

MINUTES OF THE MEETING  
AGRICULTURE, LIVESTOCK & IRRIGATION  
50TH LEGISLATIVE SESSION  
HOUSE OF REPRESENTATIVES

January 16, 1987

The meeting of the Agriculture, Livestock & Irrigation Committee was called to order by Chairman, Representative Duane W. Compton on March 25, 1987, at 1:00 p.m. in Room 317 of the State Capitol.

ROLL CALL

All members were present except Representative Orval Ellison who was excused.

Bills heard were House Bill No. 108 and House Bill No. 59.

HOUSE BILL NO. 108

Rep. Bruce Simon, District No. 19, Billings, sponsor, introduced this bill at the request of the Legislative Audit Committee. He is a member of the committee auditing the Department of Agriculture regarding Dutch Elm disease. They developed rules and consider it to be a serious problem. There is nothing that the Department of Agriculture can do to prevent the spread of this disease. HB 108 is a simple repealer so the Department would no longer be in compliance.

PROPONENTS

Rep. Keller is a proponent of HB 108.

OPPONENTS

None.

QUESTIONS FROM THE COMMITTEE

Rep. Jenkins asked why the Department is not preventing the spread of this disease if this is the law. Rep. Simon explained it appears they had a two-fold problem. He said there was no money appropriated for this problem, and no rules were adopted by the Department and they feel helpless. The disease attacks elm trees only, is spread by a beetle or through the root system and it is a fungus which chokes trees to death. He said the City of Billings marks the trees that have the disease and they are removed. The Department can do nothing to prevent the spread of Dutch Elm disease in Montana.

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Rep. **Cody** asked if any research is being done. Rep. Simon didn't know of any research being done in Montana. It is a problem throughout the nation. There has been research and a number of chemicals have been tried to prevent the spread. Rep. Simon said he lost two big trees of his own.

Rep. Keller asked if this is rescinded, would the city still have authority to make a person remove those diseased trees? Rep. Simon advised that it is a city ordinance and has nothing to do with state law.

Rep. Holliday said initially the provisions were a local government problem through statute.

John Northey advised the program was established in 1979 to implement a statewide program. Statutes contemplate state funding of grants to cover entities to enhance research. They have requested funds for this program, but because there is no funding, nothing has been done. The Department of Agriculture agrees with this repealer, since there is nothing they can do. Research is done on a national scale. There is no known cure that he is aware of. Every time they audit, they are not in compliance, and the law should either be enforced or repealed. City ordinances can take care of this.

Rep. Simon closed saying the best preventive medicine for Dutch Elm disease is to cut the diseased trees down immediately. The state of Montana cannot do anything about it. The Department is not in compliance either and he suggests repealing this statute.

EXECUTIVE SESSION

HOUSE BILL NO. 108

Rep. Hanson moved HB 108 DO PASS. Rep. DeMars seconded the motion and the motion carried unanimously.

HOUSE BILL NO. 59

Tom **Gomez**, researcher said he wrote a "short book" and a statement of intent concerned with maintenance and division of fencing on adjoining land. A ranch owner can exclude the new language by way of agreements. Other possible ways by which a person may obtain a right are: a person may have a duty to maintain an adjoining fence by way of prescription, custom, or under statute. Look on page 2 by prescription or custom - where a person has, over a period of 20 years, kept up a certain portion of a fence, the courts have felt that it has become a duty. Prescription is the grant of a right

or title to be attained by a long continued exercise or enjoyment of that right or duty. Custom is more through use or practice that one may assert a right or may be seen as having a duty. Language of the stockgrowers was to deal with those persons who could demonstrate that during the course of time they had maintained a fence and that Rep. Hanson's bill did not interfere with that. There was concern about the individual who had maintained the entire fence or worked on the lefthand side of the fence instead of the right. This language says that absent an agreement, absent the prescription or custom, then the rule would apply. A saving clause has been added.

Rep. Koehnke said if he has done this for 20 years, a person is stuck with this for the rest of his life. Mr. Gomez said it is a presumption of duty saying why does a person maintain a fence for 20 years. Due to that the duty arises by presuming initially in any given case as to whether it is a duty for a person to maintain that fence.

Rep. Rapp-Svrcek mentioned the concern raised by Mr. Hemmer that it was to be clear that the lessees are obliged to do the fencing. Mr. Gomez said he was not asked to make an amendment on Mr. Hemmer's proposed amendment. It seemed that a false definition was going to be presented. It didn't seem that a lessee could be an owner. Perhaps a change was being made that was beyond the scope of the original bill.

Rep. Rapp-Svrcek asked Mr. Gomez if he were relatively confident that under the bill, a lessee of state lands would be required to fence all state lands. Mr. Gomez responded it would be however a contract reads.

Rep. Corne' also raised the question on the rights and duties of railroad and highway fences. He asked if this had been addressed. The matter of highways was addressed on page 9 and indicates that the Department of Highways must construct a fence through the open range where livestock might be a hazard to motorists so as not to have stock trespass because of the danger. Railroads have the duty to fence their right of ways and if there is any harm done to an animal that does wander out on the railroad, an owner can claim remedy. The responsibility does not lie with the stock owner to fence his stock in, but with the railroad to fence stock out.

Rep. DeMars asked if that took into consideration a road that was built 25-30 years ago that was never fenced by the highway. This refers to a particular date that highways were required to fence.

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Rep. Cody asked Rep. Hanson how this is going to affect areas in the state that are open range. He asked what is the necessity of this, because if you have an open range, a fence is not needed. Rep. Hanson replied open range is addressed in a different set of statutes than those relating to maintaining coterminuous fencing.

Rep. Cody asked what this legislation accomplishes. Rep. Hanson explained HB 59 is to more adequately define duties of each land owner the section of fence he will be liable to maintain. There is a big problem out there because nobody knows what he is supposed to maintain. Rep. Hanson said it is an unwritten common law that you have to maintain the righthand half, so to clarify, HB 59 makes it statutory that a person has to maintain the righthand half of the coterminuous fence if there cannot be a satisfactory agreement. It has been an unwritten law, and this will make it statutory.

Rep. Jenkins explained this in subsection (b) of this bill, if a person has cattle, he is not responsible for maintaining half the fence if the land is not being used for grazing. If livestock is put on that ground, then he is responsible for maintaining half of that fence, and if the neighbor has put up the whole fence, he is responsible for half the cost of building and maintaining that fence. Common unwritten law somehow has not always been passed down, or people coming into the region were not aware of this and this simply puts the previously understood laws into the statutes.

Rep. Hanson explained that HB 59 would have no effect unless you have livestock. Rep. Jenkins said unless he chooses to let his land be unused, not using land for grazing or pasturing shall not be considered as lying idle if you were not raising stock.

Rep. Keller asked that, under that presumption, if you bought a piece of land in the middle of farm ground, would you have to fence that whole thing. Rep. Jenkins responded there are also areas of open range and there are areas where cows are fenced out and areas where they are fenced in.

Rep. Patterson asked about the saving clause in the amendment. For those that have livestock, if neighbors do not have livestock, would he have to keep his cattle out of there, and what if they enter state highways? He said interstate fence is the responsibility of the state to maintain.

Rep. Bachini explained if you have cattle, you have to fence and your neighbor doesn't if he doesn't have any cattle; and

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you have to maintain both fences, if he lets the land stay idle. If use of that land changes to just farming, then the party that has the livestock has to maintain the fence.

Rep. Patterson moved the amendment BE ADOPTED. Rep. Jenkins seconded the motion which was adopted with Reps. Cody and Poff opposed. Fourteen committee members voted for the amendment which was ADOPTED.

Rep. Hanson moved HB 59 DO PASS AS AMENDED without a Statement of Intent. Rep. Jenkins seconded the motion. Rep. Hanson said in the Statement of Intent the very last sentence should not be included. She said that was the stockgrowers wording and they have already determined that the obligations of the owner must remain unimpaired but the statute is already in law and by court decision. The researcher said the last sentence of the Statement of Intent does not have the impact of law if the bill under its own terms is clear and has an effect by itself.

Rep. Bachini asked if under existing statutes this is necessary. Mr. Gomez advised the bill does something very clearly, it assigns a specific section of fence for which a person has an obligation to maintain at least half and it specifically designates that physical portion of the fence because a division fence is in common with a land owner. There are many court cases where they seek remedy, where one has maintained a fence and thus is fulfilling their obligation. The bill assigns that share of responsibility.

Rep. DeMars asked if a person has a ranch and has previously run cattle, does that revert back to the other person on the other side of the fence so it doesn't have to be maintained any longer.

Rep. Campbell asked if a rancher only boards cattle for a month, does he have to maintain fence for only a month. Rep. Patterson said he did not. He has to maintain it for a year. He still has to maintain that fence until the usage of that ground is changed.

House Bill No. 59 received a DO PASS AS AMENDED unanimous vote.

Dr. Welch and Dr. Luft of Montana State University presented an interesting program about research and extension activities at the university.

The consolidation operates at a reduced conservation service which the extension service will budget. This is down about 12% for 1987. The budget is in line with the request to move the experiment station back to the appropriated level.

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Weeds and weed research are major issues as far as producers, land owners, and urban areas are concerned. They have a biochemical control program. Chemical control is expensive. Plant breeding, genetics, offers more control than other means. There will be new products and processes. They will work out agricultural problems through the use of added value. There is great competition with other states in the market place.

Safflower is being tested as an alternate crop and is being considered as a replacement for diesel fuel; it burns like diesel but plugs jets somewhat. It is very similar to olive oil. They have about 700 pounds of this special safflower seed. They are looking at it as an opportunity to make an impact in a market. A vial of the oil was passed around. It appeared to be quite thin.

There is an opportunity for hard white wheat to be marketed. There may be an opportunity for Montana producers since it grows well in Montana and is very well accepted as a milling wheat.

They are doing new research into ways to add value to Montana products. HB 187 sponsored by Senators Manning and Kolstad is a wheat breeding and biochemical bill.

Animal and human nutrition, with two budget modifications, would provide opportunities for a maximum return. This would be an investment in the future. They will support the kind of research and will have an open house. They are extremely proud of their research building.

Dr. Luft said there are 49 county extension offices, only 3 counties do not have extension facilities. Their budget is down about 12% because of budget cuts and Gramm-Rudman. It is composed of federal and state dollars and significant amount of county dollars. Counties pay roughly half of county agents' salaries and pay for secretarial help. Counties contribute about 3 million dollars. They work in agricultural and material resources, human resources, community development area, 4H youth areas, and other areas. They have a statewide advisory committee - some are selected for or voted to the office they hold.

In the financial area family economics have had a great demand. They are working on agriculture product utilization; sustainable agriculture, home based businesses. 84-1/2% of their funding goes to personal services, 15% to capital equipment, etc., and to tenured faculty. See EXHIBIT #1.

Administratively, they are combining SCS and the experiment station. Rep. Koehnke asked if any county agents are being laid off. Dr. Luft said four people that were terminated on September 30. Several have remained. Tenured positions will be terminated with notice.

Rep. Koehnke asked if research in this event will be phased out, and 4H can carry on after that happens so that is not terminated. Dr. Luft said they spent about 25% of their time in the youth area. There are many 4H volunteer leaders. About \$6 million dollars if provided by leaders.

Research and development to add value to Montana products is being carried on. They are looking at alternative crops. They have not explored the barley area very much. Appropriate use of barley can have a significant cholesterol effect in meat. Studies should be done on what use the remains from oil production of safflower could be used for.

After research and development had been proven, there is a need for someone to pick it up and carry on. After you have the product, you must get it translated into industry. They would enter into an agreement with someone who would then contract with producers to process and market the products. The University would be in the process row. They work very closely with research and marketing industry.

ADJOURNMENT

The meeting adjourned at 3:00 p.m.

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REP. DUANE COMPTON, Chairman





COMMITTEE REPORT

January 16

1987

Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION

report HOUSE BILL 103

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

*DWC*

Rep. Duane W. Compton,

Chairman

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# STANDING COMMITTEE REPORT

January 16

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Mr. Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION

report HOUSE BILL 59

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

Rep. Duane W. Compton

Chairman

## RESPONSIBILITY OF ADJACENT LANDOWNERS TO MAINTAIN FENCES

Be Amended as Follows:

1. Page 1, line 22.

Following: "by"

Insert: "prescription, custom, or"

2. Page 2.

Following: line 6

Insert: "NEW SECTION. Section 2. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

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December 31, 1986

FROM: Flathead County Extension Advisory Council  
723 5th Ave. East  
Kalispell, Montana 59901

EXHIBIT # 1  
DATE Jan. 16, 1987  
HB \_\_\_\_\_

TO: Dr. William Tietz, President  
Montana State University  
Bozeman, Montana 59717

Dear Dr. Tietz:

Thanks for the opportunity to meet with you and your staff to hear about your proposed consolidation of Ag Research and Cooperative Extension. Some questions were answered, but we remain concerned about the future of the Cooperative Extension Service in general and the 4-H program in particular.

The 4-H program provides an essential service in preparing our youth for adult life. More and more children from outside the traditional family farm are becoming involved in 4-H and gaining exposure to the values of agriculture life. This generation will be making tomorrow's decisions, so it is increasingly important for them to understand the family farm operation.

The information age is clearly upon us, and the Extension Service has served well as a clearinghouse of ever changing knowledge. Electronics will play a large role in education now and certainly in the near future; however we feel today's recipients respond better to the personal contact provided by the Extension Agent.

We feel both these vital programs are in danger of being diminished if not eventually eliminated. We're concerned the funding will be channelled to other areas, especially when the number one priority will be the student on the MSU campus. We hope that this is not the first step toward eradication.

There is a great deal of confusion in regards to funding. We've heard many different percentage cuts and different numbers each time we try to determine what moneys will be available for the combined program. Specifically, how much money do you expect the consolidation to save? What happens if federal funds do not match expectations? What if county funds are not as great as expected?

The proposed instructional design unit sounds very interesting; and as mentioned before, electronics will play a large part in future training. Who will make the decisions on priorities for the three departments of the consolidated department? Will this cause potential delays in delivery of timely information?

We understand the new "SuperDean" will most likely come from the Ag Research department. Is this a pattern, or will the Director of Extension also be able to take that step? How will contact with the State Legislature be handled? Will Extension be able to speak for themselves?

We remain concerned about the staff specialists. The Extension Home Economics Department has performed a great service helping economically distressed families cope with the financial burden. The current agriculture crisis will make that service even more needed in the near future. Classes in basic money management, estate planning, and investment alternatives will become more critical, not less.

Who will give direction to, and what will be the effect on the loyalties of the specialists absorbed into the consolidated department? What about new hires? Will they be strictly academic, or will they be real world communicators? Some of the specialists will not be absorbed into the department. Won't they essentially answer to different supervisors, and how will they be evaluated?

We appreciate your response to the concerns of the Flathead Extension Service Advisory Council.

Sincerely,

Flathead Extension Service  
Advisory Council

<i>Jerry Brobst</i>	<i>JoAnn Speelman</i>
<i>Cliff Brennan</i>	
<i>Gene Logg</i>	
<i>Glenda Lewis</i>	
<i>Robert [unclear]</i>	<i>Robert [unclear]</i>
<i>Paul [unclear]</i>	<i>Robert [unclear]</i>

Note: Letter composed by Jerry Brobst and JoAnn Speelman at the direction of the Flathead Extension Advisory Council.

CC: Dr. Leroy Luft, Director Montana Cooperative Extension Service  
Dr. Jim Welsh, Director Montana Ag Experiment Station  
Board of Regents, Montana University System  
Flathead County Legislative Delegation

