

**MINUTES**

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

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

**Call to Order:** By Senator Greg Jergeson, on February 4, 1991, at 3:00 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:** Vice-Chairman Koehnke called the meeting to order in the absence of Chairman Jergeson who was presenting a bill in another committee.

**HEARING ON SENATE JOINT RESOLUTION 12**

**Presentation and Opening Statement by Sponsor:**

Senator John H. Anderson, District 37, advised that he is presenting Senate Joint Resolution 12 at the request of the Montana Association of Conservation Districts and the Montana County Noxious Weed Control Groups. He added the bill is supported by the Headwaters RCD. He stated there is much concern about the weeds in Montana and it is fast becoming a major problem. In order to come up with a comprehensive plan to make proper legislative recommendations, it was felt that a complete study must be made of this matter. That is the main reason this resolution is being presented to the committee. He stated it is

a joint resolution of the Senate and House requesting the Montana Department of Agriculture to study and develop a plan and recommendations on a weed seed-free agronomic crops and farm products program. It also requests a report of findings and recommendations of the study be made to the 53rd Legislature. Senator Anderson read the bill in its entirety to the committee. He also pointed out that the fiscal note indicated the Department of Agriculture will assume costs of conducting this study and preparing the plan and recommendation to the 53rd Legislature. The fiscal note also stated committee members will serve without state per diem and related expenses. Senator Anderson stated a representative from the Department of Agriculture was present to answer questions.

#### Proponents' Testimony:

NEIL PETERSON, Weed Coordinator for the Madison County Weed Board and Chairperson for the Headwaters RCD Range Weed Committee which is made up of weed personnel from eight southwestern Montana counties, stated that both entities go on record in support of SJR 12. He stated he wished to detail some history pertaining to this Resolution. He read and presented his written testimony to the committee members (Exhibit #1).

JOHN ANDERSON, rancher from Alder and Madison County, stated he represents the Ruby Valley Soil Conservation District and also the Montana Association of Conservation Districts in support of SJR 12. He stated he would like to touch on the certified feed program. This program was initiated by the Ruby Valley Conservation District in an effort to address a weed problem that was being scattered on the national forest and also private lands by recreationists, primarily hunters, by hauling in weed infested horse hay. The program involved the Forest Service, Bureau of Land Management, Department of State Lands and private land owners. The effort involved a three-fold approach: (1) educate the public; (2) develop a source of weed-free feed; and (3) enforcement. Their hope is to expand on this program through this Resolution. The MACD did pass a resolution at its 1990 annual meeting in support of this effort. Another area of concern was identified in the resolution that called for investigation into the sale of noxious weeds as ornamental plants.

JANET ELLIS, Montana Audubon Legislative Fund, advised it is their opinion an ounce of prevention is worth a pound of cure. She stated if weeds can be prevented from coming into the state, weed control will be more successful. She stated her group supports SJR 12.

WALLY CLOSE, rancher from Twin Bridges, stated that the ranchers from his area support SJR 12.

#### Opponents' Testimony:

None.

Questions From Committee Members:

Senator Swift asked if the Agriculture Department is agreeable to covering the costs of funding this study.

Gary Gingery, Montana Department of Agriculture, advised that they were asked to assist in drawing up the Resolution with the idea they would work with existing staff. The committee members would not be paid \$25.00 or per diem. The Department was agreeable to that.

Senator Williams asked for a definition distinguishing "weeds" and "noxious weeds". Mr. Gingery stated that there are several definitions, one under the County Noxious Weed Act which says the Department of Agriculture can establish those noxious weeds which have adversely affected livestock, agriculture, wildlife, and forestry. They can then supply a list which all counties then must deal with. In addition, each district can name additional weeds that they believe are noxious. In the Noxious Weed Trust Fund Act the Department can also establish what are noxious weeds, which are normally the same as those in the County Weed Act but could be different. Under a state quarantine law, the Department can also define noxious weed seeds.

Senator Williams asked if a noxious weed in Montana is the same as a noxious weed in Idaho in regard to shipping hay back and forth. Mr. Gingery advised that 12 states are getting involved in setting up a system where all 12 states would be dealing with the same issues so that there will be common regulations and laws and some consistency.

Senator Rea asked how these laws could be enforced, and what might be the penalty. Mr. Gingery advised that would have to be looked at. Tools they could use as a state agency would include quarantine powers, embargo powers and misdemeanor charges. There are things that are better handled at the local level.

Senator Beck stated he would like to see the committee members reimbursed for their efforts in working on this study. He asked what the possibility would be of putting this in the hopper with the rest of the studies. Senator Anderson said he thought that was a good suggestion and he had no objections.

Senator Aklestad asked Senator Anderson what they intended to accomplish through this resolution. Senator Aklestad pointed out that weed free hay can already be mandated. Senator Anderson stated that state to state transportation of weed free hay, seeds, etc., are all concerns. In order to recommend some legislation in this regard, a comprehensive study has to be made.

Senator Aklestad stated that there is one point this

resolution does not cover and that is the problem of vehicle travel. He believes that concentrating on clean hay is not going to help the problem of vehicles spreading noxious weeds.

Senator Anderson said that was a good point, and he would be open to an amendment from the committee addressing the vehicle problem. Senator Williams pointed out that probably the vehicle problem would be a topic of discussion in the next two years during the study.

Closing by Sponsor:

Senator Anderson stated that he was sure all the members of the Agriculture Committee were familiar with noxious weeds in their respective areas since the problem is not confined to one county or state. One of the needs is to work with other states. He stated he hoped the committee would see fit to support SJR 12.

HEARING ON SENATE BILL 185

Presentation and Opening Statement by Sponsor:

Senator Bill Yellowtail, Senate District 50, advised he is presenting SB 185 which is a result of the work of the Environmental Quality Council regarding ground water. The objective is to improve the availability of information to farmers and ranchers if they wish to consider leachability to groundwater in their choice of herbicides and insecticides. Presently the state requires that pesticides and herbicides be registered with the Department of Agriculture. The EPA also requires, in addition to registration, that there be tests made on these chemicals concerning the leachability potential to groundwater. That requirement comes from the federal Insecticide, Fungicide, and Rodenticide Act. This bill would add to the state requirements for registration the availability of test results for anyone who requests that kind of information. A nominal fee would be charged.

Proponents' Testimony:

CHRIS KAUFMANN, Montana Environmental Information Center, stated they stand in support of this bill because they care about the protection of ground water. Citizens across the nation are clamoring for information about ground water and how pesticides are affecting their ground water. She believes farmers especially want to know this information so they can make good choices about the chemicals they are using. If the information exists, it should be available to the people who most care about the impacts of pesticides on their ground water. She urged support of this bill.

JIM BARNGROVER, representing the Alternative Energy

Resources Organization, stated that AERO is a citizen based non-profit organization with approximately 200 members statewide. He stated they are interested in maintaining the quality of natural resources. He stated there are several reasons he is supporting this bill. The public deserves ready access to information about relative leachability of various pesticides. He does not believe people should accept the premise "what we don't know can't hurt us". In this decade there are literally thousands of man-made compounds which are used for pesticides. Many of these compounds are toxic and can be harmful if they end up in ground water. SB 185 would help prevent unnecessary contamination of precious ground water by giving interested parties information on the relative leachability of various pesticides. He informed that according to a recent farm and ranch survey, over half of the respondents expressed a need for more information regarding leachability of pesticides. Ready access to this information should be encouraged. He reiterated his support of SB 185.

#### Opponents' Testimony:

PAM LANGLEY, Executive Director, Montana Agriculture Business Association, said that MABA is a group of approximately 300 people who are involved in providing input items into agriculture. They include the applicators, dealers, distributors as well as the companies that do business in Montana. MABA is concerned about ground water and protecting the environment. She stated they worked hard last session for the passage of Montana Agriculture Chemical Ground Water Protection Act, and are now working on container disposal issues to help get containers out of the environment. She stated they are opposed to SB 185 for four reasons: (1) It is unnecessary legislation. This information is collected by EPA, and is available from EPA through the Freedom of Information Act. (2) They believe it would somewhat cripple the Department of Agriculture with needless paper work and take up staff time. She stated there are about 30 - 35 leachers registered in Montana, but several companies and distributors register this many basic products. It would take some research to even estimate the volume of paper work and staff time that this legislation could generate. She added that the Department of Agriculture has published a document called "Rave" in response to requests for information. It takes the commonly used compounds and tells which ones are leachers and takes into consideration several other factors such as depth to ground water, soil types, etc. (3) This legislation is vague and poorly drafted. (4) Montana agriculture could lose products they depend on simply because of this unnecessary and duplicative regulatory burden. Montana is a low use state, fees have been increasing, and companies may take a second look. She added that only two states require that tests be submitted directly to the state - California and Arizona. She urged the committee to vote against the legislation because it is redundant, creates unnecessary bureaucracy and regulatory burden.

BOB STEPHENS, Montana Grain Growers Association, stated that group opposes SB 185 mainly because they believe the information is already available through the EPA. He stated there is also a possibility of losing some chemicals.

Questions From Committee Members:

Senator Beck asked how much paper work this would create in the Department of Agriculture.

Gary Gingery stated that they had pointed out they would need additional files. If a fiscal note had been requested, they would have indicated that. He also stated they would need additional personnel to help in this matter; however, the EQC did ask the Department to run this program for two years, and if there was a significant impact, to come back to the next session and explain that. He added that the Department is not taking a position on this bill.

Senator Beck commented that it was stated in testimony that information is available from the EPA. He asked what is the reason for the redundancy in registering it with the Department of Agriculture.

Jim Barngrover stated that if one talks to a group of farmers and ranchers around Montana, one finds the vast majority do not realize there is a procedure for going through EPA to find out this information. Their first inquiry would be to the Department of Agriculture. It is logical that it should be available through the Department, where there would be much more opportunity to disseminate the information.

Senator Jergeson asked if it is Mr. Barngrover's impression that farmers would be reluctant to go to EPA and would prefer to go to the Department of Agriculture for information. Mr. Barngrover stated he believes that would be the case. Most farmers are not excited about doing anything with the federal government.

Senator Beck asked Mr. Barngrover about his comment that the organization AERO disseminates information. He asked if AERO could not inform the farmer that it would be just as easy for the farmer to collect information from the EPA as from the Department of Agriculture. Mr. Barngrover indicated they could to a point, but they do not serve many farmers and ranchers relative to the whole who work through the information channels already established through the Department of Agriculture.

In response to a question by Senator Rea, Mr. Gingery advised that there is a requirement that EPA requires registrants to address ground water issues with pesticides. Those products that are highly leachable do have statements on them that either say they do not contaminate ground water or warns consumers not

to use this herbicide when ground water is within ten feet of the surface and the soil is sandy. EPA does have warnings on those products for which there is leachability. In addition, the Department of Agriculture has a list of those leachers that are registered by EPA. There are about 66 primary leachers, 35 of which are registered by the state. The Department has the basic information that they use and this information is available to the public.

Senator Devlin asked what else would be done under this bill. Mr. Gingery explained that the Department has the right, under the current pesticide law, to require any registrant to submit their tests to the Department if a question is raised. When the Department gets that information into the files, there is only one document that is confidential and that is their formula for active and inward ingredients. That is confidential by EPA law and by state law. Everything else is available to the public if they specifically ask for it. He stated that most requests are for the chemical and physical attributes of that compound that make them leachers, and the short detailed summary information that shows how it may reach the ground water. Upon request that information is made available.

Senator Devlin wondered if all that information is available, what else would they want.

Senator Swift said he understood they were distributing much of the information in the publication mentioned in testimony. Mr. Gingery informed that the Department has a publication called "Rave", a four-page document which is distributed to commercial, government and private farm applicators on which they can make an assessment at their own well sites of the vulnerability of ground water when they use pesticides. It is a scoring system that they can go through on their own or in consultation with the Department or the Cooperative Extension Service, and it gives them a first idea of potential problem. It is not a document that says absolutely there will or will not be a problem. From there, working with various agencies they can decide if they should proceed further. Under the Agriculture Groundwater Protection Act, when the Department writes general management plans or specific management plans, they will deal with specific pesticides that are leachers in that act. The intent under that act is to get that information out to the public in terms of point source problems and also non-point source problems which would be applications on the fields or soils and irrigation.

Senator Williams asked Senator Yellowtail if there any specific cases that brought this to his attention. He also asked if he would be willing to sunset this bill. Senator Yellowtail responded that there is all kinds of information available about leachability of chemicals. That principal is well established. Regarding the matter of fiscal impact, a sunset could be put on this but he did not think that was a good idea. He stated it was not his or EQC's intent to "cripple" the Department of

Agriculture with unnecessary paper work. If the Department had concerns, they could have requested a fiscal note.

Senator Jergeson asked when EQC was discussing these issues and determining whether or not to request the drafting of this bill and other bills, was the public involved in the discussions about whether or not EQC would recommend this legislation. Senator Yellowtail informed that EQC meetings are open to the public and well advertised. He stated he did not recall that the Ag Business Association was present or took an interest in the EQC process.

Senator Jergeson asked Pam Langley of the Montana Agri Business Association if she cared to describe the involvement of her association in the discussions that EQC had on this issue. Ms. Langley stated they did follow this, but they did not actually see the bill until the same day EQC voted on it.

Senator Jergeson asked if in the discussions about leachability, did she make comments about what is currently involved in tests through the EPA and where information resides concerning that issue. She said they were monitoring, but until they knew exactly what EQC had in mind, they did not know how to respond to what they were planning to do. She stated they have no problem with information being made available. However, they question what good this study will do.

Senator Jergeson asked Ms. Langley if it was her impression that farmers are reluctant to involve themselves with EPA to the extent of asking them about anything. She stated she believes they would prefer dealing with the Department of Agriculture. Without this legislation, a farmer can call the Dept. of Agriculture, which in turn will call the EPA and obtain the information. She stated the companies object to the extra regulatory burden. Under this bill, it will be up to the companies to provide the information.

Senator Rea asked how many pesticides are being discussed. Mr. Gingery advised that in Montana there are almost 4900 pesticide products registered. Of those, there are about 350 active ingredients. EPA has designated about 66 active ingredients that are true leachers, with another secondary list adding about 100. In terms of active ingredients they are talking about between 66 and 100 products that are potential leachers under certain conditions. Pesticides include disinfectants, which are usually not a problem in this situation, and repellents.

Senator Aklestad asked Senator Yellowtail who might be the people coming and asking for this bill. He stated agriculture has been the focal point of this discussion, so he would like to know if any farmer was in attendance at the meetings. Senator Yellowtail stated this certainly is not an anti-farmer bill. It is designed mainly to make the information easily available.



Senator Aklestad said it was pointed out that farmers were reluctant to contact the EPA. He again stated he would like to know who was in attendance at those meetings.

Senator Jergeson stated he was a co-sponsor of SJR 12, and would like to see it pass, but when it is suggested in the fiscal note that there is no fiscal impact and yet there are responsibilities for the Director of the Department as well as several other public people representing various groups, he wonders if the fiscal note is entirely accurate. It is his belief there must be some fiscal impact. He also pointed out there is no fiscal note at all for SB 185, but it was mentioned that this bill may have considerable fiscal impact. Chairman Jergeson wondered if the Department is being consistent in their approach to these two issues.

Mr. Gingery stated that when they were asked to help draft SJR 12, the sponsor and people involved specifically asked the Department to assume the costs involved, and requested that the committee members serve without state per diem or related expenses. He stated that is the way they were instructed to write the resolution, but it could be easily changed if that was the wish of the Agriculture Committee. He further advised that in regard to SB 185, they did make a presentation to EQC of what they thought it would cost to manage the system. There was discussion within the EQC and they specifically asked if the Department could operate the system for two years and assume costs involved. The Department had mentioned filing needs because of the size of the studies, and the time spent in xeroxing materials to be sent out. It is noted in the bill that the Department would charge the basic cost of copying. The Council specifically asked the Department to hold off. Without a fiscal note the Department could not even present how much the basic cost of a filing system would be.

Senator Jergeson said the point he wished to make on SJR 12 is that if the Director of the Department of Agriculture spends a day in committee meetings, that is a day he spends away from other responsibilities within the Department that must be done by someone else, and so on down the line. Yet it is indicated there is no fiscal impact there; then there is no fiscal note on SB 185, and yet testimony indicates there is potential fiscal impact. He questions whether the committee is getting consistent information concerning fiscal notes.

Senator Beck stated it is his recollection that there were no representatives in attendance from the Stock Growers, Grain Growers, etc. at meetings preceding the drafting of this bill. They were attended by Environmental Information Center, AERO and possibly Northern Plains Resource Council. He stated he was almost certain there were no representatives from the agriculture side.

Senator Jergeson commented that there are people who are

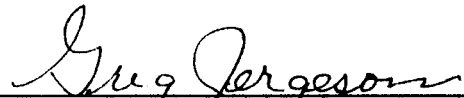
bona fide agriculturalists who belong to many organizations. Senator Beck said someone had asked who testified on the bill and he was informing who did testify, according to his recollection.

Closing by Sponsor:

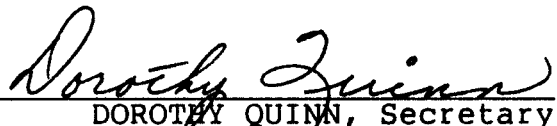
Senator Yellowtail stated he wished to respond to some of the points made in criticism. In regard to the bill being unnecessary and redundant, he stated the purpose of the bill is to make information more easily and locally available to agriculturalists who want it. He believes it would dovetail well with the publication "Rave" that the Department of Agriculture already has in place. He pointed out on the back of the publication there is a list of chemicals that have some leachability potential. He stated it is certainly not their intention to "cripple" the Department of Agriculture with paper work. In regard to the fiscal note, he said he wished the Department had spoken up sooner. He believes there was an understanding which has been abandoned at this point, and added he would be glad to request a fiscal note. Concerning the bill being vague and poorly drafted, he stated the bill contains rule-making authority for the Department. He rejected the assertion that agriculturalists could lose products due to the extra regulatory burden. He stated this is not a regulatory burden but rather a matter of requesting information that those companies already file, tests that are already done, and attempt to make it more locally available. The bill does not purport or intend to inhibit any chemical whatsoever. It is his opinion agriculturalists are becoming more sophisticated in wanting to know what they are putting on their land and in their water. It is an information accessibility bill. Senator Yellowtail indicated he would be willing to do the research requested by committee members.

ADJOURNMENT

Adjournment At: 4:15 P.M.



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GREG JERGESON, Chairman



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DOROTHY QUINN, Secretary

GJ/dq

ROLL CALL  
AGRICULTURE COMMITTEE

DATE 2/4/91

52nd  
LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON			
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.

February 4, 1991

TO: Chairman and members of the Senate Agriculture Committee

RE: Senate Resolution 12, Senator John Anderson: A Resolution for a committee to research and develop legislation for the 1985 Montana County Noxious Weed Management Act.

FOR: The Record

My name is Neil Peterson. I am the Weed Coordinator for the Madison County Weed Board and chairperson for the Headwater's RC&D Range/Weed Committee, which is made up of weed personnel from eight (8) Southwest Montana Counties. Both entities go on record in support of SR12.

I want to detail some history pertaining to SR12. The Resolution is directed specifically at Section 7-22-2126, Embargo of the current County Noxious Weed Act. The Resolution goals are to:

- Review the legal aspects to provide improved embargo administrative authority to county and state governments.
- Coordinate the use of Embargo authority and the current Noxious Weed Seed Free Feed Program of effected governmental and private agencies and parties.

The now existing Embargo Section is the weakest section in our excellent Noxious Weed Act. It is now becoming clear, that with the Noxious Weed Seed Free Feed Program in place, that weed prevention, early detection and public awareness are key activities in the overall Weed Management Program. An improved Embargo Section can perform a key role in Weed Prevention.

In Madison County's Noxious Weed Seed Free Feed Program there are 1.1 million acres of Federal and State Public Lands covered with regulations governing entry of only certified weed seed free feed. These regulations have been in place for two years and the public's acceptance and support has been 90 plus percent. The reasons for acceptance has been that administration has been geared to prevention and awareness, not strict law enforcement. The other reason has been the certified products are in the market place and the involvement from agricultural producers in the program.

Even though the program is up and running, the county has no administrative authority for the private land owners or state school lands. The County's Weed Board has had requests and support for regulation.

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In one case, a county's rancher believed the regulations were in place and called to see if he could bring his own hay, from another county, to his home place. This is an excellent example of public awareness developing in Madison and adjacent counties.

The Resolution was generated by a Ruby Valley Conservation District Board Member and local hay producer. The Resolution has been introduced through conservation district levels and has been approved by the State's Conservation District Association.

It was understood at the beginning that the Resolution was created for researching the legal aspects; the administrative authorities; the coordination of several entities and then if feasible, present sound legislation in the future.

In summary, the Noxious Weed Seed Free Feed Program and the need for better Embargo authorities is like a snow ball rolling down a hill. It really doesn't want to be stopped, but it needs guidance and direction. This is what SR12 can and needs to do.

Thank you.

*Heil O. Peterson*

