

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Greg Jergeson, on March 13, 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)

Members Excused:

Bob Williams (D)

Staff Present: Connie Erickson (Legislative Council).

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

Announcements/Discussion:

None.

HEARING ON HOUSE BILL 771

Presentation and Opening Statement by Sponsor:

Representative Mike Foster, House District 32, advised that HB 771 is a clarification bill that has been worked out between the grain elevator operators and the Department of Agriculture. HB 771 makes some changes in the commodity warehouse and commodity dealer laws which regulate grain elevator operations. As an example, it gives the Department of Agriculture ability to file actions in Lewis and Clark County as well as in the county in which the violation of the law occurred. It clarifies when warehouse receipts must be issued, and it requires accurate record keeping by commodity dealers. The changes are designed to protect grain producers and also has the support of grain elevator associations.

Proponents' Testimony:

MIKE ORGAS, president of Montana Elevator Association, and an employee of General Mills, stated that his group supports the changes proposed in HB 771. He added that it is to the benefit of their industry as well as the producers to assure that accurate record keeping and sound business practices are followed.

PAM LANGLEY, representing Pacific Northwest Grain and Feed Association, stated that association supports this legislation.

A Position Statement was furnished by the Department of Agriculture and copies furnished to the committee members. (Exhibit #1).

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Aklestad asked if the smaller grain operators were represented at the hearing in the House, and how will this bill affect them. In response, Roy Bjornson, Department of Agriculture, stated that he believed the smaller operators did have input. It will affect some of the smaller operators in view of the fact it will require a little more bookkeeping. They are mostly concerned with truckers who do not keep very good records when it comes to verifying what type of business they have done. Most of the businesses keep adequate records, but some truckers operate from the check book only.

Senator Aklestad expressed concern that the small operators have not been equally represented. Mr. Orgas informed that Dan Place runs a small independent operation and he is one of the primary movers in this particular bill.

Senator Koehnke asked if there was any opposition in the House, to which Rep. Foster replied that to his recollection there was not.

Senator Jergeson referred to existing language on page 15, subsection 2, and asked Mr. Bjornson where it was arrived at that the bond would be set at 2%. Mr. Bjornson advised that Section 6 sets the bond requirements for the commodity dealer and subsection 2 sets the bond for the commodity dealer which may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period. So 2% is the value which is used to determine the amount of bond that the commodity dealer must have, between \$20,000 and a million dollars. A dealer would have to carry a minimum of \$20,000.

Senator Jergeson asked if the title of the bill would allow the amount of bond be changed to 3% without changing the \$20,000 and the top level. Mr. Bjornson directed attention to Line 20, page 15, which, through negotiation with the grain elevator company, it was decided to take that out.

Senator Aklestad pointed out there was no effective date, to which the sponsor replied that it would be October 1.

Closing by Sponsor:

Representative Foster advised that upon checking his notes, he ascertained there were no opponents at the hearing on HB 771 in the House. He urged concurrence on HB 771.

HEARING ON HOUSE BILL 888

Presentation and Opening Statement by Sponsor:

Representative Linda Nelson, House District 19, informed that HB 888 revises the Wheat and Barley Committee. It expands the groups that may nominate members for appointment to the committee, and it expands it to include Women Involved in Farm Economics; it revises the time period for nominations; deletes the provision that a member of the grain trades sits on the committee; exempts the executive director of the committee from the State Pay Plan; allows the committee to contract with other units of the University System; and it appropriates the funds from the Wheat and Barley Account. She stated the money for the Wheat and Barley comes from their own check-off. Ms. Nelson added that HB 888 easily passed the house.

Proponents' Testimony:

DENNIS NATHE, State Senator, District 10, advised that he believes HB 888 is a good bill and accomplishes two things that the Wheat Research Market Commission wanted accomplished: (1) statutory appropriation; and (2) exempts one position from the State Pay Plan. He urged concurrence of HB 888.

LARRY BARBER, a wheat and barley producer from Denton, stated he is currently serving his second term as a director of the Montana Wheat and Barley Committee. He read and presented his written testimony to the Committee (Exhibit #2).

CHUCK MERJA, a wheat and barley producer from Sun River and President of the Montana Grain Growers Association, stated their association supports HB 888. He believes the changes encompassed in this bill will help the Wheat and Barley Committee become more effective in spending the producers' monies to help promote Montana's wheat and barley industry. It would statutorily appropriate the assessment collected on wheat and barley to the committee, in whom they have the utmost confidence to spend that

money wisely. Concerning exemptions from the State Pay Plan, he advised that initially there were four exemptions requested but that was amended in the House. He stated his organization would like to see this body reinstate those four exemptions. He presented written testimony expanding on their reasons for supporting HB 888 (Exhibit #3).

KAY NOREMBERG, representing Wives Involved in Farm Economics, advised they would like to concur with the previous testimony and rise in support of this bill.

Opponents' Testimony:

LAURIE EKANGER, Administrator of the State Personnel Division, stated she is representing the Administration in opposition to Section 2 of this bill only. She advised their objection has been consistent, and that there are four bills so far this session to exempt individuals or groups of employees from the State Pay Plan. She stated one of her objectives is not to have this exemption list grow, adding it gets longer every session. The reason the Administration opposes adding to this list of exemptions is because it allows the agency to raise above and beyond that allowed in the statewide pay scales. The effect of that is to revert back to the pre-1973 days when every agency set their salaries whether or not they had the funds available, and the state, as an employer, was not able to guarantee that they were providing equal pay for equal work. The purpose of the statewide classification of pay is to provide order, equity, fairness and consistency to the state pay practices for all state employees. There are problems with the Classification in Pay Act and they are coming to a head this session. Past legislators have purposely frozen and compressed the salaries in order to make ends meet. As a result, there is a real proliferation of requests for exceptions and exemptions.

The speaker stated another reason the Administration is opposed is that exemptions are not fair to managers that do not have a funding source which allows them to raise their salaries. General Fund agencies, particularly, have very little flexibility and even if they had the authority, they could not afford to raise salaries. The biggest reason in opposing exemptions is that an occupation is singled out for special treatment. It is her opinion this is demoralizing and unfair to the rest of the state work force. She pointed out that exceptions can be offered if severe recruitment and retention problems occur. However, the Administration urges the Legislature to stop encouraging exceptions and exemptions, and that an overall solution to the pay problems be looked at. She acknowledged that there are chronic pay problems, and most of the professional employees are underpaid. The last session established a committee to study pay, and a recommendation was provided by that committee which would allow salaries to be based on the surrounding states' markets and that philosophy is in the Governor's pay proposal which is in HB 509. In summary, she requested that Section 2 be

deleted, and the committee work together with the House and the Administration to come up with a solution for all the states' professions and not deal with them in this "hodge podge" manner.

Questions From Committee Members:

Senator Rea asked how many other individuals are paid with funds that are not state funds. He stated it was his understanding that even with exemptions, the state will still be obligated to pay that individual. Ms. Ekanger advised that agencies have a number of funding sources and some are earmarked, some are general funds, and some are federal funds. Any time any of these are state employees, some are general funded, and some of them have funding from other sources.

Senator Devlin asked Mr. Barber when their group first became included in the State Pay Plan. Mr. Barber informed they have been included since its inception, 1967, and added that they requested this exemption in the last session but it was denied.

Senator Koehnke asked if this has always been a problem. Mr. Barber replied that the problem is growing in magnitude due to the fact that the comparative salaries are overrunning them. In the initial years of the Committee, their salaries were comparable with the rest of the country, but with the present salary picture they are so far below the rest that it is almost embarrassing. He informed the No. 3 person in North Dakota makes more money than the No. 1 person in Montana in a similar position. He added that a young man was hired in Idaho to be an Administrator, and he started at \$45,000 which is \$13,000 more than their Administrator makes with nine years' experience. If the current Administrator must be replaced, it will be difficult to find a qualified person who will come in at that level. He stated their main objective is to be able to bring in the right people to do the job, and that is their reason for requesting the exemption.

Senator Devlin asked if the current Administrator's position could be upgraded. Ms. Ekanger stated she believed that had been checked into, and that the position is properly classified.

Senator Devlin referred to the proposal of the interim committee, and asked if there would be an increase for this individual up to a market determined by surrounding states. Ms. Ekanger advised that what the committee's proposal does is set the entry rates at the average of the market for the four surrounding states and the State of Washington. It sets entry rates and then gives individuals a percent raise to catch up with the market. She said the problem is over the last ten years they have really lost ground because of no pay raises while all the surrounding states have been averaging 3 to 4% per year.

In response to a question by Senator Aklestad, Connie Erickson, Legal Counsel, advised that if the committee wanted to remove the exemption, all that would be necessary would be to strike Section 2 in its entirety and the correct adjustments would be made in the title.

Chuck Merja requested permission to address the rating issue. He stated he did not believe that should come into the conversation since these are producers' monies. They are just trying to pay their people what they are worth. He believes it is different from being a General Fund money.

Ms. Ekanger stated it is state money, but it is earmarked. Senator Nathe agreed, stating that any money collected by the state is state tax money. However, this is not general fund money but is rather a voluntary check-off that is collected by the state, handled through the Department of Agriculture.

Ms. Ekanger pointed out that some agencies have more money than others - there are rich agencies and poor agencies in state government, depending on their funding source. She stated their concern is that employees not be paid based on how rich or how poor the agency is, but, as an employer, the State should provide equal pay for equal work.

Senator Koehnke asked if these individuals in question were given a pay raise, would the amount of check-off have to be raised. Mr. Berber stated it would affect the check-off in no way at all. They maintain a balance in a reserve fund for "lean" years, so there would be no difference in the check-off.

Closing by Sponsor:

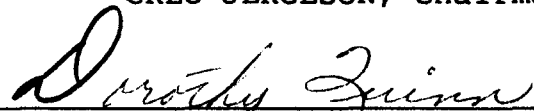
Representative Nelson pointed out that the discussion has centered around Section 2 of the bill, which she feels is important to be left in. She said Ms. Ekanger asked what makes this group of people so special that they would want to be exempt from the pay plan. Rep. Nelson reiterated that it is because the barley growers tax themselves - 1 cent a bushel on wheat, and 1 and 1/2 cent per cwt on their barley. They believe these are their tax dollars and they should be allowed to spend them as they see fit. She expressed sympathy for the rest of the state employees, but stated she feels justified in asking for this exemption.

ADJOURNMENT

Adjournment At: 4:10 P.M.



GREG JERGESON, Chairman



DOROTHY QUINN, Secretary

GJ/dq

ROLL CALL
AGRICULTURE COMMITTEE

DATE 3/13/91

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.

Memorandum 2/18/91

Plant Industry Division

Position Statement

House Bill 771 "An act to generally revise the agricultural warehouseman, commodity dealer, and the grain standards act"; revising use of the \$30,000 exemption; providing a penalty for fraud; eliminating use of a combination scale ticket and warehouse receipt; eliminating the requirement that scale weight tickets be exchanged for warehouse receipts; establishing a time limit for issuing a warehouse receipt; requiring a producer to request a warehouse receipt; allowing the pooling of agricultural commodities in storage to cover shortages; allowing the department of agriculture to seek remedy in the First Judicial District; changing the aggregate liability of surety bonds from cumulative to noncumulative; eliminating the ability of the department of agriculture to set bond amounts by rule; removing the minimum and maximum amounts of bonds for commodity dealers; providing remedies for commodity dealer defaults; requiring commodity dealers to keep records; providing for claims on the bond by an injured person.

The proposed changes to the Public Warehouseman and the Commodity Dealer laws as recommended in HB 771 are needed to clarify the intent of the law.

Section 80-4-402. Definition: (3) Bond indicates that the Department by rule may allow other equivalents such as Certificate of Deposit, and letters of Credit, etc. The method in which the department handles these other equivalents are set by rule. Therefore, line 17 Section 80-4-604 as required this section sets the minimum and maximum for the Commodity Dealer Bond or its equivalent.

(4)(c) The first \$30,000 of a person's annual grain purchases from producers are exempt. The intent of this exemption is to allow small feedlot, small grain dealers, and farmer to farmer purchases to occur without being in violation of the licensing requirement. The definition creates a problem for the department as some grain companies, feedlot operators and truckers have used this exception to avoid the licensing requirement or to avoid renewing their Commodity Dealer license in a timely manner. The proposed amendment would require an applicant to file for a license for the next succeeding year if the exemption is exceeded.

Definition (10) if proposed as a housekeeping amendment. The proposed amendment would allow the state law to always be in compliance if changes are made in the USDA-Grain Standard Act.

Section 80-4-429 (3) Penalty: Providing a penalty for a person who intentionally commits fraud. The proposed amendment would strengthen the penalty from a misdemeanor to a felony. The current law imposes felonies for non-licensed and issuing fraudulent receipts. This amendment adds felony penalties for unauthorized sale of warehouse receipts or failing to pay for purchased commodities. The penalty would not apply to Credit Sales Contracts if properly executed between the buyer and seller if they comply with the terms of the contract.

Section 80-4-525 (4) addressess the language that should be on a scale ticket so that the scale ticket is not confused with a warehouse receipt. The department prefers the current language "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE". The issue of concern as expressed by the proposed amendment is address in Section 80-4-527 (8).

(7) Eliminate the use of a Combination Scale Ticket and Warehouse Receipt. The proposed amendment would eliminate the use of a combination scale-warehouse receipt. Public warehouseman have eliminated the use of this type of receipts. CCC auditors will not allow the use of these receipts if the warehouseman has in place a Uniform Storage Agreement.

(8) The proposed amendment would allow the Public Warehouse to retain the original copy of the warehouse receipt rather than give the original to the producer. The producer may receive the original upon request of the public warehousemen. If the proposed amendment is allowed, the department will insist that all original copies of the warehouse receipts will be kept in a safe place.

(11) To clarify when a warehouse receipt must be issued. The proposed amendment would prevent the warehouse from keeping open storage using scale tickets. The proposed amendment to definition does present a technical problem with Section 80-4-522 whereby, 15 days of free storage will be granted to the producer. If warehouse receipts are not issued for 30 days a problem will exist. Consider adding language -- after issued insert WHEN STORAGE IS CHARGED BUT --- no later than 30 days after delivery unless agreed to in writing by both parties.

Section 80-4-538. Agricultural Commodities in storage will be pooled to pay off shortages: The proposed amendment will clarify how warehouse receipt claims are to be handled when a grain company becomes insolvent.

In subsection (3), the proposed amendment will save the department time and money when filing legal petitions.

Section 80-4-604. (1) To Change the aggregate liability of surety bonds from cumulative to noncumulative: The proposed amendment would re-align the Commodity Dealer bond with the

Public Warehouseman bond which is now noncumulative. The noncumulative status will make it easier to industry to acquire surety bonds.

(2) Allows the Department to set the amount of bond or its equivalent not to exceed 2% of the value of agricultural commodities purchased over a 12 month period. The proposed amendment would not allow the department to increase bond by rule. The proposed amendment would also eliminate the minimum amount and the maximum. The statement setting forth the minimum and the maximum are needed by the department.

NEW SECTION: To provide remedies for Commodity Dealer defaults: The proposed amendment would allow the department to deal with defaults in the same manner as we deal with defaults in the public warehouseman area. The amendment would grant the department authority to take possession of commodities and records in the facilities. The amendment would also allow the department to petition the court for the authority to liquidate the business.

NEW SECTION: To provide record keeping requirement for Commodity Dealers: The purpose of this amendment requiring commodities to keep records showing daily positions, purchases deliveries or payments. The current law does not require commodities to issue scale tickets and this causes problems for the field auditor.

NEW SECTION: To clarify who may make a claim on a bond by a person injured: The proposed amendment would clarify that only claims could be accepted from Montana producers and agricultural commodities grown in Montana.

hb771

SENATE AGRICULTURE
EXHIBIT NO. #2
DATE 3/13/91
BILL NO. #888

**TESTIMONY OF THE
MONTANA WHEAT AND BARLEY COMMITTEE**

Great Falls, Montana

**PRESENTED BY
LARRY BARBER, DIRECTOR**

**For the record of
the**

Senate Agriculture Committee

on

HB 888

**March 13, 1991
Helena, Montana**

My name is Larry Barber. I am a wheat and barley producer from Denton, Montana. I am currently serving my second term as a director of the Montana Wheat and Barley Committee. As I am sure you understand, the Committee is made up of seven producers, each representing a production district of the state. We are appointed by the Governor, but serve the producers, who, through a check-off, contribute a portion of their grain receipts for the purposes of market development and research.

House Bill 888 contains two important issues for the Committee and grain farmers across the state. The first issue is that of statutory appropriations. Since 1981, when the statutes were changed, the wheat and barley check-off monies have been appropriated by the Legislature. As a result, the producer-directors and farmers, who contribute the money must come before the Legislature and request the right to spend their own funds.

The scope of activities which is funded by the Committee is broad and growing each year. Over the last seven years, the average director spent 36.5 days per year serving on Committee business. We see the need for more market development, both domestic and foreign, and new research, if we are to compete in the business of wheat and barley production. What we are asking for in this piece of legislation is for the Legislature to statutorially appropriate to the Wheat and Barley Committee their monies and allow them to spend that money to best serve the needs of the producers they represent. The 1980's showed us that we must be able to maintain

an adequate reserve for poor years and that the reserve must be safe.

The second issue to us in this legislation is the request to exempt the administrator's position of the Wheat and Barley Committee office from the State Pay Plan. It is important for us to be able to hire and keep competent, reliable employees. The grain farmers, who voluntarily contribute these check-off dollars, deserve no less than that. Currently, our administrator earns 30% less than the next lowest paid wheat or barley administrator. We in Montana can't expect people to work for that much less than their fellow administrators. Time after time, we have watched our neighboring states, who are both our allies and our competitors in this industry, arm themselves with the best and the brightest people from the private sector industries, both domestically and overseas. Minnesota, North Dakota, Washington, Idaho, Nebraska, and Colorado all have attracted professional market development people from private trading companies and overseas offices because they simply pay more than we are allowed to in Montana.

I cannot see the wheat and barley producers of Montana allowing an abuse of these salary exemptions. We MUST pay good people and we MUST pay to get good people.

I thank you for your time and consideration. If you have any questions, I will be happy to answer them.



**Montana
Grain
Growers
Association**

SENATE AGRICULTURE

EXHIBIT NO. 13

DATE 3/12/91

BILL NO. #888

P.O. Box 1165 • 750 6th Street S.W. • Great Falls, Montana 59403 • 406/761-4596

Testimony of the Montana Grain Growers Association
on HB888
before the Senate Agriculture Committee
March 13, 1991

Chairman Jergeson, Members of the Committee, my name is Chuck Merja. I am a wheat and barley producer from Sun River and am the President of the Montana Grain Growers Association. Our organization supports HB888.

Our organization is a strong supporter of the Montana Wheat and Barley Committee. In fact, 24 years ago, we were instrumental in the passage of the legislation that established the Wheat and Barley Committee. We have watched the Committee become a premier self-help organization that is held in high esteem by other market development and research organizations.

This bill makes two major changes in how the Committee functions. I believe these changes will allow the Committee to even more effectively utilize producer monies to improve and promote Montana's wheat and barley industry. First, this bill would statutorially appropriate the assessment collected on wheat and barley to the Committee. The Committee is governed by seven wheat and barley producers who volunteer a great deal of their time to determine how best to use the assessment. It is their job to design and implement programs to fit their budget. They do a good job of stretching producer funds. We have a great deal of confidence in them. Without exception, they have all made it their job to become experts in the business of promoting Montana wheat and barley. Yet time and time again, we have seen the Legislature overturn their decisions and force the Committee to change their budget. That does not make sense. Producers must have the ability to use their money the way they see fit.

LANNY CHRISTMAN
President
Dutton

CHUCK MERJA
Vice President
Sun River

MERLE MULLET
Treasurer
Glendive

JERRY THUESEN
Secretary
Reserve

The portion of this bill that exempts the Committee employees from the state pay plan is also very important to us. Limiting the salaries of these employees has the potential of severely restricting the effectiveness of the Committee. This industry, which includes other state commissions, U.S. Wheat Associates, the U.S. Feed Grains Council, Foreign Ag Service, the grain trade, commodity brokerage firms and other allied industries, is part of a highly competitive job market. We can not allow the state pay plan to hinder our ability to retain and attract talented people to work in these important positions. The task of promoting our industry is very technical and specialized, requiring not only a high level of knowledge, but personal relationships with others in the industry on a state, national and international level. We cannot have a frequent turnover of staff members.

I know the State Department of Administration will be testifying against this portion of the bill. That is their job and they oppose all exemptions. However, while these staff members are technically employees of the Department of Agriculture, they are really employees of Montana wheat and barley growers. Montana wheat and barley growers should be free to pay them a salary that is commensurate with the job they do.

I urge you to give HB888 a do-pass recommendation. I'd be happy to answer any of your questions. Thank you.

DATE 3/13/91

COMMITTEE ON Agriculture

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)