

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

February 13, 1987

Chairman Duane W. Compton called the meeting to order at 1:00 p.m. in Room 317 of the State Capitol, Helena.

ROLL CALL

All members were present. Also present was Tom Gomez, Legislative Council Researcher.

Bills to be heard were HB 591 and HB 620, and SB 46.

HOUSE BILL 591

Rep. Ted Schye, District 18, Glasgow, sponsor of HB 591, said it is an act to require counties to transmit irrigation district funds on the 10th day of each month to the county in which the district office is located; amending section 85-7-2135, MCA; and providing an effective date. Rep. Schye said HB 591 was requested by the Montana Water Development Association. This bill allows irrigation districts to get their money once a month instead of once a year. The counties use this money for a year and the irrigation districts have to borrow to get by for a year, so they would like to get their money once a month instead of waiting for a year. Right now agriculture needs to get all the help they can.

PROPOSERS

Ken Kelly, registered lobbyist, representing the Montana Water Development Association and the Montana Irrigators. Members of MDWA support HB 591. It is the practice in some counties of holding irrigation district funds for a year. Many districts do not have the cash reserves to operate for long periods without replenishing their capital. It would help if a printout was furnished by the counties to each district so they would know the amount of anticipated funds. They just don't have the reserves in many of these districts to carry on the day-to-day operation, and wait for a year for the taxes to come in. They hope to get a favorable response from this committee and give it a Do Pass just to help the irrigation districts collect their money when it is due. In this day of computers it should be no problem for the counties to dispense that money as it comes in to the County Treasurer, so he asks for favorable consideration. (See EXHIBIT #1)

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Jo Brunner, Executive Secretary of Montana Water Development Association, would like to submit testimony by Jerry Nypen of the Greenfield Irrigation District (See EXHIBIT #2) in support of HB 591. They depend on the tax revenue to pay fixed expenses that must be paid regularly. The assessments are usually received by the County Treasurers in May and November and present law requires the funds be paid to the irrigation districts by January 1. Dick Kennedy of the East Bench Irrigation District, Dillon, is also in support of HB 591. The successful operation of an agriculture irrigation district depends on the funds.

OPPONENTS - None

QUESTIONS FROM THE COMMITTEE

Rep. Bachini asked what was done with the money on a yearly basis. Was it kept in a separate account? Jo Brunner believed it had to be handled in an earmarked account, but the counties were allowed to use the money. Rep. Bachini asked if the irrigation districts ever came up short when they asked for their money. Ms. Brunner answered no, but they just had to operate without their money. At one time, Cascade was holding \$1 million in the irrigation account of Greenfield Irrigation District. Rep. Cody asked Rep. Schye if the counties were using that money, and probably investing it and drawing interest on it, they don't object to this bill? Rep. Schye thought some of them would have objected. His County Treasurer voluntarily gave the irrigation districts in that county their assessments on a quarterly basis. Some of the bigger counties don't disburse the funds until January 1.

Rep. Patterson said in his area in Yellowstone County they have the Huntley Irrigation District and all of the fees associated with operating that district are on the farmers' tax statements in November and June. Will these still be collected on November 30 and May 31? Between November through May they would make a payment each month? Mr. Kelly said what happens is that they don't get all of the money in but it takes a period of time for the county treasurer to get these funds allocated to the proper accounts, and it lies there until the county treasurer gets a chance to allocate it and send it out. While they don't get money in every month, it takes time to get the money allocated to the proper accounts to which the money goes. They don't get that done all at once, and so are asking as they allocate the money that it be transmitted directly to the irrigation district so they can use the money. Rep. Patterson further asked if the assessment collected in November was paid January 1.

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Mr. Kelly answered that sometimes they make part of it. Then they hold the rest of it (a lot of people pay all of their taxes at one time) until March and once they pass January 1, any money that comes in in May they hold until the following January. They have the most problems where there are multiple counties involved. They are attempting to correct their holding it until the following January 1.

As a former county commissioner, Rep. Compton stated he didn't see how taxes collected by the first of November could be allocated one month later because allocation requires everything to be balanced. They couldn't get it out in a month, in a small county. If there is a little discrepancy in the balancing, no funds are distributed. It couldn't be the following month--it might be a month or so later.

Rep. Schye closed.

SENATE BILL 46

Sen. Ted Neuman, District 21, which includes parts of Cascade and Lewis & Clark Counties, offers today for consideration SB 46 which is the loan link deposit program enacted in the March special session to clear up some small problems they have had with the bill, and to authorize the action for another two years. The link deposit program allows the Board of Investments to make deposit in certain financial institutions with the condition they use these deposits and loan them out to eligible farmers and ranchers at an interest rate of 3% above the rate at which they receive the funds. That is one of the changes in the bill. During initial legislation, they had a 2% margin in there for the financial institutions. One of their complaints was that they couldn't process these loans on a 2% margin, to make it worthwhile. They said they would use the program to a greater extent if some changes were made. The first of those changes was to allow them to have a 3% spread on the interest rate. See EXHIBIT #1-1.

Secondly, after using it for a little bit, they realized that the 6-month loan was a little too short a time. When they were trying to implement the plan last spring they were trying to get the crop in the ground. So those who participated in the program did that. This would extend the length of time now on the loan from 6 months to 12 months. You can understand the need to borrow money for a year-long purpose. That is a better way to plan your finances and also to allow sufficient time

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from planting to harvest. In terms of livestock, you may not always need a year-long loan, but may want to have enough flexibility in the loan to carry livestock over the winter if purchased in the spring.

The current CD rate that the Board of Investments has is about 5.9%, say 6%. The institution then is allowed 3% on that so that means they would have to put these loans out at about 8%. He is paying about 11%, so this would give the operators a 3% break, and on \$50,000 that would amount to about a \$1500 break for the life of the loan. \$1500 doesn't seem like very much money, but it is a lot of money when you don't have it. \$1500 would buy quite a few groceries, pay the power bill, and help the family get through the summer. Others will address the financial situations that exist in Montana today, and he hoped they will take time to do that.

There is a technical amendment that Tom is proposing and it pertains to the effective date of the act. If that is necessary, he hoped the committee would put it on the bill and act favorably on it.

PROPONENTS

KEITH KELLY, Director of the Department of Agriculture, supports SB 46. The DOA supports SB 46 for temporary continuation of the loan link deposit program enacted by the March special session. See his written testimony, EXHIBIT #3.

Mr. Kelly had just returned from a meeting "Today is Agriculture Action Day", and the primary thing that he saw in his mind was that whether it is appropriate at the state or federal level, it needs to be done. At that meeting of over 200 people, including our congressional delegation, the majority of them felt that if interest rates were down, there are people you will be able to help continue and carry on. There are 11% interest rates, and historically agriculture has never been an industry that paid high interest rates. It is a heavy borrower and always has been for operating capital. That is not unusual, with its large investments in land, machinery, and equipment, and the key issue was interest rates. This is a bill providing for a 1% buy down on loans that will help. There will still be some tough times ahead. He was very much in support of the bill.

KAY FOSTER, representing the Governor's Council on Economic Development, urges support of SB 46. See her testimony, EXHIBIT #4.

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IRENE MOFFETT, a farmer from Dawson County, is an active member of Northern Plains Resource Council and the Montana Farmers Union. She asked for support of SB 46. It is very critical for providing farmers and ranchers with operating loans. The program has been revised to make it more useable. This is an investment in agriculture that is dearly needed. EXHIBIT #5.

KAY NORENBURG, Women Involved in Farm Economics (WIFE). They have been involved with one farm crisis or another in the state of Montana since its inception in 1985. They talk daily with people who are having financial difficulty. This program is badly needed.

AL VERSCHOOT, representing People's Action, urges support of SB 46. The bill passed last March didn't have a lot of time to work. Most people had their operating money already or didn't have it because they couldn't get it. Lending institutions didn't want to work with them because of the short period of time. He is glad to see this bill and also the amount of money that will be put out at a lower rate of interest. Three points will make a large difference in their borrowing. He urges passage of this bill.

CAROL MOSHER, Montana Stockgrowers and Montana Cattle Women, would like to go on record in support of SB 46.

JO BRUNNER, Montana Grange, Montana Cattlemen and Montana Cattle Feeders, is in support of SB 46.

BOB PYFER, Montana Credit Unions League. They don't have a lot of credit unions in Montana making agricultural loans, but they do have a few and have been in contact with one of them who has looked into the program. They feel that it is a good option to have out there in times of low liquidity. They support the bill.

TERRY CARMODY, Montana Farmers Union, wanted to be on record as being in support of SB 46.

REPRESENTATIVE GAY HOLLIDAY, District 31, Roundup, is a proponent of SB 46. On behalf of the Agriculture Interim Committee, of which she is currently vice chairman, she brings this bill to the Legislature.

OPPONENTS - None

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QUESTIONS FROM THE COMMITTEE

Rep. Koehnke asked Sen. Neuman how much money was loaned under the program. Sen. Neuman answered that it was \$1.9 million, loaned to 42 ranchers the six months the program was in operation. Sen. Neuman said six institutions had used the program.

Rep. Campbell asked if there had been any losses under this program. Sen. Neuman said no, the Board of Investments has required very strict pledging. There have been some changes in the law now. The financial institutions pledge the assets that the farmer pledges to the bank as security for the loan. Up to this time, the Board of Investments required the use of other security such as bonds, etc., and that was kind of a problem. That pledging requirement has been changed.

SEN. NEUMAN closed thanking the proponents who came up and supported SB 46 and the Interim Ag Committee who worked on this bill and carried it on their behalf also. He thinks the program is very important. He has had visits with several lenders since we have been working on this bill last summer and this fall, and they indicated they would use this program to a greater extent if these changes were made. He hopes that the lenders will take this money and pass it on to the farmers and ranchers in Montana.

HOUSE BILL 620

Rep. Leo Giacometto, District 24, representing Wibaux, Fallon, Carter, and half of Powder River Counties, said HB 620 is an act to require notice of a landowner's right to a hearing in a dispute over weed control responsibility; to prevent implementation of weed control measures by the County Weed Board in such a case, except in an emergency; to provide for determination of liability for the cost of emergency measures; and amending sections 7-22-2123 and 7-22-2124, MCA.

The weed board under the present law still has some loopholes in it. People did not know they had a right to a hearing. On page 2(e) they just included, in the note that they send to the individual rancher or landowner, that he has a right to a hearing. The hearing was already in the law, but it was not stated in the notice sent to the landowner, so they didn't know about it. This is not really a change in the law, it is just letting them know they have a right to a hearing. Page 3, line 8 inserted that unless corrective action is taken or they haven't requested a hearing, it clarifies just what takes place when you have a hearing. In the law it just said you had a right to a hearing but did not state for what purpose it might be. If

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a person receiving an order to take corrective action requested administrative hearing, the board may not institute control measures until the matter is finally resolved. A clause had to be included in here in case of an emergency. If this case was to go on, and it was an emergency matter, that weeds had to be sprayed before the seeds sprouted and scattered, they could go ahead and do that, but the cost of this would be determined by what came out of the hearing, whether or not he was responsible for that entire cost or not. There are no real changes in the law. It is just clarifying some loopholes that were left open.

PROPOSERS

JO BRUNNER, representing the Montana Grange, Montana Cattle Feeders, and Montana Cattlemen, supports HB 620. See her testimony, EXHIBIT #6.

BOB STEPHENS, Montana Grain Growers, went on record as supporting HB 620.

CAROL MOSHER, Montana Stockgrowers and Montana Cattle Women, wanted to go on record as supporting HB 620.

LORNA FRANK, Montana Farm Bureau, wanted to go on record as supporting HB 620.

JOAN FORSNESS, representing Women Involved in Farm Economics, supports HB 620.

TERRY CARMODY, Montana Farmers Union, also supports HB 620.

OPPOSERS - None

QUESTIONS FROM THE COMMITTEE

Rep. Hanson asked how you determine when there is an emergency. Rep. Giacometto said some of that responsibility goes to the weed board determining the weed problem. We have to have some teeth in the law. It is up to the weed board to decide. This had to be included in case a hearing would take a longer period of time.

Rep. Hanson asked Josephine Lacy, DOA, if there was already a statute on the books against allowing any noxious weeds going to seed. Ms. Lacy said it is in the law not to allow weeds to go to seed, unless that person is in compliance with a weed management plan. The old law first stated it was unlawful to permit noxious weeds to go to seed. Period. So then everybody

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was in violation of the law. When the law was rewritten two years ago, the changes were made. This gives you a little bit of flexibility, so you have to be in compliance with a weed plan, and you have to be doing some kind of weed control treatment, but it doesn't mean you have to be keeping every noxious weed on your place from going to seed.

Rep. Giacometto closed.

EXECUTIVE SESSION

HOUSE BILL 620

Rep. Giacometto moved DO PASS, and Rep. Harriet Hayne seconded the motion. (The old law said if you allowed any weed to go to seed on your place, you were breaking the law. Grey area--what is an emergency?). Motion was ADOPTED unanimously. Rep. Rapp-Svrcek was excused.

HOUSE BILL 591

Rep. Bud Campbell moved DO PASS, and Rep. Gene DeMars seconded the motion. After discussion, the motion was ADOPTED unanimously. Rep. Rapp-Svrcek was excused.

Rep. Ellison said Rep. Compton had brought up the January 1 date and wanted it explained further. Rep. Compton replied that if taxes are paid at the end of November, those taxes are all divided up and balanced and until that master sheet balances to the penny, there can't be any distribution made on the taxes because there is an error someplace. Until that balances, no funds can be distributed. Two months afterwards, even in November and May, it is tough to balance them. The others dribbling in at other times are easy to balance. It would depend on the number of taxpayers and the amount of money paid in as to when the account might balance. Some counties have more up-to-date systems. With the equipment available now, he thought 60 days would be long enough. Rep. Ellison asked if all of those assessments come on the first tax installment. It was thought they do.

Rep. Cody thought the purpose of this legislation was that the counties don't hold it from the first of January one year until the first of January the next year. It is the intention of the legislation, not that they necessarily have to pay it. She was told by other committee members that they "shall" pay it. Tom Gomez suggested the possibility of amending this bill to require

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it be paid within 60 days. Rep. Compton and Rep. Poff thought it would take some time if there were any problems with it. It would take at least 60 days. It is hard to put a limit on it.

Rep. Holliday saw no problem at all. If it is collected, they already have to pay it all by January 1. If we extend that to 60 days, that is more leniency as far as time frame than they already have. She thought it would be easier to make one installment the first of December or January.

Rep. Corne' thought this bill doesn't really address a time period after receipt of funds that it has to be delivered. It just says they have to be delivered the tenth of the month. Any money that belongs to a district has to be delivered by that date each month. That's the way the title reads.

Rep. Patterson said this bill would be an advantage to the person who becomes delinquent and doesn't pay his taxes until spring. The way the law is now, the guy has a water assessment due and the treasurer doesn't have to make that payment to the water board until the following January. If the guy is delinquent on the first of November and doesn't pay until spring in May or June, this would allow them to pass that directly to that district. It would be an advantage for the district for someone to be delinquent for treating that money.

Rep. Koehnke said there are some in their water district who don't pay until they need the water. Rep. Compton thought that was true in all districts.

Rep. Ellison thought there are two different methods of assessing for water. Some of them are assessments on your taxes, and some of the state projects in water districts are assessed by the association.

Rep. Koehnke answered that in just their district, it was on the taxes, but just this year they were separated because people who wanted to protest their taxes still wanted to pay their water bill. Rep. Ellison asked the procedure for taking the water assessments off the tax statements. He was told this was not germane to the bill.

SENATE BILL 46

Tom Gomez, researcher for the Committee, explained an amendment must be attached by this committee if you choose to recommend it for passage. There is a defect in SB 46. It was clearly

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intended that the bill provide an immediate effective date and a termination date. The immediate effective date is necessary because in the special session the Legislature enacted this law with a termination date of March 15 of this year. There is a section that looks like it might be the effective date, but it isn't. In section 5, line 18, it says that Chapter 5, special session laws of March 1986 as amended. Then you see an amendment. That only relates to this law. There is nothing here about this law that you are enacting. Without the amendment, these sections of law amended by SB 46 will be terminated on March 15, 1987, and because there is no effective date for this act, this act will not take effect until October 1. So it is seriously doubtful that SB 46 can take effect if the provisions of law being amended do not exist. Those sections will be gone March 15. SB 46 won't take effect until October.

Rep. Jenkins said all they have to do is take the effective date to March 15 on the Senate Bill? This was affirmed.

Rep. Holliday said she did not understand. Isn't the exact wording in the amendment? Mr. Gomez said the little section there is the exact language (EXHIBIT #6). Notice the quotation marks around it. It is amending this part of the law that had been amended in the March special session. This law goes out of effect on March 15. SB 46 will not go into effect until October. This act is not in reference to SB 46. This act is in reference to Chapter 5, special session laws of March. He thought that is how the problem arose. It had been intended that there be an immediate effective date, so that continuity existed, and then bring it up to termination.

Rep. Jenkins asked if you would then drop section 5, Chapter 9 completely out of this bill. Mr. Gomez said no, that section would also have to stay.

Rep. Giacometto moved that Mr. Gomez draw up the appropriate amendment for this bill. See EXHIBIT #5A.

(Discussion regarding timeframe for acting on this bill was had. By putting an amendment on it, it would have to go through the House and go back to the Senate Ag Committee for approval, and then be signed by the Governor by March 15.)

Mr. Gomez further explained that this is the second thing that needs to be clarified. There is a companion bill for SB 46,

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HB 275, sponsored by Rep. Rapp-Svrcek, also recommended by the Interim Subcommittee on agricultural problems. The question presented to Mr. Gomez was is it necessary to have HB 275 in order to have SB 46. The answer is no. But this SB 46 can be enacted and go into effect on its own terms without the appropriation. Something that isn't apparent from SB 46 is that once again all of these laws that you enacted in the March special session are going to come back. That's why this was amended from the special session law: to bring back everything in this act which was SB 7 in the March session. One of those parts is that the board may place public funds under its control not exceeding \$50 million in link deposits in eligible institutions qualified under this act to receive such deposits. Based on that provision alone, if this bill is enacted without the appropriation, SB 46 would go into effect on its own, with fiscal consequences which would be if all the \$50 million were used in the link deposit program. There would be a loss of \$500,000 to all agencies of government and other political entities that have money invested in the short term investment pools of the Board of Investments because of 1% buydown that is provided for in the link deposit program.

Rep. Rapp-Svrcek said HB 275 has been heard by the Subcommittee on Natural Resources and they are holding it for the arrival of SB 46 so that the program can be considered as a package.

Rep. Cody asked if SB 46 is passed before hearing HB 275, are we going to hear Rep. Rapp-Svrcek's bill? Rep. Rapp-Svrcek said it was his understanding that this committee will not hear HB 275 here but that SB 46 will be transferred to the Subcommittee on Natural Resources. Rep. Cody said if SB 46 is passed, it will still have to go down to the Appropriations Committee.

Rep. Bachini moved SB 46 BE CONCURRED IN, and Rep. Giacometto seconded the motion.

Rep. Giacometto then moved the amendments BE ADOPTED. Rep. Bachini seconded the motion. It was unanimously ADOPTED. The motion that SB 46 BE CONCURRED IN AS AMENDED was unanimously ADOPTED.

Rep. Rapp-Svrcek said that was his understanding that we don't have to hear HB 275 in the Committee. He stands to be corrected.

Rep. Compton mentioned there was a probability of a combined Senate and House committee meeting at 7:00 p.m. This has been declared Ag Crisis Day.

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ADJOURNMENT

There being no further business to come before the committee,
the meeting adjourned at 2:40 p.m.

Rep. Duane W. Compton
Chairman

FORE, LIVESTOCK & IRRIGATION COMMITTEE

Date February 13 1937

[illegible]

STANDING COMMITTEE REPORT

February 13

19 87

Mr. Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION
report HOUSE BILL 620

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. DUANE W. COMPTON

Chairman

MS
First

White

reading copy ()
color

STANDING COMMITTEE REPORT

February 13 19 87

Mr. Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION
report HOUSE BILL 591


☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. DUANE W. COMPTON

Chairman


First

White

reading copy (_____)
color

STANDING COMMITTEE REPORT

February 13 19 87

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

report SENATE BILL 46

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. DUANE W. COMPTON Chairman

1. Page 7.

Following: line 24

Insert: "NEW SECTION. Effective date -- termination. This act
is effective on passage and approval and terminates June 30,
1989."

for - 1 to 2/3/

MS
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reading copy (_____)
color

EXHIBIT #1
DATE Feb. 13, 1987
HB 591 - Rep. Del Schuyler

WITNESS STATEMENT

NAME K. M. Kelly BILL NO. HB 591
ADDRESS Helena DATE _____
WHOM DO YOU REPRESENT? Mt. Water Development Assn. & Mt. Lehigh
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Irrigation District members of MWDLA support HB 591 in an attempt to correct a practice in some locations of holding irrigation district funds for up to a year. Many districts do not have the cash reserves to operate for long periods without the replenishment of their operating capital. It would help if a grant rate was furnished by the counties to each district so they would know - the amount of anticipated funds.

EXHIBIT ^{#2}#2

DATE Feb. 13, 1987

HB 591 - Rep. Reddy

HB 591

Testimony

Jerry Nypen
Fairfield, Montana

I am representing Greenfields Irrigation District and testifying in support of HB 591. - *East Bend Irrigation District, Idaho*

The successful operation of an irrigation district depends on the prompt receipt of income to cover expenses - no different than a positive cash flow in any successful business. We count on the revenue received through the taxation process executed by the County Treasurers to pay fixed and regular expenses such as salaries and construction debt payments.

Water assessments are paid by the water users to the County Treasurers usually in May and November. Current law allows counties to hold revenue until January 1st. This bill will simply keep the County Treasurers on the ball in promptly forwarding our revenues. Please support HB 591. Thank you.

BILL SUMMARY
(SB 46)

Prepared for the House Agriculture, Livestock,
and Irrigation Committee

By Tom Gomez, Staff Researcher
Montana Legislative Council

Senate Bill 46 is a bill to extend authorization for the agricultural loan linked deposit program, which was established during the March 1986 Special Session.

Senate Bill 46, as amended, contains the following main provisions:

- Increases from 6 months to 1 year the term for deposit of state funds in financial institutions participating in the linked deposit program;
- Extends the term for linked deposit loans from 6 months to 1 year;
- Allows participating financial institutions to write linked deposit loans at an interest rate 3 percentage points greater than the rate payable to the state on the certificate of deposit, rather than at 2 percent as under present law;
- Provides that the loan obligation itself may be used to satisfy the financial pledging requirement governing security for state investments;
- Reauthorizes code provisions that allow the board of investments to place up to \$50,000,000 in public funds in lending institutions qualified to receive such deposits; and
- Provides for termination of the agricultural linked deposit program on June 30, 1989.

EXHIBIT # 3
DATE Feb. 13, 1987
#B 46 - Sen. Ted Guernsey



TED SCHWINDEN
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

KEITH KELLY
DIRECTOR

AGRICULTURAL DEVELOPMENT DIVISION

AGRICULTURE/LIVESTOCK BLDG.

CAPITOL STATION

HELENA, MONTANA 59620-0201

MICHAEL MURPHY
ADMINISTRATOR
(406) 444-2402

TESTIMONY OF MONTANA DEPARTMENT OF AGRICULTURE
FOR THE HOUSE AGRICULTURE, LIVESTOCK, AND IRRIGATION COMMITTEE
ON SENATE BILL 46
FRIDAY, FEBRUARY 13, 1987
HELENA, MONTANA

Chairman Compton and members of the Committee. The Montana Department of Agriculture supports Senate Bill 46 for the temporary continuation of the Agricultural Loan Linked Deposit Program.

The problems facing our state's agricultural industry have not disappeared. Studies indicate that Montana's adverse economic conditions in agriculture and other industry have not yet bottomed out and may not for sometime to come.

High interest rates are one of the primary factors contributing to the cashflow problems facing our farmers and ranchers. The Agricultural Loan Linked Deposit Program will provide relief from high interest rates for some of our state's producers. The availability of the lower interest financing may make the difference as to whether or not a farmer or rancher is able to continue in agriculture.

Senate Bill 46 also addresses concerns that have been noted by lenders around the state and the Governor's Council on Economic Development.

For these reasons the Montana Department of Agriculture supports Senate Bill 46.

February 13, 1987

TESTIMONY IN SUPPORT OF SB46

Mr. Chairman and Members of the Committee:

My name is Kay Foster. I represent the Governor's Council on Economic Development. I am the Deputy Mayor of Billings, a community largely dependent upon the economic health of the farmers and ranchers in this state.

For 9 months the Agricultural Debt Subcommittee of the Governor's Council studied and held public hearings and the bill before you embodies one of eight agricultural recommendations unanimously approved by the full Council. The Council felt that the changes recommended by Senator Neuman allowing a larger point spread between the CD rate and loan rate and extending the term of the loan were important improvements in the loan program and will assure wider use of this method of financing agricultural debt.

The Governor's Council urges your support of SB46.

NORTHERN PLAINS RESOURCE COUNCIL # 5

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

~~EXHIBIT~~
DATE Feb. 13, 1987
SB 46 Dr. Jed Neuman
Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

Testimony in Support of SB 46
February 13, 1987

Mr. Chairman, members of the committee. I am Irene Moffett, a farmer from Dawson County. I am an active member of both the Northern Plains Resource Council and the Montana Farmers Union.

I ask you to support Senate Bill 46. I believe the program is very critical in helping provide farmers and ranchers with operating loans.

The program has been revised to make it more usable, for the banks. I urge you to support SB 46. This is an investment in agriculture that is dearly needed.

Thank you.

EXHIBIT # 5A
DATE Feb 13, 1987
SB 46 Sen [initials]
Neuman

AMENDMENT TO SENATE BILL 46

1. Page 7.

Following: line 24

Insert: "NEW SECTION. Effective date -- termination.
This act is effective on passage and approval and
terminates June 30, 1989."

NAME Jo Brunner EXHIBIT #6
ADDRESS 2015½ 9th Avenue Helena DATE Feb 13, 1987
TELEPHONE 442-2654 RE 620 - Rep. Leo
REPRESENTING Grange, Cattlefeeders, Cattlemen Giacometto
APPEARING ON WHICH PROPOSAL HB 620
SUPPORT X AMEND OPPOSE
COMMENTS:

Mr. Chairman, members of the Committee, for the record, my name is Jo Brunner and I would like to enter the Montana Grange Association, the Montana Cattlefeeders Association and the Montana Cattlemen Association as in support of House Bill 620

Some of you may recall the extensive~~s~~ revision of the weed bill originally proposed in the 1985 Legislative Session.

One of the reasons for that revision was the bill, as proposed, would have lessened the land owners right and control, on his own land.

That bill was ~~t~~ightened up resulting in part, with the provisions in Section 7-22-2110 and 7-22-2123 and 2124^{the} notification and hearing sections.

Apparently, we left something out, something very necessary, as far as our organizations are concerned.

It is all well and good to say that a landowner should keep up on the laws that pertain to his operation, and I believe that most of them would like to be able to do so.

However it is not realistic to expect our landowners to know the intricacies of each law. Laws change constantly as all of us know in this room, and those of us who work within the Legislative structure often loose track of whats going on. Legislators have staff to rely on and in all due respect, its rumored that on occasion some of you loose track of the contents of a law, even then.

Our organizations support the inclusion of the right to a hearing notification on page 2 Section 1, paragraph 3, sub (c) and on page 3 and 4, Section 2 paragraph 3 lines 21 through line 2.

We feel that these additions are reasonable, should not be costly to the weed districts, and will in fact, put the burden of responsibility on the land owner to a greater extent.

We ask a do pass on HB 620

VISITORS' REGISTER

House Ag. Livestock & Drug COMMITTEE

BILL NO. SB 46

DATE Feb. 13, 1986

SPONSOR Sen. Neuman

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Dore Moffatt	NPRC Myself	✓	
Kay Foster	Governor's Council on Economic Development	✓	
Bob P. Ser	Mont. Credit Union League	✓	
Al Dussch			
Wally Hoon			
Kay Norenberg	WIFE	X	
KEITH KELLY	DEPT. OF AGRICULTURE	X	
Loarel Mashor	Mt. Stockgrowers Mt. Cattle Ranch	X	
Bob Stephens	Mt. Grain Growers	X	
Anne Black	Northern Plains Res. C.	X	
A. Bruma	Heavy Cattle Ranch		
Terry Cannon	Mt. Farmers L.	X	
Ray Hillman		X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Ag. Linenstock & Irving. COMMITTEE

BILL NO. NB 620

DATE Feb. 13, 1987

SPONSOR Rep. Giacometta

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Ag. Livestock & Irrig. COMMITTEE

BILL NO. HB - 591

DATE February 13, 1987

SPONSOR Rep. Schyer

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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

February 13, 1987

A joint meeting of the Senate and House Agriculture, Livestock and Irrigation Committees met in room 325 of the State Capitol at 7 p.m. on the above date.

Senator Boylan, Chairman asked that anyone speaking on the bill to leave testimony with the secretary. He explained that the bills being heard tonight would go through the proper legislative procedure before they would go out as a law. He said the reason for the combined meeting tonight is so the House members could also hear the testimony, and they will have access to all the testimony which is given tonight by people who are from out of town and will not be able to come back to testify again. He said they would start off tonight with Senate Bill 268 and give 1/2 hour to the proponents and 1/2 hour to the opponents.

CONSIDERATION OF SENATE BILL 268: Senator Yellowtail, Senate District 50 and chief sponsor of Senate Bill 268 explained this as a bill regarding partial redemption of foreclosed agricultural property. He said he would start with just a brief discussion of context to place this entire issue in perspective. Agriculture is the backbone of Montana economy and family farms and ranches are the flesh of Montana communities. Agriculture in Montana is in crisis and if we are realistic we will realize that the crisis will not be over in the immediate future. Therefore it follows that this financial crisis that we are beset with now is not likely to stop in the near future.

Senator Yellowtail pointed out the agricultural crisis stems from forces beyond the control of Montana farmers and ranchers. We know mismanagement is not the reason for the crisis, he said, rather we identify issues like federal policy in the areas of value of the dollar, interest rates, import and export policy, etc.

Senator Yellowtail said we need to enhance an atmosphere wherein Montana family farming and ranching can recover from this crisis and SB 268 fits in the context of current law which provides that for foreclosed agricultural property the foreclosed borrower presently has the right of redemption for one year from the time of the foreclosure. He said the law of redemption is an old law and goes back a long way, it is found in the code books in 25-13-8 and other sections in

the codes. He said they tried to make the bill as simple as possible, it sets out a procedure for partial redemption, a time line, parameters for the valuation, due process in the interest of fairness to all parties. Senator Yellowtail then went through the bill section by section highlighting what the bill does.

PROPOSERS TO SENATE BILL 268: Sue Olson, farms near Roundup, representing Northern Plains Resource Council spoke as a proponent of Senate Bill 268, her testimony is attached as exhibit 1.

Alfred Verschoot, Ronan, Montana People's Action (MPA), spoke in support of Senate Bill 268. He said he felt this was an effort to upgrade the law. Land can be divided and he said he felt no reason why this could not be done. Since many of the loans will not return over 20% this law should be beneficial to the lending institutions.

Mary Lou Heiken, Rural Ministries Coordinator, for the Montana Association of Churches. She said the Montana Religious Legislative Coalition is in support of Senate Bill 268. She said she was raised on a farm and been actively involved in farming and ranching for over 30 years. She said it was important for her to remain in the community even if she did not have the total farm. She mentioned an elderly farm couple in their late 60's who are losing their farm and are in poor health with little or no earning power. With partial redemption they could retain a couple of acres and their home, live off their social security and stay in their own community where they would have the support of life long friends. If they have to move it is very doubtful if they will survive mentally, physically or financially, and I am sure there are many more like them.

Helen Waller, Circle, Montana, president of the National Save the Family Farm Coalition spoke in support of Senate Bill 268. Her written testimony is attached as exhibit 2.

Tom Tully said, his family ranches in the Bull Mountains south of Roundup, and he testified on behalf of Northern Plains Resource Council, spoke in favor of Senate Bill 268. His testimony is attached as exhibit 3.

Jeane Charter, said her family ranches next to Tully's in the Bull Mountains. Her testimony is attached as exhibit 4.

Jim Murry, Executive Secretary Montana AFL-CIO speaking in support of Senate Bill 268. His testimony is attached as exhibit 5.

Mary Kee, Roundup, Montana, and a member of Montana People's Action spoke in favor of Senate Bill 268. Her testimony is attached as exhibit 6.

OPPONENTS TO SENATE BILL 268: Al Haslobacher, representing Farm Credit Services of Spokane spoke in opposition to Senate Bill 268. His testimony is attached as exhibit 7.

John Cadby, Montana Bankers Association, representing all the commercial banks in the state of Montana, said he would like to introduce 3 bankers who are here to respond to questions of the committee: Mr. John Witte, President of the Traders State Bank at Poplar; Phil Johnson with the First Bank in Helena and we have our counsel George Bennett who is here to answer any legal questions that might arise. He said also speaking in their behalf is a banker from Sidney, John Franklin from the First United Bank of Sidney.

John Franklin, Bozeman, financial consultant and executive officer of the First United Bank in Sidney, testified in opposition to Senate Bill 268. He said, I grew up on a farm and worked with farmers all my life. I read this bill that at the foreclosure auction the buyer buys it but does not know what he got. He expressed the concern that a buyer might buy a ranch and in the partial right of redemption lose the hay base and asked, where does that leave the ranch?

Bob Stephens, Montana Grain Growers, spoke as an opponent of Senate Bill 268. He said, Montana Grain Growers feel this is just another stumbling block to get additional financing from farm credit service organizations, and it will tend to take the guts out of a good farm and you will find you have a hard time selling it.

Mons Teigen, representing the Montana Stockgrowers Association and Montana Cattlewomen. He gave written testimony, attached as exhibit 9. He said Warren Ross is chairman of the newly formed Ag Credit Committee, and was here this morning but could not remain or he would have spoken here on the need for credit for farmers.

Mike Sjostrom, Vice President of Montana Ag Credit, Inc. He spoke as an opponent of Senate Bill 268 and his testimony is attached as exhibit 10

There were no further opponents and Senator Boylan before asking for questions from the committee, expressed his appreciation to the House members who had just gotten out of session and had come to the hearing without even having supper.

Senator Yellowtail told the committee they have resource people available for answering questions from the committee and introduced Mr. Bob Randall and Mr. Steve Dougherty. He said Mr. Randall is an appraiser, Mr. Dougherty an attorney and Mr. Cogley, your staff attorney, is well informed also.

Representative Bachini said he had been listening to the testimony and would like to have the sponsor clarify a couple of problems. He asked, if there is a redemption when property has been foreclosed, does this really devalue the remaining property? He said it seemed to him with an appraiser, time period, etc. wasn't this protected? Senator Yellowtail said, I recognize that the first question is a complicated one. We must be able to designate a portion of the foreclosed property that we wish to be able to redeem in a fashion that will not seriously damage the value of the remainder. We have done this in the bill, in my opinion. We have, in section 4, page 2 and following. This section deals with valuation of the portion to be redeemed and that sets up a process whereby the portion to be redeemed is not redeemed at the fair market value today, but rather proportional loan value at which the land was foreclosed. In response to the concern by the opponents, we have provided for protection in due process in section 6. The lender has very specific rights of due process to challenge any element of this partial redemption under section 6.

Senator Thayer asked if the only recourse in a dispute between the two parties going to court? Senator Yellowtail said we presume, or at least hope, that the two parties are able and willing to negotiate and discuss whatever issue there might be and hopefully resolve an issue through negotiation rather than having to go to court. Also, I believe that whether or not we wrote a due process section into this law, I think both parties would have recourse through a court hearing.

Senator Thayer said he would like to address the same question to Mr. Bennett, an attorney. Mr. Bennett, Montana Bankers Association said, I think Senator Yellowtail is correct, the ultimate arbiter of a dispute over the value would have to go through the court process.

Representative Giacometto asked Mr. Franklin, under our current law, isn't it possible if I were to lose my place that I could still partially redeem part of that. Mr. Franklin answered, yes, and said we are in the process right now of receiving 160 acres back, irrigated ground. I will guarantee you, we don't want it. If the individual that owned it would like to have 40 acres that sits on the corner that has nothing to do with the rest of the value of the place and he wants to pay us what we have in it, we'll gladly sell it to him after we have gone through the foreclosure, if that's the way it goes. I can speak for myself--we don't want any tractors, we don't want the house, we don't want any land, all we would like to do is get our money back--the depositors money we loaned out.

Representative Giacometto asked, what this bill is doing is just putting into statute what they already do. Mr. Franklin answered, yes, as far as I am concerned.

Senator Beck asked Senator Yellowtail, does this bill also include anyone who has a contract for deed? Senator Yellowtail said, no, sir. We specifically avoided the issue of contract for deed. This is strictly between a financial institution and a borrower--a mortgagor and a mortgagee.

Senator Kolstad asked, if it is in fact between a mortgagee and a mortgagor it would also include a contract for deed, isn't that correct? Senator Yellowtail said perhaps he did not understand the terms well enough. Senator Kolstad said, all you have to do is differentiate whether it includes a private lender as well as a commercial lender. Senator Yellowtail answered, No. 1, it is absolutely not my intention to address contracts for deed. If this bill doesn't say that adequately, then I think we had better insure that it does.

Representative Giacometto said, I would like someone to address what the Senator has asked there. Does this address the contract for deed? The way I read it, it would and I would like that clarified. Senator Yellowtail said he would like to refer this to the staff attorney. Dave Cogley said at the time he wrote this it was his intention as well as the sponsor's to include only mortgages when we defined "redemption" as the person who formerly occupied and owned an equitable interest in Agricultural land that was sold in foreclosure of a mortgage granted by that person. of That would be the only situation where it would to apply. I understand there is some question as to whether a contract for deed somehow can be converted into a mortgage and I am not sure what the basis for that is, but it is my understanding that this would only apply to a mortgage transaction. It would not apply to a private lender under a contract for deed.

Senator Galt said that even though it is not a contract for deed there are also private mortgagers that aren't banks or institutions. Senator Yellowtail said, you are correct that those kinds of sales do exist, and my approach to this is and if you understand my intention then perhaps in legal language we can see how to narrow that down. My intention is to couch partial redemption strictly in the framework of the precedent since 1867 presently existing full right of exemption for 1 year as it applies to a full property. Now if there is someone here who can define that I wish they would, we can narrow it down and point it in the right direction.

Senator Galt said, conceivably, and there does exist, the fact where 2 parties have it. Not first and second

mortgage, but a mortgage on one section and on another section. How do you deal with that? Senator Yellowtail said his response would be the same. How does the present one year right of redemption apply in such a case, and would presume the partial redemption would apply in the same. Senator Galt said, you would hurt one mortgager and not the other? Senator Yellowtail said it would not be his intention to do so unfairly nor was it his intention to hurt any mortgager. He said he understood that there are first and second mortgages at present and a priority right there but not being a lawyer or financier to understand how the present right of redemption applies to those cases, but his intention is that the right of partial redemption should be no different.

Senator Thayer asked if the current law allows for partial redemption or does it have to be the entire property. Senator Yellowtail said his understanding is that it applies to the full property.

Senator Beck said he would have to sit down and discuss how they came up with the formula on appraisal and how you come up with the value on this, but going one step further, if a person does get the property redeemed, turns around and sells that fairly immediately and that devaluates--sells it to a junk dealer or whatever, is there any protection for the landowner or the mortgagee in something of that nature. Senator Yellowtail said he would presume that once the parcel is fully redeemed the title would return to the redemptioner and then he can do with it whatever the rights that go along with title allow.

Senator Beck said the point he was trying to get at--the formula takes into account a piece of ground and something comes in to devalue the rest of the property--it happens all the time, that's why the zoning laws, subdivision laws etc., and that is why the question. Senator Yellowtail said in one of the early sections--section 3, subsection 2 provides that the designation of the portion must be made in such manner that the division conforms to local land use ordinances and the remainder is not unreasonably decreased in value. He said, we have provided that local land use ordinances are provided for, that those are a consideration, if that helps one part of your question. The other part of the question, in the evaluation part of section 4 we have provided that the redeemed portion must be valued -- not at any reduced value, but strictly as a proportion of the foreclosure price. He gave an assumed example.

Senator Beck asked, on your scenario that the bank bid \$100,000 and somebody else came in and bid \$120,000, but you still have this right of redemption. Does that go up to \$60,000 then? Senator Yellowtail answered, yes, as the bill is written, yes it would. He said he would note however,

that with the land not worth that amount it would take someone crazy or something to do that.

Senator Boylan asked, is this the basis to redeem the farmstead or is there another bill on the homestead act? To pick out a place to live and have the dwelling, corrals etc. Senator Yellowtail said they struggled with the whole business of the Homestead Act and whether to try to incorporate that into this bill and concluded that was too complicated, we would be mixing too many things together. The Homestead Act stands by itself, it is a separate issue and we don't want to confuse that. My intention was to provide a maximum amount of possibility to the redemptioner really based on their financial ability to redeem the property.

Representative Cody asked Mr. Franklin, what would your concerns be when a potential purchaser of land that has been foreclosed on and the fact that he might buy something that he doesn't know is there or might not be there. How do you equate that? It does exist now and I am having trouble with having it here too. Mr. Franklin said, if I understand your question, today when a piece of property sells it is a full right of redemption. The way I read the bill is that if I went broke and they foreclosed on my property and you held the lien and your neighbor decided to buy it. Your neighbor bids it in at foreclosure, he is obligated to purchase it at the end of the 12 months whatever is remaining of the farm and I could come in and take the building site and the and the irrigated bottom ground and your neighbor is obligated to take whatever is left because he bid it in at foreclosure auction.

Representative Cody asked, if the purchaser or anyone bidding on that property, if this law went into effect, would he know that there is a right to redemption even on a full foreclosure. Mr. Franklin said yes. He explained that bidding on a ranch today he would know what he was getting but the way the bill is written he would not know what he would end up with because of what might be redeemed in the the partial redemption.

Senator Yellowtail closed by saying, he was clearly astonished at the opposition here today. First, the gentleman from Spokane. The potential for reduction of value of the remainder of the property is addressed in the bill and there is a recourse if there is devaluation in some case. The fact that the bill is not limited to a few acres and the house, this has been addressed also, this is not a Homestead Exemption bill, we want maximum flexibility for the foreclosed borrower to be governed by their ability essentially to come up with the money. The fact that unreasonably decreased is not defined, I think if we tried to define that we would get ourselves involved in a hopeless

can of worms and I think the scientific analysis of an appraiser in conjunction with the court can make those determinations. As to the whole issue of you or I redeeming the water holes and the creek bottom out of our ranch, no--it is not realistic and I don't want to do that to the lender and it is not a reasonable thing for me to do anyway. I think we have provided against that case in this bill. We have provided due process. I do not think it a reasonable criticism of this bill. Mr. Franklin points out that the buyer buys it but doesn't know what he got. I have 3 responses to that. 1. Reality is that most foreclosed property does not sell as an independent unit in this day and age. What most likely happens to it is a neighbor who can afford to do so incorporates it into their holdings, or in my territory the oil man from Texas is buying these places up hand over fist, and that is the case that is more likely in this day and age. 2. The present year right of redemption exists. This is no different in terms of uncertainty for the buyer at foreclosure auction. That uncertainty exists today for the entire property. In practice today nobody buys property at foreclosure auction. Nobody is fool enough to pay the original inflated price of that property at foreclosure auction knowing that if they wait a year they will be able to get it ultimately for 5 years at fair market value which is substantially less. In our area we have foreclosures going on right and left and nobody buys at foreclosure auction because of that uncertainty, they wait out the 1 year right of redemption, so I don't see too much basis for that concern. I think we have answered the "drying up credit" theory. We all recognize that that is a pretty hollow threat. I am reluctant to say this, but Mr. Stephens and Mr. Teigen have surprised me by appearing here against this bill. I don't know Mr. Stephens very well, but Mr. Teigen is a friend of mine. I must ask, whom do you represent? Here are people who have come to support this bill and I suspect that some of them are members of your organization. Congress has established its approach to keep the family operator on the land and that is Chapter XII bankruptcy. I want to remind the committee, the lenders and everyone here that the lender's position in Chapter XII bankruptcy can only be the side that is disadvantageous. The lender under Chapter XII bankruptcy, as I understand it is entitled to recover only fair market value. Here we offer an alternative. It should be far more desirable to the lender, in any case. We offer an alternative to permit the lender to recover their loan value in this property. Please make no mistake, however, this is not intended to be an anti-lender bill. We know that Agriculture depends on viable banks and credit and we know that banks in our communities depend on viable farms and ranches. I suspect this requires the courage for both parties to meet half way. Fairness has been my over riding concern in presenting this legislation. Redemption is not a new idea, partial redemption is not so very strange to that

concept, and I think we are here offering the Montana Legislature an opportunity to do something concrete to address the recovery of family farmers in Montana.

Senator Yellowtail thanked the committee and the people who had come to the hearing for a very fair hearing.

Senator Boylan said this would conclude the hearing on Senate Bill 268 and said they would open the hearing on Senate Bill 321.

CONSIDERATION OF SENATE BILL 321: Senator Jergeson, Senate District 8 and chief sponsor of Senate Bill 321 explained the bill. He said the basic fundamental purpose of introducing this bill is because we believe mediation and negotiation is better than bankruptcy. We believe that mediation and negotiation is better than foreclosure. While this bill compels both sides to come to the table to try to sort out the problems and find a solution, it is not arbitration. Any agreement the mediator tries to work out, both sides must agree to sign the agreement and abide by the terms. If one side or the other is not able to agree the process ends and whatever course of action, be it bankruptcy or foreclosure if that is absolutely inevitable, would occur. Hopefully, he said, this whole mediation process will help some farmers and ranchers. He said many say Chapter XII bankruptcy answers the question, and he asked how many here tonight would prefer a negotiated or mediated agreement to your problem as a tool rather than going through bankruptcy? He asked them to please stand--most of those present did so. He then asked how many lenders would prefer mediation.

PROPOSERS TO SENATE BILL 321: Curtis Haskins, a farmer from Polson, Montana, a peer counselor, a member of Montana People's Action, and testifying for Senate Bill 321 in behalf of the Ag Action Coalition. He presented written testimony, attached as exhibit 11.

Terry Murphy, President of the Montana Farmers Union spoke in support of Senate Bill 321. His testimony is attached as exhibit 12.

Jim Murry, Executive Secretary Montana AFL - CIO and a life long member of the Montana Farmers Union spoke in favor of Senate Bill 321. His testimony is attached as exhibit 13.

Jo Ann Voice, Ryegate, Montana, said she is here to testify in favor of Senate Bill 321. She read some of the information that had come to her from other states that had mediation, and said she represented the Montana People's Action. Her testimony is attached as exhibit 14.

Helen Waller, National Save the Family Farm Coalition, Circle wheat farmer said she was here to support Senate Bill 321. Her testimony is attached as exhibit 15.

Jerry Schillinger, farmer, Circle and representing Northern Plains Resource Council spoke in favor of Senate Bill 321 and his testimony is attached as exhibit 16.

Lyle Quick, Circle, a commissioner from McCone County, President of Montana Association of Counties Agricultural and Rural Affairs and also sit on the National Rural Affairs Committee board. He said the committee was spawned out of the fact that Agriculture is causing so many problems today in rural America that the situation has to be addressed. He asked that the committee look favorably on this bill and most of the Ag bills being proposed this session because if we fail in state government and local government to provide the services for the people we have to support it will be total devastation. Today the delinquent tax rate is already astronomical. In McCone County alone it is 12%. Where are we going to pick up the tax dollars? We will have to cut services, he said. He left a support sheet, exhibit 17.

Geriann Wilson, Montana People's Action, Polson, handed in a sheet for testimony, her testimony is written on the back of the sheet, and is attached as exhibit 18.

Bud Mekelburg, Otis, Colorado, Executive Director of the Colorado Coalition to Save Rural America, and a farmer from Yuma County. He spoke in favor of Senate Bill 321 and his testimony is attached as exhibit 19.

Mary Lou Heiken, Rural Ministries Coordinator for the Montana Association of Churches handed in written testimony in favor of Senate Bill 321. Her testimony is attached as exhibit 20.

Mary Kee, Roundup, Montana and a member of Montana People's Action handed in written testimony in favor of Senate Bill 321. Her testimony is attached as exhibit 21.

Howard Lyman, Great Falls handed in testimony in favor of Senate Bill 321, and it is attached as exhibit 22.

John Ortwein, representing the Montana Catholic Conference handed in written testimony which is attached as exhibit 23.

The time allotted for proponents had been used up and Senator Boylan asked for opponents.

OPPONENTS TO SENATE BILL 321: Al Haslebacher, Farm Credit System Officer of Region 5, Spokane, spoke in opposition to Senate Bill 321. His testimony is attached as exhibit 24.

John Witte, Scoby, Mt, handed in a sign up sheet, said he was representing the Citizens State Bank in Scoby and the Treasure State Bank in Poplar. He explained that the purpose of the bank is to gather in the surplus funds in the community, to safeguard it for the depositors, to loan it out into that community to help it grow and prosper and to make a profit for its stockholders. He said he has been in Agricultural banking for 30 years. It is a high risk business to the farmer and operator and a high risk business to the banker. He said 2 years ago they did not pay one cent of tax to the state of Montana from their bank in Scoby because we ate 875,000 dollars in losses. Ordinarily we should have paid 35 to 40 thousand. He told about efforts to help the farmer stay in business, working with Farm Home, and even in spite of everything possible being done in mediation, what does a lender do when there is a negative balance and you are loaning out the depositors money. We think we have the tools in place, he said, through the guaranteed loan program of Farm Home today. Every time I see an auction sale I know there goes another family down the road, and they will no longer a part of the community. He said when the little community banks go down the road the communities go down the road too. We are doing everything we can to keep the farmers going. He said he did not like the mediation bill because there is a long process of time there. The chaos, the mental aches and hurts of mediation can go on for years.

Phil Johnson spoke as an opponent to Senate Bill 321. His testimony is attached as exhibit 26.

Mons Tiegen, speaking for the Montana Stockgrowers and Cattlemen, said they did not support the bill. He handed in written testimony, attached as exhibit 27

Bob Stephens, representing Montana Grain Growers Association said they are not opposed to mediation, they are opposed to mandatory mediation. He said he has farmed in Agriculture, and has been a bank officer so felt he understood both sides. He said there are many "lien" people coming in trying to get ahead of the banks, the aerial duster, the petroleum guy, the fertilizer man, the tire man, etc. The bank can have a loan, these people want to come in, file a lien, and be in ahead of the banker. When they are into the farmer, the bank will have to turn them down.

Mike Sjostrom, Vice President of Montana Livestock Ag Credit, Inc. spoke in opposition to Senate Bill 321. He handed in written testimony, attached as exhibit 28.

Mr. John White turned in a sheet in opposition, it is attached as exhibit 29.

Senate Agriculture Committee
February 13, 1987
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There were no further opponents, and Senator Boylan asked if there were questions from the committee.

QUESTIONS FROM THE COMMITTEE: Senator Lybeck asked a question of Senator Jergeson. He said, it seems to me a lot of the opponents raised the question of the length of the mediation period. Have you, or would you give it some consideration to put possibly a shorter time limit in there? Senator Jergeson answered, the basic mediation period, between the 14 days of filing notice of request of mediation after an action has been present and the time the mediator has to work with both parties--45 days, comes to a total of 59 days, and I believe the provision may be in there that the mediator can extend that time by another 45 days if he sees that there is some reasonable opportunity for an agreement to be worked out in that period of time, otherwise it would end at that time. Frankly, all of you familiar with livestock know that we are about a one crop a year operation, and in the whole process of that year 60 days is a very small part of the critical time of the entire year. I am open to all kinds of suggestions on the technical aspects of this bill, and I would consider them when we go into executive session.

Representative Lybeck said he would like to follow up with a question to Keith Kelly. He said, I realize you didn't testify, but you are here and I would like you to answer. I know we've had this program in effect now for a short while. I was wondering if you would give a brief report on how you see it has worked out. Keith Kelly, Director, Department of Agriculture, said referring to the Ag Assistance program that began sometime after mid June 1986, to date we have received 800 calls over the hot line. To break the program down by category there is the peer counseling component, a financial consultant and a mediation component of it with legal assistance in the training. We had 153 peer counseling requests, a total of 27 mediation requests and currently 4 have been concluded, some are in operation some are still working along, and 41 financial consultant cases.

Representative Rapp-Svrcek said he had a question for Mr. Witte. He said Mr. Witte seemed to be a conscientious banker who cared about the people and the community he worked with. He said, You mentioned a lot of things in regard to your bank, that you need to make a profit for your stockholders and that both you and the borrower take risks when you sign a note and there seemed to be a great deal of concern in your testimony in regard to the communities in which you operate. I would ask you, Sir, how would it adversely affect the profit for you or your stockholders, what risks do you take, and how would it disrupt the communities just by asking that you sit down at a table with the borrower in an effort to work out something?

Mr. Witte answered, the other day when I testified before the House Ag Committee. For 9 years Daniels County has been declared a disaster county. 7 years of drought, then we had a fair year but we got grasshoppers; in '86 we had possibly one of the best moisture years that Daniels County has ever had. The old timers said this would have been the best year of crop production, but the grasshoppers didn't die. Some of our customers sprayed 3 times. We had fields out there that were as bare as this floor, so in those tough years that we have had I say Daniels County is possibly the hardest hit agricultural county in the nation, I have lost 6 farm customers. I have never gone to the court house on 1. We have sat down and negotiated, we sat in Farm Home with one and worked to see what we could do.

Mr. Witte said when you hire a "so called" expert who really knows less about Ag loans than the bankers--one of the things that scared him about the bill was--how much do they know about ag lending? He said he was also worried about the confidentiality of the loans.

Representative Rapp-Svrcek said he had a question of Mr. Phil Johnson. He said, Mr. Johnson you have not disappointed me. I hoped that at least one time tonight I would hear a member of your industry allude to the fact that these bills would dry up credit, and you did it for me. I just have some questions about drying up credit. Do you perceive that credit dries up in a banking community or gets tighter for reasons other than agricultural loans? Does the health of the community have any effect on agricultural credit? Mr. Johnson said, In Montana, I think I would turn that question around. The health of agriculture has a great effect on the community. In terms of drying up credit--no, I didn't say it dried up credit. I said it did show cause in measuring risks which is what we're supposed to be good at, but we are looking at ag loans that are on the rim, so to speak as being either bankable or nonbankable. The economic conditions as I said in my testimony seem to be going against us and we perceive that we are going to have additional costs stemming from this bill in terms of monitoring and taking care of that credit.

Representative Rapp-Svrcek said he would like to talk about the loans that are on the "rim". He asked, from which scenario would the bank profit more--a scenario where they sit down with the borrower and work out something that keeps the borrower on the land and pays a portion of the money back to the bank or the scenario where the bank takes back the land? Mr. Johnson said, I think I answered that in my testimony. He was asked to answer it again, please, and said, The answer would be the former part of your response. We're better off in mediation, not mandatory mediation. The minute we take a piece of property back, we lose, and we lose big.

Representative Rapp-Svrcek said he would like to ask Mr. Johnson the same question he had asked Mr. Witte. What harm comes to the banking industry by merely asking that you sit down across from the table with a borrower? Mr. Johnson answered there were additional costs and delays, and you are introducing a party into the picture that may or may not be qualified to handle the situation.

Representative Rapp-Svrcek asked, Mr. Johnson, you are not bound by anything that mediator would come up with, you are still allowed to leave that mediation process to continue your foreclosure or whatever the bank wishes to do. Again I ask you what harm has your institution come by in sitting down across the table with your borrower? Mr. Johnson answered that it is the mandatory mediation. It results in an inordinate delay in collecting the loan, that cost is borne by society in the community and by the institution depositors and borrowers.

Representative Cody expressed that she didn't feel there was a problem with the rural bankers such as Mr. Witte that care about the community and the people in it, what about these insurance companies? Mr. Witte said he really didn't know. The insurance companies, chapter XII, have been mentioned. Chapter XII is a kind of a dirty thing and the insurance companies right now, I don't think they are making a loan in the state of Montana and haven't been for some time. Now with Chapter XII coming in they have definitely dried up their credit. I don't know how you would sit down and mediate with them. We were all caught in this fire, I lay some blame on my fellow members in the land bank system that they got some money out there on some land that was too high priced, and today the roof has fallen in and there is no way that debt can be serviced in today's economy. I don't know how you can sit down and mediate with the insurance companies.

Senator Abrams asked a question of Mr. Keith Kelly. He said, Keith, you gave us some statistics on the amount of mediation, what is your success ratio? Mr. Kelly answered, that in mediation, of the 4 cases completely signed and delivered, I think 3 of them were successful and in the 4th case the individual came to the conclusion that he could not continue in business.

Senator Galt asked Senator Jergeson, I refer to sections 17 and 18. Are all the expenses of this thing to be paid by the parties to the mediation or who? Senator Jergeson said yes, and it could be by more parties if you have more than one lender. Senator Galt said, but the whole expense--who is going to pay the mediator? Mr. Kelly answered, the Department of Agriculture, though I have to establish rules and work out some method of determining who is qualified to serve as mediators. Those people would probably be hired

under some sort of contract or retainer with the Department. They would only be hired on a case by case basis where they are called out to serve.

Senator Galt asked Mr. Kelly, do you actually think the Department of Agriculture can carry on this program without additional appropriation? Mr. Kelly said, I think any additional appropriation would be very limited, Senator.

Senator Jergeson said the bill is written the way it is so that it is not an open ended appropriation as the bill the House turned down on voluntary mediation. This has controls and limits on it. A person who requests mediation is going to have to want to be serious about making it work because it is going to cost him some money.

Senator Galt asked, you can guarantee it is not going to cost the state any money? Senator Jergeson answered, as I said it will be very limited. I suppose it will take some time for them to set up an organization, identify and entice those people who they can get to go out and do the mediation.

Senator Galt asked if this cost was in the Agricultural Appropriation bill this year? Senator Jergeson answered, as you know, Senator Galt we are never done here until we adjourn sine die and if we pass a statutory authorization the budget committees have opportunities to look at that.

Senator Galt said he had one other question, he said, I do know that this covers not only the institutions and the insurance companies, but it also covers private lenders and people with contracts for deed, etc. Senator Jergeson answered, that is true. You have to understand Chapter XII probably covers all of them. I believe some of them were looking at that Chapter XII to see if it covered contract for deed and they are afraid that it may. The fact of the matter is if anybody who has loaned money in excess of \$20,000 can foreclose, so everybody is involved in this. The whole situation is that foreclosure and bankruptcy should be the very last resort for either side, and that is a resort that neither side ever really wants to go to until they absolutely have to.

Senator Galt asked, you have one private fellow with a contract for deed to another private fellow, the fellow that is operating, stone broke, he is a poor caretaker and has done all the nasty things and you are going to preclude the fellow that has to take the place back from getting it back for a period of time--it might be for the planting season or it might be for the calving season. Senator Jergeson answered that he felt it would be for a limited period of time, 59 days for any kind of mediation could go on and he said he would suggest that in the case of a person in a

contract for deed situation--in that case the lender, if he decided to foreclose on the fellow who bought the place from him on a contract for deed and the guy was letting the place go to hell, well he could do as Mr. Witte said with his customers, in this case those people would probably be quite angry with each other and it may in fact take an objective non-bias mediator to sort the thing out for them.

Senator Galt asked, but would there be a delay in the guy getting his place back. Senator Jergeson answered, 60 days.

Representative Koehnke asked a question for Al Haselbacher from the farm credit system. In your testimony, did you say that you have instructed your people out in the field in both the land bank and PCA to mediate with them? Al Haselbacher answered, yes, that was correct, sir. It was late in the process, probably about September or October. We sent a letter to our farm credit service office which are jointly managed PCA and FLBA, asking them to make a good faith effort in participating in the Montana Ag Assistance Program in all phases of its operation.

Representative Koehnke asked, sir, was this true before this legislation for voluntary mediation? Did you instruct them to do that before this other legislation? Mr. Haselbacher answered, the Legislature was not in session and so this bill was not around so it would be before, yes.

Representative Koehnke asked, did you do that voluntarily--has that been a policy with your people all along? Mr. Haselbacher said the special session created the Montana Ag Assistance Program and it was some time after that before we actually asked them to formally participate in this program. The Farm Credit System is operated by people who come from the farmers. Our policy is to work with individual farmers on a case by case basis, and as we are farmer owned, foreclosure is an absolute last resort. Our directors are farmers and they don't make those decisions lightly.

Senator Beck asked Senator Jergeson, on page 4 of the new section 3, it says that anything under \$20,000 is not included in this mediation. Is that \$20,000 per item or a combination of items. Senator Jergeson answered, that would be outstanding debt.

Senator Beck also said he would like some documentation of how serious a problem this is--I would like to know, how many people have been denied mediation with their creditors and who are some of the creditors that denied them mediation. Is that at all possible? Senator Jergeson said he could not speak from a personal basis, but can say when our PCA was taken down along the Hi-Line there were a great many people who were at a loss on how to deal with the

situation and there were 400 members of that Association. Many of them were able to go in with the new people who were put in the office who were charged with liquidating the association. There were others that were so terribly angry that it took a great long time before they would set foot in the place to even see what their status was.

Mr. Beck said, that is really what I want to know. Maybe they've changed. Maybe they are mediating today. If someone is being denied mediation I would like to know that too.

Senator Jergeson said he did not have an individual case of someone who was denied that mediation, it is entirely possible that among the people sitting here they may be close to it or been denied mediation.

Mary Kee spoke to Senator Jergeson who then told the committee that this lady said she had been denied mediation by the farm credit system.

Senator Jergeson closed by saying that he is sort of amazed that Mr. Haslebacher is here to suggest that this bill raises false expectations for farmers. As a former borrower of PCA type services, I would like to say that they are the masters of false expectations. I, like Mr. Witte, will not use any stronger language than that here tonight. I would suggest to bankers and lenders like Mr. Witte. This bill is not aimed at you guys. This bill does not try to paint you as wearing black hats, in fact when the farm credit system did break up our PCA our local bankers did their level best to absorb the people who were members of that PCA. I applaud them for it and I don't offer this bill as a slap in their face, but I offer it as a hope that those people who are faced with their people filing Chapter XII's on them or with their having to face the point where they have to foreclose on a customer. It is legitimate for lenders to be looking out for their bottom line. It is legitimate for lenders to be looking out for a profit. It is legitimate for farmers to be looking out for their livelihoods, to be looking out for their destinies, and sometimes because they are so closely involved in their own legitimate interests they have trouble seeing the other side. The mediator may be able to sort this out. He said he did not expect the time to drag on, that there was a time limitation, and said it is Chapter XII that is causing the lenders to dry up credit, it is not the tools that would try to prevent Chapter XII that is doing it.

Senator Boylan closed the hearing, and said anyone who did not get to testify could hand in testimony to the secretaries and it would be duly noted.

The meeting was adjourned at 10:02 p.m.

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Senator Boylan, Chairman