

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By Chairman Bob Bachini, on February 13th 1989,  
at 2:55 p.m.

#### ROLL CALL

Members Present: All members present with exception of:

Members Excused: Rep. John Patterson

Members Absent: none

Staff Present: Ms. Connie Erickson, Legislative Council and Ms.  
Maureen Cleary, Committee Secretary

Announcements/Discussion: none

#### HEARING ON HOUSE BILL 465

#### Presentation and Opening Statement by Sponsor:

REP. DENNIS IVERSON: House District #12. This bill will provide a definition of the livestock dealer that will be considered constitutional. The previous definition was determined unconstitutional. Offered amendments to Committee (See Exhibit #16).

#### Testifying Proponents and Who They Represent:

Mr. Les Graham/ Dept. of Livestock, Helena

Mr. Jerry Jack/ MT. Stockgrowers Assoc., MT. Cattle Women Assoc.,  
Association of State Grazing Districts, Helena

#### Proponent Testimony:

Mr. Graham: (See Exhibit #1)

Mr. Jack: Our committee's met with Mr. Les Graham from the Dept.  
of Livestock. We give full support to the concept of this  
legislation.

#### Testifying Opponents and Who They Represent:

none

#### Questions From Committee Members:

none

Closing by Sponsor: Rep. Iverson: waived closing.

DISPOSITION OF HOUSE BILL 465

Motion: Rep. Ellison: made the motion "do pass"

Discussion: none

Amendments, Discussion, and Votes: Rep. Ream: made the motion for a "do pass on amendments". Ms. Erickson: Clarified some of the language in the bill in regard to federal bonds. A vote was cast and amendments were passed. (See Standing Committee Report).

Recommendation and Vote: THEREFORE, THE COMMITTEE RECOMMENDS THIS BILL "DO PASS AS AMENDED".

HEARING ON HOUSE BILL 516

Presentation and Opening Statement by Sponsor:

REP. MARIAN HANSON: House District #100. This bill will clarify the responsibility of the adjacent landowners to maintain fences. I have some proposed amendments (See Exhibit #17).

Testifying Proponents and Who They Represent:

Mr. Jerry Jack/ MT. Stockgrowers Assoc., MT. Cattle Women Assoc., Association of State Grazing Districts, Helena

Mr. Les Graham/ Dept. of Livestock, Helena

Proponent Testimony:

Mr. Jack: We rise in support of this bill. We have one concern regarding the topographic constraints. It appears though the amendments offered by Rep. Hanson should address our concerns.

Mr. Graham: (See Exhibit #2)

Testifying Opponents and Who They Represent:

none

Questions From Committee Members:

REP. WESTLAKE: How would this legislation be enforced? REP. HANSON: (Read text, page 1, line 11) Currently, the only recourse for maintaining the fence is persons must notify their neighbor, by registered letter, giving 5 days notice. If they do not want to help you repair the fence, mutually, then you have the right to repair the entire fence. Then

you can go to court and plead your case, asking for restitution.

REP. GUTHRIE: Would there be any differences noted in this bill regarding fencing within a herd district or outside a herd district? MR. GRAHAM: Herd district guidelines can be set within the district itself by their county commissioner. REP. GUTHRIE: Our district has a specific problem. We have dryland farmers that run no livestock and other ranchers that run livestock. The question always seems to arise, who's responsibility is it to maintain the fence? MR. GRAHAM: It would depend on how those specific herd districts are established. It is usually the responsibility to fence livestock out of property, unless that is a pre-agreed situation. REP. GUTHRIE: This is a problem that we are continually faced with. I was hoping this would be addressed in this legislation. MR. GRAHAM: Another area would be subdivisions and housing districts that face this same type of predicament. It might be something we need to look at in the next biennium.

REP. KASTEN: What happens when you get sheep ranchers and cattle ranchers together? There certainly is a difference in the type of fence. REP. HANSON: A legal fence is described in law. It does not distinguish between a horse fence or sheep fence. REP. KASTEN: What is a "legal fence"? REP. HANSON: It is four wires with posts so many feet apart, securely fastened. Or a step-fence. REP. KASTEN: So the livestock person that maintains sheep would not have to maintain anything more than this? REP. HANSON: I don't know. MR. GRAHAM: A legal fence is constructed of at least 3 barbed-wires, tightly stretched, the lowest may not be more than 15-18 inches above the ground. The post must be 20 feet apart or 33 feet apart when two or more stays or pickets are used. There are a variety of definitions. Depending on the type of fence that is being constructed.

Closing by Sponsor:

REP. HANSON: This bill will provide another tool for the person who wants to maintain a fence in good condition. And will provide the landowner with some assistance on the court level.

DISPOSITION OF HOUSE BILL 516

Motion: Rep. Hanson: made the motion "do pass"

Discussion: Rep. Guthrie: I would like to see some type of amendment that will address the issue of herd districts. Rep. Kasten: I don't think this will be an easy law to enforce.

Amendments, Discussion, and Votes: Amendments were discussed among Committee members and a vote was cast. The proposed

amendments passed. (See Standing Committee Report)

Recommendation and Vote: THEREFORE, THE COMMITTEE RECOMMENDS  
THIS BILL "DO PASS AS AMENDED".

DISPOSITION OF HOUSE BILL 516

Motion: Rep. Hanson: made the motion "do pass"

Discussion: none

Amendments, Discussion, and Votes: Amendments were discussed and  
a vote was cast. Amendments passed. (See Standing  
Committee Report)

Recommendation and Vote: THEREFORE, THE COMMITTEE RECOMMENDS  
THIS BILL "DO PASS AS AMENDED".

HEARING ON HOUSE BILL 509

Presentation and Opening Statement by Sponsor:

REP. FRANCIS BARDANOUE: House District #16. House bill 509 is  
the result of concerns by various businesses that have  
leased land on railroad right-of-way. This bill provides a  
process for negotiating a settlement should the land be sold  
from under the lessee. This bill does not attempt to take  
away anyone's property rights, but to provide a legal means  
of settling disputes and provide a reasonable settlement.

Testifying Proponents and Who They Represent:

Ms. Kim Enkerud/ MT. Farm Bureau, Women Involved in Farm  
Economics, MT. Stockgrowers Assoc., Helena

Mr. Dan Place/ businessman, Townsend, MT

MR. Dan Fiest/ MT. Graingrowers Assoc., Great Falls, MT

Mr. Terry Murphy/ MT. Farmers Union

Mr. Bob Stephens/ MT. Graingrowers Association, Helena

Ms. Pam Langley/ MT. Ag Business Association, MT. Grain Elevators  
Association, Helena

Mr. Steve McCullough/ self, Townsend, MT

Mr. Ted Newman/ MT. Council of Co-ops

Rep. Bert Guthrie/ House District #1

Rep. Francis Koehnke/ House District #32

Rep. Linda Nelson/ House District #19

Rep. Vernon Westlake/ House District #76

Rep. Don Steppler/ House District #21

Mr. Laverne Neskims/ self

Proponent Testimony:

Ms. Enkerud: (See Exhibit #3)

Mr. Place: I am in support of this bill in order to protect my investment and the future of Townsend.

Mr. Fiest: (See Exhibits #4 through #9)

Mr. Murphy: We rise in support of this legislation. This bill addresses a problem of some businesses in some towns.

Mr. Stephens: We are in support of this legislation.

Ms. Langley: Many businessmen would suffer from the loss of leased land being sold from underneath. We support this legislation. Adjustments in the bill can be made to address the concerns of the railroads.

Mr. McCullough: (See Exhibit #10)

Mr. Newman: It is unfair that property sold to lease holders is done so at exorbitant prices.

Rep. Guthrie: I am a victim of what this bill is trying to address. At one time I was the lease holder of a piece of property, owned by the railroad. I was also the owner of the surrounding property on both sides. But for some reason, my lease, when it terminated, was not renewed by the railroad. Even though it had been leased by my family for three generations. A short time later the lease was reissued to another party. Subsequent to that, the property was purchased. So I have a piece of ground that surrounds 3 and 1/2 acres that is owned by another party. This legislation is addressing just the lease holder. I would like to see the legislation amended with the sponsors concurrence to accommodate the surrounding landowners. I would hope that a sub-committee could be formed for that formulation.

Representative's Francis Koehnke, Linda Nelson, Vernon Westlake and Don Steppler asked to go on record in favor of this legislation.

Mr. Neskims: I would like to see this bill provide for the problem that Rep. Guthrie spoke of.

Testifying Opponents and Who They Represent:

Mr. John Crowley/ Washington Corporations, National Association of Reversionary Property Owners, Isaquah, Washington

Mr. John Echart/ Burlington Northern Railroad

Mr. Leo Berry/ attorney, Burlington Northern Railroad

Ms. Karen McKnight/ lease administrator, Montana Rail Link, Missoula

Opponent Testimony:

Mr. Crowley: (See Exhibits #11 through #13)

Mr. Echart: It is not hard to understand the frustration of the landowner who is under a lease agreement. And I believe that the sponsors intent is to sincerely solve a difficult situation. However, in most cases railroads do not own clear title to land that the track is laid on. Only 10-20% is actually owned by the railroads. If you choose to favor this legislation, you will do so at the expense of many others that are affected by this. It actually enhances the problem. This legislation will drive the costs up.

Mr. Berry: This bill changes the respective legal rights of parties that have entered into legal contracts. You are effecting not only agricultural elevator holders, but also a large number of other type of lease holders that lease land from the railroads. What you are doing with this bill is changing the contractual rights. The adjustments of rights must be based on reasonable conditions and be of a character appropriate to public purpose justifying the legislation. The question that you must ask is, "What is the public purpose?". The purpose is not to protect lease holders in general, but only lease holders that lease from the railroads. The question must be asked, "Are we affecting this legislation, solely for the purpose of a few private parties?" And the answer is, "Yes". And not for a general public purpose. Some other states legislation has been struck down exactly for these reasons. The legislation did not address the needs of the general public purpose. I have serious constitutional questions regarding this legislation.

Ms. McKnight: I am in favor of the opposing arguments made against this legislation. We would be happy to negotiate with lease holders.

Questions From Committee Members:

REP. DRISCOLL: Don't you think that it would be easier to simply use the fair market value? MR. BERRY: Normally, when there are disputes regarding the fair market values there

are three appraisals. The land lease holders appraisal. The railroads appraisal. And then they agree to choose another for a more neutral appraisal. REP. DRISCOLL: But the railroads, having a legal staff, don't they have an advantage? MR. BERRY: Not really.

REP. KOEHNKE: Suppose there was a boom in a town and the market value became very competitive? MR. CROWLEY: It states in your bill that one way of determining fair market value is "offer from a bidder". REP. KOEHNKE: So then the grain elevator operator must move his building! That would be impossible. MR. CROWLEY: That is what is stated in your bill. REP. KOEHNKE: We used to ship in bulk cars. Those were taken away and the railroad changed the system. That meant that we had to buy equipment. And we had to quit shipping because of the circumstances. What are we to do? MR. CROWLEY: Technology changed, no one canceled your lease.

REP. HANSON: Does your bill really mean to address all leaseholders with property or did it mean to address an abandoned property? REP. BARDANOUE: All property.

REP. KASTEN: I am concerned about utilities that have right-of-way. Could we have an amendment? REP. BARDANOUE: I am not going to argue about this legislation! It has been restructured and revised... REP. BACHINI: Rep. Bardanoue, it is my intention to put this bill into a sub-committee.

REP. WESTLAKE: Does the law of eminent domain pertain to this bill in any way? MR. BERRY: As Mr. Echart testified earlier, there are many variations on the agreements leased by the railroad. Not all property was acquired by eminent domain.

REP. GUTHRIE: Once the railroad is gone, doesn't it usually happen that those businesses along that right-of-way go under too? Their vitality and existence depend on the transportation of products? MR. ECHART: That is often the case. But in some cases it can work the other way as well.

Closing by Sponsor:

Rep. Bardanoue: I am concerned with the "merger mania" that is occurring in the United States. Businesses buy a little piece of it and then sell out. I hope you will consider all those affected by this legislation.

CHAIRMAN BACHINI: We will put this bill into a sub-committee. The members will be Rep. Koehnke, as acting Chairman, Rep. Driscoll and Rep. Guthrie.

DISPOSITION OF HOUSE BILL 358

Motion: Rep. Elliott: made the motion "do pass" Rep. Compton:

provided a substitute motion of "do not pass"

Discussion: Proposed amendments and statement of intent were distributed among Committee members. (See Exhibits #18, #19, #20 and additional written testimony submitted See Exhibit #14) Rep. Kasten: These amendments do not cover the bill. This bill will not work. Rep. Elliott: With due regard to Farm Credit Service, they do not have a good track record. They have alot of delinquent loans, alot of problems involved. Farm Home Administration has 25% to 50% of their loans delinquent. Someone is not getting the farmer to pay his bills. And the reason why that farmer is not paying his bills is because, he cannot. The mediation between these agencies will help. Will benefit those credit services, will benefit the farmer. Last year Farm Home Administration sent out 990 delinquent notices to farmers and ranchers in Montana. I see it as a vehicle for change. I see it as a positive change. REP. BACHINI: I think that everyone has already decided how they are going to vote. Unless there is something significant that you feel you must address then we should take a vote on Rep. Compton's motion.

Amendments, Discussion, and Votes: Amendments were discussed and a vote cast. Amendments passed (See Standing Committee Report).

After the final vote was cast on the bill itself, Rep. Kasten questioned Chairman Bachini regarding further amendments. Chairman Bachini addressed her in stating that any further amendments would now have to be taken up on the House floor.

Recommendation and Vote: A vote was cast on the substitute motion of "do not pass" and a roll call vote taken. The vote was reversed. THEREFORE, THE COMMITTEE RECOMMENDS THIS BILL "DO PASS AS AMENDED".

ADJOURNMENT

Adjournment At: 5:30 p.m.

  
\_\_\_\_\_  
REP. BOB BACHINI, Chairman



DAILY ROLL CALL  
AGRICULTURE COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 13<sup>th</sup>

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Bachini, Chairman	✓		
Rep. Francis Koehnke, Vice Ch.	✓		
Rep. Gene DeMars	✓		
Rep. Jerry Driscoll	✓		
Rep. Jim Elliot	✓		
Rep. Linda Nelson	✓		
Rep. Bob Ream	✓		
Rep. Don Steppler	✓		
Rep. Vernon Westlake	✓		
Rep. Duane Compton	✓		
Rep. Orval Ellison	✓		
Rep. Bert Guthrie	✓		
Rep. Marian Hanson	✓		
Rep. Harriet Hayne	✓		
Rep. Betty Lou Kasten	✓		
Rep. Vernon Keller	✓		
Rep. John Patterson			

2-14-89

10:22 AM

J.C.

# STANDING COMMITTEE REPORT

February 14, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that House Bill 465 (first reading copy -- white) do pass as amended.

Signed: \_\_\_\_\_  
Bob Bachini, Chairman

## And, that such amendments read:

1. Title, line 10.

Following: "MCA;"

Strike: "AND"

2. Title, line 11.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1.

Following: line 20

Insert: "(3) "Immediate resale" means a sale of livestock within 60 days of the purchase of the livestock."

Renumber: subsequent subsections

4. Page 1, line 24, through page 2, line 9.

Strike: "buying or selling"

Insert: "purchasing"

Following: "livestock"

Insert: "for immediate resale or interstate shipment"

Following: "."

Strike: remainder of line 24 through page 2, line 9.

5. Page 7.

Following: line 16

Insert: "NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval."

2-14-89  
10:20  
JQ

STANDING COMMITTEE REPORT

February 14, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that House Bill 516 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Bob Bachini, Chairman

And, that such amendments read:

1. Page 2, line 7.

Following: "land."

Insert: "If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time."

2-14-89  
1:25p  
J.C.

STANDING COMMITTEE REPORT

February 14, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that HOUSE BILL 358 (first reading copy -- white), with statement of intent attached, do pass as amended.

Signed: Bob Bachini  
Bob Bachini, Chairman

And, that such amendments read:

1. Page 7, line 11.

Following: "act]."

Insert: "Within 7 days of the expiration of the time limit for the filing of a mediation request,"

Strike: "The"

Insert: "the"

2. Page 9, line 9.

Following: "10]."

Insert: "The farmer and the creditor are entitled to at least 45 days of negotiations in good faith."

3. Page 9, line 13.

Following: "effective."

Insert: "At the end of 10 days, the mediator shall sign a release order allowing the creditor to initiate an action against the borrower."

4. Page 11, line 17.

Following: "agreement"

Strike: the remainder of line 17 through "creditor" on line 18

Insert: ". The farmer and the creditor have 7 days to review the agreement and request modifications. The mediator shall draft the final written mediation agreement to be signed by the farmer and the creditor"

## Summary.

Montana has had a livestock dealer licensing law since 1971. Several changes have been made in the law through the years, mostly dealing with the definition of a dealer. H.B. 465 addresses the definition as well as the current procedures with bonds and financial statements.

## Major Changes.

- 1.) Definition of dealer. Currently we do not have a definition of a livestock dealer. A Helena District Court has ruled our definition to be unconstitutional at this time. The proposed definition attempts to outline perimeters within which the dealer may operate.
- 2.) Financial Statement Requirement. The proposed legislation deletes the requirement that an annual financial statement is required. It inserts the language that will allow the Department of Livestock to request and receive a financial statement.
- 3.) Bonding Requirements. The new language will allow the Department to use the U.S.D.A. Packers & Stockyards Bonds in lieu of a state bond. Currently of the 600 plus dealers, almost all have P & S bonds. This would eliminate much paper work at the state level.

During the past 15 years the Department has had a very difficult time in enforcing this law. It is hoped that this will smooth out the entire process.

EXHIBIT #2  
DATE 2/13/89  
HB 516.

H.B. 516

Summary.

The Department of Livestock is interested in this from the standpoint that we are the ones called when problems occur with stray livestock and/or bad fences.

One overall concern we have is that livestock producers be made aware of the fact that somewhere in the future we may lose a court case dealing with livestock on highways. To date, courts have ruled with the producer.

EXHIBIT #3  
DATE 2/13/89  
HB 509

February 13, 1989

TO: House Agriculture Committee

FROM: Montana Stockgrowers Association  
Montana Farm Bureau

SUBJECT: House Bill 509 - An Act Providing a First Right to Leaseholders of Railroad Right-Of-Way Property to Purchase the Property

Mr. Chairman, Members of the Committee:

My name is Kim Enkerud. I am here before you today on behalf of the Montana Stockgrowers Association and the Montana Farm Bureau.

Many of our members have facilities they own cooperatively along railroad right-of-ways which they use for weighing their cattle and loading and shipping them out in the fall. We are here to support House Bill 509 as it would benefit these people to have an option to buy this property first.

We would ask that clarification language be added on page 3, line 2. The language would follow "property". We would like to add "that the leaseholder leases." The reasoning behind this is as follows: The way I read and interpret the language now is that any party who has a lease on the railroad right of way will have the ability to bid on another's lease because each person who is a leaseholder will be extended an offer to do so. With this language addition it assures me that if I have a scale facility on the right of way, only I will be offered that right of first refusal on that particular lease.

We feel this language will stop any misunderstanding of the law in the future.

Thank you.

EXHIBIT #4  
DATE 2/13  
HB 509

Chairman, Members of the Committee:

My name is Dan Place. I am owner and operator of Broadwater Grain & Supply, Inc. of Townsend, Montana. I am a proponent of H.B.509.

Broadwater Grain & Supply consists of two elevators, two warehouses, eight steel grain bins with receiving and shipping equipment for the movement of grain.

My business and facilities are located on Railroad lease ground in Townsend. I support H.B.509 to protect my investment and my business and the future of the same in Townsend.

Eighty percent of my grain movement is by Rail so it is imperative that my grain loading facilities be located close to the Railroad.

I have operated Broadwater Grain for eleven years. In the past 11 years my bankers and finance people have always said, "You are borrowing on your equity which is inventory, account receivables, and facilities which is brick, motor, and steel. It has always been a problem with my finance people that I do not own the land my business resides on. H.B.509 would solidify my working relationship with these people.

In conclusion I support H.B.509.

Broadwater Grain & Supply, Inc.

Dan Place

*Dan Place*



House  
~~Senate~~ Bill ~~508~~ 509

2-10-89

Mr. Wright

Mr. Chairman and members of Committee

EXHIBIT #5  
DATE 2/13  
HB 509

My name is Dan Feist.

Employed by Harvest States Cooperative of Great Falls.  
I'm a proponent of <sup>House</sup> ~~Senate~~ Bill ~~508~~ 509

We had a very bad experience at Three Forks, MT  
in 1983 when Universal Royal apex purchased  
abandoned line and right of ways from the bankrupt  
Milwaukee railroad. We were not offered any  
option to purchase this land prior to the sale.

After several meetings with Universal we were told our  
options were to purchase 2.75 acres at a price of \$100,000  
or lease the site at \$1500 per month for 5 years.

We did lease the land so we would have time to  
research what alternatives we would have. After  
much research our attorneys decided we would have  
to purchase the land which we done in 1987  
at a cost of 75,000 Dollars.

Copies of letters with Universal sent.

Dan Feist -

Field Supervisor -

Harvest States Cooperative.

Doug Langley.

744 443.7299

Total pages of

EXHIBIT 6  
DATE 2/13  
HB 509

Post Office Box 886  
Wallace, Idaho 83873  
August 16, 1983

Farmers Union Grain Terminal Association  
P. O. Box 671  
Great Falls, Montana 59401

Gentlemen:

Universal Royal Apex Limited Partnership is the successor in interest to those certain lease agreements between you and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated September 20, 1976 (lease number 80868); February 7, 1958 (lease number 65676) and March 11, 1980 (lease number 76163), wherein certain real property located in Gallatin County, Montana was leased to you.

Pursuant to the terms of said leases, you are hereby notified that each is terminated effective sixty days from your receipt of this notice of termination.

As provided in the above-referenced leases, you have the right to remove from the leased premises all property owned or placed thereon by your association and to restore the premises to a state of usefulness within sixty days of your receipt of this letter. If you fail to remove such property and restore the premises, then Universal Royal Apex Limited Partnership shall enter the premises and remove said property at your expense or treat said property as abandoned and appropriate and dispose of the same, or pursue any other legal remedy available, all as provided in said leases.

Very truly yours,

UNIVERSAL ROYAL APEX  
LIMITED PARTNERSHIP

By Justin Rice  
Justin Rice  
President

Certified Mail  
Return Receipt Requested



EXHIBIT 7  
DATE 2/13  
HB 509

## UNIVERSAL WOOD & METAL CORPORATION

1000 West Silver Road • P.O. Box 99 • Smelterville, Idaho 83868

July 21, 1983

GTA Elevator  
Three Forks, Montana

Gentlemen:

Confirming the krux of our conversation during the meeting held on July 21, 1983 at your Three Forks office with Dan Feist, Jay Hankin, Rusty Sheppard, Ray Tocci, and J. C. Marshall present.

Universal Royal Apex offers to sell and convey to GTA twenty-eight (28) lots of approximately three (3) plus acres at Three Forks, Montana consisting of fourteen (14) lots presently being leased plus an additional area of similar size. The selling price shall be One Hundred Thousand Dollars (\$100,000.00) and the property shall be conveyed by quit claim deed as Universal Royal Apex received from the railroad.

If GTA elects to continue leasing it will be necessary to re-negotiate the multiple leases for a total cost of fifteen hundred dollars (\$1500.00) per month for a period of five (5) years.

It is further understood that Ray Tocci of T Bar T Realty and Insurance of Three Forks, Montana will represent Universal Royal Apex in these negotiations and that a reply may be anticipated by August 1, 1983.

Respectfully yours,

*J. C. Marshall*  
J. C. Marshall

klp

*Confused  
view of  
mixed leases  
Constantly changing  
legal title, is it  
good for the ground Public*

*HB 50 a Right of Way  
J.C. Marshall*

*3 of 4 pages*

• 600 Sixth St. SW • P.O. Box 671 Great Falls, MT 59403

4 of 4 pages

EXHIBIT 9  
DATE 2/13  
HB 509

WITNESS STATEMENT

NAME Larry Murphy BUDGET \_\_\_\_\_  
ADDRESS Great Falls, MT.  
WHOM DO YOU REPRESENT? Montana Farmers Union  
SUPPORT / OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS:

HB 509 attempts to address a problem of serious proportions to some businesses in some towns. The majority of unfair financial demands has fallen on grain elevators but certainly not all of it.

HB 509 is only fair. Montana Farmers Union urges a "do pass" on HB 509.

thank you.

Larry Murphy, President  
Montana Farmers Union

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# NORTHWEST POTATO SALES

Steven R. McCullough

Box 1287 • Townsend, Montana 59644

Phone: (406) 266-5610

(406) 266-3070

#  
EXHIBIT 10  
DATE 2/3/89  
HB 509

H.B.509

2-11-89

Chairman and members of the committee:

I am a proponent of HB509.

*Steve McCullough*

I am owner and operator of Northwest Potato Sales in

Townsend.

I presently lease two sights from the Railroad. My investment in building and improvements on these leases is in excess of \$250,000.00. My storage and shipping facilities are on these leases. *No Railroads are presently designed for C.R. Potato Storage, I may not be a desirable tenant* If an unscrupulous person purchased the property under my buildings I may be put out of business. *I would like some means of protection.* That effects me personally. This would also would be detrimental to Montana. My farm sells seed potatoes to other states. I gross nearly half a million annually. This money is spent in Montana. This out of state money provides jobs and cash flow for our state. Please support H.B.509. *For our State*

*If my leased land would come up for sale, it would only be fair that a tenant leasee should have the opportunity to purchase said land at a fair market value*

Respectfully Submitted,

*Steven R. McCullough*  
STEVEN R. MCCULLOUGH



EXHIBIT

DATE

HB

11  
2/13/89  
509

# National Association of Reversionary Property Owners

2311 E. LAKE SAMMAMISH PL. S.E. ISSAQUAH, WA 98027  
(206) 392-1024

Richard Welsh, Executive Director

February 9, 1989

Representative Bob Bachini  
Chairman, House Agriculture, Livestock and Irrigation Committee  
Capitol Station  
Helena, Montana 59620

Dear Representative Bachini:

This letter concerns HOUSE BILL 509 "An Act Providing a First Right of Refusal to Leaseholders of Railroad Right-Of-Way Property to Purchase the Property".

The National Association of Reversionary Property Owners (NARPO) is a non-profit group operating throughout the United States to further the private property rights of property owners owning land adjacent to railroads and other utilities. NARPO's research of railroad rights off way ownership has shown consistently that the railroads only own between 10 % and 20 % of the rights of way that their tracks are laid on. When the railroads acquired their rights of way, they usually acquired an easement for railroad purposes only and when the railroad purpose ceases then the right of way reverts back to the existing abutting property owner by state law. Under some state laws, sometimes the right of way reverts back to the heirs or assigns of the original grantor of the easement, but in either case the railroads do not own the underlying fee simple title to most of their rights of way.

At first glance it appears that HB 509 is constitutionally flawed because it purports to force the railroads to sell something that they may not own. In fact Burlington Northern Railroad was sued in the Iowa courts for fraud for just this sort of thing in 1981, see Haack v. BN, 309 NW 2d 147 (1981). Under state property laws the railroads can lease out parts of their rights of way even if they do not own them in fee because they have control of the surface easements. Legislatures cannot legislate away private property rights that exist today and have existed sometimes for over 100 years, see Lawson v. State of Washington, 730 P2d 1308, (1986). I am sure the Montana Supreme Court would hold the same.

I believe that proposed SB 334 should be reworked and more thought put into it so as to protect the property interests of abutting reversionary property owners. We are sorry that this is coming to you so late, but one of my property owner contacts in Montana just alerted me to the bill. By the way, we are not affiliated with the railroads; just the opposite. We are constantly an adversary to them both at the federal level and at the local levels. We would be glad to offer assistance in your rewrite of the bill if you request and given a little advance notice we could make an appearance at a committee hearing. We have testified to Congress and other state legislatures in the past.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard Welsh", with a long, sweeping horizontal line extending to the right.

Richard Welsh, Executive Director



MONTANA WESTERN RAILWAY CO., INC.  
700 1/2 Railroad Street  
Butte, MT 59701

TELEPHONE (406) 782-1249  
FAXPHONE (406) 723-5233  
Equipment: 3M 9165

EXHIBIT #12  
DATE 2/13/89  
HB 509

*Babini Seat # 99*

FROM:

Name: Mike Greene Ref. Number: \_\_\_\_\_  
(Full name)

Request to send: \_\_\_\_\_

Date Requested: 2/13/89 Time Requested: 9:30 a.m.

To Be Completed by: DATE 2/13/89 TIME ASAP

Date Sent: 2/13/89 Time Sent: \_\_\_\_\_

Number of Pages (including this cover page): 2

DELIVER TO:

Name: John Etchart "*Bob Babini*"

Organization or Firm: Burlington Northern *Capitol*

Address: Helena, MT

FAX Ph. Number: 444-4105 Verification Ph. Number: 442-1296

SPECIAL INSTRUCTIONS: DELIVER IMMEDIATELY "*URGENT*"

TROUBLE receiving all pages clearly or cannot deliver this message, please call immediately:

(406) 782-1249



EXHIBIT #73  
DATE 2/13/89  
HB 509

February 13, 1989

The Honorable Bob Bachini  
Montana State Representative  
Capitol Station  
Helena, MT 59601

Dear Rep. Bachini:

HB 509

House Bill 509 in its intent is a gross misapplication of the Public Service Commission (P.S.C.).

Leaseholders rights to property and property owners rights are best handled by the parties directly involved.

It is inappropriate for the P.S.C. to adopt rules or procedures for the resolution of disputes between individuals when the private sector could more effectively deal with the intricacies of lease arrangements.

House Bill 509, if passed, would effectively stop all future leases of railroad property and deny the railroad (landowner) his right to realize the full potential from the sale of his property, rendering parcels of land market useless.

Thank you.

Sincerely,

Mike Greene  
General Manager

HB-358 - MEDIATION - TIME LIMITS

EXHIBIT #14  
DATE 2/12  
HB 358

- Sec. 3. Start: Creditor cannot start process to collect debt until he serves notice on the farmer advising of right to mediation. (Mortgage foreclosures can take up to 2 years to resolve after mediation.)
- Sec. 4. 14 days: A farmer or creditor has 14 days from the Sec. 3 notice to request mediation.
- Sec. 7. Department has duty to give notice of mediation meeting. There is no time limit on department. Also, under Sec. 6, department may refer the farmer to a credit analyst before the meeting.
- Sec. 8. 14 days: After the department gives notice of mediation meeting (Sec. 7), mediation must start in 14 days.
- 45 days: The mediator must sign a release order in 45 days, if parties have acted in good faith.
- 45 days: The mediator may extend for 45 more days if either party is found not to have acted in good faith.
- 10 days: If either party gives notice that mediation is not effective, mediation terminates in 10 days.

\* \* \* \* \*

Possible time:

Sec. 4 - 14 days

Sec. 7 - 30 days or more depending on actions of Department.

Sec. 8 - 114 days possible to termination of mediation.

Thus it is possible for the process to make 158 days, or more if the department takes longer under Sec. 7 to set the mediation meeting.

Submitted by: Mr. John Crowley  
Washington Corporations  
101 International Way  
Missoula

MONTANA ASSOCIATION  
OF  
**LIVESTOCK AUCTION MARKETS**  
INC.

MICHAEL G. ELLERD  
Executive Secretary

406/587-9790

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

Comm  
meet 2/13

HB 465

EXHIBIT #15  
DATE 2/13/89  
HB 465

February 1, 1989

TO: House Agriculture Committee

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

RE: Proposed Changes in Montana's Livestock Dealer Law

Concerning the changes proposed by the Montana Department of Livestock in the livestock marketing law as pertains to livestock dealers, the Montana Association of Livestock Auction Markets, which represents fourteen of the state's fifteen markets, supports the Department's efforts in this endeavor. The Association feels that, while this proposal may not be the solution to all the problems plaguing the marketing sector, it is, none the less, certainly worth pursuing.

Amendments to House Bill No. 465  
Introduced Copy

Requested by Representative Iverson

Prepared by Dave Cogley  
February 6, 1989

EXHIBIT #16  
DATE 2/13/89  
HB 465

1. Title, line 10.  
Following: "MCA;"  
Strike: "AND"

2. Title, line 11.  
Following: "MCA"  
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1.  
Following: line 20  
Insert: "(3) 'Immediate resale' means a sale of livestock within  
60 days of the purchase of the livestock."  
Renumber: subsequent subsections

4. Page 1, line 24, through page 2, line 9.  
Strike: "buying or selling"  
Insert: "purchasing"  
Following: "livestock"  
Insert: "for immediate resale or interstate shipment"  
Following: "."  
Strike: remainder of line 24 through page 2, line 9.

5. Page 7.  
Following: line 16  
Insert: "NEW SECTION. Section 9. Effective date. [This act] is  
effective on passage and approval."

Amendments to House Bill No. 516  
First Reading Copy

EXHIBIT #17  
DATE 2/13/89  
HB 516

Requested by Representative M. Hanson  
For the Committee on House Agriculture, Livestock, and Irrigation

Prepared by Connie Erickson  
February 13, 1989

1. Page 2, line 7.

Following: "land."

Insert: "If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time."

Amendments to House Bill No. 358  
First Reading Copy

EXHIBIT #18  
DATE 2/13/89  
HB 358

For the Committee on House Agriculture, Livestock, and Irrigation

Prepared by Connie Erickson  
February 13, 1989

1. Page 7, line 11.

Following: "act]."

Insert: "Within seven days of the expiration of the time limit  
for the filing of a mediation request,"

Strike: "The"

Insert: "the"

2. Page 9, line 9.

Following: "10]."

Insert: "The farmer and the creditor are entitled to at least 45  
days of negotiations in good faith."

3. Page 9, line 13.

Following: "effective."

Insert: "At the end of 10 days, the mediator shall sign a release  
order allowing the creditor to initiate an action against  
the borrower."

4. Page 11, line 17.

Following: "agreement"

Strike: the remainder of line 17 through "creditor" on line 18

Insert: ". The farmer and the creditor must have seven days to  
review the agreement and request modifications. The mediator  
shall draft the final written mediation agreement to be  
signed by the farmer and the creditor"

Amendments to House Bill No. 358  
First Reading Copy

EXHIBIT #19  
DATE 2/13/89  
HB 358

For the Committee on House Agriculture, Livestock, and Irrigation

Prepared by Connie Erickson  
February 13, 1989

1. Page 7, line 11.

Following: "act]."

Insert: "Within 7 days of the expiration of the time limit for  
the filing of a mediation request,"

Strike: "The"

Insert: "the"

2. Page 9, line 9.

Following: "10]."

Insert: "The farmer and the creditor are entitled to at least 45  
days of negotiations in good faith."

3. Page 9, line 13.

Following: "effective."

Insert: "At the end of 10 days, the mediator shall sign a release  
order allowing the creditor to initiate an action against  
the borrower."

4. Page 11, line 17.

Following: "agreement"

Strike: the remainder of line 17 through "creditor" on line 18

Insert: ". The farmer and the creditor have 7 days to review the  
agreement and request modifications. The mediator shall  
draft the final written mediation agreement to be signed by  
the farmer and the creditor"



Amendments to House Bill No. 358  
First Reading Copy

EXHIBIT #20  
DATE 2/13/89  
HB 358

For the Committee on House Agriculture, Livestock, and Irrigation

Prepared by Connie Erickson  
February 10, 1989

1. Page 1.

Following: line 14

Insert:

"STATEMENT OF INTENT

A statement of intent is required for this bill because [section 16] grants rulemaking authority to the department of agriculture. It is intended that rules address the compensation of mediators and credit analysts employed to implement the provisions of this bill as well as other topics that may arise in the administration of agricultural mediation services."

## VISITORS' REGISTER

Agriculture

COMMITTEE

BILL NO. HB 465DATE February 13<sup>th</sup>

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JACK SEDGWICK	HELENA	X	
GEORGE EICHORN	✓	X	
Jerry Jack	MT Stockgrowers	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# Agriculture

BILL NO. HB 516

DATE February 13<sup>th</sup>

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

Agriculture

COMMITTEE

BILL NO. HB 509DATE February 13<sup>th</sup>

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John H. Crowley	Missoula		X
KAREN McKnight	Missoula		X
Pam Langley	Montana Ag Business Helena Montana Grain Elevator	X	
Kim Enkerud	Farm Bureau, WIFE MT Stockgrowers	X	
Steve McCullough	Townsend Mt	X	
Dan Place	- -	X	
Bob Stephens	Int. Grain Elevator	X	
Wayne Burt	Mont PSC		
Terry Murphy	MT Farmers Union	X	
John Etchar	BN	/	X
Ted Neumann	COUNCIL OF LOOPS	X	
Kay Nourling	WIFE	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# ROLL CALL VOTE

AGRICULTURE, LIVESTOCK & IRRIGATION

COMMITTEE

DATE 2/13/89 BILL NO. HB 465 NUMBER \_\_\_\_\_

NAME	AYE	NAY
BOB BACHINI, CHAIRMAN	✓	
FRANCIS KOEHNKE, VICE CHAIRMAN	✓	
GENE DE MARS	✓	
JERRY DRISCOLL	✓	
JIM ELLIOT	✓	
LINDA NELSON	✓	
BOB REAM	✓	
DON STEPPLER	✓	
VERNON WESTLAKE	✓	
DUANE COMPTON	✓	
ORVAL ELLISON	✓	
BERT GUTHRIE	✓	
MARIAN HANSON	✓	
HARRIET HAYNE	✓	
BETTY LOU KASTEN	✓	
VERNON KELLER	✓	
JOHN PATTERSON		

TALLY

(17)

Maureen Cleary  
~~Mary Lou Schmitt~~  
Secretary

BOB BACHINI, Chairman  
Chairman

MOTION: Rep. ellison move "do pass"  
Rep. ream "amends" (17) aye

amendments stored as:

# ROLL CALL VOTE

AGRICULTURE, LIVESTOCK & IRRIGATION

COMMITTEE

DATE 2/13/89 BILL NO. HB 516 NUMBER           

NAME	AYE	NAY
BOB BACHINI, CHAIRMAN	✓	
FRANCIS KOEHNKE, VICE CHAIRMAN	✓	
GENE DE MARS	✓	✓
JERRY DRISCOLL	✓	
JIM ELLIOT	✓	
LINDA NELSON	✓	
BOB REAM	✓	
DON STEPPLER	✓	✓
VERNON WESTLAKE	✓	
DUANE COMPTON	✓	
ORVAL ELLISON	✓	
BERT GUTHRIE	✓	✓
MARIAN HANSON	✓	
HARRIET HAYNE	✓	
BETTY LOU KASTEN	✓	✓
VERNON KELLER	✓	
JOHN PATTERSON	✓	

TALLY

(13)

(4)

Maureen Cleary  
Mary Lou Schmitt  
Secretary

BOB BACHINI, Chairman  
Chairman

MOTION: Hanson move "do pass"  
Hanson move "amends" (17)  
Hanson "do pass as amend"

# ROLL CALL VOTE

AGRICULTURE, LIVESTOCK & IRRIGATION

COMMITTEE

DATE

2/10/89

BILL NO.

HB 358

NUMBER

"DO NOT PASS"

NAME	AYE	NAY
BOB BACHINI, CHAIRMAN		✓
FRANCIS KOEHNKE, VICE CHAIRMAN		✓
GENE DE MARS		✓
JERRY DRISCOLL		✓
JIM ELLIOT		✓
LINDA NELSON		✓
BOB REAM		✓
DON STEPPLER		✓
VERNON WESTLAKE		✓
DUANE COMPTON	✓	
ORVAL ELLISON	✓	
BERT GUTHRIE	✓	
MARIAN HANSON	✓	
HARRIET HAYNE	✓	
BETTY LOU KASTEN	✓	
VERNON KELLER	✓	
JOHN PATTERSON	✓	

TALLY

(8)

(9)

Maureen Cleary  
~~Mary Lou Schmitt~~  
 Secretary

BOB BACHINI, Chairman  
 Chairman

MOTION: rep elliot move "do pass"  
 rep elliot move "amendments" (17)  
 rep elliot move "stmt of intent" (17)  
 rep. compton move "do not pass" sub motion

DO PASS AS AMEND