

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION**

**Call to Order:** By Senator Greg Jergeson, on January 9, 1991, at 1:00 P.M.

#### **ROLL CALL**

**Members Present:**

Greg Jergeson, Chairman (D)  
Francis Koehnke, Vice Chairman (D)  
Gary Aklestad (R)  
Thomas Beck (R)  
Betty Bruski (D)  
Gerry Devlin (R)  
Jack Rea (D)  
Bernie Swift (R)  
Bob Williams (D)

**Members Excused:** None

**Staff Present:** Doug Sternberg (Legislative Council).

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:** Chairman Jergeson introduced the Secretary and Legislative Council staff member, and by way of Roll Call asked the members to introduce themselves. He stated that the Committee would follow Mason's Rules of Order wherein questions and comments go through the Chair. However, a member would be able to carry on a line of questioning within reason.

Motions will not require a second to be acted upon. The order of consideration of a bill will start with proponents being heard, then opponents, followed by questions from the Committee, and then the sponsor will have an opportunity to close. Executive action will be taken as soon as possible, and the Consent Calendar may be considered. If a bill is noncontroversial but needs extensive amendments, executive action will be taken at the following meeting. If a bill is extremely controversial, every member of the committee will be given ample time to make their decision.

Doug Sternberg outlined the most expeditious procedure for handling amendments. He stated it was imperative that he see all the amendments to check the legal content and everything that goes into the amendments. He stated that

bill summaries that briefly outlined the legislation would not be forthcoming this session on a regular basis, but if any Senator would like a summary on a specific bill he would gladly provide that information. In addition, he did not believe that preparing amendments during an executive session would hold up any action.

Chairman Jergeson stated the options regarding casting a vote when a member is not present at executive action would be to leave a note prior to the absence, or to have a certain amount of time after executive action for an absent member to cast a vote. The third option would be to put off a vote until the full committee is present. Chairman Jergeson stated he was inclined to go with the first option, which would mean leaving a written note with the Vice-Chairman indicating the vote of the absent member. If there are extensive amendments to a bill, it may be necessary to hold off final executive action on a bill until all members are present.

He also requested interested members to contribute to a "coffee" fund.

Senator Jergeson requested that all persons sign the Visitors Register, and that anyone planning to testify fill out a Witness Sheet.

#### HEARING ON SENATE BILL 9

##### Presentation and Opening Statement by Sponsor:

Senator Gerry Devlin, District 13, stated that in the past when brands were registered in this state, cases have been found where many dozens of brands were registered to one person. Problems arise on a re-record year when many brands are not re-recorded they go into a dead file. Individuals sort through the dead file to locate good brands, many of which are worth a good deal of money. The recording process has already begun for 1991. However, the real concern is about the brands that are not re-recorded in 1991 and which might be "picked up" at high prices in 1992. Rather than making this bill retroactive, the limitation would begin on January 1, 1992. In the interim between now and the next 10-year cycle for re-recording, the Department would develop a system of staggering the recordings from those years hence. Some amendments have been proposed (Exhibit No. 1).

##### Proponents' Testimony:

LES GRAHAM, Department of Livestock, advised that he is a proponent of SB 9. He stated that Senator Devlin has discussed this bill with the industry at various meetings around the state, and Mr. Graham has written about it in the Montana Farmer

Stockman, and they have had very few comments back. Mr. Graham stated that with the amendments proposed this is something the Department can work with and develop. He pointed out some problems regarding the 10-year recording cycle. Notices of re-recording were mailed January 2, according to state law, and approximately 20,000 envelopes have been returned with improper addresses. Many are not the fault of the people holding the brands but rather the fault of the post office because there may have been a change from a Rural Route number to a road or box number, and the post office will not forward. It is his belief that by going to a staggered system, it will be easier to keep track of current addresses.

Another problem arising from a 10-year recording period occurs when there may have been a death in the family early in the re-recording period, and ten years later a person may come in to change the recording of the brand to a son or daughter, a copy of a death certificate must be required or a probate out of the courts.

According to Mr. Graham, the recordings presently number about 65,000. Some persons who come in late in the recording cycle might end up with a 3-iron brand. He believes SB 9 would address that problem and hold some brands open. He added that he is in support of SB 9 with the amendments.

DON JONES, representing the Montana Stockgrowers Association, stated he is a rancher from Wise River, and is Vice-Chairman of the Stockgrowers Transportation, Brand and Theft Committee. He read and presented written testimony (Exhibit No. 2) in support of SB 9 as amended.

CAROL MOSHER, representing the Montana CattleWomen, read and presented written testimony (Exhibit No. 3). She concluded by stating that five brands per person should be sufficient, but it may adversely affect a few people.

MARVIN BARBER, representing Agricultural Preservation Association, stated his group supports SB 9 in its amended form.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Williams asked how long a brand remains in the dead brand file. Senator Devlin stated there is no time limit. It remains there until someone re-records it.

Senator Williams further inquired regarding the 20,000 returned notices. Mr. Graham advised that their Department would wait until approximately March 1, 1991, at which time they will go through the notices that have been returned and then send them

to their District Brand Inspectors or give the inspectors at the auction markets a list in an attempt to determine if people are still in the area. Mr. Graham felt certain that the number of returned notices would be reduced substantially by the end of this year.

Senator Jergeson asked that since there are liens on some brands, would the Secretary of State's office be able to supply some addresses from their liens file. Mr. Graham advised all those files would be crosschecked.

In reply to Senator Koehnke's question about a death in the family, Mr. Graham advised that the Department now demands a copy of a death certificate or a will before they allow a transfer to go through.

Senator Aklestad asked for clarification regarding the effective date of January 1, 1992. He wondered if there was any way to limit the number of brands starting this January. Senator Devlin stated that was their original hope, but it is not possible at this point.

Senator Beck stated he is concerned about the staggered re-recording system and how it will be implemented. Mr. Graham advised that he was conferred with 14 other states involved in such a system. Most of them have gone to recording a percent of the brands per year.

Senator Rea asked if there are many instances in family corporations where there are numerous children, more than five, and how would this affect them. Mr. Graham stated in those instances most of those corporations would have two or three brands they use in their livestock operation, and perhaps each of the children have one or two. The biggest problem is with the collectors.

Discussion centered around the various ways of staggering the re-recording. Mr. Graham summarized by stating that the Department would spend the next few years putting together a workable system, and he would no doubt appear before the Agriculture Committee during that time.

Closing by Sponsor:

Senator Devlin acknowledged the concern about the staggering of re-recording, but stated that the amount of work involved in the current re-recording system every ten years would be reduced. He stated he believes SB 9 a worthwhile bill, and he would like to see the Department put a staggered system of recording into effect.

\* \* \* \* \*

Chairman Jergeson advised that he requested Mr. Charles

Brooke, Director of the Department of Commerce, to appear before the Senate Agriculture Committee early in the session to give a review of the McCarty Farms Case.

Mr. Brooke advised that he brought several key staff members with him:

Annie Bartos, Chief Legal Counsel  
Pat Saindon, Transportation Division Administrator  
John Craig, Bureau Chief, Intermodal Commodities  
Pat Flaherty, Cost Analyst, Intermodal Commodities Bureau

Ms. Bartos presented a Chronology of Events (Exhibit No. 4) concerning the McCarty Farms Case which she distributed to the committee members. A question and answer session followed.

Upon completion of the informational discussion, Chairman Jergeson thanked the Commerce Department staff for appearing.

\* \* \* \* \*

EXECUTIVE ACTION ON SENATE BILL 9

Motion: Senator Beck moved that the amendments for SB 9 be passed. In favor - 9; Opposed - 0. Motion CARRIED.

Discussion:

None.

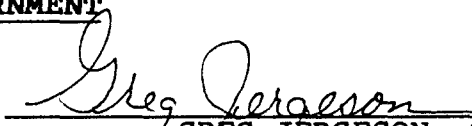
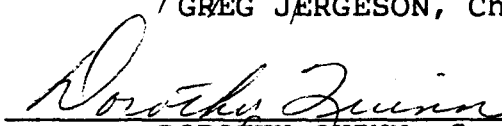
Amendments, Discussion, and Votes:

None

Recommendation and Vote: Senator Devlin moved that Senate Bill 9 DO PASS AS AMENDED. In favor - 9; opposed - 0. Motion CARRIED.

ADJOURNMENT

Adjournment At: 2:22 P.M.

  
GREG JERGESON, Chairman  
  
DOROTHY QUINN, Secretary

GJ/dq

ROLL CALL  
AGRICULTURE COMMITTEE

DATE

1/9/91

52nd

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON	X		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

Page 1 of 1  
January 21, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill 2 (first reading copy -- white), respectfully report that Senate Bill 2 be amended and as so amended do pass:

1. Title, line 6.

Following: "LIVESTOCK;"

Insert: "REQUIRING THE DEPARTMENT OF LIVESTOCK TO IMPLEMENT A  
SYSTEM FOR STAGGERED RECORDING AND RERECORDING OF MARKS AND  
BRANDS;"

2. Title, line 8.

Strike: "AN IMMEDIATE"

Insert: "A DELAYED"

3. Title, line 9.

Strike: "AND A RETROACTIVE APPLICABILITY DATE"

4. Page 4, line 2.

Following: line 1

Strike: "Each"

Insert: " (1) Until a system is developed under subsection (2)  
each"

5. Page 4, line 20.

Following: line 19

Insert: "(2) The department shall develop a system for the  
staggered recording and rerecording of marks and brands."

6. Page 6, line 2.

Following: "date"

Strike: the remainder of line 2 through line 6

Insert: ". [This act] is effective January 1, 1992."

Signed: Greg Jergeson  
Greg Jergeson, Chairman

Amendments to Senate Bill No. 9  
First Reading Copy

Requested by Senator Devlin  
For the Senate Committee on Agriculture

Prepared by Doug Sternberg  
January 8, 1991

SENATE AGRICULTURE  
EXHIBIT NO. 11  
DATE 1/9/91  
BILL NO. SB 9

1. Title, line 6.

Following: "LIVESTOCK;"

Insert: "REQUIRING THE DEPARTMENT OF LIVESTOCK TO IMPLEMENT A  
SYSTEM FOR STAGGERED RECORDING AND RERECORDING OF MARKS AND  
BRANDS;"

2. Title, line 8.

Strike: "AN IMMEDIATE"

Insert: "A DELAYED"

3. Title, line 9.

Strike: "AND A RETROACTIVE APPLICABILITY DATE"

4. Page 4, line 2.

Following: line 1

Strike: "Each"

Insert: " (1) Until a system is developed under subsection (2),  
each"

5. Page 4, line 20.

Following: line 19

Insert: "(2) The department shall develop a system for the  
staggered recording and rerecording of marks and brands."

6. Page 6, line 2.

Following: "date"

Strike: the remainder of line 2 through line 6

Insert: ". [This act] is effective January 1, 1992."



SENATE AGRICULTURE  
EXHIBIT NO. #2  
DATE 1/9/91  
BILL NO. SB9

TESTIMONY ON S.B. 9  
TO LIMIT THE NUMBER OF BRANDS TO FIVE  
JANUARY 9, 1991  
SENATE AGRICULTURE COMMITTEE

BY  
MONTANA STOCKGROWERS ASSOCIATION

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GOOD AFTERNOON CHAIRMAN JERGESON AND MEMBERS OF THE SENATE AG COMMITTEE. THANK YOU FOR THE OPPORTUNITY TO PRESENT TESTIMONY IN SUPPORT OF S.B. 9, A BILL LIMITING THE NUMBER OF BRANDS RECORDED OR RERECORDED BY ONE PERSON TO FIVE. MY NAME IS DON JONES AND I AM A RANCHER FROM WISE RIVER. I ALSO REPRESENT THE MONTANA STOCKGROWERS ASSOCIATION AND AM VICE-CHAIRMAN OF THE STOCKGROWERS TRANSPORTATION, BRAND AND THEFT COMMITTEE.

S.B. 9 WILL PREVENT BRAND COLLECTORS FROM REGISTERING AND COLLECTING BRANDS THAT ARE NOT RE-RECORDED DURING THE CURRENT RENEWAL PERIOD TAKING PLACE IN 1991. THESE COLLECTORS REGISTER VALUABLE ONE-IRON BRANDS AND THEN MARKET THEM TO HOBBYISTS OR SOME JUST COLLECT THEM LIKE STAMPS. THIS PRACTICE PREVENTS LEGITIMATE LIVESTOCK PRODUCERS FROM UTILIZING THE LIMITED SUPPLY OF THE VALUABLE ONE-IRON BRANDS. TO MANY FOLKS, THIS MAY SOUND LIKE A PRETTY UNIMPORTANT MATTER, BUT FROM A PRODUCER'S PERSPECTIVE, THIS MAKES IT DIFFICULT TO OBTAIN THE MORE USABLE, PRACTICAL AND PREFERRED BRANDS. THE REASON THESE BRANDS ARE

PAGE 2

MONTANA STOCKGROWERS TESTIMONY, S.B. 9

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VALUABLE IS BECAUSE THERE ARE ONLY A LIMITED NUMBER OF THEM, THEY ARE EASY TO USE, EASY TO READ, MORE HUMANE TO THE ANIMAL, AND DO LESS DAMAGE TO THE ANIMAL HIDE WHICH IS MARKETING AS AN ANIMAL BY-PRODUCT.

TWO OR MORE IRON BRANDS ARE LESS DESIRABLE TO LIVESTOCK PRODUCERS BECAUSE THEY HAVE A TENDENCY TO BLUR, MAKING THEM DIFFICULT TO READ, COVER A LARGER AREA OF THE ANIMAL AND REDUCE THE VALUE OF THE HIDE WHEN CATTLE ARE SOLD.

ADDITIONALLY, THE MONTANA STOCKGROWERS ASSOCIATION FAVORS AN AMENDMENT TO STAGGER THE RENEWAL OF BRANDS IN MONTANA. AT THIS TIME, THE DEPARTMENT OF LIVESTOCK IS OVERWHELMED WITH THE BRAND RENEWAL REQUESTS -- WHICH HAPPEN EVERY TEN YEARS. A STAGGERED RENEWAL PLAN WOULD ELIMINATE THIS PROBLEM AND STREAMLINE THE BRAND RENEWAL PROCESS.

THEREFORE, WE FEEL S.B. 9, AND ANY AMENDMENTS THAT REQUIRE IMPLEMENTATION OF A MORE EFFICIENT RENEWAL PROCESS, IS A GOOD BILL AND NECESSARY TO HALT THE PRACTICE OF HOBBYISTS COLLECTING A ESSENTIAL IDENTIFICATION TOOL USED BY THE LIVESTOCK INDUSTRY.

MR. CHAIRMAN, THE MONTANA STOCKGROWERS ASKS FOR A DO PASS ON

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MONTANA STOCKGROWERS TESTIMONY S.B. 9

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S.B. 9 AS AMENDED.



P. O. Box 1679  
Helena, Montana 59624  
(406) 442-3420

Senate Agriculture  
Exhibit NO. # 3  
DATE 1/8/91  
BILL NO. SB 9

Senate Ag Committee  
Jan. 8, 1991  
SB 9

Mr. Chairman and members of the committee, I am Carol Mosher, representing the Montana CattleWomen.

We are in support of the concept of SB 9 to limit the number of brands issued per person because we are aware that there is a need to free up unused brands that could be really utilized by other people. However, for those who may not realize why one person may need quite a few brands, let me give you some examples, using my own ranch in some of these instances. Some people raise several different breeds or kinds of cattle and it can simplify their operation in management and record keeping if we can use different brands for these purposes. Our ranch owns 2 jaw brands which we do not presently use, but in the event we could be assured of an additional 25 to 35 dollars per head profit on the hide, then in the future those jaw brands would be very useful to us. In a ranch corporation or even smaller operations brands may be registered with certain specific persons named as owners and sometimes that is done for legal protection in cases of possible divorces, deaths, inheritances, etc. Some ranches keep herds separated with different brands to designate those as purchased cattle or as raised cattle.

Our organization believes that the Board of Livestock and the Brand Division is a very well managed part of our state government and we are proud of them and would like to support them in every effort to continue to run an efficient department.

In conclusion, we think that most of us can live with 5 brands per person, but must honestly say that it may adversely affect a few people.

Thank you.

*We do support the amendments*

*Carol Mosher*

SENATE AGRICULTURE  
EXHIBIT NO. 4  
DATE 1/9/91  
BILL NO. \_\_\_\_\_

January 9, 1991

McCARTY FARMS/STATE OF MONTANA - VS - BNRR

CHRONOLOGY OF EVENTS

(For Senate Agriculture Committee  
of the 52nd Montana Legislature)

- September 11, 1980 - Plaintiffs commenced court action invoking jurisdiction of Court under 49 U.S.C. Section 11705(c)(1) and 28 U.S.C. Section 1337 alleging that BN, during the period from September 12, 1978 to September 12, 1980, charged unjust and unreasonable rates for the shipment of wheat in violation of 49 U.S.C. Section 10701(a).
- March 16, 1981 - Parties stipulated Class Certification and Order of Court entered certifying class and referring matter of reasonableness of rates to ICC.
- March 27, 1981 - Plaintiffs filed Complaint with ICC alleging they have been subjected to payment of rates that were and are unreasonably high in violation of 49 U.S.C. Section 10701(a).
- December 14, 1981 - ICC issued Initial Decision finding: (1) defendant has market dominance over the involved wheat and barley traffic; (2) the present and past rates complained of are and were when assessed and collected unreasonable insofar as they exceed 200 percent of the variable cost of service; and (3) a revenue to variable cost ratio of 200 percent is found to be the maximum reasonable rate. Defendant also ordered to cancel schedules containing assailed rates.

- July 30, 1982

  - ICC served Decision reopening case, instituting a separate proceeding regarding the reasonableness of barley rates, and consolidating these two cases with Docket No. 37815S Montana Dept. of Agriculture, et al. v. Burlington Northern, Inc. (The State of Montana's case was filed at the ICC on 3/26/81.)
  
- January 4, 1983

  - ICC served Order in which, inter alia, the Managing ALJ asserted it must conclude case with administrative finality by the end of the third year (approximately 05/02/83) or automatically dismiss case by statutory decree 49 U.S.C. Section 11701(c).
  
- June 2, 1983

  - ICC served Decision reopening case, repudiating ALJ Decision of 01/04/83 regarding three year rule, and indefinitely postponing any decision.
  
- September 11, 1984

  - ICC orders the case reopened. Commission ordered both parties to submit additional evidence on all market dominance guidelines.
  
- December 19 - May 23, 1985

  - Settlement talks commence by order of Judge Hatfield. Several proposals and counter proposals are submitted by both parties and are rejected.
  
- April 15, 1986

  - ICC reopens case for additional submission of evidence on market dominance.
  
- August 1, 1986

  - Parties meet to consider BN settlement proposal.
  
- August 26, 1986

  - McCarty offers a counter proposal.
  
- May 27, 1987

  - ICC Decision - BN found market dominant over wheat and barley shipments moving from Montana to Pacific Northwest ports.
  
- June 8, 1987

  - BN filed Petition requesting ICC to Vacate its Order of 5/27/87.
  
- February 12, 1988

  - ICC Decision - BN found to have rates that exceed a reasonable maximum and reparations are due.

- November 21-22, 1988 - Settlement discussions resume in Magistrate Shanstrom's Court in Billings. No agreement is reached.
  
- February 21, 1989 - ICC rules on calculations and costing procedures, correcting for costing problems and recomputing the R/VC benchmark ratios for determining rate reasonableness. ICC also provided additional guidance on the computation of reparations. BN is given 90 days to present their calculations on reparations and roll back rates if needed. McCarty will then have 30 days to respond.
  
- March 3, 1989 - Judge Hatfield orders parties to meet for settlement discussions before Magistrates Shanstrom and Holter in Billings on June 12, 1989.
  
- April, 1989 - BN files its reparations data in accord with ICC Order of February 21, 1989. McCarty has 30 days to reply.
  
- May 26, 1989 - McCarty files its report on reparations and proposed rate structures.
  
- June 1, 1989 - Named Plaintiffs, MGGA Board of Directors and other interested agricultural groups meet with MDOC and Mike Ogborn to discuss latest evidence and upcoming settlement talks. This is an example of the innumerable meetings like this over the past nine years.
  
- June 12, 1989 - Mike Letson, Dave Desch et al attend settlement conference in Billings. Judge Hatfield ordered this conference; no agreement is reached.
  
- June 15, 1989 - BN files Motion to Strike portions of Complainants' May 26, 1989 submission regarding reparations and proposed rate structure.
  
- June 21, 1989 - Supplemental submission of BN regarding reparations and proposed rate structure incorporating first quarter 1989 calculations.

- July 5, 1989                    -    Complainants' reply to BN Motion to Strike.
- July 14, 1989                -    Complainants' reply to BN's Supplemental Submission incorporating first quarter 1989 calculations.
- November 27, 1989           -    Second Supplemental Submission of BN regarding reparations and proposed rate structure incorporating 2nd Quarter 1989 Calculations.
- December 18, 1989           -    Complainants Reply to BN's 2nd Supplemental Submission.
- January 8, 1990             -    Motion of BN to Strike Complainants' 12/18/89 Reply to Supplemental Submission.
- January 29, 1990            -    Complainants Reply to Motion to Strike.

NOTE: Setting aside all of the pending procedural ruling due by the ICC, the status of the case remains that the ICC should issue its decision based solely on what reparations BN must pay to the McCarty class and what interest calculation is to be applied to that figure.

McCarty plaintiffs and Burlington Northern have filed reparations evidence and rebuttals based on current *procedure* revenue to variable cost procedure. The parties await further ICC findings and directives.



119/21

Agriculture

SK 7

[illegible]

(Please leave prepared statement with Secretary)

# ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 1/9/91 Bill No. SB9 Time 2:15

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN  
Secretary

GREG JERGESON  
Chairman

Motion: Sen. Beck moved that the  
for SB 9 amendments  
be passed.  
In favor: 9  
Opposed: 0  
Motion Carried

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 1/9 Bill No. SB 9 Time 2:18

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion: Senator Devlin moved that  
Senate Bill 9 DO PASS AS  
AMENDED. In favor: 9  
Opposed: 0

Motion Carried