

MINUTES OF THE MEETING  
AGRICULTURE, LIVESTOCK AND IRRIGATION  
MONTANA STATE SENATE

February 8, 1985

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 415 of the State Capitol Building at 1:00 p.m. by Chairman Boylan.

ROLL CALL: All members present.

SB 301: Senator Max Conover, SD 42, said the bill was introduced at the request of the Department of State Lands. It is a clean-up bill for establishing a payment deadline for agricultural leases on state lands. Testimony attached, Exhibit #1.

PROPOSERS: Dennis Hemmer, Department of State Lands supported passage of SB 301. Testimony attached, Exhibit #2.

OPPOSERS: None.

Committee questions: Senator Galt to Mr. Hemmer - In your testimony you say the lessee is sent a certified letter with the grazing leases, yet you scratched that out of your bill. Hemmer - On page 2; lines 2,3,4,&5 have been replaced in subsection 2, lines 17 through 20.

Senator Kolstad questioned the language on line 17, page 2. He thought it was different because that is when the lease is cancelled, "the Department shall notify." He thought they would want to reinstate that language at the top of the page. Mr. Hemmer - The language at the top of the page is the same language, their procedure for certified letters is run by Board policy. The two are doing the same thing. In neither case is the Department required by statute to send a certified letter. If you are going to deprive someone of their lease, they have to be notified so, for policy and the right of the individual, the Department has instituted a certified letter. If the committee wished the Department to do that by statute, he would have no problem with it.

Senator Hammond to Mr. Hemmer - The certified letter only notifies them it has been cancelled, there isn't any notification prior to cancellation? Mr. Hemmer - That is correct. The one in the statute currently, and the one that will be proposed, is a requirement that they notify them that it has been cancelled. The requirement to notify them prior to that is by Board policy. The Board will not cancel it unless the Department has written a certified letter saying that, unless they pay it, the Department will cancel it.

John MacMaster, Legislative Researcher, explained that at the top of page 2, on lines 1 & 2 it says "if not paid by April 1 the entire lease is cancelled" and then it says, "the



Department shall notify." That was taken out and reinserted in subsection 3 and subsection 2 was put in. They are going to notify in either subsection 1 or subsection 2.

Senator Aklestad/Mr. Hemmer - How many instances have you had where you collected under this rule? Mr. Hemmer - We probably run into 3 - 4 absolute ones per year; in instances where we receive late payments, we have quite a number.

Senator Aklestad - Under the law you would be able to cancel out right away; what do you do now regarding the late ones? Mr. Hemmer - It is only by a rule and is very clear on the grazing leases, we have only used this in instances where, with continued contact, we are unable to get them to pay it. The Department has not used this to insure a timely payment, but only used it after several years of not paying. Grazing leases are quite clear cut. They must be paid by first of April. In a grazing lease, they are billed at about the 1st of the year and if payment is not received by February 28, a certified letter is sent and the certified letter says that, unless they pay the certain amount by April 1st, they will be cancelled and, if they do not pay, they are cancelled. The Department periodically goes through the files and, if time permits, sends a letter asking them and telling them if they don't pay it they may face cancellation but, in only the worst of instances do they face cancellation.

Senator Bengtson/Hemmer - In the case of agricultural leases, if you are to cancel the lease for non payment, do you reimburse the lessee for the work he has done on the land? Mr. Hemmer - There is a provision on all leases whenever a lease changes hands, there must be compensation for improvements. A new lease is not issued until such time as the Department receives notification from the former lessee that settlement has been made on the improvements. If settlement has not been made, then they have an arbitration process.

Senator Galt - Would you have any question or problem on moving the November 15 date to the same date you give the federal government, December 31? Mr. Hemmer - The exception to the federal government is a blanket exception because it is difficult to cancel them. The way it would work is if we have not received payment by November 15 we would then send the lessee a certified letter that says you have until December 31 to pay that. Senator Galt - The law says you send a letter to cancel. Mr. Hemmer - Correct, but the way the law works is they should pay by November 15, if they haven't paid by December 31st, then they are cancelled. You are looking at a 45 day grace period in there. We would have no problem and would suggest the committee adding a provision that the Department must notify by certified mail those individuals in sufficient time, prior to the application, they make payment. In answer to Senator Conover's question, December 31 is the date the lease turns into a pumpkin, so to speak, that is the date you must pay it. If you haven't paid it, that's the trigger where you get the



notice and if you haven't paid on the notice by December 31st, then it would be cancelled. There is nothing that states a certified letter and he would support that going in there. November 15 is a voluntary date and if you have been notified after that then you would have to do it by December 31st.

Senator Lybeck - In regard to the money going into the school trust fund, is there going to be a provision there for not paying by November 15. You loose 45 days interest, will there be an additional charge here? Mr. Hemmer - No, if we get this we will still be making more interest than we are making now. The penalty is sufficient enough at cancellation of the lease that we don't need anything further.

Senator Boylan suggested John MacMaster and Mr. Hemmer get together to work out the amendments suggested by the committee, in regard to dates and sending of the certified letter.

Mr. Hemmer said he would sit down with his attorney and bring up some amendments to provide what the committee was asking for.

Hearing closed on SB 301.

HOUSE BILL 350: Representative Schultz was not present, so Keith Kelly, Department of Agriculture, proceeded with the bill, handing the committee some housekeeping amendments. Exhibit #3.

OPPONENTS: None.

Committee questions: Senator Aklestad asked Mr. Kelly what the abuses were that brought this bill on. Mr. Kelly answered, none. If a person registers a product and it doesn't meet the criteria of the claim and he doesn't meet registration standards at the University, the Department has kept the \$25. The statute is not clear on this and this was for clarification. Regarding the second part, now the Department can send a form out where they put their ingredient tag on it along with their name and address and it saves the Department from going back and forth on the phone saying they need more information. They have run into this problem more on the fertilizer side than with feed.

Senator Aklestad - What about outfits that put out bulk feed. Mr. Kelly - They do register now. The Department goes out with inspectors and do random samples and Montana State University runs an analysis to see that they are using what they say they are using. If not, they call it to their attention. A lot of times they are getting a shipment in, it is put in the corner and forgotten what it is. They are trying to prevent an accident from happening.

Senator Galt - What is the description of a distributor? Mr. Taylor - A distributor is a licensed person who sells and distributes feed in the State of Montana. The definition of commercial feed requiring a license is cattle feed, sheep feed,



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page 4.

horse feed. Pet food or specialty products do not require a license.

Senator Bengtson: Are you going to change all your fees to be nonrefundable and how does the Department of Agriculture handle this money? Mr. Kelly - Within the Department the fees from feed and fertilizer are earmarked accounts. This bill is for clarification.

Representative Shultz, HD 30, in answer to Senator Galt and Aklestad's questions, said it refers directly to custom feed except for a pet food product. You can take a truck in, get whatever you want and take it back home again. This bill just makes it so the Department of Agriculture doesn't have to give the fee back.

The hearing closed on HB 350.

DISPOSITION OF HB 350: Senator Lybeck moved HB 350 BE CON-CURRED IN. Motion carried. Senator Lybeck will carry the bill on the Senate floor.

DISPOSITION OF SENATE BILL 201: Amendments to SB 201 were presented. Exhibit #4.

John MacMaster explained that there was a communication problem when the bill was drafted. The amendments put the bill into the kind of shape the Department originally intended it to do. Most of the amendments are conforming amendments. One of the most important is on page 9, line 13. Right now the fees are paid by the licensee and the bill provides that the fee is paid by the manufacturer. The manufacturer is a person who manufactures fertilizer. The two amendments the Department proposed a few days ago are included and amendment 9 is also one of the more important ones. This is a redraft and clarifies that if a fee has been paid on fertilizer by the manufacturer if he sells it to a middle man and the middle man adds something else and sells it to the farmer, the fee is only paid once by the manufacturer. Most of the rest of the amendments are conforming to the amendment providing that the manufacturer pays the fees not the licensee.

Senator Galt moved the amendments.

Senator Bengtson thought they should have heard manufacturers. The distributors didn't want to pay the fee and she didn't think it made a lot of difference to the Department. They may still have the same problem collecting the fee from the manufacturer than as from the distributor. They may need 2.5 FTES to handle this work in the Department of Agriculture. She thought it was pressure put on the Department by the distributors to shift it over to the manufacturers.

Mr. Kelly said the recommendation for this came from the Fertilizer Advisory Council. The argument was that they were



not getting the fees collected, some were not reporting. Not only the dealer but the manufacturer had no problem on that with their computers. They can put a line or star by Montana and pull off tonage figures when it is invoiced and the Department will mail them back out a check. We are missing some fees by underreporting of distributors and the manufacturers are supportive of collecting these fees. This way we will have a more accurate reporting. We will always have those distributors on the boundary. The Fertilizer Advisory Council advises the Dean of Agriculture where he should direct his research.

Senator Boylan called for the committee's vote on Senator Galt's motion that the amendments to SB 201 be adopted. Motion carried.

Senator Bengtson moved SB 201, as amended DO NOT PASS.

Senator Bengtson's reason for the motion was that she thinks there must be a better way to enforce the feed payment by the fertilizer people. She thought they were grasping at straws to get more research money so they are passing the buck and putting the fees on the manufacturer. She thought they should enforce the laws on the books now.

Senator Galt felt she was wrong. The fertilizer manufacturers are in favor of this and they put the fee right on the bottom of the invoice.

Senator Lybeck reminded the committee of the manufacturers' testimony and that it was to their advantage to do this.

Senator Kolstad made a substitute motion that SB 201, as amended, DO PASS. A roll call vote was called for on Senator Kolstad's motion. There were 10 YES and 1 NO vote. Motion carried.

SENATE BILL 129: John MacMaster reported that he was still working on the Banking Association's amendments.

Senator Kolstad thought the bill needed a fiscal note because part of the amendments deal with the provision that it adds additional costs.

John told the committee that Senator Boylan asked to hold up on the fiscal note because the bill will be amended.

Senator Boylan said he will get the fiscal note after the bill is amended. They have been working with amendments from the Bankers Association, but if the counties come in it will be different because now it is being entirely paid for by the Banking Association. Some of the loan people are here and they will answer questions.

Senator Kolstad to Mike Stephens, Clerk & Records Association-



Mr. Stephens had given John a copy of the amendments. One of the problems they are still discussing is who is paying the cost of this regarding the different mix of liens in the different counties. He would like to have permission for John to work on their amendments. The Clerk and Recorders have 8 amendments. Their biggest problem is having some method of keeping track in the county rather than have to rely on the computer system.

Senator Lane called on Wayne Gibson, First Security Bank, Bozeman, who said he would like to have the opportunity to look at the Clerk and Recorders' amendments. They are trying to work with this in any way they can to get the central lien filings in. They have worked with the grain trade since the first of August. He thought it critical to have one place to go to get this information. He said they are willing to pay whatever the costs are so they can have the centralized system. They would like to have the computers in the counties and are willing to foot that cost also. There are enough lien filings within the state to pay for this very quickly.

Blake Wordal, representing the Montana Implement Dealers, said he really liked the concept, especially of having the Bankers Association pay for it. However, now that the funding has switched, around 15% of the liens filed in the county are filed by his dealers. If they are looking at 5,000 liens in Choteau county, which would be about 750 equipment liens, at \$10 a shot it would be about \$7,500 start up costs for this. The farm equipment dealers are concerned that their industry is, as such, that they can't afford it.

Senator Galt said the committee can't do anything until they get the amendments.

John MacMaster said the Ag/lien Filing Committee, Banking Association amendments are going to be the same as they handed out at the prior hearing, except they are going to address Senator Kolstad's concern and delete the stiff penalty for defrauding. John said he hadn't been asked to draft up the County Clerk and Recorders' amendments yet.

Mr. Stephens replied that he had given a copy of the amendments to Mr. Akey in the Secretary of State's office and John has had a copy of the amendments and that is why he had asked for committee permission to implement them in. The Clerk and Recorders aren't against it, they just have problems on the mechanism and funding and would like to have these problems worked out.

Senator Boylan asked John to go over the amendments and coordinate the bankers and clerk and recorder amendments.

There being no further business, the meeting adjourned.

  
PAUL F. BOYLAN, Chairman



ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/8/85

SENATE  
SEAT

#

NAME		PRESENT	ABSENT	EXCUSED
1	SENATOR GARY AKLESTAD	✓		
27	SENATOR ESTHER BENGSTON	✓		
35	SENATOR JACK GALT	✓		
34	SENATOR H. W. (SWEDE) HAMMOND	✓		
10	SENATOR ALLEN KOLSTAD	✓		
38	SENATOR LEO LANE	✓		
48	SENATOR RAY LYBECK	✓		
31	SENATOR ELMER SEVERSON	✓		
39	SENATOR BOB WILLIAMS	✓		
29	SENATOR MAX CONOVER, V. CHMN.	✓		
50	SENATOR PAUL BOYLAN, CHAIRMAN	✓		

Each day attach to minutes.



2-8-85

# VISITORS' REGISTER

(Please leave prepared statement with Secretary)



Feb. 8, 1985  
Exhibit #1

BACKGROUND ON SENATE BILL NO. S.B. 301  
FOR SENATOR MAX CONOVER

An act establishing payment deadlines for State agricultural leases; amending Section 77-6-506, MCA.

Senate Bill No. 301 would amend Section 77-6-506, MCA, by requiring a lessee of classified agricultural land to submit payment in cash to the Department by November 15 of the year in which a crop is harvested, and if not paid on or before December 31 of that year, the lease is cancelled. The deadline may be extended by the Department for good reason.

The Department does have the ability to cancel agricultural leases under 26.3.114 paragraph (3) Administrative Rules of Montana. However, the rule indicates that "Failure to pay rental when due may result in cancellation of the lease." and is not reinforced in law. The Department feels that the Administrative Rule does not allow the needed enforcement authority.

The Department of State Lands has had difficulty in collection of agricultural rentals of State lands due to some confusion in the law. In many cases, grazing and agricultural privileges are granted in the same lease. Section 77-6-506, MCA, requires that rental payments for grazing are due on February 28 of the year, which constitutes a payment before use takes place. A problem occurs when the lessee has paid his grazing rental, but has not paid the agricultural rentals on the same tract. The Department has not had the ability to cancel a portion of the lease in the past. Consequently, delinquent payments are received as much as a year late.

The proposed legislation would insure quick collection of rentals due the Trust and clear up the requirements for agricultural leasing, especially when grazing and agricultural activities are occurring on the same lease.

The Department has a system similar to that proposed in this bill in place on grazing land. This system works very well.



Feb 8, 1985  
Exhibit #2

TESTIMONY ON SENATE BILL 301

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports the passage of Senate Bill 301 regarding the establishment of deadlines for receiving rentals on State Lands' agricultural leases. The collection of crop share rentals has been a problem for the Department for some time. There needs to be a requirement for timely payments of agricultural leases; by not making these timely payments, the school trust loses income that it could be collecting as interest on these payments. Likewise delinquent crop share payments create a problem in bookkeeping and add monitoring and auditing that shouldn't be required. Grazing leases do have a requirement in statute that if a grazing lease is not paid by the first of April, the lease will be cancelled. There is not a similar statutory requirement for the deadline for paying a crop share rental. While there is an administrative rule that states that the Department may cancel a lease for failure to pay, the Department has been reluctant to enforce that in all but the most blatant of instances. Senate Bill 301 will simply extend the requirements made of grazing leases to agricultural leases.

Senate Bill 301 does however provide ability for the Department to grant extensions to lessees in extenuating circumstances. There are instances when due to equipment breakdown, contractual agreements, or the fact that the elevators are full, that the lessee is unable to sell his crop. Likewise there are instances, whereby allowing the lessee to hold the crop for a period of time, the Trust may increase its revenue.

The procedure followed for grazing leases is that if payment is not received by the first deadline, the lessee is sent a certified letter notifying him that unless payment is made by the final deadline, his lease will be cancelled. I would expect to use a similar procedure for the crop share rentals. Passage of this bill will allow the Department of State Lands to better manage school trust interest to insure the timely receipt of the income.

I would ask your favorable consideration of this bill.



Feb. 9, 1925  
Exhibit #3  
HB 350

DEPARTMENT STATEMENT:

Section I  
Section 80-9-201

Permits and Registrations

The proposed change in Section 80-9-201 (1) would clarify the fact that all applicant fees, including registration fees, would be nonrefundable. The nonrefundable applicant fee would cover application review costs incurred by the Department.

The proposed change in Section 80-9-201 (2) would clarify what information is required when applying for a permit or registration. The Department now has to seek additional information relative to labels or facsimiles. The proposed change would enhance the Department's ability to review all information.

3400 permits registered  
as of January 1, 1925



Feb 8, 1985  
Exhibit #4

Proposed amendments to SB 201, introduced copy.

1. Page 6, line 4.

Following: "~~licensee-or~~"

Strike: "registrant of fertilizer"

Insert: "manufacturer"

2. Page 6, line 9.

Following: "by"

Insert: "or on behalf of"

3. Page 7, line 13.

Following: "No"

Strike: "registrant"

Insert: "manufacturer"

4. Page 7, line 15.

Following: "80-10-103"

Insert: "and 80-10-207"

5. Page 9, line 13.

Following: "(1)"

Strike: "There"

Insert: "(a) A manufacturer registering under 80-10-201 (1)"

Following: "shall"

Strike: "be paid"

Insert: "pay"

6. Page 9, line 19.

Following: line 18

Strike: "(a)"

Insert: "(i)"

7. Page 9, line 24.

Following: "All"

Strike: "registrants"

Insert: "manufacturers"



8. Page 10, line 1.

Following: line 25 on page 9

Strike: "(b)"

Insert: "(ii)"

9. Page 10, line 5.

Following: line 4

Insert: "(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1) (a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment."

10. Page 11, lines 2 through 4.

Following: "period." on line 2

Strike: remainder of lines 2 through 4

11. Page 11, line 5.

Following: "Every"

Strike: "registrant"

Insert: "manufacturer"

12. Page 11, line 6.

Following: "state,"

Insert: ", or a person who registers on the manufacturer's behalf,"

13. Page 11, line 14.

Following: "The"

Strike: "registrant"

Insert: "manufacturer of person registering on behalf of the manufacturer"

14. Page 11, line 16.

Following: "report"

Insert: "required by subsection (3) (a) (ii)"

15. Page 11, line 20.

Following: line 19

Strike: "registrant"

Insert: "manufacturer"



Page 3 of proposed amendments to introduced copy of SB 201.

16. Page 11, line 22.

Following: "the"

Strike: "registrant"

Insert: "manufacturer"



# STANDING COMMITTEE REPORT

FEBRUARY 8 1935

MR. PRESIDENT

## AGRICULTURE, LIVESTOCK & IRRIGATION

We, your committee on

having had under consideration

HOUSE BILL

No. 350

third reading copy ( blue )  
color

Schultz (Lybeck)

REVISES REQUIREMENTS FOR REGISTRATION AND DISTRIBUTION OF COMMERCIAL  
FEED

HOUSE BILL

Respectfully report as follows: That

No. 350

BE CONCURRED IN

~~DOES~~

~~XXXXXX~~  
DO NOT PASS

PAUL F. BOYLAN,

Chairman.



## STANDING COMMITTEE REPORT

FEBRUARY 3

19 85

MR. PRESIDENT

We, your committee on **AGRICULTURE, LIVESTOCK AND IRRIGATION**having had under consideration **SENATE BILL** No. **201**first reading copy ( white )  
color**REVISING COMMERCIAL FERTILIZER LAW**Respectfully report as follows: That **SENATE BILL** No. **201**

1. Page 6, line 4.  
Following: "licensee-or"  
Strike: "registrant of fertilizer"  
Insert: "manufacturer"
2. Page 6, line 9.  
Following: "by"  
Insert: "or on behalf of"
3. Page 7, line 13.  
Following: "No"  
Strike: "registrant"  
Insert: "manufacturer"
4. Page 7, line 15.  
Following: "80-10-103"  
Insert: "and 80-10-207"

(continued)

~~XXXXXXXX~~~~XXXXXXXX~~  
DO NOT PASS

Chairman.



FEBRUARY 8..... 19 35.

5. Page 9, line 13.

Following: "(1)"

Strike: "There"

Insert: "(a) A manufacturer registering under 80-10-201 (1)"

Following: "shall"

Strike: "be paid"

Insert: "pay"

6. Page 9, line 19.

Following: line 18

Strike: "(a)"

Insert: "(i)"

7. Page 9, line 24.

Following: "All"

Strike: "registrants"

Insert: "manufacturers"

8. Page 10, line 1.

Following: line 25 on page 9

Strike: "(b)"

Insert: "(ii)"

9. Page 10, line 5.

Following: line 4

Insert: "(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment."

10. Page 11, lines 2 through 4.

Following: "period." on line 2

Strike: remainder of lines 2 through 4

11. Page 11, line 5.

Following: "Every"

Strike: "registrant"

Insert: "manufacturer"

12. Page 11, line 6.

Following: "state,"

Insert: "or a person who registers on the manufacturer's behalf,"

(continued)



FEBRUARY 8

19 95

13. Page 11, line 14.

Following: "The"

Strike: "registrant"

Insert: "manufacturer or person registering on behalf of the  
manufacturer"

14. Page 11, line 16.

Following: "report"

Insert: "required by subsection (3) (a) (ii)"

15. Page 11, line 20.

Following: line 19

Strike: "registrant"

Insert: "manufacturer"

16. Page 11, line 22.

Following: "the"

Strike: "registrant"

Insert: "manufacturer"

AND AS AMENDED

DO PASS

PAUL F. BOYLAN, CHAIRMAN



ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE, LIVESTOCK & IRRIGATION

Date Feb. 8, 1985 SB Bill No. 201 Time 3:15

NAME	YES	NO
SENATOR GARY AKLESTAD	✓	
SENATOR ESTHER BENGSTON		✓
SENATOR JACK GALT	✓	
SENATOR H.W. (SWEDE) HAMMOND	✓	
SENATOR ALLEN KOLSTAD	✓	
SENATOR LEO LANE	✓	
SENATOR RAY LYBECK	✓	
SENATOR ELMER SEVERSON	✓	
SENATOR BOB WILLIAMS	✓	
SENATOR MAX CONOVER, VICE CHAIRMAN	✓	
SENATOR PAUL BOYLAN, CHAIRMAN	✓	

RITA TENNESON

Secretary

Chairman

SENATOR PAUL BOYLAN

Motion: DO PASS SB 201 AS Amended