

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By CHAIRMAN PETE STORY, on APRIL 12, 1989,
at 8:00 A.M.

ROLL CALL

Members Present: Senator Gary Aklestad, Senator Loren Jenkins, Senator Esther Bengtson, Senator Matt Hims1, Senator Paul Boylan, Senator Tom Keating, Senator Judy Jacobson, Senator H.W. "Swede" Hammond, Senator Pat Regan, Senator Larry Tveit, Senator Fred Van Valkenburg, Senator Dennis Nathe, Senator Greg Jergeson, Senator Gerry Devlin, Senator Richard Manning, Senator Sam Hofman, Senator Lawrence Stimatz, Senator Ethel Harding, Senator Pete Story

Members Excused: None

Members Absent: None

Staff Present: Clayton Schenck, LFA

Announcements/Discussion: None

HEARING ON HOUSE BILL 609

Representative Ben Cohen, House District 3, Whitefish, Montana, introduced HB 609. He said that HB 609 would establish a water quality rehabilitation account. The account allows money to be used for the clean-up of a pollution event when the Department of Health cannot completely identify the responsibility party. This special fund would be available for immediate use so that the Department of Health could respond instantaneously and not wait until small events become large events, he said. After it is cleaned up then the responsible party will be identified and billed for the cost and cleanup and any appropriate fines. He pointed out that these funds would flow to this account only until this account reaches ten thousand dollars, in any one year, or a total of fifty thousand dollars and then the money would revert to the general fund. This kind of immediate response would save everybody a lot of trouble and expense.

Steve Pilcher, Chief of the Water Quality Bureau for the

Montana Health and Environmental Sciences, testified in support of HB 609. He pointed out that public health protection and protection of the environment would both be enhanced by the provisions of this bill. The financial ability to respond in a timely manner to these minor emergencies such as water pollution events, may save the expenditure of many thousands of dollars. He noted that the department would continue to use their authority to place the burden of responsibility on the person that caused the problem. This bill provides much needed back-up to the ability to respond to these environmental emergencies, he stated.

Stan Bradshaw, representing Montana Council of Trout Unlimited, testified in support of the bill. Protecting trout fishery from these kinds of pollution events is an important issue. He said this bill would help minimize impacts of pollution activity on fisheries.

Opponents: None.

Questions of the Committee:

Senator Hims1 asked what the range of the fines were.

Mr. Pilcher replied that the Montana Quality Act penalty provisions provide for the agency to seek civil penalties not to exceed ten thousand dollars. He pointed out that each day of violation constituting a separate offense.

Senator Hims1 asked if the person that is involved in the accident does the department sit in judgement and fine him.

Mr. Pilcher (196) replied that the Water Quality Act does not provide administrative penalty authority. The court must be asked to assess any penalties. Normally the issue is resolved through an consent decree between the agency and the responsible party and an agreement reached for an appropriate single penalty amount. The court is then asked to give their blessing to that settlement.

Senator Keating asked what is done with the penalties now.

Mr. Pilcher replied that the law provided for any fines and penalties to be deposited in the state general fund. Agency costs are then replaced to the agency budget and cannot be expended unless the budget amendment is approved.

Senator Himsl asked if the agency had a contingency fund.

Mr. Pilcher replied that the legislature had been reluctant to approve funding for unknown situations. This bill would provide such a contingency account.

Senator Himsl asked if this meant a statutory account.

Mr. Pilcher replied that he did not know whether that would be considered a statutory account.

Senator Keating asked about the incident where the truck broke lose and backed into the lake if that was an accident would they have to pay fines.

Representative Cohen replied that there were no fines assessed in that particular case. The primary concern is always protection of the environment and compliance with the law. In this particular case the company did, after much persuasion, agree to assume responsibility. The problem was corrected and the environmental damage cleaned up.

Senator Keating asked what action was taken to mitigate the damage.

Representative Cohen replied that they used absorbent pads and booms to confine the oil to a small location. The pads were removed and disposed of properly. He said the pads soaked it up like a big sponge and it was taken away before it could spread and contaminate the Whitefish waters supply.

Representative Cohen pointed out that there were provisions for willful and negligent actions and with a corresponding higher penalty amount. He noted that the court would have that discretion in the cases. The law requires compliance regardless of the circumstances but the judge or the court would have some latitude in assessing any fine depending on the circumstances that surrounded that particular event, he said.

Senator Keating clarified that the bill was for a contingency fund in order to deal with certain unexpected events that damage water.

Representative Cohen replied that was correct. He said that having access to a couple thousand dollars or two thousands of dollars immediately to respond to environmental disaster may save the environment and would save the responsible party significate clean-up

costs.

Senator Boylan asked about truck accidents in the Gallatin River if they would be subject to this fine if it was an accident.

Representative Cohen replied that there were many such accidents around the state. He pointed out the particular concern at Whitefish Lake was that it serves as a public water supply for the community of Whitefish.

Senator Devlin asked if these monies were set aside for expenditures in case of a spill such as a trucker, it could be cleaned up then the fines would come later.

Mr. Pilcher replied that this was the idea behind the bill to get it cleaned up and stabilized as soon as possible and then talk about who is responsible and the extent of the liability. He said the main thing was to get it done quickly instead of sitting along side and arguing and all the time seeing all the stuff go on down the Gallatin river or someplace else.

Senator Story asked why each day was a separate offense. It could jack the limit up significantly and be ruinous to a small businessman. He asked if a truck sitting there two or three days before discovery would constitute separate offenses.

Representative Cohen replied that the agency does have some flexibility as the law is written and can ask the court to assess the civil penalties. The intent behind making each day a separate offense is to prod the individual responsible for the pollution to be more timely in cleanup. If it were allowed to continue that damage would continue to mount. He said that an incident such as this would be considered one event. The truck only wrecked once and if an honest effort to respond was being made, the department would not just sit back for a week and then come out and say they had been watching this for a week and now the civil penalty would be seventy thousand dollars instead of one day's violation. Is there as an incentive to facilitate prompt response.

Chairman Story said he could imagine a situation where it could have gone off a cliff in such a fashion that no normal crane in the state could even get to it for two months, in which case a floating crane might have to be shipped in from California.

Representative Cohen replied that many differing situations were encountered. The department attempted to respond to them in a reasonable fashion and take into consideration factors surrounding each incident.

Chairman Story noted that the committee was uncomfortable with statutory appropriations and generally amends the language so it is not a statutory appropriation. He asked if there was any problem with that.

Representative Cohen replied that the goal here was to set up the funding in order to have immediate response and to keep costs as low as possible. The technicalities of how the fund is established and works needs the better wisdom of the members of this committee, he said.

Senator Devlin asked if this funding had been here, how quick could they have responded on a weekend.

Mr. Pilcher replied that they could respond very rapidly. He noted that the department has an emergency response program. He said there was one individual within the Department of Health and Environmental Science, and that assignment rotates among the various staff members, that carry a pager twenty-four hours a day. Direct contact with the emergency communication center at the Dept of Emergency Services is maintained at all times. If they get a call of any nature like this, such as the Highway Patrol comes upon this wreck they immediately contact the Disaster Center, they will contact the individual that is on call and a response will be immediately.

Chairman Story asked if the Governor's contingency fund or supplemental funds could be obtained for such emergencies.

Mr. Pilcher replied that those options are available but the timeliness of getting that approval is the limiting factor. That timeliness limitation would be removed by the provisions of this bill. To get a supplemental is not an easy task. So it is immediate access to funds in order to respond to these environmental problems that is important to the department, he said. The Governor does have those discretionary funds but he must declare the situation to be a disaster before the department would have access to those funds. Those funds have been utilized in other cases where the magnitude of the problem was much greater and did constitute a true disaster.

Chairman Story commented that in the past, JP's have used

their fines to run their office, instead of having a salary. The conclusion has been made that some of those arresting officers are in fact more inclined to make an arrest and get the fines since it pumps up their funds. He asked if the department was interested in doing the same sort of thing.

Mr. Pilcher, replied that they did not however he could see that the perception could exist. If all the fines went back into normal operating budget or retirement funds, people could perceive that enforcement actions would be stepped up. He said it was his opinion that the provisions of this bill have absolutely no bearing on the long established enforcement policy within the agency. He pointed out that there was no incentive since the provisions of the bill capped the funds.

Representative Cohen closed. (775) He said that the major points he would like to make concerning this account is to prevent small events from becoming big events. Big events would end up costing the responsible party more and often it is not anything the responsible party did willfully. These funds would be used to respond to emergency water quality situations when the responsible party can not be found immediately or fails to respond in a timely manner. Many times expenditures of a few hundred or a thousand dollars in a timely manner can significantly reduce the extent of the environmental damage and therefore the cost of cleanup. There are no penalties or fines in this bill, he said.

HEARING ON HB 717

Representative Larry Grinde, House District 30, presented HB 717. He stressed that this bill would enact legislation for agriculture that was far-reaching. He pointed out that this bill would help agriculture, especially the marginal rancher out there or farmer who is having a cash flow problem and help him get back on his feet. This in turn would help main street prosper and create private sector jobs. He pointed out that if twenty percent of the people of the State of Montana that are under the CRP program participate in this, it would put one hundred million dollars into the economy of the State of Montana. HB 717 would give the Board of Investment the authority to bond an agricultural program. He distributed a summary sheet. (Exhibit #1) He explained the Federal CRP program as the Crop Reserve Program. This federal program allows highly erodible land to be held idle. This is bid at so much an acre and the Federal Government pays for this land

on an annual basis. This is the money that is being considered in this bill. The Board of Investments seeks to implement a program that would lend money to farmers who in return would assign their federal Conservation Reserve Payment contracts to the Board. (See Exhibit)

Proponents:

(Tape 1-B)

Dave Lewis, Executive Director of the State Board of Investments, testified in support of the bill. He explained that the program has the potential to put a lot of money into the agriculture community of this state. The program is very successful in South Dakota, he said. The Board of Investments provide bond programs for local governments and schools districts. Bond programs make money available cheaper in a variety of areas in Montana's economy. If risk is eliminated the cost of the capital is reduced. He pointed out that the program is the most important one they have seen and legislation that might be of benefit to the Montana agriculture economy. He said this would be a safe program and provide lower cost capital for the Ag industry.

Mr. Lewis explained that the Board would put the program together to protect the state so there would be no risk for the state. If they buy one of these CRP contracts they will set up bank that will be available to any Ag operator in the state if he wants it. He can sell his contract at a discount to the state the state will buy that contract and take the annual payments from the Federal Government and pay off the bond issue. They're risk is to be sure the contract stays in compliance and there are a lot of safeguards to be sure what they are doing to control that compliance risk and the bonds be paid off. The passage of this bill does not authorize the program. The Board has to sign off on the bond issue. The Board would be very careful to be sure the risks are covered before they sign the bond issue.

David Ewer, bond program officer for the Board of Investments, testified in support of the bill. (257) He pointed out that HB 717 didn't say a thing about CRP and does not mention the Farm Program, however this legislation is needed to accomplish this program. An Economic Development Act, that authorized bond programs to be used for economic development, contains language that allows financing to enhance agriculture. He pointed out that HB 717 would do two things. It would give the ability to allow for refinances and allow statutory authority to pay the cost of monitoring

originating loans. The Board of Investments doesn't have the staff to physically originate the loans for this program or go out and monitor the program on a case by case bases. They will need someone to do it for them. Their intention is to go to the private sector and supply those services. It seemed awkward after contract is negotiated in good faith to require every two years to get reauthorization to reaffirm the contract that is already in place, he pointed out. The federal government does not guarantee that they will appropriate this money every year. Mr. Ewer felt it very unlikely the Federal Government would renege on a multi-billion dollar program. They will tell the bond holder very clearly that he or she buys the bond subject to knowing that this a program in under-penned financially by the Federal payments, the primary security. They are looking at other types of security, bond insurance, letter of credits, anything that will enhance the bond issue. They will try to do anything that will reduce the cost of the bonds and provide more money to farmers.

Mr. Ewer summarized that the Board would try to give the farmer a lump sum loan payment. To do that they will sell bonds, the farmer will assign his loan payment to the Board of Investments and the Board will pay the bond. There will be a first mortgage in place. They will protect their out-of-pocket costs. There will be a capitalized reserve in the program to pay for compliance costs, in case a farmer is out of compliance there will be money in hand to correct it. The requirement of the CRP is to make a contract with the Federal Government that says, I will not grow grain on it but will keep it in native grass, keep livestock out of it. If livestock do go in and graze the land there will be a penalty. The CRP payment is cut off if the cattle do graze the land. They want to prevent this from happening so that is why the contract monitor is in place to get the cattle off. The reserves are for out-of-pocket costs. Each participate will have their own reserve and that reserve will be hit first and then to the first mortgage.

Jack Gunderson, a retired farmer, testified in support of the bill. (418) He said that this legislation would not do anything for him but he see the great potential for younger farmers, farmers with debt problems. He felt this would pump a great deal of money into the state at a needful time.

Opponents: None

Questions from the Committee:

Senator Aklestad commented that he was concerned about what would really be accomplished with this program. On the first mortgage the farmers in financial straights are probably with the FHA and are borrowed up to at least three times over the amount of average contract, basically about ninety-three thousand dollars. Will a bank help, he asked.

Representative Grinde said that he had a concern here to and agrees that some are too far in debt and cannot obtain first-in-line. They are looking at the man that has the cash flow problem, the operating problem where he can be made solvent and he can continue in agriculture.

Senator Story asked if the contract would have the original producer liability or do you have it when you buy it.

Representative Grinde said that it is like a buy-out contract but there is a very important distinction, it is a loan program. As far as the Feds are concerned the Board of Investments are liable. The Board will contractually make the borrower liable with a loan.

Senator Aklestad asked if Representative Grinde had ever seen one of those CRP contracts. Who assumes all of the appendixes and the appendixes of this contract, the farmer or the State of Montana, the Investment Board.

Representative Grinde replied that all will go back on the farmer.

Senator Aklestad asked if there were a cap of fifty thousand dollars under CRP or any limitation.

Representative Grinde said that the federal government specifically exempts state government from the fifty thousand dollar. State Land falls under this too.

Senator Jenkins if state land could be under the CRP program.

Dave Lewis said he did not know.

Representative Grinde said that the Department of State Lands had said that they will not participate in this program.

Senator Jenkins asked if leases on state land could be put into CRP.

Senator Story noted that the land owner has to sign off. They have to sign off on someone who is selling that CRP contract and the state won't allow any of their lessees to enroll in this program.

Senator Story asked if this would allow this money to be used to buy more land.

(Tape 2-A)

Senator Tveit asked who would be responsible if cattle get on the land. He pointed out that the penalties were great. It is 3% of the annual pay for the first time, the second time it is 6% of the annual pay, and the third time it is confiscation by the federal government.

Mr. Ewer responded and said the Board of Investments is responsible for making sure that the payments come in. Compliance through the loan payment will make the farmer responsible.

Senator Tveit commented that there were some farmers that would take advantage of this program to their benefit. He pointed out that they could tie it to Chapter 12 bankruptcy. If the program is misused then the state will be in the land business.

Senator Keating asked about the security of the bonds.

Mr. Ewer replied that the security of the bond was the CRP payment to the Board of Investments. He pointed out that other mechanisms were being looked at. (200)

Senator Keating asked about the subaccounts. If the farmer flounders could money be taken out of the reserve to service the debt. He asked if the Board was going to replace the bank as the advisor.

Representative Grinde responded that the reserve is set up for compliance alone to make sure the farmer goes along with regulation. Any money involved goes directly from the federal government to the state government. The reserve insures compliance with the program. If the farmer is out of compliance then his reserve is used to make sure he comes within compliance.

Senator Keating asked if the contract had any stipulations where the borrower could not become a non-resident after making the loan. He asked if there were anything to prevent the borrower from taking the cash and leaving the obligation.

Mr. Ewer said the program parameters require that money is

used for Montana agriculture related purposes. There will be a loan agreement, a contract.

Senator Devlin (384) asked if the land must be repossessed, would this fall under the same laws as other banking regulations that say they have to get rid of it in five years.

Representative Grinde said he did not know if this would fall under banking regulations. (401) He said it was his intention, if the state takes possession of the land, that it be resold to agricultural units.

Representative Grinde closed. He answered some of the concerns (441). He pointed out that when there is a debt buydown it will save interest money for a cash flow. He said this was an optional program, there was no cost to the state, no FTE's involved, and no additional money will be needed from the state. The money will be provided by the federal government. An evaluation committee was set up with two people, plus the Board of Investments, as the program progresses. When the program is implemented it will help the agricultural business, agricultural cash flow and create private sector jobs.

HEARING ON HOUSE BILL 760

Representative Tom Hannah, House District 86, presented HB 760. (540) He explained that the bill would fund an economic analysis for the specific purpose of off-stream storage. This would be an additional reservoir water for various uses, including recreation. He noted that this was in regards to Pick-Sloan funding. He discussed other states that have accessed these federal dollars for projects and the possibility of Montana gaining this fund source. He said the economic analysis which would be done by Eastern Montana College would have the study ready for next session's legislature. At that time, the Legislature could consider many types of projects, offstream storage, irrigation projects, and others that fall into the Pick-Sloan Program. The program is currently in place and being used by other states. He pointed out that drought has been a serious problem in the very recent past and Montana needed to develop a water plan. Montana did not have the resources to develop such a plan unless access is found to Pick-Sloan funding. The economic analysis is the first step towards the plan to develop Montana water and use federal dollars to do that.

Proponents:

Representative Bill Glaser, representing Yellowstone County, testified in support of the bill. He explained that a major commitment was made in 1944 to the upstem states to reimburse them for the loss they had in order to have flood control downstream. This is known as the Pick-Sloan Act. An economic analysis was done in 1958 on the Pick-Sloan commitment on the upstem and downstem basin. This analysis is still used to figure the value of hydroelectric power that was promised to the upstem states. He pointed out that North and South Dakota, in order to get back some of the money that was owed them, did an economic analysis done on each state. This document and several other tax documents were put together and determined that the federal government had made a commitment in so many dollars. The Bureau of Reclamation has done some quiet numbering on this and they feel that the commitment to Montana is somewhere around \$8 billion (715). North and South Dakota used their analysis as a tool to receive worth that was given to them in a commitment in 1944.

Mr. Glaser said that Eastern Montana College was an ideal choice for the economic analysis. The Bureau of Reclamation office is located in Billings. The Dean of Business, Mr. Andre Corheur, would be working on the analysis. He noted that there would be some additional monies from private sector and the federal government that would become available.

Opponents: None

Questions of the Committee:

Senator Jergeson (794) asked about the \$7,500 appropriation whether it was from the general fund or from either water development special revenue account or renewable resource development account. He asked if there were some errors here.

Representative Hannah said there were some errors. He had a proposed amendment to the bill (Exhibit #2). This would make it a \$7,500 general fund appropriation.

Senator Bengtson asked what documents would be used to come up with the economic analysis.

Ken Heikes, Eastern Montana College, said that this internal document was used by the federal government and is generally not circulated. It would be used in Andre

Corheur's research. The other pieces of the research would be the taxable value of the inundated land and the productivity of the inundated land.

Representative Hannah pointed out that Senator Conrad Burns was on the water and energy committee. He said that committee was the first step for federal government projects. The state of Montana has the influence to get those types of funds.

Senator Tveit commented that the Pick-Sloan had potential and the off-stream flow was important. He asked the size of this potential was.

Representative Glaser replied that the federal government, Bureau of Reclamation, had been changing directions. Emphasis in 5 or 6 years may not be off-stream storage but maintenance on the existing facilities.

Senator Devlin asked if the DNRC should be involved in the planning stage.

Representative Glaser replied that this was not a project but an economic analysis.

(Tape 2-B)

Representative Hannah pointed out that there was a lot of money being spent on water projects by the federal government and Montana is noticeably absent. He closed.

HEARING ON HOUSE BILL 469

Representative Tom Hannah presented HB 469 for Representative Addy. (148) He explained that the bill would appropriate money a continuation of air quality monitoring in Yellowstone County. He said this is a critical issue in cleaning up the airshed in Yellowstone County and this is the states share.

Proponents:

Mr. Jeffrey Chaffee, Chief of the Air Quality Bureau of the Montana Department of Health and Environmental Sciences, testified in support of HB 469. He presented testimony explaining the departments role in the Billings air monitoring study (See Exhibit #3).

Carlo Grey, representing Montana Power Company, (294) testified in support of the bill. She said she was speaking on behalf of John Lahr who could not be

present. This cooperative effort by BLATQC and the state has shown success and been valuable. The concern if the state ceases to be active and involved in this project on an on-going basis, is that the project would lose its credibility.

Kay Foster testified on behalf of Jim Scott, in favor of the bill. Jim Scott serves as secretary treasurer of the Billings Laurel Air Quality Task Force. She pointed out that it is very important to have this level of funding from the state joined with private industry to maintain the integrity of the reports.

Mary Westwood, General Counsel for Montana Sulphur and Chemical Company, spoke in favor of the bill. She said the company was a member of BLATQC. This has proved to be a very good experiment with industry, the state and local citizens working together to try to solve a serious air quality problem in Billings. The group arose out of serious legal complications involving air quality. The idea was to get the lawyers out of it. The data gathered is very valuable in moving towards solutions.

Harold Ude, representing Cenex, testified in support of the bill. He said that Cenex is a member of BLATQC. They feel that this is an important program and that the state should not pull out now.

Representative Kelly Addy, chief sponsor of the bill, appeared in support of the bill. He said the bill is asking that the program be refunded for the next biennium. He said it was important to resolve the dispute in Yellowstone County.

Questions of the Committee:

Senator Boylan asked if the area could take care of their problem without the state appropriating this money.

Representative Addy said the city of Billings and Yellowstone County did not decide to relax the air quality standards in the area. The Legislature decided to do that. The Legislature turned down local option amendments. If the Legislature relaxes the air quality standards then they should be willing to monitor the consequences of that policy (500). This is modeled to be used elsewhere.

Senator Bengtson pointed out that this did have an economic impact on the state as well and was a statewide concern.

Senator Himsl asked who provided for air monitoring in other cities in the state.

Mr. Chaffee replied that the air quality is monitored statewide. He said the reason this is not part of the base budget is because the department resources have been committed to other priorities, such as Western Montana. The EPA provides 2/3 of the funding for that group. The Billings Air Monitoring Unit is based on the appropriation given to the department by the last Legislature which provided one FTE to run the monitoring sites and be a participant in the BLATQC process. He noted that if this funding is lost then the ability to continue on would be jeopardized.

Senator Himsl asked if this should be considered in the base budget.

Mr. Chaffee replied that there was an attempt to put it in the planning process. But the fact that it was a local initiative, had come from the area where it had been provided special funding by the Legislature before, it was thought that it had to be reviewed again by the Legislature this year.

Jim Scott, from Billings, arrived late and was able to testify in support of the bill. He said he was a banker and businessman and in 1987-88 was the chairman of the board of the Billings chamber and represented the chamber of the establishment of the Billing-Laurel Air Quality Technical Committee. He also served as treasurer of BLATQC in 1987. He said BLATQC was the most recent effort to address the SO₂ levels and their effect on air quality on Yellowstone Valley. Adding value to resources has created thousands of jobs, millions of dollars of income taxes and millions of dollars of secondary or related economic activity. While it has made significant economic contribution to the region and the state, it has had other not so desirable bi-products. This has resulted in high emissions of SO₂ and the situation has been a source of conflict in the community. (717) Information gathered by the ambient air monitoring effort conducted by the state and BLATQC makes a major contribution to determining if and where these activities can be cited. He said it is critical for the BLATQC effort to continue because it is making a significant, cost effective contribution to the understanding of SO₂ air quality issue in Yellowstone valley. That understanding will create solutions with will improve the overall environmental quality while protecting the

existing industrial base. It also improves the economic activity of the area and the state by contributing data by a potentially limiting factor degrading our air quality. It is important statewide in promoting the collaborative model in addressing environmental concerns that is more effective and less costly than the litigative model of the past. For BLATQC to be effective, the state must continue to be an active partner.

Senator Aklestad asked if there was a match from the federal government under air quality.

Mr. Chaffee explains that there was a match requirement to get the federal grant regarding the state air program. This is viewed, however, as a special one time appropriation from the Legislature to do special study so it is not tied to that match requirement (887). The match requirement is better explained as a level of effort requirement, he said.

Representative Addy closed.

ADJOURNMENT

Adjournment At: 11:36 a.m.



PETE STORY, Chairman

PS/dt

FCS412

DAILY ROLL CALL

FINANCE AND CLAIMS

COMMITTEE - 1989

DATE 4-12-89

NAME	PRESENT	ABSENT	EXCUSED
Senator Gary Aklestad	✓		
Senator Loren Jenkins	✓		
Senator Esther Bengtson	✓		
Senator Matt Himsl	✓		
Senator Paul Boylan	✓		
Senator Tom Keating	✓		
Senator Judy Jacobson	✓		
Senator H.W. "Swede" Hammond			✓
Senator Pat Regan	✓		
Senator Larry Tveit	✓		
Senator Fred Van Valkenburg	✓		
Senator Dennis Nathe	✓		
Senator Greg Jergeson	✓		
Senator Gerry Devlin	✓		
Senator Richard Manning	✓		
Senator Sam Hofman	✓		
Senator Lawrence Stimatz	✓		
Senator Ethel Harding	✓		
Senator Pete Story	✓		

BACKGROUND INFORMATION TO HB717

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 1

DATE 4-12-89

BILL NO. 717

Board Goal

The Board of Investments (the Board) seeks to implement a program that would lend money to farmers who in return would assign their federal Conservation Reserve Payment (the CRP) contracts to the Board. The Board would obtain the cash for the program by issuing bonds which would be repaid from the annual federal CRP payments. Implementing such a program requires amending the Economic Development Act which is the purpose of HB717. Further details on the federal CRP program and the anticipated structure of the Board's bond program follow.

Background of Federal Conservation Reserve Program

The Conservation Reserve Program, administered by the Agriculture Stabilization and Conservation Service (the ASCS) of the United States Department of Agriculture (the USDA), was authorized by Title XII of the United States Food Security Act of 1985 and is governed by regulations contained in 7.C.F. Part 704. CRP was established in order to conserve and eliminate over production on forty to forty-five million acres of highly erodible land across the United States. Under this program, a potential participant may bid his land under federal erodibility guidelines established by the Soil Conservation Service (the SCS) of the USDA. If the bid is accepted, a contract is entered into between the participant and the Commodity Credit Corporation (the CCC) of the USDA.

The state of Montana and other states have been authorized to be successors in interest to CRP contracts without dollar limitation; such authority has been approved through a standard memo of understanding and successor in interest agreement approved by the USDA.

The following sets forth some of the terms of the CRP contract between the CCC and the CRP participant.

The CCC agrees, subject to the availability of funds, to:

- 1) pay the participant an annual rental income equal to the accepted per acre bid price multiplied by the number of eligible acres placed in the CRP (CRP payment) during the period of the contract;
- 2) share the cost of establishing eligible conservation practices with the CRP participant; and,
- 3) provide the CRP participant with the technical assistance necessary to carry out the contract.

The CRP participant agrees to:

- 1) place into the CRP specified eligible acres of cropland and to implement a conservation plan in accordance with scheduled completion dates for a period of ten crop years;

Ex #1
4-12-89

- 2) establish and maintain a permanent vegetative cover to reduce erosion;
- 3) not allow grazing, harvesting or other commercial use of forage from the CRP land and not produce any agricultural commodity on converted wetland or highly erodible land; and
- 4) file required reports to the local ASCS office.

After CRP participants have agreed to implement the approved conservation plan, annual CRP payments will be made after October 1 of each year of the contract period in the form of cash, commodity certificates or in any combination of payments established in accordance with 7. C.F.R. Part 77.

If the CRP participant breaches the CRP contract, the CCC may terminate the CRP contract, in which event the CRP participant will forfeit all rights to payments under the CRP contract, refund all payments previously received together with certain specified amount of interest, and pay specified liquidated damages.

If a new owner or operator purchases or obtains the right and interest in or right to occupy the CRP lands such new owner or operator may become a participant in the CRP contract with the same terms, conditions and obligations.

Monitoring and Enforcing CRP Compliance

The approximately 49 ASCS offices within the state are responsible for disbursing CRP payments and monitoring compliance in their respective counties. ASCS employees report to and their operations are administered by both state and county Agricultural Stabilization and Conservation (ASC) committees. State ASC committees are composed of three members who are appointed by the Secretary of Agriculture. A county ASC committee is made up of three regular members, each of whom serves a staggered three-year term. County ASC committee members are elected by eligible farmers in the local administrative area of the county. Generally, these committees meet once a month or as determined necessary.

The monitoring conducted by ASCS offices entails on-site inspections of acres enrolled in the CRP to ensure that the CRP participant has complied with the CRP contract terms and conditions. Approximately 15 percent of all CRP farms are randomly selected and spot-checked for compliance.

CRP participants are required to file an annual acreage report in their county. County ASCS offices use local newspapers, radio and monthly newsletters to alert CRP participants of their filing requirement on or before the established final reporting date for the county, generally no later than July 15. In addition, CRP participants are notified by

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newsletter of specific measures which they must carry out to ensure that their CRP acres are properly maintained annually and throughout the life of the CRP contract. These news releases generally are mailed two to three weeks before field inspections begin.

The inspections are part of a process intended to ensure that violations are detected early and to encourage correction; they are not designed to find ways of removing CRP participants from the CRP. If a farm inspection finds the CRP participant in violation, the violation is reported to the county ASC committee and a notice to take corrective measures is sent to the CRP participant. The county ASC committee normally gives the CRP participant 15 days from the date of notice to correct the violation. Based on the nature of the violation and corrective measures taken, the ASC committee may or may not charge the CRP participant a maintenance default penalty. If, for example, a CRP participant corrects a weed problem brought to his attention, he may not be charged a penalty; if, on the other hand, the CRP participant has harvested a portion of his CRP fields, it is likely he will be assessed a penalty. The amount of the penalty can either be paid directly by the CRP participant, or deducted from his CRP payment; it will vary according to the gravity of the violation, as a proportion of the number of CRP acres in violation, and as a percentage of his annual CRP payment. The CRP participant remains ineligible to receive any portion of his CRP payment until he brings his CRP acres into compliance.

Any producer adversely affected by a county ASC committee's determination has the right to appeal that decision to the state ASC committee, and if dissatisfied with the state committee determination, to the Deputy Administrator, State and County Operations, in Washington, D.D.

Through the Board's position as successor in interest, the Board will be in a position to assure CRP contract compliance as further described herein.

Compliance Record in Montana

The CRP has been in operation since 1986. In Montana, over 6,000 CRP contracts are in effect involving over 2.2 million acres. There have been virtually no compliance problems as the data below show.

*

	<u>Total CRP Contracts</u>	<u>% of all CRP Contracts</u>
Total Number of 1st Time Violations*	48	0.80%
Total Number of 2nd Time Violations*	7	0.10%
Total Number of 3rd Time Violations*	1	0.01%
Total Number of Terminations	<u>3</u>	<u>0.04%</u>
	59	0.90%

* Where a penalty was assessed

Source: MT State ASCS Office

Appropriations for CRP

CRP is a line item in the overall USDA budget that is presented through the Office of Management and Budget to Congress. In fiscal years 1986 and 1987, USDA was given authority to fund CRP through transfers from the CCC, which has a \$30 billion borrowing authority from the U.S. Treasury. In fiscal years 1988 and 1989, funds for CRP came from congressional appropriations. According to the national ASCS office, Congress has never failed to appropriate funds annually for any long-term USDA program. Should such failure or delay in appropriation occur, ASCS has the option of making CRP payments in commodity certificates, provided they are sufficiently backed by grain held in USDA storage. Any delay in appropriation will not result in termination of CRP contracts by the USDA.

CRP Enrollment in Montana

Summary data through the seventh CRP sign-up which does not include the sign-up ending in March, 1989, is shown below. Montana currently has 2,264,770 acres in CRP through 6,228 contracts. At approximately \$37.50 per acre, total CRP payments in Montana now exceed \$84,000,000 annually. The average contract covers about 364 acres and \$13,000 in annual payments.

<u>Top 10 CRP Counties</u>	<u>Total Acres</u>	<u>% of Federal Limit</u>	<u># of Contracts</u>	<u>Average Size of Acres</u>
Blaine	91,390	66.7	208	439
Chouteau	128,759	40.5	301	428
Daniels	142,501	97.4	401	355
Hill	97,646	32.7	254	384
McCane	103,889	76.1	233	446
Phillips	126,531	99.7	239	529
Roosevelt	95,114	48.8	355	268
Sheridan	113,158	65.3	420	269
Toole	110,851	63.7	261	425
Valley	139,978	70.9	341	410

These ten counties have collectively 1,149,817 acres enrolled in the CRP program and comprise 51 percent of Montana's total enrolled CRP acres.

A table showing CRP acres in all counties is presented in Appendix 1.

Background to HB 717

HB 717 needs to be viewed in context with the entire law it amends, the Economic Development Bond Act of 1983 (the Act). This act enables the Board to promote and foster economic development by using various types of bond mechanisms. For example, the Board can issue bonds that are



exempt or subject to federal income taxes. The Board's bonds to finance its CRP program would be subject to federal income taxes (but not Montana state income taxes). The Board can issue bonds that have no backing of the state's credit; these bonds are called stand-alone bonds because they have no financial backing of the state. The Board can issue bonds that are indirectly backed by the state by issuing moral obligation bonds which provide that the Governor request the Legislature to restore a deficiency in the moral obligation bond's debt service reserve fund. The Board's bonds for its CRP bonds would be stand-alone bonds and would not be backed by the state and the state would not be liable for the debt service.

The Act establishes a clear legislative intent as to the public merits of economic development and prescribes the boundaries, limitations, and responsibilities the Board is subject to. The Board has, through the current Act, almost all the authority and prudent limits necessary to effectuate a CRP bond program.

HB 717 addresses two areas in which current law needs additional flexibility. First, HB 717 expands the definitions of "project" to include the repayment of debt and the use of loan funds for farm-related working capital. While the current law clearly allows agricultural projects to obtain financing under the Act, the original Act was written somewhat within the context of federal law governing federally tax-exempt bond users which prevents the use of refinancings and working capital. Given that the Board will use federally taxable bonds, the current limitations seem from a policy view, not only unnecessary, but too limiting for optimizing the program benefits to farmers.

The second area for legislative authorization is the need to defray ongoing operational costs such as the cost of loan servicing. HB 717 provides for ongoing statutory authorization to defray operation costs. The magnitude or complete dimension of such costs are not known at this time.

All costs will be borne by the CRP program and not through any other Board or state source.

Board Parameters, Benefits and Potential Program Size:

The Board's program is a loan program, not a straight sale of contract. Farmers remain responsible for federal CRP compliance. The proceeds are treated as a loan by the IRS (a favorable point). The use of the proceeds is limited to buying, refinancing or operating the farm.

The benefits of the program are outlined below:

↓
NOT FREE MONEY

*

<u>Remaining CRP Contract Life</u>	<u>Minimum % of CRP Payments in Up-Front Cash</u>	<u>% Goal of CRP Payments in Up-Front Cash</u>
10 yrs	55%	60%
8 yrs	62%	67%
6 yrs	68%	73%

- A minimum amount of up-front cash will be contractually assured, if not realized, participation not required
- The amount of up-front cash depends heavily on market rates
- (The Board will do everything possible to maximize up-front cash to farmers) in concert with providing sufficient safety to bondholders.



Potential program size:

- 2.3 million acres CRP @ \$37.50 = \$800+ million total cash flow
- 55% capitalization = \$440 million in bonds
- ?- 25% program utilization = \$100 million program size.

Preliminary Program Structure

While subject to change, the Board's CRP program will have the following characteristics:

- 1) Any CRP enrollee will be eligible to participate in the Board's CRP bond program providing that such enrollee has not previously been in violation of the CRP contract (additional credit evaluation guidelines are being considered, no final decision has yet been made). ✓
- 2) The Board's program is a loan program, not a straight sale of the CRP contract.
- 3) CRP contracts will be assigned to the Board subject to recourse.
- 4) Proceeds are to be used to refinance existing farm debt, acquire property or enhance working capital.
- 5) During the marketing and application phase, applicant may be subject to a commitment fee.
- 6) Assigning a portion of the acreage subject to an existing CRP contract will be allowed to give participants the flexibility in

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obtaining the cash amount needed from loan proceeds. However, CRP contracts must be assigned for the full term of their remaining years.

- 7) A first mortgage on the CRP acreage and an easement and other covenants will be required giving the Board and its agent the right to assure program compliance. (1) PROTE STAFF
- 8) Funds which will be held in reserve through a 2 1/2 percent bond capitalization and a 2 1/2 annual hold-back mechanism will be used to pay for monitoring program compliance and to pay for the costs of enforcing program compliance. Some rebate mechanism to participants who are in compliance is anticipated. (2) DEC BY D
- 9) Approved SCS conservation program must be established. (1) 1990-ANY GOV PROGRAM
- 10) For participants whose CRP land has not established a satisfactory cover as per the SCS conservation plan, partial loan proceeds will be held in escrow to cover reseeding and other compliance efforts until cover is established.

Preliminary Bond Structure

The following is a preliminary bond structure which is subject to change, however, this is the Board's current position on these points.

- 1) Issuer: Montana Board of Investments.
- 2) Amount: The initial issue is estimated to be approximately \$10,000,000 to \$20,000,000. The total amount of bonds will vary depending on the amount of CRP payments assigned to the Board by participating farmers.
- 3) Form of Bonds: Taxable serial bonds issued in registered form in minimum denominations of \$5,000.
- 4) Maturities: Bonds will mature annually on March 1, beginning March 1, 1990 and running until the last payment is received under CRP contracts to participating farmers (not to exceed 10 years). The average maturity of the issue is estimated to be approximately six years.
- 5) Interest Rate: Bonds will bear interest at a fixed rate according to a serial maturity schedule with principal paid on March 1st of each year.
- 6) Interest Payment Dates: Bonds will be sold as at par value, with semi-annual interest payable on March 1 and September 1 of each year. A certain amount of capitalized interest may be necessary as part of the bond issue.

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- 7) Source of Payment: Bonds will be special limited obligations of the Board payable from qualifying loans originated through a loan originator. These loans, in turn, will be payable from CRP payments made by the USDA under contracts with participating farmers. The Board will be designated as the recipient of 100 percent of the CRP payments now received by participating farmers under program agreements and will assign its rights to those payments to a trustee for the benefit of bondholders.
- 8) Security: Bonds will be secured by the recourse loans made to participating farmers. Loans themselves will be secured by (a) the Successor in Interest Agreements designating the Board as recipient of 100 percent of any CRP payments made to participating farmers (see Source of Payment above) and (b) all funds on deposit with the trustee under the indenture including reserve funds. The loan agreement will require participating farmers to take all steps necessary to ensure continued compliance under CRP.
- 9) Sizing of Bonds: The issue would be sized as the maximum amount of bonds which could be supported by 97 1/2 percent (due to the anticipated 2 1/2 percent compliance holdback mechanism) of the CRP payments of each farmer.
- 10) Subordinate Series of Bonds: The bond issue would be divided into two series. Series A bonds totalling 90 percent of the issue would have senior lien on all program revenues and funds. Series B bonds totalling 10 percent of the issues would have a subordinate lien to the Series A bonds and would likely be purchased by the Board.
- 11) Reserve Fund: A reserve fund would be created equal to 2 1/2 percent of the bond amount. This reserve would serve as a source of funds to (a) meet any compliance costs and (b) to make any payments of principal and interest as necessary.

The 2 1/2 percent excess payments would be available to be added to the reserve each year. A minimum reserve level of 2 1/2 percent of the bond amount would be set and if maintained, the 2 1/2 percent excess would be returned to the farmer on an annual basis. Interest earnings would accumulate and remain in the reserve fund. Any funds remaining in the reserve at the end of the program will be disbursed on a pro-rata basis to farmers in compliance.

Individual escrows would be set aside for farmers from loan proceeds which would be released when the SCS determined that grass cover had been established.

- 12) Compliance with CRP Contracts: The Board would be responsible for insuring compliance under the CRP contracts and would monitor the acreage participating in the program. CRP acreage is monitored for compliance by the ASCS through its offices in each County.

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The ASCS audits acreage and imposes fines and penalties for acreage which is out of compliance.

- 13) Memorandum of Understanding: The program would operate in accordance with a Memorandum of Understanding entered into with the CCC.
- 14) Loan Originating and Contracting Monitoring Agreements: The Board anticipates entering into loan origination and contract monitoring agreements with private sector entities to assist in originating loans and perform monitoring and correction functions.

Loan Originator and Contract Monitor

(1) PRIVITIZATION - CREATES JOBS
(2) DOUBLE COMPLIANCE - ASCS PRIVATE

The Board intends to employ the services of both a loan originator and a contract monitor. The loan originator would accept and process loan applications, be available to explain the program and originate approved loans to be funded through a Board bond sale. The contract monitor would monitor CRP compliance, and take corrective compliance action as needed. The Board has requested loan originator/contract monitoring services from a number of interested parties and will notify the general public via a legal notice that a request for a proposal for such services is welcomed by the Board.

Timetable , Dec 1, 1989

- 1) Design Stage: January-June, 1989
 - a) Finance Team assembled
 - b) Roles of loan originator and contract monitor defined
 - c) Program structure finalized
 - d) loan originator and contract monitor hired
- 2) Marketing and Program enrollment: July-September, 1989
 - a) Board and Servicer market CRP program
 - b) Loan originator accepts & processes applications
- 3) Funding of Loan Closing: October-December, 1989
 - a) Establish cycle I cutoff date, approx. Sept. 1
 - b) Size bond issue to fund cycle I participants
 - c) Sell bonds
 - d) Lend bond proceeds to farmers
 - e) Fund reserves
 - f) Pay bond and program costs
- 4) Repeat process 2 and 3 indefinitely

5) Contract Monitor

- a) Begins compliance efforts after funds lent to farmers
- b) Take corrective action as necessary

Points of Special Interest THINK TANK SESSIONS -

In discussing a Board CRP bond program with legislators, the farm community, and other interested parties, the following questions of special interest arose and while not definitive, answers and responses are presented below:

- BIGGEST CONCERNS**
- 1) The Board plans to take a first mortgage on CRP acreage land; what's to prevent the state from owning significant amount of agricultural land as a result of foreclosure?
- (1) POSSIBLE
(A) RECEIVE PAYMENTS
(B) LAND TO SELL

The Board is concerned about protecting the annual CRP payments. The Board will take all possible steps to preserve the payments and recover compliance enforcement costs. The Board will sell foreclosed land only to bona-fide agricultural operators.

- 2) How is the Board going to record mortgages on applicable CRP acres that presently may not be adequately described for a mortgage filing?

It is anticipated that the Board would take a mortgage on the next recordable size of acres over the particular CRP acres.

- 3) Many potential users of the Board's CRP bond program may already have a mortgage or other lien on their CRP land; how will the Board treat such requests?

Participants will be required to obtain subordinated positions or partial releases from such liens. It can be expected that some lienholders may demand loan paydown or that loans be made current before such subordination or release is given.

- 4) Many different people may be a party to a single CRP contract; how will the Board treat such parties?

Land owners will have to give their consent to assign their share of a CRP contract to the Board; tenants, if desiring to participate in the Board's program, would also have to assign their positions.

- 5) Has the tax treatment of the Board's program been finalized?

A private letter ruling has been issued by the IRS for South Dakota regarding their program. It is a standard practice to rely

- (1) LOAN
(2) NO T. ON CUR. SUM
(3) PAY ENRZY.

on such a letter ruling when the fact situation is the same as it will be in the Montana program. State income tax treatment is currently being researched.

- 6) Who bears the financial risk associated with the Board's CRP bond program?

Bondholders will bear the risks of government nonpayment, and payment interruptions due to noncompliance. Such risks must and will be clearly stated in the offering statement. The bonds would be revenue bonds of the Board and payable only through the payments contained in its CRP program. It is anticipated that the Board as an investor of funds will be asked to buy approximately 10 percent of the CRP bonds on a subordinated basis, i.e., paid concurrently but directly after nonsubordinated bondholders. The options for bond issuance and letter of credit coverage is being actively pursued by the Board and will be obtained if available and demonstrably cost effective.

OVERVIEW

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ESTIMATED UPFRONT LOAN AMOUNT NET OF ALL COSTS
\$10,000 ANNUAL CRP PAYMENT

<u>Bond Rate</u>	<u>8 Payments Remaining</u>	<u>9 Payments Remaining</u>	<u>10 Payments Remaining</u>
9%	50,664	54,436	57,821
10%	48,922	52,403	55,499
11%	47,273	50,488	53,321
12%	45,712	48,682	51,278

(1) DISCOUNTED RATE - CANT BE DETERMINED - INT. P.
 (2) ENTER PROGRAM - GUARANTEE - BOTTOM WILL BE

NOTE: A portion of loan proceeds may be required for capitalized interest depending upon the timing of the bond closing.

Interest Rate Calculation

Estimated Interest Rate on Loan

Bond Rate	Variable
Costs of Issuance	.60%
Loan Origination Fees	.35%
Compliance Monitoring	.25%
Trustee Fees	.05%
Credit Enhancement Fees	.25%
Annual Hold Back	.50%
Reserve Fund	.44%
Total	Bond Rate - 2.44%

NOTE: The annual hold back and reserve fund would be returned to farmers if not required by the program.

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Appendix 1

CONSERVATION RESERVE PROGRAM CUMULATIVE TOTALS

COUNTY	25% CROPLAND	SIGNUPS 1 THRU 6		SIGNUP 7		TOTALS	
		Acres	Contracts	Acres	Contracts	Acres	Contracts
Beaverhead	32,225	1,678.8	5	1,417.1	2	3,095.9	7
Big Horn	117,125	16,786.7	35	428.7	2	17,215.4	37
Blaine	137,075	81,348.1	174	10,042.1	34	91,390.2	208
Broadwater	37,850	23,643.0	46	1,740.4	7	25,383.4	53
Carbon	37,350	11,406.7	54	2,648.8	2	14,055.5	56
Carter	40,150	37,142.2	104	4,268.5	9	41,410.7	113
Cascade	118,150	54,560.3	201	5,431.5	22	59,991.8	223
Chouteau	318,125	113,904.4	261	14,854.5	40	128,758.9	301
Custer	31,200	20,448.8	52	1,964.6	7	22,413.4	59
Daniels	146,275	134,623.3	379	7,877.3	22	142,500.6	401
Dawson	116,100	49,271.9	154	6,741.2	32	56,013.1	186
Deer Lodge	3,825	0.0	0	0.0	0	0.0	0
Fallon	67,198	60,601.2	192	3,287.3	12	63,888.5	204
Fergus	168,800	59,697.1	178	5,378.0	24	65,075.1	202
Flathead	27,100	10.0	1	0.0	0	10.0	1
Gallatin	70,075	7,834.0	21	1,645.1	4	9,479.1	25
Garfield	68,800	51,549.5	112	3,437.4	9	54,986.9	121
Glacier	123,525	50,698.0	119	1,729.3	8	52,427.3	127
Golden Valley	34,525	33,789.1	92	818.6	3	34,607.7	95
Granite	9,200	0.0	0	0.0	0	0.0	0
Hill	298,450	73,054.9	189	24,591.6	65	97,646.5	254
Jefferson	13,550	5,745.6	18	31.2	1	5,776.8	19
Judith Basin	82,850	17,411.9	57	2,441.1	6	19,853.0	63
Lake	51,400	0.0	0	229.1	1	229.1	1
Lewis & Clark	21,475	7,803.3	26	705.1	3	8,508.4	29
Liberty	150,125	59,848.9	138	11,900.6	29	71,749.5	167
Lincoln	3,325	0.0	0	0.0	0	0.0	0
McCone	136,575	84,492.2	197	19,397.1	36	103,889.3	233
Madison	26,850	9,666.0	29	0.0	0	9,666.0	29
Meagher	18,425	7,219.9	23	0.0	0	7,219.9	23
Mineral	1,525	0.0	0	0.0	0	0.0	0
Missoula	12,775	70.0	1	23.6	1	93.6	2
Musselshell	33,999	32,483.6	72	1,298.4	8	33,782.0	80
Park	31,975	9,036.8	27	1,291.5	5	10,328.3	32
Petroleum	21,356	15,130.8	30	2,634.2	7	17,765.0	37
Phillips	126,850	117,579.4	220	8,951.3	19	126,530.7	239
Pondera	146,550	29,539.8	108	1,559.1	12	31,098.9	120
Powder River	40,150	16,989.8	49	4,223.1	11	21,212.9	60
Powell	14,825	0.0	0	0.0	0	0.0	0

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COUNTY	25% CROPLAND		SIGNUPS 1 THRU 6 Acres Contracts		SIGNUP 7 Acres Contracts		TOTALS Acres Contracts	
	Acres	Contracts	Acres	Contracts	Acres	Contracts	Acres	Contracts
Prairie	35,025		18,082.8	57	3,309.4	5	21,392.2	62
Ravalli	24,800		2,024.1	9	283.5	1	2,307.6	10
Richland	120,200		36,298.7	128	14,692.4	45	50,991.1	173
Roosevelt	194,875		77,936.1	300	17,178.1	55	95,114.2	355
Rosebud	45,275		31,557.3	43	10,141.2	12	41,698.5	55
Sanders	12,525		1,238.4	2	0.0	0	1,238.4	2
Sheridan	173,400		101,963.4	369	11,194.7	51	113,158.1	420
Silver Bow	2,550		0.0	0	0.0	0	0.0	0
Stillwater	61,900		53,908.1	144	4,988.6	12	58,896.7	156
Sweet Grass	23,525		3,255.4	14	123.1	2	3,378.5	16
Teton	138,100		64,026.7	203	4,153.4	23	68,180.1	226
Toole	173,900		89,451.6	208	21,399.5	53	100,851.1	261
Treasure	10,750		4,001.7	11	243.4	1	4,245.1	12
Valley	197,425		110,222.1	268	29,755.8	73	139,977.9	341
Wheatland	34,025		25,088.6	69	885.9	4	25,974.5	73
Wibaux	46,300		28,017.9	100	5,357.0	23	33,374.9	123
Yellowstone	89,500		40,378.0	112	5,559.3	24	45,937.3	136
CUMULATIVE	4,321,778		1,982,516.9	5,401	282,252.7	827	2,264,769.6	6,228

MEMORANDUM OF UNDERSTANDINGBETWEEN THE STATE OF AND THE COMMODITY CREDIT CORPORATIONConservation Reserve Enhancement Program

This Memorandum of Understanding is entered into between the _____ ("the State"), and the Commodity Credit Corporation ("CCC") of the United States Department of Agriculture. The parties agree as follows:

1. This agreement involves the Conservation Reserve Program ("CRP") which is authorized by Title XII of the Food Security Act of 1985 and carried out by CCC. The regulations governing the CRP are found at 7 C.F.R. Part 704.
2. The State will carry out a special conservation reserve enhancement program under which the State makes certain enhancement payments to CRP participants. The State will, in exchange for making such payments to CRP participants, enter into agreements with CCC under which the State agrees to succeed to the interests of the CRP participants with respect to the CRP contracts. This Memorandum of Understanding sets forth the terms and conditions under which the State may be a successor in interest to the CRP contracts and receive the payments which are due and payable under those contracts.
3. The State may succeed to CRP contracts with respect to acreage subject to those contracts on farms located in whole or in part within the State.
4. The State must assume interest in all of the acreage subject to the CRP contracts by lease, right of occupancy, or otherwise. In assuming such interest, the State must maintain control over that acreage for the full period remaining under the CRP contract.
5. The State upon succeeding to the original CRP contract will be fully responsible for compliance with the terms and conditions of that contract, together with such other terms and conditions as may be specified in the successor-in-interest agreement to the CRP contract (i.e. Form CRP-1D Addendum).
6. Any payments that are due under the CRP contract for which the successor-in-interest agreement is entered into between the State and CCC will be subject to set-off with respect to debts that are owed by the CRP participants whose interest is being succeeded to by the State but only for those debts owed by such participant which are on the debt register of the County Agricultural Stabilization and Conservation Service (ASCS) Office, for the county or counties where the land is located, as of the date the agreement is executed. The debts that are on the debt register in the ASCS office are those debts that are due and owing by the CRP participants and have been reduced to claims.

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- 7. CCC may make payments under the successor-in-interest agreement in the form of cash or commodity certificates. Payments made using commodity certificates shall be made in accordance with the regulations (7 C.F.R. Part 704) that are applicable to such certificates.
- 8. In order to succeed to a CRP contract, the State and the CRP participant whose interest under the CRP contract is being succeeded to by the State must sign a successor-in-interest agreement to the original CRP contract. The State must comply with all of the terms and conditions specified in that agreement and the original CRP contract.
- 9. No successor-in-interest agreement to a CRP contract shall become effective without the approval of the county ASC committee.
- 10. In the event that any CRP payments due the State under a successor-in-interest agreement to a CRP contract are inadvertently paid to the original CRP participants rather than the State, the State shall recover those payments from the CRP participants as its sole and exclusive remedy.
- 11. Section 1234 (f)(4) of the Food Security Act of 1985, as added by section 322 of the Disaster Assistance Act of 1988, provides that the annual maximum payment limitation that is applicable to the total amount of rental payments that an owner or operator may receive under the Conservation Reserve Program shall not be applicable to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program.
- 12. This Memorandum of Understanding shall become effective as of the date of the last signature to this memorandum and may be terminated by mutual agreement in writing.

It is so agreed and understood.

(signature/date)

(signature/date)

for the State of _____

Executive Vice President
Commodity Credit Corporation

(print name)

(title)

(address)

Ex #1

NOTICE CRP-115

EXHIBIT 2

4-12-87

REPRODUCE LOCALLY. Include form number and date on all reproductions.

CRP-1D Addendum (11-01-88)

Form Approved - OMB No. 0560-0125

U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation

SUCCESSOR-IN-INTEREST AGREEMENT

(ADDENDUM TO CRP CONTRACT NO. _____)

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a). The authority for requesting the information to be supplied on this form is the Food and Security Act of 1985, P.L. 99-198, and the regulations promulgated thereunder (7 CFR Part 704) and the Internal Revenue Code (26 U.S.C. 6102). The information requested is necessary for CCC to consider and process the offer to enter into a Special Conservation Reserve Enhancement Program in order to determine eligibility, and to determine the interest parties to the contract. The information may be furnished to other USDA agencies, IAB, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, subpoena, or administrative demand. A fee reporting burden for the collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to Department of Agriculture, Compliance Officer, CCRA, Room 204-N, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

This agreement is entered into between: (1) the State of _____ ("the State"); (2) the undersigned participant(s) ("CRP participants") in Conservation Reserve Program ("CRP") contract No. _____ ("the CRP contract"); and (3) the Commodity Credit Corporation ("CCC") of the United States. The parties agree as follows:

- 1. The State is carrying out a special conservation reserves enhancement program in accordance with the Memorandum of Understanding between CCC and the State effective as of _____ ("MOU") and agrees to succeed to the interests of the CRP participants in accordance with the terms and conditions of the MOU and to comply with the terms and conditions of the CRP contract.
2. The CRP participants are participating or intend to participate in a special conservation reserves enhancement program conducted by the State and agree to the State succeeding to the interests of the CRP participants.
3. The State assumes responsibility for submitting any documents needed to determine compliance with the MOU and the CRP contract.
4. The terms of the CRP contract shall continue in force except as specifically modified by this Addendum.
5. All CRP payments to be made under the CRP contract as of the date that this Addendum is entered into or which becomes due and owing after that date, whether to be made in commodity certificates or otherwise, shall be made to the State or made pursuant to an assignment of payment made by the State.
6. The CRP participants certify that all parties who contracted with CCC under the CRP contract have signed this Addendum and that the parties signing this Addendum for the CRP participants have the authority to do so. The State certifies that the person signing this addendum has the authority to do so.
7. This Addendum shall become effective as of the date of the last signature thereto.

It is so agreed and understood.

Signature of State Representative and Date | Title | Name and Address of Agency
Signature of CRP Participants | Date | Address
Signature | Date | Address
Signature | Date | Address
Signature of Commodity Credit Corporation | Date | Title

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

4-12-89

GOVERNMENT PROGRAMS

N.D. loan program awaits OK from USDA

North Dakota farmers will soon be able to get a loan from the Bank of North Dakota and use their annual Conservation Reserve Program payments to repay the loan.

The program must still be approved by USDA.

Under the plan, farmers with land enrolled in CRP would be eligible to borrow up to 95 percent of the value of their contract with the USDA. The value is the total of the payments. Then that value is discounted approximately 60 percent to reflect the time value of the money as the bank waits for repayment through the 10 years of CRP payments.

USDA would repay the loan by assigning the farmer's annual payments to the Bank of North Dakota, which would participate with local lenders in making the loans.

Mickelson: CRP loans help save farms

Associated Press

PIERRE, S.D. — The first loans made under a new South Dakota farm financing program have helped at least a couple of farmers save their land, says Gov. George Mickelson.

One of the first loans went to Daniel Lipp of Timber Lake, who lost his farm because of foreclosure a year ago.

"This allowed him to pay off his foreclosed loan," the governor said. "This puts him back in business and gives him operating capital."

Lipp says he lost his land because he couldn't pay a Farmers Home Administration loan. The Bank of Hoven provided a loan so he could get the land back, and the state loan will allow him to repay the Bank of Hoven and also buy some livestock for the ranch, he said.

"I hope to get a little livestock in and hoping to stay on the farm. I had no more credit, so I had nowhere else to go."

I hope to get a little livestock in and hoping to stay on the farm. I had no more credit, so I had nowhere else to go.

Daniel Lipp
Timber Lake, S.D., farmer

Mickelson says the state has recently closed the first half-dozen loans under the new farm financing program. The state financing plan is tied to the federal Conservation Reserve Program, which pays farmers to idle land subject to erosion for a period of 10 years.

The state program allows South Dakota farmers to get a lump-sum payment up front for land they have enrolled in CRP. In exchange, the state will get the annual payments the farmers would have received from the federal government over the life of the CRP program.

Because the state must pay interest to the bondholders, the lump-sum payments to farmers will amount to less than the farm-
CRP: Continued on next page

from the federal government.
The state has issued \$10 million in bonds at an interest rate of nearly 10 percent to get the money needed for the lump-sum payments. The bonds will be repaid with the annual payments the farmers would have received from the federal government over the life of the CRP program.

CRP
Continued from previous page

ers would have received if they had taken the annual federal payments. In effect, a loan at 11.3 percent, Mickelson says the farmers will allow farmers and ranchers to reorganize their debts at less than the current prime lending rate.

In the next month, 90 more loans will be made under the program, the governor said. The applications already received exceed the \$10 million available from the first bond issue, but he says farmers should continue to apply because additional bond issues will be sold to provide financing for more loans.

Clint Roberts, administrator of the program, says another of the first loans made under the program has also allowed a farm family to reclaim its land.

The farmer, who had tears in his eyes when he received the loan check, "was able and buy back his land," Roberts said.

Mickelson says it took a long time to get Congress and Wall Street financiers to understand and accept the loan program. "I didn't think it would take this long to put together, but it's worth it," the governor said.

Ex. #1 4-12-89

Those options include contract negotiations with two

AGRI-NEWS

Vol. 20 No. 36 Billings, Montana, March 17, 1989

Gov. Stephens sends Pierce Plant bill back for rework

The sponsor of a bill designed to encourage the purchase of a vacant meat packing plant in Billings says it would be gutted under an amendment sought by Gov. Stan Stephens.

Stephens said last week he wants the Legislature to rework House Bill 58 that would cancel delinquent taxes on a business property when it would help sell it and stimulate new commercial activity.

Stephens returned the measure unsigned to state lawmakers on March 8, saying it would cost public schools too much money at a time when government must consider every available revenue source for education funding.

The bill's sponsor, Rep. Jerry Driscoll (D-Billings), said he planned to fight the governor's request.

He argued the governor's move was tantamount to vetoing the measure. "It would kill the bill; he might as well have vetoed it."

Under Stephens' proposed amendment, only that portion of property taxes used to help finance local governments could be forgiven by county commissioners.

The remaining 60 percent of the taxes for schools and the university system would have to be paid.

Stephens insisted the tax bill approved by the Legislature "may seriously erode Montana's school foundation program."

Citing a Feb. 1 Supreme Court decision, forcing state lawmakers to develop a new equalized school revenue plan for Montana, he noted that the state must look to every possible money source to satisfy the court's mandate.

Bill supporters contend, however, that if the taxes against the defunct Pierce plant - now tied up in bankruptcy - aren't canceled, it will remain an idle facility with the state unlikely to get any benefit from its discounted sale on the auction block.

Rolf Schwenninger, International Leather Manufac-

turers, Inc., in Billings, has expressed public interest in the plant. He told *Agri-News* on Tuesday if the plant does go on the auction block, his company will be there to bid.

The EDA rejected a cash offer Schwenninger said his company made late last year. Schwenninger declined to release the amount of that cash bid but said, "It was handled through political channels and I would prefer to keep the price out of the public records."

A U.S. Commerce Department agency, the Economic Development Administration, and Yellowstone County currently hold liens on the property.

Montana's congressional delegation has been unsuccessful in persuading EDA to drop its lien. The property could go on the auction block in May to satisfy back government loan payments and property taxes owed on it, according to officials.

S.D. farm finance Similar to Mont. HB717

PIERRE, S.D.(AP) - The first loans made in a new state farm financing program have helped at least a couple of South Dakota farmers save their land, Gov. George Mickelson said Friday.

The program is similar to the one proposed in Montana by Rep. Larry Grinde (R-Lewistown) under House Bill 717.

Both states' financing plans are tied to the federal Conservation Reserve Program, which pays farmers to idle land subject to erosion for a period of 10 years.

The state program allows farmers to get a lump-sum

(Continued on Page 19)

Riverton FCS office closes

At the end of March, the Wyoming Farm Credit Services office in Riverton will close its doors and its 15-year-old building will be sold, a victim of Omaha District cost-cutting.

Lending activities at the Production Credit Association and Federal Land Bank office have been shut down since December and transferred to the FCS office in Worland.

Special assets secretary Cindy Maulik and loan officer Steve Crowe, who are now settling up remaining accounts at the office, will both be looking for new jobs when it closes.

Rather than accept a transfer to another association office in the district, they have decided to stay put in Riverton.

"There isn't enough work and it isn't economical to

aining helps cattle gain!

tion. This has been achieved even with Brahman and Brahman-cross cattle, which are more edgy than "Okies" or exotics.

Pumphrey's initial results came after a 13-month-long trial that compared working groups and inactive groups of cattle. Two subsequent test also involved control groups that were never worked.

The first test lasted 35 days beginning Dec. 12, 1984, and involved 35 Charolais-Brahman heifers. The heifers were divided into two and the first group was worked an average of 1.58 hours on each animal. The group was "yarded" an average of 1.23 hours per day. The worked cattle gained 34 pounds per day (2.10

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New S.D. farm finance program gains customers

(Continued from Page 1)

payment up front for land they have enrolled in the federal CRP program. In exchange, the states are then given the annual payments the farmers would have received from the federal government.

One of the first South Dakota loans went to Daniel Lipp of Timber Lake, who had lost his farm because of foreclosure a year ago, Mickelson said. "This puts him back in business and gives him operating capital."

At his weekly press conference, Mickelson held up a large copy of the \$151,547 loan check that went to Lipp.

The farmer had planned to attend the news conference but was unable to reach Pierre because of the winter storm sweeping the state, the governor said.

"I hope to get a little livestock in and hoping to stay on the farm. I had no more credit, so I had nowhere else to go," Lipp told the newspaper.

Mickelson said the first half-dozen loans in the farm financing program were closed on Thursday.

South Dakota has issued \$10 million in bonds at an interest rate of nearly 10 percent to get the money needed for the lump-sum payments. The bonds will be repaid with the annual payments the farmers would have received from the federal government over the life of the CRP program.

Because the state must pay interest to the bond hold-

ers, the lump-sum payments to farmers will amount to less than the farmers would have received if they had taken the annual federal payments.

The lump-sum payment is, in effect, a loan at 11.3 percent. The loans will allow farmers and ranchers to reorganize their debts at less than the current prime lending rate, Mickelson said.

In the next month, 90 more loans will be made under the program, the governor said.

The applications already received exceed the \$10 million available from the first bond issue, but farmers should continue to apply because additional bond issues will be sold to provide financing for more loans, he said.

Clint Roberts, administrator of the program, said another of the loans made Thursday also allowed a farm family to reclaim its land.

The farmer, who had tears in his eyes when he received the loancheck, "was able to give a check to the Farm Credit System and buyback his land," Roberts said.

Mickelson said it took a long time to get Congress and Wall Street financiers to understand and accept the loan program.

Nor-West continues efforts to open Midland plant

(Continued from Page 1) ber, they had completed Huber and partner had \$150,000 worth of work, Schwenninger said.

ILM picked up the majority of those costs "with the balance to be negotiated concurrently when negotiations with Nor-

West-Pak and ILM are determined at the end of March.

Schwenninger says it will take a maximum of \$375,000 and 45 to 60 days for Herman Co., to finish retrofitting and get USDA certification.

T h r o u g h o u t Schwenninger's campaign to open the plant he declares that the company who runs Midland slaughter operations and his leather processing co-

never had a co-ownership agreement. They are to stand on their own feet," Schwenninger said.

weighing weights, individual weights and performance data available sale day.
• Semen Tested
• Scrotal measurements

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"I didn't think it would take this long to put together but it's worth it," the governor said.

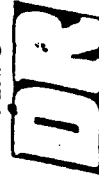
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AT THE RANCH

CLYDE PARK MONTANA

Ex. #1

4-12-87

MT CRP CONTRACTS

EY. #1 4-12-19

<u>County</u>	<u>Total # Loans</u>	<u>Total # Loans Held Out-of-State</u>	<u>% of Total Loans</u>
Beaverhead	5	0	0.0%
Big Horn	29	2	6.8%
Blaine	180	15	8.3%
Broadwater	36	1	2.7%
Carbon	36	0	0.0%
Carter	318	19	5.9%
Cascade	209	10	4.7%
Chouteau	322	10	3.1%
Custer	32	0	0.0%
Daniels	348	34	9.7%
Dawson	195	19	9.7%
Deer lodge	0	0	0.0%
Fallon	205	20	9.7%
Fergus	212	20	9.4%
Flathead	4	1	25.0%
Gallatin	34	4	11.7%
Garfield	110	6	5.5%
Glacier	139	18	12.9%
Golden Valley	102	4	3.9%
Granite	0	0	0.0%
Hill	248	20	8.0%
Jefferson	15	0	0.0%
Judith Basin	51	0	0.0%
Lake	1	0	0.0%
Lewis & Clark	39	0	0.0%
Liberty	97	18	18.5%
Lincoln	0	0	0.0%
McCone	316	36	11.4%
Madison	27	3	11.1%
Meagher	27	2	7.4%
Mineral	0	0	0.0%
Missoula	4	0	0.0%
Musselshell	78	4	5.1%
Park	47	2	4.3%
Petrolleum	33	3	9.0%
Phillips	487	18	3.7%
Pondera	64	1	1.6%
Powder River	59	4	6.8%
Powell	0	0	0.0%
Prairie	67	4	5.9%
Ravalli	11	2	18.1%
Richland	144	6	4.1%
Roosevelt	476	86	18.1%
Rosebud	50	0	0.0%
Sanders	2	0	0.0%
Sheridan	470	88	18.7%
Stillwater	219	26	11.9%
Sweet Grass	19	3	15.8%
Teton	204	6	2.9%
Toole	252	40	15.9%
Treasure	12	2	16.7%
Valley	401	33	8.2%
Wheatland	49	1	2.0%
Wibaux	132	32	24.2%
Yellowstone	179	23	12.8%
Totals	6,796	646	9.5%

HB 717
4-12-89

March 31, 1989

Mr. Larry Grinde
Capitol Station
Helena, MT

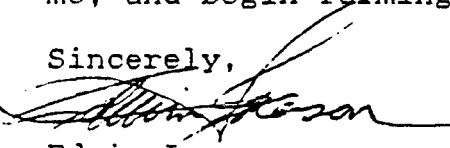
Dear Mr. Grinde:

I am writing in response to our conversation by telephone earlier today wherein we discussed HB 717. As you may recall, I very much support your efforts on behalf of this bill, and I want to urge you once again to facilitate it's passage. It would be a tremendous benefit to myself, and I am confident the same applies to many farmers in Montana.

You indicated that several concerns had been raised by the senate committee, two of which I would like to address: First, there seems to be some concern that the state would be in an unfavorable position should the landowner default on his CRP obligations. However, the instances of potential default appear very remote as the landowner certainly has the most to gain by adequately maintaining the CRP contract, and the most to lose by allowing it to go into default. More important for the protection of the state, is the value of the land itself. If a Landowner should fail to keep his contract in compliance, the state would have the opportunity to step in as mortgage holder, correct the default, collect the remaining annual CRP payments, and sell the property at the end of the contract period at what would certainly be a handsome profit.

I also want to address the question of what to do about out of state landowners. Four years ago, I was forced to leave my farm because I was denied financing for my operating budget. I renewed my teaching certificate and hunted extensively in Montana for a job, but finally found one in Mullan, ID. By a series of small miracles and at great expense to my family, we have so far managed to retain possession of the farm. However, we are on progressively "thin ice" with the Land Bank. I have studied the summary of your bill, and I am convinced it would allow me to pay off my Farm Credit Services loan, which is in default. Furthermore, after several more years teaching, I would then be able to return to my farm near Roundup and start over. This is why I am so supportive of HB 717. I see in it the opportunity I need to move back to the farm which was owned by my Father before me, and begin farming again.

Sincerely,



Edwin Iverson

cc. Rep. Bob Clark ✓
Sen. Jack Galt

Ex. 3
4-12-89
HB 469

2. Permitting of new industries (with air emissions) keys on ambient SO₂ levels and their relationship to ambient air standards in the Billings-Laurel area.

BLAQTC is currently evaluating strategies for reduction of SO₂ emissions during periods when elevated ambient SO₂ is observed. The group plans to implement these strategies and evaluate their effectiveness with the ambient monitoring data. The current focus is on reducing periodic high ambient SO₂ levels which can cause health impacts in sensitive members of the public.

The Department has received numerous inquiries in the past year from new industries wanting to locate in the Billings-Laurel area. Some examples include the Kerley Enterprises sulfur plants, the Chrome Corporation refinery, and the Anheuser-Busch malt plant. One of the key issues in locating these types of industries in the Billings-Laurel area is their ability to receive an air quality permit. Because the area is currently exceeding state ambient SO₂ standards and is approaching federal standards, permitting new SO₂ sources is complex and difficult. Failure to work toward improving the situation jeopardizes economic development in the Billings-Laurel area.

The Department is faced with an increasing number of air quality priorities and dwindling resources. Your decision on this bill will directly influence the priority of the Billings SO₂ problem. We strongly feel that your passage of this bill is a message that the public and economic health of Billings and the state are important issues.

In conclusion, the Department and BLAQTC request continued legislative support for the Billings air quality study.

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 3
DATE 4-12-89
BILL NO. 469

TESTIMONY ON HOUSE BILL 469

BEFORE THE FINANCE & CLAIMS
COMMITTEE OF THE
MONTANA SENATE

|
|
|

BY JEFFREY CHAFFEE, P.E., CHIEF OF
THE AIR QUALITY BUREAU OF THE MONTANA
DEPARTMENT OF HEALTH AND ENVIRON-
MENTAL SCIENCES

The Montana Department of Health and Environmental Sciences (Department) is offering testimony on House Bill 469 to explain the Department's role in the Billings air monitoring study. The Billings-Laurel Air Quality Technical Committee (BLAQTC), which is comprised of Billings area industries, the Billings Chamber of Commerce, the Yellowstone County Air Pollution Control Agency, and the Department instituted an ambient sulfur dioxide (SO₂) monitoring study in December, 1987. This monitoring effort consists of three monitoring stations operated by BLAQTC's industrial members, and two monitoring stations operated by the Department. Data collected by the monitoring network is used to evaluate ambient SO₂ levels in the Billings area and to focus BLAQTC efforts for improvement of ambient air SO₂ levels.

The 50th Legislature passed House Bill 878 which provided \$50,000 to the Department for Billings area SO₂ monitoring, provided that area SO₂-emitting industries also contributed to the monitoring study. BLAQTC would like to continue the joint state-industry SO₂ monitoring to assist group efforts toward reduction of ambient SO₂ levels. Reduction of ambient SO₂ levels in the Billings-Laurel area is important for several reasons:

1. Current monitoring efforts show that ambient SO₂ concentrations periodically reach levels considered injurious to public health;

2

Amendments to House Bill No.760
Reading Copy

DATE 4-12-89
HB NO. 760

For the Committee on Senate Finance and Claims

Prepared by LFA
April 11, 1989

- 1. Page 3, lines 15 through 21.
Strike: "If" on line 15 through "1991." on line 21.