

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

February 6, 1987

The Agriculture, Livestock and 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: Senator Lybeck excused. All other members present.

CONSIDERATION OF HB 331: Representative Dorothy Bradley, HD 79, Bozeman, said the bill deals with the change of hands of livestock auction markets. When a market changes hands, detailed information is sent to all interested parties, including the person's personal financial statement. The report will continue to be mailed but the financial statement will be excluded. This financial information will still be filed with the Dept. of Livestock and will continue to be reviewed and assessed by them.

PROPONENTS: Mike Ellerd, Executive Secretary, MT Assoc. Livestock Auction Markets, in favor. Exhibit #1.

Mons Teigen, MT Stockgrowers, MT Cattlewomen, in support.

Les Graham, Dept. of Livestock, told the committee that the financial statement will still have to be given to the Board of Livestock. This statement has been misused by people not connected with livestock or the auction companies. Exhibit #2.

OPPONENTS: None.

COMMITTEE QUESTIONS: Senator Bengtson asked which interested parties usually get the financial statement. Rep. Bradley told her there is a list in the bill starting on page 1, lines 19 through line 6 on page 2.

DISPOSITION OF HB 331: Senator Jergeson moved HB 331 BE CONCURRED IN. Motion carried. Senator Jergeson will carry the bill on the senate floor.

FURTHER CONSIDERATION OF HB 59: Senator Bengtson felt this bill would cause more problems than there are now. Senator Kolstad replied that it is just giving them something to base the law upon.

Dave Cogley, Legislative Council, said the statute now imposes mutual obligation on adjoining landowners to maintain a division fence. There is nothing saying what part of the fence a

person must maintain.

Senator Galt said that, in his area, it has always been accepted that you do the right hand side unless some other arrangement is made.

Committee members were concerned about subdivisions, people putting up woven fences which are more expensive, swampy or mountainous terrain which is more expensive and difficult to fence than flat land and the fact that the other person might refuse to pay his share if he felt the cost was too high and, in some cases, the person may not do any fencing at all.

Dave Cogley said that, if you wanted to collect from the adjacent landowner, you would have to prove the cost was reasonable. If your neighbor refuses to do the fencing or to pay for it, you can go ahead and do it and then bill him. HB 59 just defines the right hand side as there is nothing in the code defining which 1/2 of the fence belongs to whom. The code does say you can build the whole fence and send your neighbor the bill for 1/2 of the cost, providing it is a legal fence. He referred to MT Codes 81-4-101, citing a legal fence.

Senator Beck said there are problems with subdivisions, regarding 50 feet here, then 50 more feet belonging to another person and on down the line. He felt a landowner in a subdivision should have to maintain all the fence.

Senator Thayer suggested that lineal feet may solve the problem of mountains and coulees, rather than using the one mile rule.

After considerable discussion among committee members in regard to law suits over fencing, gentlemen's agreements, building the fence and later billing the neighbor, moving the fence line in on your property line a foot, and range laws saying you have the responsibility to fence livestock out, committee members came to the conclusion the bill would cause far more problems than it would solve.

DISPOSITION OF HB 59: Senator Bengtson moved to TABLE HB 59. Motion carried unanimously.

FURTHER DISCUSSION ON SB 142: Senator Weeding told the committee that, after last week's hearing, and the Bankers Assoc. attack on the bill, he now has a "gray" bill to present. Exhibit #3. He felt this cleared up concerns from the bankers. The first two concerns relate to types of foreclosures covered and the identity of the person holding agricultural land at that time. Amendment #1 takes

care of that. They have listed all the types of institutions that should be covered by this act. The types of actions covered, as well.

Senator Galt did not think the state could address nationally chartered banks. Dave Cogley said it was his understanding that all federal agencies and farm credit system lenders and possibly federally chartered banks do abide by laws of foreclosure and redemption of the state they are operating in.

Senator Weeding said the second concern was timing, or the length the right of first refusal may go on. Page 2, lines 15 through 18 address that. This time limit would coincide with the banks time limit. The leasing language was tightened up on lines 19 and 20 on page 2.

Fourth, was Mr. Bennett's concern of the bill's failure to recognize the lien laws. This bill wouldn't come into play until after the foreclosure during which lien claims must be resolved. Another of Mr. Bennett's concerns was that the language in section 4 might render it uncertain the holder could obtain the certificate of sale. We said that is now struck from the bill. The identity of the preceding owner was in doubt, so they have now used the term "preceding owner" throughout the bill. They put an additional burden on the person exercising the right to identify themselves. The former owner must notify the bank within 25 days after publication of the action of foreclosure, p. 4, line 9 through line 6 on p. 5 of the gray bill.

Senator Beck asked about p. 2, line 8, gray bill, following 3rd party where it says "make a "good faith" offer to sell or lease". He wanted to know the definition of "good faith". Dave Cogley answered that in subsection (3) an offer by certified mail to the name and address contained in the required notice which is given by the former owner to the creditor is "good faith" notice. Mailing by certified mail is a "good faith" offer. Value is determined by bid or offer of the 3rd party.

DISPOSITION OF AMENDMENTS TO SB 142 (Gray Bill): Senator Jergeson moved the amendments contained in the gray copy be absorbed into SB 142. Motion carried unanimously. The gray bill will be put into original SB 142.

Senator Story told the committee he thought the bill now takes out the private rancher who sells a piece of his ranch, but still affects the rancher who has to have a bank loan and wishes to assign the mortgage on contract for deed to a bank. The banker will end up with an assign-

ment and if the place is sold the money will go to the banker. Dave Cogley said the assignee takes on the same rights the former owner has. The bank will be a holder of foreclosed agricultural land subject to the right of first refusal if a mortgage is assigned.

Senator Story felt the banker wouldn't take an assignment like that. He also felt the bank would be in the same position if a contract for deed was assigned because he understood a contract converted into a mortgage. Dave Cogley said he didn't know if that would be true.

Senator Thayer asked if a person isn't making it and has used up all his resources, what opportunity is he going to have. Can he hide his assets some way to get a debt reduction or be able to bid on the ranch at a later time at a lower price. Weeding said they did not intend to provide a vehicle to hide assets. Owners are good operators and those people may be able to make a go of it or may come into an inheritance or get another loan. Some are 4th and 5th generations who should have a chance to buy back.

Senator Thayer asked if Senator Weeding knew of instances where some insurance companies refused to let occupants get back in. Weeding said two people testified at the previous hearing regarding this and he knew of a couple instances where this has happened in the eastern part of MT. He said some insurance companies are creating dynasties.

Senator Story felt this bill would hurt far more people than it will help. He estimated that there are about 23,000 ranchers in MT. Of these there are a few thousand who have not been in trouble. There is a far larger number working on borrowed capital. About half of that group are working so close to the line that anything we do to hurt their capital will put them out of business. We may save less than a dozen but there may be 10,000 who will survive if they sell part of their place. This bill applies to them when they sell if they have to assign to a bank. There are many places for sale and not many buyers so buyers can be selective. Sales can get complicated. Buyers won't wait the time limit to purchase, they will go somewhere there isn't any time limit. He did not think this bill should be passed.

Senator Jergeson thought the damage regarding lending institutions dealing with farmers based on this risk has already been accomplished by Congress passing Chapter 12. He said this bill provides an opportunity to avoid Chapter 12 situations and thought it was worth a try. He thought Senator Story's concerns were already covered under Chapter 12.

Senator Story, regarding leases, said people may let fences run down, alfalfa get out of production and the place would

become less valuable.

Senator Bengtson had problems with contracts for deed not being clear as there are assignments and other methods people use to convey property. Senator Weeding said the types of entities are defined on the 1st page on lines 20 through 24 of the gray bill. The types of proceedings are defined as the mortgage or execution of the judgement on page 2 of the gray bill. Assignments aren't listed, maybe they will have to be clarified.


Senator Story said that a contract for deed must be treated as a mortgage once half is paid.

Senator Weeding said this doesn't impose any conditions on that holder. He only offers it at his terms, whether it be bankers, lenders or whatever type of holder it might be. If he doesn't want to sell it, there is no requirement he would have to.

Senator Weeding said FHA has the right of first refusal. He said he didn't know what would become of the Federal Land Bank, he said it was on the verge of collapse. A lot of land will end up in public ownership some day. FHA's enactment of first refusal makes you think that might be what the Feds will do with this anyway. There is talk about making it available to the former owner on a long term basis and discounted prices. He said if it was put into MT law it would be in place before the federal law went into effect. He said we are talking about the federal land bank and insurance companies, we aren't talking about private or big banks.

SB 142 and the gray bill will be taken up again at a later date.

There being no further business, the meeting adjourned.



SENATOR PAUL BOYLAN, Chairman

ROLL CALL

AGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/6/87

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.

MONTANA ASSOCIATION
OF
LIVESTOCK AUCTION MARKETS
INC.

MICHAEL G. ELLERD
Executive Secretary

406/587-9790

P.O. Box 4307
Bozeman, Montana 59772-4307

February 6, 1987

TO: Senate Agriculture Committee

FROM: Michael Ellerd, Executive Secretary, Montana Association of
Livestock Auction Markets, Inc. *ME*

RE: House Bill 331

The decision to either grant a license for a new livestock auction market in Montana, or grant a transfer of an existing license from one holder to another, is made by the Board of Livestock. In such cases the Board will conduct a public hearing to determine whether or not there is sufficient reason to grant such a license or transfer. The Board's decision is based partially on the testimony given at such hearings. Their decision is also based partially on the financial solvency of the applicant. That portion of the Board's decision is determined from a financial statement submitted to the Board by the applicant. Because that portion of the decision, i.e., the financial portion, is not an issue of public debate, the Association does not feel the financial statement in such cases should be a public document.

Therefore, the Association asks the committee to give its consent to House Bill 331.

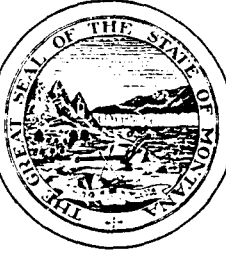
SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-6-87

BILL NO. HB 331

DEPARTMENT OF LIVESTOCK



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2023

HELENA, MONTANA 59620

Testimony & Facts

House Bill 331 - Representative Dorothy Bradley
At request of Montana Markets Association
Prepared by Les Graham

When a Livestock Auction Market in Montana changes ownership, or when a new facility is built, the purchaser or applicant must provide the Department of Livestock with a variety of information including, but not limited to:

- 1.) Personal Financial Statement
- 2.) Bond Information
- 3.) Operating Plans
- 4.) Management Plans
- 5.) Selling fees and costs
- 6.) Financial plans

The applicant must be able to demonstrate the ability to operate the facility.

Prior to acceptance of the transfer application and it's approval, the Board of Livestock must, after legal notice, hold a public hearing.

It is the feeling of the Montana Auction Market Association and the Board of Livestock, that personal financial statement should not be made public.

The Department has had instances whereby that information has gone to individuals with no basic interest in the matter.

The responsibility of monitoring auction market financial stability rests with the U.S. Department of Agriculture, Packers and Stockyards Administration, and the Department of Livestock.

Call Montana Livestock Crimestoppers 800-647-7464

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 2-6-87

BILL NO. HB 331 enrolled & approved

SENATE BILL NO. 142

INTRODUCED BY WEEDING, SCHYE, COMPTON, E. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GIVE THE PRIOR OWNER OF FORECLOSED AGRICULTURAL LAND THE RIGHT TO PURCHASE OR LEASE SUCH LAND BY MEETING THE TERMS AND CONDITIONS OF THE HIGHEST OFFER MADE TO PURCHASE OR LEASE SUCH LAND; AMENDING SECTION-25-13-710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Agricultural land" means land eligible for valuation as agricultural land under 15-7-202.

~~(2) "Foreclosed--agricultural-land"--means--agricultural land--which--has--been--acquired--by--process--of--law--in--collection of--debts--or--by--any--procedure--for--the--enforcement--of--a--claim thereon,--whether--created--by--mortgage--or--trust--indenture--~~

"HOLDER OF FORECLOSED AGRICULTURAL LAND" MEANS A NATIONAL- OR STATE-CHARTERED BANK, A MUTUAL OR STOCK INSURANCE COMPANY REGULATED BY ANY STATE, A MORTGAGE COMPANY, A FARM CREDIT SYSTEM LENDER, A STATE OR FEDERAL AGENCY, OR ANY SUBSTANTIALLY SIMILAR FOREIGN ENTITY WHICH HAS ACQUIRED THE RIGHT TO DISPOSE OF AGRICULTURAL LAND THROUGH FORECLOSURE OF

SENATE AGRICULTURE
EXHIBIT NO. 3
DATE 2-6-87
Montana Legislative Council
BILL NO. SB 142

1 A MORTGAGE OR TRUST INDENTURE ON THE LAND, WHETHER BY
 2 JUDICIAL PROCEEDINGS OR OTHERWISE, OR THROUGH EXECUTION OF A
 3 JUDGMENT OBTAINED BY IT AGAINST THE IMMEDIATELY PRECEDING
 4 OWNER OF THE LAND.

5 Section 2. Right of first refusal. (1) A person
 6 holding HOLDER OF foreclosed agricultural land shall, when
 7 leasing or selling such land or any portion thereof to a
 8 third party, make a good faith offer to sell or lease the
 9 land or portion thereof to the immediately preceding former
 10 owner for the same price and upon the same terms and
 11 conditions offered by a third party that are acceptable to
 12 the seller or lessor.

13 (2) An offer to lease to the former IMMEDIATELY
 14 PRECEDING owner is required each time the foreclosed
 15 agricultural land is leased to a third party, EXCEPT THAT
 16 ONCE THE IMMEDIATELY PRECEDING OWNER FAILS TO MEET THE TERMS
 17 OF A LEASE OFFER, THE RIGHT TO MEET FUTURE OFFERS IS
 18 EXTINGUISHED AND NO OFFER TO LEASE IS REQUIRED. An offer to
 19 sell to the former IMMEDIATELY PRECEDING owner is required
 20 only the first time the property is sold TO A THIRD PARTY.

21 (3) An offer sent by certified mail to the former
 22 ~~owner's--last-known--address~~ NAME AND ADDRESS FILED BY THE
 23 IMMEDIATELY PRECEDING OWNER UNDER [SECTION 4] is a good
 24 faith offer.

25 Section 3. Time to exercise right. (1) A-former AN

1 IMMEDIATELY PRECEDING owner OF FORECLOSED AGRICULTURAL LAND
 2 may not exercise the right to lease agricultural land later
 3 than 15 days after receiving an offer to lease under
 4 [section 2].--A former owner AND may not exercise the right
 5 to purchase agricultural land later than 60 days after
 6 receiving an offer to sell under [section 2].

7 (2) THE RIGHT OF THE IMMEDIATELY PRECEDING OWNER TO
 8 PURCHASE OR LEASE ANY FORECLOSED AGRICULTURAL LAND UNDER
 9 [SECTION 2] APPLIES ONLY FOR THE SAME LENGTH OF TIME THAT
 10 REAL ESTATE MAY BE HELD BY A BANK UNDER 32-1-423(2).

11 ~~Section 4.--Section 25-13-710, MCA, is amended to read:~~
 12 ~~"25-13-710.--Real---property-----what---interest~~
 13 ~~transferred: (1) Upon a sale of real property, the purchaser~~
 14 ~~is--substituted--to--and--acquires--the--right,--title,--interest,~~
 15 ~~and--claim--of--the--judgment--debtor--thereto,--and--when--the~~
 16 ~~estate--is--less--than--a--leasehold--of--2--years¹--unexpired--term,~~
 17 ~~the--sale--is--absolute.--In--all--other--cases,--the--property--is~~
 18 ~~subject--to--redemption,--as--provided--in--part--8--of--this~~
 19 ~~chapter.~~

20 (2)--A transfer of an interest in agricultural land
 21 under this section is subject to {sections 1 through 3}, and
 22 no certificate of sale under 25-13-711 may be issued until
 23 expiration of the time for the exercise of rights under
 24 {sections 1 through 3}."

25 SECTION 4. NOTICE REQUIRED FROM IMMEDIATELY PRECEDING

1 OWNER. (1) AN IMMEDIATELY PRECEDING OWNER MUST NOTIFY IN
2 WRITING THE HOLDER OF FORECLOSED AGRICULTURAL LAND OF THE
3 NAME AND CURRENT ADDRESS OF ONE INDIVIDUAL WHO IS AUTHORIZED
4 TO EXERCISE THE RIGHT OF FIRST REFUSAL ON BEHALF OF THE
5 IMMEDIATELY PRECEDING OWNER. IF THE IMMEDIATELY PRECEDING
6 OWNER IS AN ENTITY FOR WHICH NO SINGLE INDIVIDUAL IS
7 ORDINARILY AUTHORIZED TO ACT, THE NOTICE MUST ALSO INDICATE
8 THE NECESSARY TRANSFER OF AUTHORITY THAT ENABLES THE
9 INDIVIDUAL NAMED IN THE NOTICE TO ACT.

10 (2) FAILURE OF THE IMMEDIATELY PRECEDING OWNER TO FILE
11 THE NOTICE REQUIRED BY SUBSECTION (1) WITHIN 25 DAYS AFTER
12 PUBLICATION OF NOTICE OF FORECLOSURE OR EXECUTION SALE
13 OR WITHIN 15 DAYS AFTER A CHANGE OF HIS ADDRESS
14 OPERATES AS A WAIVER OF THE RIGHT OF FIRST REFUSAL.

15 (3) A FORECLOSING CREDITOR, WITHIN THE DEFINITION OF
16 HOLDER OF FORECLOSED AGRICULTURAL LAND, OR A SHERIFF MUST
17 ADVISE THE IMMEDIATELY PRECEDING OWNER AT THE TIME NOTICE OF
18 FORECLOSURE OR WRIT OF EXECUTION IS SERVED OF THE RIGHT OF
19 FIRST REFUSAL GRANTED IN [SECTION 1] AND OF THE NOTICE
20 REQUIREMENT OF SUBSECTION (1).

21 SECTION 5. RECORDING REQUIRED. THE IMMEDIATELY
22 PRECEDING OWNER SHALL, WITHIN 3 WORKING DAYS FOLLOWING THE
23 NOTICE TO THE HOLDER, FILE A COPY OF THE NOTICE FURNISHED
24 THE HOLDER UNDER [SECTION 4] WITH THE CLERK AND RECORDER OF
25 THE COUNTY IN WHICH THE LAND IS LOCATED IN ORDER TO ASSERT

1 HIS RIGHT OF FIRST REFUSAL AGAINST A THIRD PARTY PURCHASER
2 OR LESSEE OF THE HOLDER. THE CLERK AND RECORDER SHALL RECORD
3 EACH RIGHT OF FIRST REFUSAL SO RECORDED AS AN INTEREST IN
4 THE LAND. THE IMMEDIATELY PRECEDING OWNER SHALL FILE A
5 RELEASE UPON TERMINATION OF THE RIGHT GRANTED IN [SECTION
6 2].

7 Section 6. Effective date. This act is effective on
8 passage and approval.

-End-

SENATE AGRICULTURE COMMITTEE AMENDMENTS
TO SB 142

AMENDMENTS ADOPTED ON 2/6/87 (on a motion by Senator Jergeson)

BILL VOTED ON IN COMMITTEE ON 2/16/87 RESULTING IN A TIE VOTE
(The motion by Senator Story was that SB 142 as amended DO NOT PASS)

1. Title, line 4.

Strike: "PRIOR"

Insert: "IMMEDIATELY PRECEDING"

2. Title, lines 7 and 8.

Strike: "AMENDING" through "MCA;" on line 8

3. Page 1.

Following: line 15

Strike: subsection (2) in its entirety

Insert: "(2) "Holder of foreclosed agricultural land" means a national-or state-chartered bank, a mutual or stock insurance company regulated by any state, a mortgage company, a farm credit system lender, a state or federal agency, or any substantially similar foreign entity which has acquired the right to dispose of agricultural land through foreclosure of a mortgage or trust indenture on the land, whether by judicial proceedings or otherwise, or through execution of a judgment obtained by it against the immediately preceding owner of the land."

4. Page 1, line 21.

Strike: "person holding"

Insert: "holder of"

5. Page 1, line 24.

Strike: "former"

6. Page 2, line 3.

Strike: "former"

Insert: "immediately preceding"

7. Page 2, line 5.

Following: "party"

Insert: ", except that once the immediately preceding owner fails to meet the terms of a lease offer, the right to meet future offers is extinguished and no offer to lease is required"

8. Page 2, line 5.

Strike: "former"

Insert: "immediately preceding"

9. Page 2, line 6.

Following: "sold"

Insert: "to a third party"

10. Page 2, line 7.

Strike: "former" through "address" on line 8

Insert: "name and address filed by the immediately preceding owner under [section 4]"

11. Page 2, lines 9 and 10.

Strike: "A former"

Insert: "(1) An immediately preceding"

12. Page 2, line 10.

Following: "owner"

Insert: "of foreclosed agricultural land"

13. Page 2, line 12.

Following: "[section 2]"

Strike: ". A former owner"

Insert: "and"

14. Page 2.

Following: line 14

Insert: "(2) The right of the immediately preceding owner to purchase or lease any foreclosed agricultural land under [section 2] applies only for the same length of time that real estate may be held by a bank under 32-1-423(2)."

15. Page 2.

Following: line 14

Strike: Section 4 in its entirety

Insert: "Section 4. Notice required from immediately preceding owner. (1) An immediately preceding owner must notify in writing the holder of foreclosed agricultural land of the name and current address of one individual who is authorized to exercise the right of first refusal on behalf of the immediately preceding owner. If the immediately preceding owner is an entity for which no single individual is ordinarily authorized to act, the notice shall also indicate the necessary transfer of authority that enables the individual named in the notice to act.

(2) Failure of the immediately preceding owner to file the notice required by subsection (1) within 25 days after publication of notice of foreclosure or execution sale is served or within 15 days after a change of his address operates as a waiver of the right of first refusal.

(3) A foreclosing creditor, within the definition of holder of foreclosed agricultural land, or a sheriff must advise the immediately preceding owner at the time notice of foreclosure or writ of execution is served of the right of first refusal granted in [section 1] and of the notice requirement of subsection (1).

Section 5. Recording required. The immediately preceding owner shall, within 3 working days following the notice to the holder, file a copy of the notice furnished the holder under [section 4] with the clerk and recorder of the county in which the land is located in order to assert his right of first refusal against a third-party purchaser or lessee of the holder. The clerk and recorder shall record each right of first refusal so recorded as an interest in the land. The immediately preceding owner shall file a release upon

termination of the right granted in [section 2]."
Renumber: subsequent section

16. Strike: "NEW SECTION. in the following locations:
Page 1, lines 12 and 20
Page 2, line 9
Page 3, line 4

7050e/L:JEA\WP:jj

STANDING COMMITTEE REPORT

FEBRUARY 5

19 37

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK & IRRIGATION

having had under consideration HOUSE BILL No. 331

third reading copy (blue)
color

Bradley (Jargason)

**REVISE NOTICE OF A HEARING FOR A CERTIFICATE TO OPERATE A
LIVESTOCK MARKET**

Respectfully report as follows: That HOUSE BILL No. 331

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

PAUL F. BOYLAN,

Chairman.