribute pesticides or pesticide containers in such a
 19 manner as to endanger man or the environment or to endanger
 20 food or any other products that may be transported, stored,
 21 displayed, or distributed with such pesticides;

22 (c) to handle, apply, or attempt to apply any
 23 registered pesticide for which he does not have an
 24 appropriate, complete, or legible label at hand; or

25 (d) to apply or attempt to apply any registered

1 pesticide in a manner inconsistent with the label, as
 2 defined in 80-8-102.

3 (2) It is unlawful for any person to manufacture,
 4 formulate, ~~use~~ ^{or} store, ~~apply or attempt to apply~~ any
 5 registered pesticide or component or byproduct thereof in
 6 such a manner that the pesticide or any component or
 7 byproduct cannot be contained or confined within the
 8 boundaries of the lands owned by or under the appropriate
 9 control of the person involved. * ~~(see section)~~

10 Section 10. Section 80-8-306, MCA, is amended to read:
 11 "80-8-306. Violation Penalties. (1) Any person
 12 convicted of violating any of the provisions of this chapter
 13 or the rules issued thereunder or who may misrepresent,
 14 impede, obstruct, hinder, or otherwise prevent or attempt to
 15 prevent the department or its duly authorized agent in
 16 performance of its duty in connection with the provisions of
 17 this chapter shall be adjudged guilty of a misdemeanor and
 18 shall be fined not less than \$100 but not more than \$500 or
 19 imprisoned in the county jail for a term not to exceed 6
 20 months, or both.

21 (2) The department or its authorized representative is
 22 hereby authorized to apply to the district court of the
 23 county or any county wherein a violation is about to occur
 24 or has occurred to grant a temporary or permanent injunction
 25 restraining any person from violating or continuing to

1 violate any of the provisions of this chapter or any rule
 2 promulgated under the chapter notwithstanding the existence
 3 of other remedies of law. When a person makes pesticide
 4 applications ~~without a license or permit or~~ ^X in violation of
 5 a lawful written order of the department, ^X the district court
 6 of Lewis and Clark County has concurrent jurisdiction with
 7 the district court of any other county wherein a violation
 8 has occurred or is about to occur, and the department may
 9 select and proceed in the court most appropriate under the
 10 circumstances. The injunction is to be issued without bond.
 11 (3) Nothing in this chapter is to be construed as
 12 requiring the department or its authorized agent to report
 13 minor violations of the chapter for prosecution or for the
 14 institution of seizure proceedings when it believes the
 15 public interest will be best served by other remedial
 16 actions or by a suitable notice of warning in writing of a
 17 lawful written order; nor is any part of this chapter to be
 18 construed to apply to common carriers transporting shipments
 19 tendered to them by the general public.

20 (4) Notwithstanding any other provisions of this
 21 section, if any person who with intent to defraud uses
 22 or reveals information relative to formulas of products
 23 acquired under the authority of 80-8-201, he shall, upon
 24 conviction, be fined not more than \$500 or imprisoned for
 25 not more than 1 year, or both.

1 (5) in all prosecutions under the registration section
 2 involving the composition of a lot of pesticide, a certified
 3 copy of the official analysis signed by the department's
 4 authorized chemist shall be accepted as prima facie evidence
 5 of the composition"

-End-

in one or more counties without a covered
 label

What time roll call were at

	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
SMITH, Chairman	2-4-81 452 No					
SCHULTZ, Vice Chairman	Yes					
ERNST	Yes					
JENSEN	Yes					
ELLERD	Yes					
RYAN	Yes					
FEDA	-					
BRIGGS	Yes					
UNDERDAL	-					
MC LANE	Yes					
MANUEL	-					
BENGTSON	Yes					
JACOBSEN	Yes					
ROBBINS	Yes					
HOLLIDAY	Yes					
ROUSH	-					
CONROY	No					

TAPE C
Side 1 TRK 3