

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Chair Rea, on February 10, 1993, at 1 p.m.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: Sen. Devlin

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: SB 328
Executive Action: SB 279, SB 328

HEARING ON SB 328

Opening Statement by Sponsor:

Sen. Hertel said SB 328 would make some changes to the existing law, helping the sellers and applicators of materials to agricultural crops. He referred to 71-3-901, Section 1, SB 328 would allow a lien to be placed on these crops by the person or firm applying this material. SB 328 would add "fertilizer" to the types of materials applied to crops which would allow those crops to have a lien placed on them. Lines 6 and 7 add the words "and the use of fertilizer". Lines 16 and 17 defined how fertilizers will be applied, either through aerial or ground application. The intent of SB 328 is that any certified entity under contract that performs labor in applying materials, such as chemicals to control weeds or insects or fertilizer to enhance growth of the crop by aerial or ground application, will be allowed to place a lien on the crop where the service was

performed. This lien would be held until payment has been made for this service. Section 2 provides for an immediate effective date.

Sen. Hertel said SB 328 is necessary because of the large dollar amounts involved with the agricultural chemical and fertilizer business. SB 328 is necessary for the economic survival of the applicators who cannot bear the burden of nonpayment for these materials and services.

Proponents' Testimony:

Pam Langley, Executive Director of Montana Agriculture Business Association, supported SB 328. Exhibit #1.

Ed Naughton, Farmer Union Oil Co., Credit Manager, supported SB 328. The proposed liens will cover loopholes that exist in current law. Mr. Naughton stated although most farmers are responsible for paying their debts, this lien, if filed within 60 days of application would protect receivables. There has been an increase of fertilizer application in the last 10 years. If these accounts are not paid then Coops would go out of business and this would affect farmers.

Mike Lang, Northern Ag Service in Malta, Montana supported SB 328. Mr. Lang said his company performed ground application of pesticides and fertilizers. He said the 1980's were tough on the Ag business and business in general. The fertilizer/pesticide application business is a high volume business that deals with large sums of money. If an applicator cleared 2%-3%, profit that is considered high. He stated, as a small operator, he could not afford a credit department. He is responsible for that aspect of his business thus making accounts receivable very important. Lien laws would not only insure that payment was received, but a person could also borrow against their accounts receivable from a bank.

Gary Marxer, Moore Farmers Oil Company (a local Coop), Moore, MT supported SB 328. He stated 40% of the costs in his business are covered, 60% are not. He said fertilizer use has increased over the last 5 years and that explained the introduction of SB 328. The Coops need ways to protect themselves from debts which are not paid.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Forrester asked why there was not a time limit on the lien. Sen. Hertel said it was his understanding that it only applied to present crops. Doug Sternberg, Legislative Council, said that was correct, under Section 902, the lien must be filed within 60 days after last labor or service was performed. Under Section 907, all actions regarding foreclosure and enforcement of the

lien must be commenced within one year. This would change the filing limitations statutes.

Sen. Aklestad asked Sen. Hertel if the lien would not supersede a bank mortgage. Sen. Hertel said no. Doug Sternberg said Section 904 deals specifically with the priorities of the lien. The mortgage could only be taken on the grain or crops. Doug read the entire section and said that it does not affect the priority of liens.

Sen. Aklestad asked for clarification on what a lien could be taken against without getting a second lien. Pam Langley responded that this lien could only be on the crop, whereas a bank could place a lien on land or equipment. Sen. Aklestad said the bank already had a lien on the crop so this would be a second lien. Ms. Langley said that the crop lien would go in ahead of the bank. She said the Montana Bankers Association and the Independent Bankers Association both expressed that they had no problems with this legislation.

Sen. Aklestad asked if a applicator was able to file a lien that supersedes the bank's lien. Sen. Halligan said that a lien could not be filed on the fertilizer applied on the ground, and the priorities of filing a lien are not changed but expanded to include the applicator's labor. Sen. Halligan asked Mr. Sternberg to read Section 904 again and he did.

Sen. Halligan said that the crop lien would apply only to the crop and would supersede the other liens, except for seed.

Closing by Sponsor:

Sen. Hertel said that the lien provided in SB 328 would not be used a great deal, but the lien would provide much needed protection. Fertilizer use is important and can have significant amounts of money tied to it. He said there will not be an increase on the amount of liens brought into the Secretary of State's office with passage of this bill. In the long run SB 328 will help agriculture in Montana.

EXECUTIVE ACTION ON SB 279

Discussion:

Doug Sternberg, Legislative Council, said that he had drafted Russell Hill's amendments into bill draft format. The essence of the bill stays the same. The primary change is page 4, line 8, changing "responsible for" to "required to". There is also a change on line 9, changing "construction" to "construct", and "operation" to "operate".

Motion/Vote:

Sen. Halligan MOVED THE AMENDMENTS to SB 279. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Sen. Aklestad MOVED SB 279 have an immediate effective date. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Sen. Pipinich MOVED SB 279 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 328

Motion/Vote: Sen. Forrester MOVED SB 328 DO PASS. The motion CARRIED UNANIMOUSLY.


EXECUTIVE ACTION ON HB 104

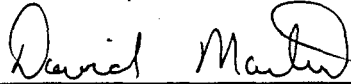
Discussion: The Committee discussed HB 104 and decided that there were points to work out before further consideration.

Motion/Vote: Sen. Pipinich MOVED that the Committee pass consideration until the next meeting. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: Meeting adjourned at 1:39 p.m.


SENATOR REA, Chair


DAVID MARTIN, Secretary

JR/dm

ROLL CALL

SENATE COMMITTEE AGRICULTURE DATE 2-10-93

[illegible]

FO8

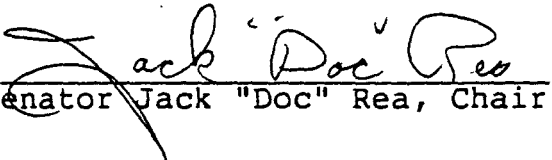
Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 328 (first reading copy -- white), respectfully report that Senate Bill No. 328 do pass.

Signed: 
Senator Jack "Doc" Rea, Chair

Agriculture Lien Law Clarification -- SB 328
Senate Agriculture Committee Hearing
February 10, 1993

SENATE AGRICULTURE

EXHIBIT NO. 1
DATE 2-10-93
BILL NO. SB 328

1. Clarifies that lien on crop is available for both ground and aerial application of pesticides, clearing up some confusion that has existed. Fertilizer is alluded to ("to promote plant growth") but is not really currently covered and is the only input item other than gasoline for which a lien on the crop is not provided for in Montana law. Pesticide sale and application was added in Montana law in the early 1980's.

2. Farm suppliers have no intention of filing a lien on every farmer who purchases fertilizer (not being done now under seed and pesticide liens) but need ability to file in some cases. An individual in Secretary of State's office estimated that only about 1 per cent of all ag liens filed are for seed and pesticide combined.

3. Farm suppliers--especially independents and those in small towns--are struggling to stay in business. CRP reducing our customer base by as much as 25% in some counties plus costly and time-consuming DOT, OSHA and EPA regulations along with Worker Comp rates are all taking their toll. Accounts receivable are yet another challenge.

4. Keeping farm supply outlets in small communities is beneficial to farmers. Given all the other challenges, a few individuals not paying their bills could force some of our members out of business, meaning farmers would have to travel farther and farther for their input items. In addition, it would leave rural folks now working for us unemployed.

6. We gave copies of this legislation to and discussed it with the Montana Bankers Association, the Montana Independent Bankers Association, the Montana Grain Growers Association, the Montana Farm Bureau and the Montana Farmers Union.

7. This legislation would give farm supply outlets a secured lien and would not affect current priorities. Seed, hail, threshers, labor and warehouse liens remain ahead of this lien.

8. The bottom line is that all we want is an avenue to assure that we are paid for our product--which obviously we can't recover once it is on the farmer's field--to help us stay in business to serve farmers who do pay their bills.

Submitted by Montana Agricultural Business Association

Amendments to House Bill No. 104
Blue Reading Copy

Requested by Senator Halligan
For the Committee on Agriculture

Prepared by Doug Sternberg, Council Staff
February 6, 1993

1. Page 5, line 18.

Following: "ACCOUNT"

Strike: ". AN AMOUNT UP TO \$20,000 EACH YEAR IS"

Insert: ", are"

2. Page 5, lines 21 and 22.

Strike: "FUNDS" on line 21 through "FUND." on line 22

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 2-10-93

BILL NO. HB 104

DATE 2-10-93

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 328

Name (Print)	Representing	Bill No.	Check One	
			Support	Oppose
Pam Langley	Montana AgriBusiness	SB328	✓	
ED NAUGHTON	FARMER UNION OIL CO	SB328	✓	
Mike Lang	MABA/Northern Ag Service	SB328	✓	
Gary Maxner	Moore Farmers Oil Co	SB328	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY