

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

February 18, 1987

Chairman Duane W. Compton called the meeting to order at 1:00 p.m. in Room 317 of the State Capitol, Helena. All members were present. Tom Gomez, Researcher was present.

Bills to be heard were HB 738, and a rehearing on HB 220.

HOUSE BILL 738

Rep. Loren Jenkins, District 13, sponsor of HB 738, explained two years ago the Department of Fish, Wildlife and Parks bought the Geisler Mfg. plant. It is rented to the City of Fort Benton for a museum. HB 738 just establishes the official name of it as the Montana Agriculture Center and Museum of the Northern Great Plains. It is strictly an agricultural museum. On line 17 it says there is no cost to the State of Montana. This bill just gives it an official title.

PROPOSERS

Jim Flynn, Director of the Department of Fish, Wildlife and Parks, left his testimony. He supports this legislation. It will not result in expense to the Department. However, the Department opposes providing liability insurance and will close the facility if the City of Fort Benton cannot pay the insurance costs. (EXHIBIT #1)

OPPOSERS - None

QUESTIONS FROM THE COMMITTEE

Rep. Campbell suggested instead of the FWP closing the facility, let them sell it. Rep. Jenkins said that would be a viable option, but right now he doesn't look for the Department to take that option. There is a problem with insurance and getting it settled out. They wanted to buy insurance through the Department and that wasn't acceptable. Right now they are trying to find insurance.

Mr. Flynn said the reason he put the last paragraph's language in was in case something happens in the interim. He wanted you to know what the Department would do. They'd have to come back to the next legislature if they were going to sell it, and make the decision as to what will

OPPONENTS - None

Rep. Campbell asked if perennial seed included Baby's Breath. He sells quite a bit of it, and there's no mention of it anywhere. There was no response.

Rep. Holliday said to Dave Howard that they might not handle it in the House, but they'd like to know what he wanted changed, and what would be proposed in the Senate that the House committee wouldn't get a chance to hear. Mr. Howard said Section 80-5-102 might be switched back under 80-5-103. He wants to reserve the right to sit down with Tom Gomez to see that those sections are all in there. He also said it looks like some paragraphs have been combined where they should have been kept separate. Rep. Holliday then asked if they were technical changes rather than policy changes, and Mr. Howard answered yes. Rep. Jenkins apologized to the committee for the short time frame, but they just got it in today.

Rep. Cody asked Keith Kelly if the original bill was drafted at his request, and, if so, why was that done to begin with, and why such major changes.

Mr. Kelly explained the process was started last summer. The DOA was looking at all statutes about noxious weeds. It is very cumbersome as it is, and they'd like the ability to do this by rule. They have been working with the weed committee during the fall and trying to make some updates in the legislation. It is a community problem. It was just a simple bill and they asked Rep. DeMars to carry it.

Rep. Cody wondered what the court case was they kept referring to. Mr. Kelly said the intent of the bill is to give more teeth to the weed seed law so they wouldn't have to go to court.

Oran Bjornson, Administrator for the Plant Industry Division of the DOA, explained they found a dealer conditioner labeller who had altered seed tags, and as a result, sold the seed to a farmer who suffered a lot of damages. The farmer found out from a lab in Wyoming that the seeds were a year old and was a seed of another crop, and there had been alteration of the label. He went into court with the County Attorney, who felt they had a good case, and the person they were after also hired an attorney from Billings, a Mr. Moses. They got into quite a legal dispute and lost the case. We were told if they wanted to continue with the weed law, some changes would have to be made in the law.

PROPOSERS

Rep. Jenkins stated HB 220 has been worked on and there might be places where it needs some amendments, but he hopes it can be fixed in the Senate. They've been trying to work with the noxious weed seeds with DOA people and they worked with the revised agricultural seed laws for the seed men. They have been working on this for three weeks and are out of time, and he hopes the committee will let it go through. A court case in Lewistown last year almost destroyed the seed laws in Montana. They started tightening them up at the direction of the seed people. He is sure a couple of amendments will be put on in the Senate. They have 45 days left over there and we don't have any more time in the House.

Rep. Compton remarked that the subcommittee and Tom Gomez worked long hours on this.

Rep. Patterson presented the subcommittee report. Last session they reworked the weed laws. The opportunity came up to address the seeds. Some of the concerns are on page 4 where noxious weed seeds are listed. These are the weeds considered in the last session. To control knapweed and other noxious weeds, you have to control the seed. This bill would control the seed and some minor amendments might be added in the Senate. They worked with DOA who had input in this bill, and they realize we need some type of seed legislation in the state. Seed laws are old and have been on the books quite awhile. Because of the influx of seeds from other states, we need to revise our laws. This bill would accomplish that. Technical questions will be referred to Tom Gomez, who did a lot of work on drafting this bill. I hope the committee can give it a do pass recommendation.

Keith Kelly, Director of the Department of Agriculture, said this started out as a simple bill. It is now an industry bill. He is not opposing the bill at all, but they may want to pass it to the Senate where it might be able to be cleaned up in some minor spots. He is not opposing the bill. It covers what they wanted at first and the industry is satisfied. The Senate will fine tune it.

Dave Howard, industry representative, supports the bill. He received the bill as corrected, and there are definite changes. They want the opportunity to change it in the Senate.

spent the bucks, and you are going to turn around and close it?

Mr. Flynn said there was a clear agreement among legislators, Fort Benton people, and the Department in 1985 that it was not going to cost the State of Montana any money. Funding was only for purchase. The Long Range Subcommittee people and all others clearly understood that was what the understanding was. If they couldn't administer and run it, it wasn't going to be a state facility. Rep. Cody asked how much it cost, and Mr. Flynn said \$250,000 total.

Rep. Ellison said you can't lay the blame on FWP. It lays in the lap of the Legislature. If this goes belly up, the Legislature made a bad decision.

Rep. Jenkins closed. He said that on line 14 of the bill after "museum", is the present law: "but shall lease the facility to the City of Fort Benton for so long as the City of Fort Benton provides for the development, operation and maintenance of the center and the museum without cost to the state of Montana." That is what was perceived. It was probably a fairly good buy, as they couldn't put up that much building for that money now. The City has already put a lot of money into the building. They'll have a community center, a stage or auditorium for showing slides and pictures of homestead days and agriculture from day one up to modern farming. It's a history of farming really. The reason was to name this museum and put the name into the statutes. It has not changed the City of Fort Benton's promise to the State that it will be no cost to the State. They want the name because it is easier to apply for grants if you are a recognized museum and this will recognize them as official. He hoped for favorable consideration.

#### EXECUTIVE SESSION

Rep. Bachini moved HB 738 DO PASS. Rep. Giacometto seconded the motion, and it was unanimously ADOPTED.

#### HOUSE BILL 220 - Rehearing

The Department of Agriculture drew up the original bill. The subcommittee, consisting of Reps. DeMars, Patterson, and Jenkins, drew up the new bill.

Rep. Gene DeMars, District 29, sponsor of HB 220, turned his opening remarks over to the seed people.

happen to it. This is what they would do: come to the 1989 Legislature and see what they want to do--sell it, leave it closed, or abandon it.

Rep. Corne' asked if this was going to be a City park and museum and the State wanted nothing to do with it, why was the FWP directed to acquire the property in the first place?

Rep. Jenkins said FWP park money was used to purchase it originally. Rep. Hanson wanted to know if it was open now or at least summers, and Rep. Jenkins stated their grand opening is going to be in 1989. They are remodelling now and putting up exhibits. It was an implement building and it was closed down, and now they are setting it up for all kinds of agricultural exhibits.

Rep. Holliday asked Mr. Flynn what in that agreement are the focusses on the property--insurance and liability. Did they assume that and they would sign that with only the passage of this legislation?

Mr. Flynn answered that the property was a rather unique funding package put together by the Long Range Building Program. They didn't have a problem with utilizing some of the State's resources to purchase the property, but as a Department, they are not in the business of running museums. The committee, after discussion with the local people, did use state money to purchase it and then turn it over. That was the clear understanding. If you are going to have a public facility, you have to have insurance and since the State owns the building, they must have adequate insurance, but since it is not supposed to cost the State anything, they are requiring the City to provide insurance. The cost of insurance is a difficult hurdle to get over. If they don't, the FWP won't pay for insurance and will close it.

Rep. Jenkins said the State itself insured it and that was part of the reason for the FWP to be in there. The rest of it is all in the statute. They wanted the State in there because it is easier to pick up grants.

Rep. Cody asked Mr. Flynn: you have just purchased this property and you are going to lease it to the City for \$1.00 and if for any reason they can't support the facility, you are going to close it? If they aren't able to buy liability insurance and they can't open the facility, you have already

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Rep. Bachini asked how long it would take to make some of the technical changes proposed. If they could do it by Friday, they could act on the bill and put out a clean bill on the floor of the House.

Mr. Kelly said they are looking at two different forms. The old bill had been scratched out and now there is a new one. There may not be any changes necessary, but there just hadn't been time to look at it.

Rep. Bachini asked if they waited until Friday, would Tom Gomez have enough time to work on it. Mr. Gomez said he was extremely busy, but he thought he might be able to do it.

Rep. Jenkins suggested that they recess for a half hour and go over it with Tom Gomez and the seed people.

Rep. Holliday asked if it would be possible to delay any action until Friday, and Rep. Compton said that would give them two days to work on it.

Action was postponed until Friday. The subcommittee, the seed people, and Tom Gomez were to work on the new proposals from 2:30 to 3:00 p.m.

#### ADJOURNMENT

There being no further business to come before the committee, the meeting was adjourned at 2:35 p.m.

*Duane W. Compton*  
Rep. Duane W. Compton  
Chairman

DAILY ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 13, 1987

[illegible]

# STANDING COMMITTEE REPORT

February 18

19 87

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

report HOUSE BILL 738

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

REP. DUANE W. COMPTON

Chairman

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**White**

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HB 738  
February 18, 1987

EXHIBIT #1

DATE 2/18/87

HB 738 Rep. Lou Jenkins

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The department supports this legislation on condition that it will not result in expense to the department.

The 1985 legislature, through HB 928, directed the Department of Fish, Wildlife & Parks to acquire property in Fort Benton for the "Montana Agricultural Center and Museum of the Northern Great Plains."

The department has completed this purchase as directed by the legislature.

HB 928 also directed the department to "lease the property to the City of Fort Benton for \$1 a year for so long as the City of Fort Benton provides for the development, operation, and maintenance of the facility without cost to the State of Montana."

The property has been turned over to the City of Fort Benton and renovations, development of exhibits, and the storing of collection items are underway. It is our understanding that the city intends to turn management of the property over to its Civic Improvement Association. The department has prepared a lease agreement to carry out the final intent of HB 928, but this agreement has not been signed by the city, apparently due to concern over the need for the city or the Civic Improvement Association to purchase liability and property insurance coverage at its own expense.

HB 738 permanently codifies the authority for the museum project in state statutes as part of the State Park System. It also anticipates perpetual management by the City of Fort Benton at no cost to the state. The department has no objection to this.

However, the department wishes to go on record as being opposed to using department funding to continue operation of the facility if the City of Fort Benton decides to give up the project or finds itself in financial difficulty. In the event this should happen, the department would close the facility.

*Bill draft*

AMENDMENT TO HB 220

1. Title, line 3.  
Following: line 2  
Strike: line 3 in its entirety
2. Title, line 5.  
Following: "AN ACT"  
Insert: "TO GENERALLY REVISE THE AGRICULTURAL SEED LAWS;"
3. Title, line 6.  
Following: "RULE"  
Strike: "THE"
4. Title, line 8.  
Following: ";"  
Strike: "AND"  
Insert: "TO ESTABLISH CERTAIN LICENSING REQUIREMENTS;"  
Following: "SECTIONS"  
Strike: "80-5-101 AND"  
Insert: "80-5-102 through"  
Following: ","  
Insert: "80-5-107 through 80-5-113, 80-5-202, 80-5-204, 80-5-205, and 80-5-207,"  
Following: "MCA"  
Insert: "; REPEALING SECTIONS 80-5-101, 80-5-106, 80-5-201, AND 80-5-203, MCA; AND PROVIDING EFFECTIVE DATES"
5. Pages 1 through 9.  
Strike: everything after the enacting clause  
Insert: "NEW SECTION. Section 1. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:  
  
(1) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures of seeds.  
  
(2) "Approximate percentage" and "approximate number" mean the percentage or number with the variations above and below that value as allowed

according to the tolerance limits defined in the "rules for seed testing" adopted by the association of official seed analysts.

(3) "Bin-run seed sales" means seed sales from one farmer to another farmer with seeds sold "as is" without guarantee or analysis.

(4) "Certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification that are comparable to those adhered to generally by the seed certifying agencies described in subsection (4)(a).

(5) "Controlling the pollination" means to use a method of hybridization that will produce pure seed which is at least 75% hybrid seed. Hybrid designations must be treated as variety names.

(6) "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

(7) "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross

produced by controlling the pollination and by combining:

- (a) two or more inbred lines;
- (b) one inbred or a single cross with an open pollinated variety; or
- (c) two or more selected clones, seed lines, varieties, or species.

(8) "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

(9) "Labeling" means to affix, before offering the seed for sale, on the exterior of the container in a conspicuous place a label written or printed in the English language that has not been altered, giving the information required under this chapter.

(10) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the establishing agency.

(11) "Name of the state in which the seed was grown" means any of the several states of the United States or a foreign country.

(12) "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(13) "Percentage of germination" means the percentage of seeds that show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the association of official seed analysts.

(14) "Percentage viability" means the percentage of live seed capable of producing a normal seedling under optimum growing conditions, after all forms of dormancy have been overcome, if present.

(15) "Person" means any individual, firm, partnership, corporation, or association.

(16)(a) "Prohibited noxious weed seeds" means the seeds of perennial and other noxious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts and that, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds include the seeds of:

(i) leafy spurge (*Euphorbia esula*); and

(ii) Russian knapweed (*Centaurea repens*).

(b) "Prohibited noxious weed seeds" includes the seeds or bulbets of any other plant designated as prohibited weed seeds under rules adopted by the department.

(17) "Protected variety" means a variety for which a certificate has been issued by the United States plant variety protection office or for which an application for protection has been filed granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety.

(18) "Restricted noxious weed seeds" means the seeds and bulbets of any plant designated as restricted weed seeds under rules adopted by the department. The term includes the seeds of:

- (i) spotted knapweed (*Centaurea maculosa*); and
- (ii) dyers woad (*Isatis tinctoria*).

(19) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or conditioning.

(20) "Seed conditioning plant" means any place of business that repackages, conditions, blends, treats, or otherwise manipulates agricultural seeds.

(21) "Seed dealer" means any person who offers for sale, sells, or barter agricultural seeds.

(22) "Seed labeler" means any person affixing labels to agricultural seeds, with his name and address

listed as required in 80-5-102 when such seed is distributed in Montana.

(23) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

(24) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(25) "Weed seeds" means the seeds or bulbets of all plants generally recognized as weeds within this state and includes noxious weed seeds.

Section 2. Section 80-5-102, MCA, is amended to read:

"80-5-102. Labeling of agricultural seeds. Any person offering for sale a package, parcel, or lot of agricultural seeds, as defined in ~~80-5-101~~ [section 1], that contains 1 pound or more of agricultural seeds, whether in package or in bulk, must have affixed to it a label specifying:

(1) a lot number or other distinguishing mark;

(2) kind. The name of each kind of seed present in excess of 5% shall be shown on the label and need not be accompanied by the word "kind". When two or more kinds of seed are named on the label, the name of each

kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

(3) variety, as follows:

(a) the following kinds of agricultural seeds shall be labeled to show the variety name or the words "variety not stated":

alfalfa	oat
barley	pea, field
bean, field	rye
beet, field	safflower
brome, smooth	sorghum
clover, crimson	sorghum-sudan hybrid
clover, red	soybean
clover, white	sudan grass
corn, field	sunflower
corn, pop	trefoil, birdsfoot
fescue, tall	<u>wheat, club</u>
flax	wheat, common
millet, foxtail	wheat, durum

(b) if the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate



percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(4) that the seed is hybrid, if any one kind or kind and variety of seed present in excess of 5% is "hybrid" seed. The percentage that is hybrid shall be at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5% and are named on the label, each that is hybrid shall be designated as "hybrid" on the label. No one kind or variety of seed may be labeled as "hybrid" if the pure seed contains less than 75% hybrid seed. Any one kind or kind and variety that has pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

(a) the percentage of pure seed that is hybrid seed; or

(b) a statement such as "Contains from 75% to 95% hybrid seed";

(5) state or country of origin, if known, of alfalfa, red clover, white clover, native range

grasses, and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(6) the approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination and stated as "total germination and hard seed".

(7) the germination date that must include the calendar month and year in which the germination test was completed;

(8) the purity analysis that must include:

+7+ (a) the approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds;

+8+ (b) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds;

+9+ (c) the approximate total percentage by weight of weed seeds;

+10+ (d) the approximate percentage by weight of other crop seeds in agricultural seeds; and

+11+ (e) the name and approximate number of each kind or species of restricted noxious weed seeds

occurring per pound of ~~agricultural,--vegetable,--or flower-seeds,~~ seed;

~~(12)~~ (9) the full name and address of the seedsman, importer, dealer or agent, or other person, firm, or corporation selling the ~~agricultural~~ seed;

~~(13)~~ (10) in the case of mixtures of agricultural seeds which contain two or more kinds of seed in excess of 5% by weight of each, when sold as mixtures:

(a) name of mixture;

(b) name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of 5% by weight of the total mixture;

(c) approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds;

(d) approximate percentage by weight of weed seeds as defined in 80-5-101 [section 1];

(e) approximate percentage by weight of other crop seeds in the mixture of agricultural seeds;

(f) name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions ~~as--specified-in~~ established under 80-5-105;

(g) approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of 5% by weight, together with the month and

year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed".

(h) full name and address of the vendor of the mixture."

Section 3. Section 80-5-103, MCA, is amended to read:

"80-5-103. Exchange of seed between labelers.

(1) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed and quantity of each kind. Each container of seed in a lot shall carry appropriate a lot number designation and--shall--be--accompanied--by--mechanical analysis-for-each-lot-so-involved.

(2) While seed is in the possession of a licensed seed labeler, it must carry a lot number on each container at all times. When seed is made available for sale or sold, a complete label must be attached to each container of a lot."

Section 4. Section 80-5-104, MCA, is amended to read:

"80-5-104. Labeling of vegetable, flower, and indigenous seeds. (1) Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(a) each container of 1 pound or less:

(i) the commonly accepted name of the kind or the kind and variety of the seed;

(ii) the name and address of the person who labeled the seed or who sells the seed within this state;

(iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed ~~in~~ by rules adopted under 80-5-105;

(iv) in the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

(A) the percentage of germination;

(B) the percentage of hard seed, if more than 1%;

(C) the month and year the test to determine the data required by this section was completed;

(D) the words "below standard germination" in not less than 8-point boldface type;

(b) each container of more than 1 pound:

(i) the name of the kind and variety of the contents;

(ii) the lot numbers or other lot identification;

(iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed in by rules adopted under 80-5-105;

(iv) the percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act;

(v) the percentage of hard seed, if more than 1%;

(vi) the month and year the test to determine the data required by this section was completed;

(vii) the name and address of the person who labeled the seed or who sells the seed within this state.

(2) Indigenous seeds, as defined in ~~80-5-101~~ [section 1], in amounts of 1 pound or more, whether in package or bulk, must be labeled with the following information:

(a) the statement "Labeled only for reclamation purposes";

(b) lot number or other distinguishing mark;

(c) the common name, genus, species, and subspecies when applicable, including the name of each kind of seed present in excess of 5%. When two or more kinds of seed are named on the label, the label shall specify the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage must apply to seed of the kind named. If the name of the variety is

given, the name may be associated with the name of the kind. The percentage in this case may be shown as "pure seed" and must apply only to seed of the variety named.

(d) state or country of origin, if known. If the origin is unknown, that fact shall be stated.

(e) the approximate percentage of viable seed, together with the date of test. When labeling mixtures, the percentage viability of each kind shall be stated.

(f) the approximate percentage by weight of pure seed, meaning the freedom of seed from inert matter and from other seeds;

(g) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter;

(h) the approximate total percentage by weight of other seeds;

(i) the name and approximate number of each kind of species of restricted noxious weed seeds occurring per pound of seed;

(j) the full name and address of the person, firm, or corporation selling the seed."

Section 5. Section 80-5-105, MCA, is amended to read:

"80-5-105. Prohibitions. A person, firm, corporation, partnership, or association may not sell or transport for use in planting in this state any agricultural~~7~~-vegetable~~7~~-or-flower seed that:

(1) contains prohibited noxious weed seeds;  
 (2) contains restricted noxious weed seeds in excess of either:

(a) the maximum numbers per pound allowed under rules adopted by the department; or

(b) the maximum numbers per pound as follows:

Common name	Species	Number of seeds per pound
dedder	{Euscuta-spp-}	±8
<u>dyers woad</u>	<u>(Isatis tinctoria)</u>	<u>0</u>
blue-lettuce	{Lactuca-pulchella}	27
St.-Johnswort	{Hypericum-perforatum}	27
oxeye-daisy	{Chrysanthemum-leucanthemum}	99
spotted knapweed	(Centaurea maculosa)	±8 <u>0</u>
hoary-alyssum	{Berteroa-incana}	9
wild oats	(Avena fatua)	45

(per pound of grass seed)

9

(per pound of cereal seed)

buckhorn	{Plantago-lanceolata}	90
plantain		
chickweed	{Stellaria-spp-}	9
curly-dock	{Rumex-crispus}	45

(3) contains in excess of 2% or more of weed seed;



(4) is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than 8-point type to indicate that:

(a) the container is hermetically sealed;

(b) the seed has been preconditioned as to moisture content;

(c) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail;

(d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1939, 7 U.S.C. 1551 through 1610, amended October 15, 1967, with subsequent revisions;

(5) is represented in any manner to be for lawn seeding purposes, unless it contains at least 50% pure seed of fine-textured perennial species which shall be specified by rules under this part. However, grass mixtures which do not contain 50% pure seed of fine-textured perennial grasses may be sold. When these grass mixtures are contained in packages of 25 pounds

or--less,--they--shall---carry--the--statements:---"Not recommended--for---a--fine-textured---perennial---turf. Satisfactory--for--a--temporary-ground--cover--or--where coarse-grass--is-not--objectionable."--A--definition--of fine-textured-varieties-to-be--adopted-in-the-rules--is as-follows:

-----{a}--bluegrasses--all---varieties--except---Canada bluegrass--{Poa--compressa},---annual--bluegrass---{Poa annua},--and--rough-bluegrass--{Poa-trivialis},

-----{b}--chewings---red---fescue--and---all---improved varieties,

-----{c}--creeping---red---fescue--and---all---improved varieties,

-----{d}--bentgrass--all-varieties,

-----{e}--fine-textured-ryegrasses,

{6} (5) is labeled, advertised, or otherwise represented as being certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

(b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

+7+ (6) is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321, et. seq.) without the authority of the owner of the variety or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture by or with approval of the owner of the variety."

Section 6. Section 80-5-107, MCA, is amended to read:

"80-5-107. Exemptions. ~~Agricultural-seeds~~ Seed or mixtures of same shall be exempt from the provisions of this part:

(1) when possessed, exposed for sale, or sold for food purposes only;

(2) when sold to merchants or dealers to be conditioned before being sold or offered for sale for seeding purposes;

(3) when in store for the purpose of conditioning or not possessed, sold, or offered for sale for seeding purposes within the state."

Section 7. Section 80-5-108, MCA, is amended to read:

"80-5-108. Inspection Analysis by grain-and seed laboratory -- reports. The grain-and seed laboratory of the agricultural experiment station shall inspect, analyze, and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station and the department determine. The laboratory shall report to the department all violations as they appear. It ~~shall~~ may also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department. ~~The-laboratory--and--the--department--shall--have--free access--at--all--reasonable--hours--to--all--premises--or structures--to--make-examination--of--any-seeds--or--any other-premises--of-a--warehouse, elevator,--or--railway company. Upon-tendering-payment--at-the-current--value, the-department-may-take-any-sample-of-seeds.~~"

Section 8. Section 80-5-109, MCA, is amended to read:

"80-5-109. Testing of submitted samples. The grain and seed laboratory shall analyze any official seed samples taken from seed lots offered for sale in the state and or submitted by the department using methods such as those established under the Federal Seed Act

and the procedural guidelines developed by the association of official seed analysts."

Section 9. Section 80-5-110, MCA, is amended to read:

"80-5-110. Laboratory testing of samples -- fees. Any citizen of this state may request the grain--and seed laboratory to examine, analyze, and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates ~~determined-jointly~~ established by the rule of the department and--the-director--of--the grain--and--seed--laboratory as recommended by the agricultural experiment station. All fees collected by the grain-and seed laboratory shall be used to defray the expenses incurred by the laboratory under ~~80-5-101~~ 80-5-102 through 80-5-113."

Section 10. Section 80-5-111, MCA, is amended to read:

"80-5-111. Certificate of test presumptive evidence. The certificate of the grain--and seed laboratory, giving results of any examinations, analyses, or tests of any seed samples made under the authority of the department, is presumptive evidence of the correctness of the facts stated in it."

Section 11. Section 80-5-112, MCA, is amended to read:

"80-5-112. Enforcement -- rules. The department shall administer and enforce ~~80-5-101~~ 80-5-102 through 80-5-113. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of ~~agricultural~~ seed which the department finds in violation of ~~80-5-101~~ 80-5-102 through 80-5-113. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reconditioning, labeling, or otherwise, and when, in the judgment of the department, the requirements of ~~80-5-101~~ 80-5-102 through 80-5-113 have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under ~~80-5-101~~ 80-5-102 through 80-5-113."

Section 12. Section 80-5-113, MCA, is amended to read:

"80-5-113. Penalty. Any person, firm, or corporation which sells or offers or exposes for sale or distribution in the state any ~~agricultural--seeds~~ seed for seeding purposes without complying with the requirements of ~~80-5-101~~ 80-5-102 through 80-5-113 is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 or more than \$300 plus costs

of such prosecution and upon conviction of the second or any subsequent offense shall be fined not less than \$500 or more than \$1,000 plus costs of such prosecution."

Section 13. Section 80-5-202, MCA, is amended to read:

"80-5-202. Licensing ~~---issuance~~ -- application -- fee~~----~~ ~~bonding----~~ ~~insurance~~. (1) All seed conditioning plants ~~and seed--labelers~~ shall obtain a license from the department for each plant before doing business in this state; however, a Montana-certified seed grower, when conditioning ~~or-labeling--certified~~ seed from his own production, is not required to be licensed under this part. ~~Bin-run--seed--sales--from--one--farmer--to another--are-exempt--from--this-part.~~

(2) Each conditioning plant must post in a conspicuous location in the facility:

(a) its fees for conditioning services; and

(b) the license designation for the facility.

~~(2)-All-licenses-are-issued-on-a-fiscal-year-basis and-expire-on-June-30-of-each-year.~~

(3) All seed labelers and growers who label or affix written claims to their seed shall obtain a license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:

(a) a Montana certified seed grower when labeling certified seed from his own production; and

(b) any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and his name and address.

(4) No person may sell or distribute seed in Montana without obtaining a seed dealer's license from the department for each place where seed is located, except for:

(a) a person who distributes seed only in sealed packages of 10 pounds or less that are properly labeled;

(b) a Montana certified seed grower when selling certified seed from his own production; and

(c) a person when making bin-run seed sales.

(5) Each person selling seed from a location other than the licensed place must be listed on the application for license.

~~(6) Application for license is made in a manner and on forms provided by the department. A nonresident shall file a written power of attorney designating the secretary of state as his agent, and the power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over the nonresident applicant. A nonresident who has a duly appointed resident agent~~



~~upon whom process may be served as provided by law is not required to designate the secretary of state as his agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.~~

(6) The department shall set by rule the period for which a license is issued under this section.

~~†4†~~ (7) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

~~†5†~~ (8) Each license shall cost no more than \$50 a year. The fee must include the cost of application for a license and must be nonrefundable. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

~~†6† Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department, provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.~~

(9) An application for a license under this section must be made in a manner and on forms provided

by the department. Such application must contain among other things:

(a) the location of each seed conditioning plant if the application is for a seed conditioning plant license;

(b) a sample label if the application is for a seed labeler license; and

(c) a list of persons selling seed if the application is for a seed dealer's license."

Section 14. Section 80-5-204, MCA, is amended to read:

"80-5-204. Screenings -- restrictions on movements. All screenings whether from seed conditioning plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in 89-5-101 [section 1] shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this part are met.

(2) The department ~~has authority to~~ may issue adopt rules to restrict or exempt from restriction the

holding and movement of screenings when the public interest is served by so doing."

Section 15. Section 80-5-205, MCA, is amended to read:

"80-5-205. Violations. The following acts caused within the state of Montana are prohibited:

(1) the failure or refusal to obtain a license as required in 80-5-202 and 89-5-203;

(2) the misbranding or mislabeling of ~~agricultural~~ seeds seed;

(3) the violation or failure to comply with rules issued under the authority of this part.

Section 16. Section 80-5-207, MCA, is amended to read:

"80-5-207. Violation -- cancellation of license -- enforcement proceedings. ~~(1) The department may cancel any license issued by it when the provisions of this part have been violated by the holder of the license.~~ Distribution of seeds that are not legally labeled or failure to comply with this chapter or rules issued under its authority constitutes sufficient grounds for the department to cancel or deny a license to a licensee, provided that the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(2) Any person convicted of violating the provisions of this part or rules promulgated under the

authority of this part is guilty of a misdemeanor and shall be fined not less than \$100 or more than \$300 for the first violation and not less than \$500 or more than \$1,000 for each subsequent violation.

(3) Nothing in this part shall be construed as requiring the department or its representatives to report violations of this part when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this part or any rule promulgated under this part notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this part may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon such act."

NEW SECTION. Section 17. Inspection. To enforce this chapter, the department may enter, at reasonable times, any public or private premises, including any vehicle of transport, and upon entry to the premises, the department may obtain samples, examine seeds and labels, inspect equipment, and review records relating to distribution of seed in Montana. The department may take any sample of seeds as may be required; however, the department shall pay, upon request, the firm current market value for each sample.

NEW SECTION. Section 18. Publication of reports. The department may publish the names and addresses of persons licensed under this chapter.

NEW SECTION. Section 19. Repealer. Sections 80-5-101, 80-5-106, 80-5-201, and 80-5-203, MCA, are repealed.

NEW SECTION. Section 20. Extension of authority. Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 21. Effective dates.

(1) Section 20 and this section are effective on passage and approval, except rules adopted by the department may not take effect until October 1, 1987.

(2) The remaining sections of this act are effective October 1, 1987.

-END-

Amendments to HB 261

Introduced (white) copy

1. Page 1, line 10.

Strike: "Butte"

Insert: "the Montana-Idaho border"

2. Page 1, line 10.

Strike: "Butte"

Insert: "from the point it enters Montana at the Idaho border"