

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

January 21, 1987

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

ROLL CALL: Senators Galt and Beck excused, all other members present.

CONTINUATION OF HEARING ON SB 4: Senator Gene Thayer, SD 19, Great Falls, reviewed SB 4, saying it was introduced at the request of the interim committee that dealt with lien laws. George Allen, of the Montana Retail Assoc., had written it as a housekeeping bill and there were no problems with it until now. Some bankers have recently raised objections. The chairman called upon Larry Akey, from the Secretary of State's office, to comment on the bill.

Larry Akey, Chief Deputy to Secretary of State, Jim Waltermire, said the questions that have come up pertained to the entire centralized lien system. He gave a brief history of the system as passed by the 1985 legislature (attached as exhibit #1). Some problems occurred in the transition period with regard to filings from the county clerks' offices to the secretary of state. He said another bill by Senator Thayer, which the committee will get at a later date, will clear up problems of unknown liens resulting because certain agriculture liens, such as seed liens, threshers' liens, crop liens, and hail insurance liens are not presently required to be centrally filed. There will probably be legislation to clean up the "information only" filing, as well. He invited committee members to the Secretary of State's office to see the facilities and clear up any questions they might have.

Senator Kolstad felt they had excessive problems with SB 129 after it was passed in 1985 and, with the improvements to the system, asked if those problems had been solved. Mr. Akey said the problems occurred almost exclusively in the ASCS. It was a problem where they had anticipated the ASCS would use the direct access system, but were not able to for most of the last harvest cycle. They are now plugged into the direct access and that will not be a reoccurring problem.

Mr. George Allen, MT Retail Assoc., and MT Hardware & Implement Dealers Assoc., said the concern comes from the implement dealers. Testimony attached as exhibit #2.

OPPONENTS: John Cadby, MT Bankers Assoc., agreed that SB 129, which was passed last session, was foresighted and a good act. Hundreds of thousands of dollars have been saved for the farmers because they didn't have to pay costs born by lenders to pre-notify every potential ag. buyer of every farm customer on every ag. product produced, required under the "Free Notification Act" passed by Congress last year. Montana's is the first state's filing system in the nation approved by the US Dept. of Agriculture. SB 4 will not aid the system. Ag. buyers in the system can already determine what products and equipment carry liens. Banks will continue to use the wrap around filing to impose a lien on all farm equipment and on the property. This bill would force lenders to go out and inventory any piece of equipment of value, and list it on the financing statement when it is sent to the Scty. of State's office. It will cause the lender a considerable amount of work and expense. They have to file more than one lien if the list of equipment is lengthy. The Scty. of State's office restricts an ag. lien to 8 products per lien. There is a potential of 32 ag. products, which to be safe, banks will automatically list all 32. Four liens at \$7 each is \$28, and this will be passed on to the producer. If all the farm equipment has to be itemized and there are 35 pieces and you must file more than 8 liens, this expense will be passed back to the borrower. There are also problems of cannibalizing equipment and sharing equipment between families or farms. You can't be sure this equipment will be there when you inventory it. An implement dealer's lien has priority over the bank's. This bill doesn't benefit anybody and will only create an administrative hassle.

Phil Johnson, First National Bank & Trust, Helena, asked whether this bill was contrary to the commission on uniform state laws. Under the uniform commercial code it may further cloud the state's position. If we deviate from the code, will this cause hesitation with lenders in and out of the state of Montana in regard to UCC filing. It will result in increased cost to borrowers and to the Scty. of State's office. He thought this was adequately covered under the present law.

Russel Alm, State Bank, Townsend, opposed the bill because of cost in time and dollars.

Mr. Akey had two concerns about the system. If the bill is passed they could handle it mechanically. However, it would put their people in the uniform commercial code bureau in a highly difficult position in policing it. Some equipment has a model number with no serial number; some have model numbers and serial numbers and some have neither

model nor serial numbers. If he gets a uniform commercial code financing statement, with Greg Jergeson as the debtor and it lists equipment with no model number or serial number, he didn't know if he should reject it as an inadequate filing statement. He couldn't be sure that some of the people in his uniform commercial code bureau, even if they grew up around agriculture, would be able to come up with that information. His second concern was the way SB 129 came out. The current law reads, the MT Scty. of State's office is liable for any data entry errors on their system. If they have to enter 8 to 12 digit serial numbers on their system, he was concerned about the liability the state may face from the possibility of transposition errors in entering those serial numbers. Because of the way the law reads, the fees they charge are commensurate with their cost and that will go back to the lenders and the borrower. He was concerned with the ability to police it and it being a potential liability.

COMMITTEE QUESTIONS: Senator Kolstad expressed concern about serial numbers which are extremely difficult to find on old equipment. George Allen responded that the bill is not retroactive. It would be from this point forward on new filings. He thought the purpose of the centralized filing system was for access to information.

Senator Jergeson asked how it would work on a combine where the number on the header is different than the number on the body of the combine. Allen said if there is more than one number they all would have to be listed.

Senator Boylan asked Dave Cogley, Legislative Council, to search out the questions on legality, uniform codes, etc., raised by the committee.

Senator Lybeck said the bill is not concerned about old equipment, it is concerned with newer pieces of equipment. On a UCC loan he lists all three numbers.

Senator Kolstad said the bill says all equipment. It must be amended to say new equipment, not old.

Senator Boylan told the committee we will defer action on this bill and see if there are any amendments that may make the bill more palatable.

DISPOSITION OF SB 46: Dave Cogley reminded the committee of the amendments that reflect the 3% spread rather than the 2% spread which were left out of the bill.

Senator Kolstad moved the amendments, presented by Dave Cogley,

be adopted. Second by Senator Bengtson.

Senator Thayer expressed concern that the small benefit to the farmer may not justify the cost to the state at a time when there is such a budget crunch.

Senator Lybeck said the original bill was late getting started, yet it loaned out over 2 million dollars through 6 lending institutions. It was successful then and is more attractive now with the changes. He felt it the right direction to go at a time farmers are in a desperate situation, especially after the House killed HB 71, the counseling bill.

Senator Boylan called for a roll call vote on the amendments. Eight senators voted yes. Senators Galt and Beck were absent. There were no nay votes. Senator Boylan will get Senators Galt and Beck's votes. Amendments adopted.

Senator Jergeson said that \$500,000 each year over the course of 2 years would be two million dollars. Because each dollar turns over 7 1/2 times, it would be about 22 million dollars going toward the improvement of Montana's economy and, at a 5% income tax rate, that pays for the program.

Senator Kolstad agreed and moved SB 46 as amended DO PASS. Motion carried unanimously. Senator Boylan said the bill will be held in committee awaiting Senators Galt and Beck's votes.

DISPOSITION OF SB 102: Senator Story said he checked the DNRC amendments with Conrad Fredricks, water attorney in Big Timber, Jim Moore, attorney in Bozeman and Ed Steinmetz, state water court, chief water master. They said the effect of the amendment would defeat the purpose of the bill. The bill says if water was measured historically by flow, it could be measured by flow; by volume, by volume; and by both volume and flow then by both volume and flow. The DNRC amendments say the water courts could look at the entire record. We recently required everyone to renew their right by filing including both by flow and volume, so the two parts of the amendment make the bill contradictory.

Senator Story asked for an amendment to the bill for an immediate effective date. This would eliminate the problem before some of the decrees go out. Senator Bengtson seconded the amendment for an immediate effective date.

Senator Jergeson asked whether water spreading should be added into the bill as an example of a volume right. Dave Cogley said the bill says "that have been historically been measured by volume" and Mr. Fritz indicated that was the only way you could measure these kinds of rights.

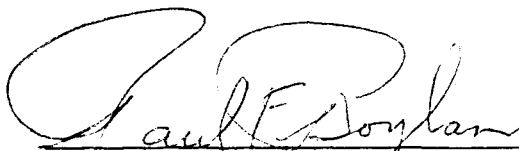
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Question on Senator Story's motion was called. Motion carried unanimously.

Senator Story moved SB 102 as amended DO PASS. Senator Boylan called for a roll call vote. Eight senators voted yes, two were absent. There were no nays. Senator Boylan told the committee he will get Senators Galt and Beck's votes before reporting the bill out of committee.

Senator Boylan informed the committee they will further consider SB 4 on Friday, January 23, 1987.

There being no further business, the meeting adjourned.



PAUL F. BOYLAN, Chairman

ROLL CALL

AGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-21-87

NAME	PRESENT	ABSENT	EXCUSED
ABRAMS, Hubert J.	✓		
BENGTSON, Esther G.	✓		
BECK, Tom			✓
JERGESON, Greg	✓		
KOLSTAD, ALLEN C.	✓		
LYBECK, Ray	✓		
STORY, Peter R.	✓		
THAYER, Gene	✓		
GALT, Jack VICE CHAIRMAN			✓
BOYLAN, Paul CHAIRMAN	✓		

Each day attach to minutes.

1.

SECRETARY OF STATE

STATE OF MONTANA

1-21-87
BILL NO. 584

Jim Waltermire
Secretary of State

Montana State Capitol
Helena, Montana 59620

AG LIEN PROGRAM

The 1985 session of the Legislature passed SB129 which provided for centralized state filing of agricultural liens and direct computer access for subscribers who have a regular need for secured transaction filing information.

The purpose of the bill was to make lien searches by potential buyers and lenders more reasonable. In the past, buyers ran the risk of paying twice for products purchased if they had overlooked a lien filed somewhere. After paying the seller for the product, unfortunate buyers found themselves paying again when the lienholder caught up with them. Lenders were at risk if they couldn't find the buyer in time or if the buyer was judgment-proof and had already transferred the product to someone else.

So long as buyers and lenders were at risk, markets and credit opportunities were limited. SB129 was designed to remove the dangers to buyers and lenders, and make information more readily available, thereby opening up markets and credit opportunities for agricultural producers.

SB129 further provided for a transition year during which filings already made at the county level could be transferred to the central file without loss of effect or priority. During that transition year, 35,844 filings were moved to the office of the Secretary of State from county clerks and recorders.

During the year, the our staff held seminars around the state to introduce the direct computer access system which was designed both to give users rapid and accurate access to state records and to hold down state staff workloads and costs.

At the beginning of 1987, more than 480 subscribers are using the direct access system. Meanwhile another transition process, unanticipated at the time SB129 passed, has begun.

In December, 1985, the United State Congress passed a federal farm bill which included provisions virtually mandating a centralized state filing system for agricultural liens. In those states which fail to establish a centralized program, agricultural lenders will have to give actual notice to every possible buyer of the secured crop, creating a blizzard of paperwork for buyers and lenders alike.

Through the foresight of the Legislature in passing SB129, Montana was already in the process of establishing a centralized system for filing agricultural liens. Montana had the honor of being the first state to have its system approved by the United States Department of Agriculture as being in compliance with the federal farm bill. Federal requirements, demanding

specific crop descriptions and other data, have been added to the system. Lenders were given a transition schedule for bringing existing filings to federal specifications for inclusion on the buyers' list called for by the federal law.

The transition to central filing has not been without difficulty. ASCS offices across the state, for instance, flooded the search facilities with a seasonal deluge of requests, without subscribing to the direct access system which could have given them immediate response without regard to other demands on SOS staff. That seasonal high, coupled with the extra demands of transitions to centralized filing and federal requirements, caused unusual delays in filing and searches.

In cooperation with the ASCS officials in Montana and our congressional delegation, the problem was ultimately solved when the ASCS offices subscribed to the direct computer access system.

In order to handle the overflow, UCC Bureau staffers worked thousands of extra hours at various times during the year. Search request response are now going out only one and a half days after receipt. Volume is running at 40 to 70 each day. New filings are always kept at a turnaround time of one day. Amendments are now on a one day schedule, but were being handled somewhat more slowly during December when lenders were attempting to qualify for inclusion on the federal list after established deadlines.

Most of the problems encountered appear to have been fixed. The overriding goal continues to be simply to maintain a current filing system and to get the information to the public as quickly as possible.

In addition to its other purposes, centralized filing (SB129) was intended to simplify searches by lenders and buyers who previously often had to search the records of more than one county for a single transaction. During the shakedown period, it has been noted that another class of liens, not included in central filing, may affect agricultural lending.

Title 71, MCA, provides for miscellaneous liens which are still filed in county jurisdictions. Seed liens, sprayer liens, farm laborer liens, hail insurance liens, and threshers' liens are included. Presently, even with centralized filing and the federal farm products list, buyers and lenders feel constrained to search relevant county files to insure they are not facing liens on crops they propose to buy or accept as security.

SB129 provided that copies of agricultural liens filed centrally with the Secretary of State be sent to the Clerk and Recorder in the debtor's county. This apparently "information only" filing has been a headache for the county officials and an unnecessary expense. With the Governor's recent budget cutbacks affecting everyone, the decision has been made to discontinue these redundant filings, except as requested otherwise by specific Clerk and Recorder.

With many contrasting needs and uses to be balanced against the costs and difficulties of establishing a smooth and efficient system, the Secretary of State remains committed to listening, adapting, and making the system work to meet all those needs.



Executive Office
P.O. Box 440
34 West Sixth
Helena, MT 59624
Phone (406) 442-3388

Testimony
SB 4

Mr. Chairman and Members of the Committee,

For the record, I am George Allen, representing the Montana Retail Association which includes the Montana Hardware and Implement Association. I am here today in SUPPORT of SB 4.

With most of the implement dealers computerized, it makes the central filing system with the Secretary of State's Office more meaningful. In the past, an implement dealer would have to file a lien in several counties at the conclusion of a sale. Likewise, if there was a trade-in, he would be required to check the filing in several counties. The central filing system now makes it easy for everyone to check with the Secretary of State's Office, to see if there is a lien on a particular piece of equipment.

What is the purpose for a central filing system if we are not going to file by serial number and model? The banks want to have a wrap-around or an all encompassing lien that ties up a farmers land, crops, equipment and all future crops and equipment. We are opposed to this type of financing and this type of lien. I appreciate that the banks are trying to protect their turf, but we feel the implement dealer that has his money invested in inventories and accounts receivable should have the right to file by serial and model number, and they should be convenient for them to check to see if there is a lien on a particular piece of equipment that a farmer would want to trade in.

The filing by serial and model number is a simple and direct means of filing liens on new purchases. It also enables an implement dealer a system by which he may check to see if there is a lien filed on a particular tractor or combine that the farmer may want to trade in.

Mr. Chairman, we feel that Senate Bill 4 deals with the sophistication of computers and provides the implement dealer with the vehicle by which he may obtain the information that he would need in conducting his day to day business. The Montana Retail Association and the Montana Hardware and Implement Association urge your SUPPORT of SB 4.

Respectfully yours,

George Allen
George Allen

DATE FILED _____
FILE NO. 2
DATE 1-21-87
BILL NO. SB4

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date JANUARY 21, 1987 Bill No. SB 46 Time 1:55 p.m.

NAME	YES	NO
ABRAMS, Hubert J.	✓	
BENGTSON, Esther G.	✓	
BECK, Tom	✓	
JERGESON, Greg	✓	
KOLSTAD, Allen C.	✓	
LYBECK, Ray	✓	
STORY, Peter R.	✓	
THAYER, Gene	✓	
GALT, Jack VICE CHAIRMAN	✓	
BOYLAN, Paul CHAIRMAN	✓	

Rita Tenneson
Secretary

Paul Boylan
Chairman

Motion: TO ACCEPT AMENDMENTS (ATTACHED) WHICH WERE INTRODUCED
JANUARY 19, 1987 AS EXHIBIT #5.

Senate Bill No. 46 Amendments (Introduced bill)

1. Title, line 8
Following: "17-6-103"
Strike: "AND"
Insert: ",,"

2. Title, line 8.
Following "80-14-102,"
Insert: "80-14-202, AND 80-14-203,"

3. Page 2
Following: line 18
Insert: "Section 2. Section 80-14-202, MCA, is amended to read:

"80-14-202. (Temporary) Approval and acceptance of deposit -- deposit agreement. (1) The board may accept or reject the linked deposit loan package or any portion thereof.

(2) Upon acceptance of the linked deposit loan package or any portion thereof, the board may place certificates of deposit for a term not less than 30 days and not to exceed 6 12 months with the eligible lending institution at a rate 1% below the current market rate for such certificates, as determined by the board.

(3) The eligible lending institution must enter into a deposit agreement with the board, which shall specify the recipients, amount, rate of interest, and length of time of loans which the institution will make upon receiving a linked deposit. The agreement must also specify that interest on the linked deposit must be paid at the times determined by the board.

(4) The period of time for which a certificate of deposit is placed with an eligible lending institution may be neither longer nor shorter than the period of time for which the linked deposit is used to provide loans at reduced interest rates."

Section 2. Section 80-14-203, MCA, is amended to read:

"80-14-203. (Temporary) Linked deposit loans. (1) Upon placement of a linked deposit with an eligible lending institution, the institution must lend such funds to each approved eligible agricultural operation listed in the linked deposit loan package required by 80-14-201 and in accordance with the deposit agreement required by 80-14-202. Each loan must be at a fixed rate of interest not exceeding 2 3 percentage points greater than the rate payable on the linked deposit.

(2) All records and documents pertaining to each loan shall be segregated by the lending institution for ease of identification and examination.

SENATE AGRICULTURE

EXHIBIT NO. 5

DATE 1-19-97

BILL NO. SB 46

(3) Each eligible agricultural operation receiving a loan under this chapter shall promptly certify receipt of the loan to the board in the form and manner prescribed by the board.

(4) Any report of noncompliance by an eligible lending institution chartered under the laws of this state must be referred to the financial division of the department of commerce for appropriate action. Any report of noncompliance by an eligible lending institution chartered under federal law must be referred to the office of United States comptroller of the currency or other appropriate federal regulatory agency for appropriate action."

Renumber: subsequent sections

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date JANUARY 21, 1987 Bill No. SB 102 Time 2:03 pm

NAME	YES	NO
ABRAMS, Hubert J.	✓	
BENGTSON, Esther G.	✓	
BECK, Tom	✓	
JERGESON, Greg	✓	
KOLSTAD, Allen C.	✓	
LYBECK, Ray	✓	
STORY, Peter R.	✓	
THAYER, Gene	✓	
GALT, Jack VICE CHAIRMAN	✓	
BOYLAN, Paul CHAIRMAN	✓	

Rita Tenneson
Secretary

Paul Boylan
Chairman

Motion: SB 102 AS AMENDED DO PASS. (Amendment for an
immediate effective date)

STANDING COMMITTEE REPORT Page 1 of 2

January 21 19 37

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK & IRRIGATION

having had under consideration..... SENATE BILL No. 46

first reading copy (white)
color

EXTEND AGRICULTURAL LOAN LINKED DEPOSIT PROGRAM

Respectfully report as follows: That..... SENATE BILL No. 46

be amended as follows:

1. Title, line 9
Following: "17-6-103"
Strike: "AND"
Insert: ", "

2. Title, line 8.
Following "80-14-102,"
Insert: "80-14-202, AND 80-14-203,"

3. Page 2
Following: line 18
Insert: "Section 2. Section 80-14-202, MCA, is amended to read:
"80-14-202. (Temporary) Approval and acceptance of deposit -- deposit agreement. (1) The board may accept or reject the linked deposit loan package or any portion thereof.

(2) Upon acceptance of the linked deposit loan package or any portion thereof, the board may place certificates of deposit for a term not less than 30 days and not to exceed 6 12 months with the eligible lending institution at a rate 1% below the current market rate for such certificates, as determined by the board.

(continued)

~~XXXXXXXX~~

~~XXXXXXXXXXXX~~

.....
Chairman.

January 21

87

19.....

(3) The eligible lending institution must enter into a deposit agreement with the board, which shall specify the recipients, amount, rate of interest, and length of time of loans which the institution will make upon receiving a linked deposit. The agreement must also specify that interest on the linked deposit must be paid at the times determined by the board.

(4) The period of time for which a certificate of deposit is placed with an eligible lending institution may be neither longer nor shorter than the period of time for which the linked deposit is used to provide loans at reduced interest rates."

Section 3. Section 80-14-203, MCA, is amended to read:

"80-14-203. (Temporary) Linked deposit loans. (1) Upon placement of a linked deposit with an eligible lending institution, the institution must lend such funds to each approved eligible agricultural operation listed in the linked deposit loan package required by 80-14-201 and in accordance with the deposit agreement required by 80-14-202. Each loan must be at a fixed rate of interest not exceeding 2-3 percentage points greater than the rate payable on the linked deposit.

(2) All records and documents pertaining to each loan shall be segregated by the lending institution for ease of identification and examination.

(3) Each eligible agricultural operation receiving a loan under this chapter shall promptly certify receipt of the loan to the board in the form and manner prescribed by the board.

(4) Any report of noncompliance by an eligible lending institution chartered under the laws of this state must be referred to the financial division of the department of commerce for appropriate action. Any report of noncompliance by an eligible lending institution chartered under federal law must be referred to the office of United States comptroller of the currency or other appropriate federal regulatory agency for appropriate action."

Renumber: subsequent sections

7021F/L:JEA/WP:jj

AND AS AMENDED
DO PASS

.....
PAUL F. BOYLAN, Chairman

STANDING COMMITTEE REPORT

JANUARY 21

1987

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK & IRRIGATION

having had under consideration SENATE BILL No. 102

first reading copy (white)
color

**STATES HOW TO USE VOLUME OR FLOW RATE IN DEFINING AN
ADJUDICATED WATER RIGHT**

Respectfully report as follows: That SENATE BILL No. 102

be amended as follows:

1. Title, line 7.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 4.

Following: line 4

Insert: "NEW SECTION. Section 2. Effective date. This act is
effective on passage and approval."

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

PAUL F. BOYLAN,

Chairman.