

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Rea, on January 15, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Jack "Doc" Rea, Chair (D)
Sen. Francis Koehnke, Vice Chair (D)
Sen. Tom Beck (R)
Sen. Jim Burnett (R)
Sen. Gary Forrester (D)
Sen. Mike Halligan (D)
Sen. Bob Pipinich (D)

Members Excused: Sen. Aklestad, Sen. Bruski-Maus

Members Absent: Sen. Gerry Devlin (R)

Staff Present: Doug Sternberg, Legislative Council
David Martin, Committee Secretary

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

Committee Business Summary:

Hearing: HB 36, SB 85, SB 73
Executive Action: SB 73, SB 85, HB 36

HEARING ON HB 36

Opening Statement by Sponsor:

Rep. Joe Barnett, District 76, presented HB 36 which would establish custodial accounts during livestock sales. After the sale the buyer pays the market. The money is then placed in a custodial account to pay the owner/seller. This account is independent from the market and may only be drawn on by the seller and should be paid, by statute, within 72 hours. The purpose of these accounts are to prevent misappropriation of funds by the market and to ensure that the funds go directly to the seller. Rep. Barnett gave an example from South Dakota where the market went bankrupt and the court tried to incorrectly impound the custodial account. This has not occurred in Montana and this would be a preventative measure. The bill also contains gender cleanup language.

Proponents' Testimony:

Jack Sedgwich, Administrator Brands Enforcement Division,
Department of Livestock. (See exhibit #1)

Les Graham, Montana Association of Livestock Auction Markets, was
in full support of this bill.

Nancy Espey, Vice Chairman, Board of Livestock added that this
bill would cover special sales.

Lorna Frank, Montana Farm Bureau, said the organization was in
full support and this bill is supported by their charter.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Halligan asked if the language in the bill is specific enough to cover a situation where the market files bankruptcy by stopping misappropriation of funds. He suggested that the Legislative Council check into this. Jack Sedgwich replied that an auction market recently went under and that these funds were protected. Sen. Halligan asked if attorneys had to be hired and that if so, it could cost \$500 in legal fees to receive a \$500 payment from the market. Les Graham said that the custodial account is pre-set, determined by the number of cattle to be sold. This account is initially established with a letter of credit and over the years the fees, yardage, and interest are legally removed from this account. A problem occurs when many sellers do not claim their checks from the fund. A cushion thus builds up and it is difficult for the stockyards to reconcile their books. He stated that sometimes people will go 2 to 3 years without claiming or cashing their checks.

Sen. Rea asked where the custodial funds are deposited. Mr. Graham stated that the funds are deposited directly into the custodial account are not to be touched by the market. However, there is a temptation to use these funds for other purposes. He cited the purchase of a condo in Hawaii by a market in another state.

Sen. Beck asked if there was time limit on withdrawal from the custodial account. Rep. Barnett answered that even when the check may not yet be written, the funds are earmarked for that individual. There are a number of reasons that the money may sit in the custodial account.

Sen. Beck thought that there was a 72-hour time limit for the market to write a check. Rep. Barnett replied that the check would probably not be written until the seller asked for it. Mr. Graham added that it can be confusing due to overlapping state and federal statutes. The auction market is required by law to write the check within a 24-hour period after the close of the market. The problem occurs not in the writing of the check, but with the failure of the seller to cash the check. Sen Beck suggested that there should be a time limit under which these checks could be cashed.

Sen. Beck asked what would happen to the custodial account in case a market closed. Mr. Graham said the money should stay in that account until claimed. A possible solution to this problem would be the formation of a state trust.

Sen. Koehnke asked if the check had to be mailed within 24 hours after the sale. Mr. Graham said that the check must be handed in person or mailed 24 hours after the sale. He reiterated that the problem occurs when checks to the seller are not cashed.

Nancy Espey said that the Board of Livestock is concerned with the build-up of these custodial accounts. The best example is the recent failure of a South Dakota market, in which Montana producers lost money. A mechanism should be developed to occasionally purge these accounts.

Closing by Sponsor:

Rep. Barnett asked that the committee vote yes on this measure.

HEARING ON SB 85

Opening Statement by Sponsor:

Sen. Keating, District 44, stated that during the Legislative Audit hearings in the interim, irregular accounting practices are sometimes discovered. SB 85 covers one of these situations and comes at the request of the Audit Committee. The US Department of Agriculture changed some accounting procedures so that the Hail Board is required to change the expendable trust to an enterprise fund. Amendments will be needed. (See exhibit #2).

Proponents' Testimony:

Ralph Peck, Deputy Director of the Montana Department of Agriculture. (See exhibit #3).

Grant Zerbe, Chairman of the State Board of Hail Insurance. (See exhibit #4).

Randy Johnson, Montana Grain Growers Association, stated that his organization supported this measure.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Beck requested an explanation of the differences between an expendable trust and an enterprise fund. Jim Manning, Audit Manager, Legislative Auditors Office, said SB 85 was necessary to be in line with federal and state accounting principles. An expendable trust is money legally set aside for a specific purpose. An enterprise fund operation is similar legally. It sets money aside for a specific purpose similar to the private business sector. The customers or public are viewed as the private sector and thus should be governed under the enterprise system. The change would not affect the operation of the Hail Board but would merely change the fund from one accounting entity to another.

Sen. Koehnke asked if this change would cost money. Jim Manning said that the transfer of funds could be accomplished at no cost.

Sen. Forrester asked if this would need a state special revenue fund. Jim Manning replied no, that it would be classified as an earmarked fund. The intent of this change is to notify users that this is a state activity that is similar to the private sector and the customers are the outside public.

Sen. Forrester asked if this was similar to the Secretary of State's enterprise fund in that it uses general fund monies that are later reimbursed. Mr. Manning replied that he is not familiar with the Secretary of State's program. Sen. Forrester asked if there are enough Hail Board funds to meet obligations. Mr. Manning replied that there are adequate reserves and that the Hail Insurance program has been fiscally sound for the past 4 to 6 years. The Hail Insurance program does not have problems similar to the workman's comp program. Although SB 85 covers some technical accounting concepts, it is basically a housekeeping bill.

Closing by Sponsor:

Sen. Keating added that the administrative costs are proprietary funds that are earned from the premiums. He concluded by pointing out that the state has adopted the General Accounting principle standards. As a result, the state has been better prepared for federal audits. The Legislative Auditor has received certificates of excellence for their work and has saved interest income due to the quality of these audits. If SB 85 is accepted with amendments, everyone should be satisfied.

Doug Sternberg, Legislative Council, explained the amendments to the committee. The essence of the amendments is to include reference to 80-2-222 in statutory appropriations and to grant authority to the Hail Board to spend these funds.

EXECUTIVE ACTION ON SB 85

Motion/Vote:

Sen. Halligan moved DO PASS on the amendments. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Sen. Halligan moved SB 85 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 36

Discussion:

Doug Sternberg, Legislative Council, explained that HB 36 only revises the penalty statute. It does not address bankruptcy or other issues, which would have to be addressed on a case-by-case basis in court. On page 2, line 10, "and" requires that both elements would have to exist to prosecute the crime. By inserting "or" on line 12 then only one element would have to be found to prosecute, thus creating two separate offenses. One offense would be the knowing failure to establish an account and the second would be the improper use of that account.

Sen. Beck asked why not change "and" to "or" in subsection A. Mr. Sternberg replied that it is gender language cleanup and grammar. There will be more of this type of action during the session.

Sen. Beck asked if there needed to be an A and a B subsection. Mr. Sternberg answered affirmatively, thus ensuring the separation of the two offenses.

Motion/Vote:

Sen. Halligan moved that HB 36 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

Meeting recessed from 1:50 to 2:10 p.m.

HEARING ON SB 73

Opening Statement by Sponsor:

Sen. Devlin brought this bill because railroad lines were not keeping up their fences, thus allowing cattle to wander on to the rails and be killed. There has never been a penalty for not maintaining these fence lines. There is also not a time limit for payment by the railways after an animal is killed. This bill would place a 30-day time limit with a 10% interest penalty each day after that. There are amendments that should be included with this bill. (See exhibit #5).

Proponents' Testimony:

Jamie Doggett, Montana Cattlemen and Montana Stock Growers Association, supports SB 73. It clarifies the fence maintenance issue and ensures timely payment in the event of the death of an animal for which the railroad is at fault.

Pat Keim, Director of Government Affairs, Burlington Northern(BN) supports this bill, including Sen. Devlin's amendments.

Russ Ritter, Government Affairs Director for Montana Rail Link (MRL), supports the bill and the amendments.

Ralph Peck, Deputy Director, Montana Department of Agriculture, supports SB 73. (See exhibit # 3)

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Beck inquired about the 30-day time limit until the fence is fixed. He asked that if the time was too long, and the rancher fixed the fence, whether the railroad would reimburse the landowner. Mr. Keim said that the 30-day limit is a compromise

between 15 for Sen. Devlin and 45 for the railway. Sometimes it is difficult to ensure that a rail crew could get to it, but BN would work with the ranchers. Russ Ritter, MRL, concurred with those observations.

Sen. Aklestad asked how the market value of the cattle would be determined. Mr. Keim said that, if there is uncertainty, BN uses recent market figures when dealing with ranchers. Sen. Aklestad suggested that the 10% interest rate on page 3, line 7, be replaced with the prime to reflect market changes. Mr. Keim did not know the origin of the 10% rate figure.

Sen. Aklestad asked Ms. Doggett if she was comfortable with the amendments, to which she replied affirmatively.

Closing by Sponsor:

Sen. Beck closed for Sen. Devlin.

EXECUTIVE ACTION ON SB 73


Motion/Vote:

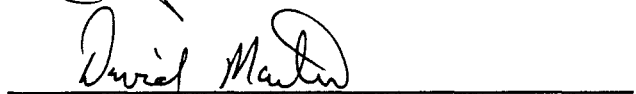
Sen. Pipinich moved the amendments to the bill. The motion **CARRIED UNANIMOUSLY.**

Further executive action was delayed to a later date.

ADJOURNMENT

Adjournment: Meeting adjourned at 2:30 p.m.


SENATOR REA, Chair


DAVID MARTIN, Secretary

jr/dm

ROLL CALL

SENATE COMMITTEE AGRICULTURE DATE 1-15-93

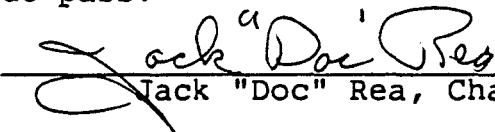
[illegible]

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 18, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 85 (first reading copy -- white), respectfully report that Senate Bill No. 85 be amended as follows and as so amended do pass.

Signed:  Jack "Doc" Rea, Chair

That such amendments read:

1. Title, line 7.

Following: "PURPOSES;"

Insert: "STATUTORILY APPROPRIATING PROGRAM FUNDS TO THE BOARD OF HAIL INSURANCE AND GRANTING AUTHORITY FOR THE BOARD TO EXPEND THE FUNDS FOR PROGRAM PURPOSES;"

Following: "SECTIONS"

Insert: "17-7-502,"

2. Page 2.

Following: line 1

Insert: "(3) The board of hail insurance has authority to accept and expend all funds received by it, including amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose."

Renumber: subsequent subsections

3. Page 5.

Following: line 3

Insert: "Section 4. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)""
Renumber: subsequent section

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 18, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 36 (first reading copy -- white), respectfully report that House Bill No. 36 be concurred in.

Signed: Jack "Doc" Rea
Jack "Doc" Rea, Chair

ADW
Amd. Coord.
Sec. of Senate

130904SC.San

HB 36

Mr. Chairman and members of the committee, for the record my name is Jack Sedgwick, Administrator of the Brands Enforcement Division of the Department of Livestock. I come before you today on behalf of the Board of Livestock and urge you to support this bill for the following reasons:

As written this bill changes section 81-8-216, MCA making it "gender appropriate". It changes the words "shall" to "must" thereby making it explicit and mandatory that certain revenue requirements be carried out.

Lastly, this bill separates the necessity for the establishment of a custodial account from the proper use of a custodial account. Both are required, but now only one needs to be proven to establish a violation of law.

We believe this bill will encourage entities to properly maintain those custodial accounts and to more properly use those custodial accounts thus better protecting the public and producers.

I want to thank this committee for its time and consideration in this matter and should be most happy to respond to any questions or to furnish any information needed for you to make your decision. Again, let me urge you on behalf of the Board of Livestock to support this legislation.

Thank you.

Jack Sedgwick

Jack Sedgwick, Administrator
Brands Enforcement Division
Department of Livestock

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 1/15/93

BILL NO. HB 36

AMENDMENT TO SENATE BILL NO. 85

Introduced bill

1. Page 1, line 12.

Insert new Section 1. (insert 17-7-502 and amend by adding reference to 80-2-222.)

Renumber subsequent sections.

2. Page 2, following line 1.

Insert: "(3) The board of hail insurance has authority to accept and expend all funds received by it including amounts repaid as principal and interest on investments. These funds are statutorily appropriated to the board of hail insurance, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations as described in 17-7-501(1) or (2), made for that purpose."

Renumber subsequent subsections.

- END -

SENATE AGRICULTURE
EXHIBIT NO. SB 85
DATE 1-15-93
2



MARC RACICOT
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.
PO BOX 200201

HELENA, MONTANA 59620-0201

LEO A. GIACOMETTO
DIRECTOR
(406) 444-3144

FAX (406) 444-5409

Friday, January 15, 1993
Senate Committee on
Agriculture, Livestock and Irrigation
Senate Bill 85

Chairman, Rea, Members of the Committee, I am Ralph Peck, Deputy Director of the Montana Department of Agriculture. The Department of Agriculture remains concerned as to the necessity of Senate Bill 85. We support an amendment to Senate Bill 85 that would provide for statutory appropriation authority necessary to administer the program.

Grant Zerbe, Chairman of the Montana State Board of Hail Insurance and other board members are here today.

Mike Murphy, Administrator of the Agricultural Development Division is also here today to answer questions.

SENATE AGRICULTURE

EXHIBIT NO. 3

1-15-93

SB 85

wp51\add\market\SB85.115

Senate Committee on
Agriculture, Livestock and Irrigation
Testimony, on Senate Bill 85

SENATE AGRICULTURE
EXHIBIT NO. 4
DATE 1-15-93
BILL NO. SB 85

Testimony of Grant Zerbe

Chairman State Board of Hail Insurance

Mr. Chairman and Members of the Committee:

For the record, my name is Grant Zerbe, Chairman of the State Board of Hail Insurance. I am actively involved in a farming operation at Frazer MT in Valley county.

While the State Board of Hail Insurance recognizes the Legislative Auditors recommendation is to change the accounting fund type to comply with their interpretation of Governmental Accounting Standard Board, the Hail Board must also be responsive to the policy holders who have supported this program for the last 76 years.

The State Board of Hail Insurance is concerned as to the necessity of Senate Bill 85. In the event that Senate Bill 85 does receive a do pass recommendation from this committee we support an amendment that would provide statutory appropriation authority.

In closing the State Board of Hail Insurance and policy holders past and present would like to Thank You for your consideration in this matter

Amendments to Senate Bill No. 73
First Reading Copy

Requested by Sen. Devlin
For the Committee on Agriculture

Prepared by Susan Fox
January 13, 1993

1. Page 1, line 15.

Following: "fences"

Insert: "-- exception"

2. Page 1, line 19.

Following: "pass"

Insert: ", except that a fence is not required in places where water ditches, embankments, terrain, or other sufficient protection prevents domestic animals from straying onto the right-of-way. An affected landowner or lessee may construct, maintain, or repair a fence subject to approval and reimbursement by the railroad corporation."

3. Page 1, line 22.

Following: "cars"

Insert: ", because of the lack of a fence or maintenance of a fence,"

4. Page 2, line 8.

Strike: "A person"

Insert: "An affected landowner or lessee"

5. Page 2, lines 8 and 9.

Strike: "department" on line 8 through "transportation" on line 9

Insert: "public service commission"

— 6. Page 2, line 10.

— Page 2, line 12.

Strike: "department"

Insert: "public service commission"

7. Page 2, line 18.

Strike: "15"

Insert: "30"

Following: "days"

Insert: ", weather permitting"

8. Page 2, line 19.

Strike: "15"

Insert: "30"

SENATE AGRICULTURE
EXHIBIT NO. 5
DATE 1-15-93
BILL NO. 73

9. Page 2, line 20.

Strike: "\$500"

Insert: "\$100"

Strike: "\$100"

Insert: "\$50"

10. Page 2, line 21.

Strike: "15th"

Insert: "30th"

DATE 1/15/93

SENATE COMMITTEE ON AGRICULTURE

BILLS BEING HEARD TODAY: SB 85, HB 36, SB 73

*** PLEASE PRINT ***

Name	Representing	Bill No.	Check One Support Oppose	
JAMIE Doggett	MT Cattlewomen	73	✓	
JACK SEDGWICK	DEPT. of LIVESTOCK			
Les Graham	mt L.S. Auction Assn	36	✓	
Grant Zerby	State Hair Board			
Wayne Budt	Mont PSC	73		
Nancy Essey	Board of Livestock	36	✓	
Ralph Peck	mt Dept of Agriculture	85 73	✓	
Russ Ritter	MRL	73	✓	
Lerna Frank	mt. Dairy Bureau	36	✓	
Randy Johnson	MGA	85	✓	
PAT Keim	Burlington Northern	SB 73	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY