

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION**

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

**Call to Order:** By **CHAIRMAN VERN KELLER**, on March 2, 1993, at  
3:00 P.M.

#### **ROLL CALL**

##### **Members Present:**

Rep. Vern Keller, Chairman (R)  
Rep. Joe Barnett, Vice Chairman (R)  
Rep. Shiell Anderson (R)  
Rep. Bob Bachini (D)  
Rep. Jody Bird (D)  
Rep. Ervin Davis (D)  
Rep. Bill Endy (D)  
Rep. Harriet Hayne (R)  
Rep. Gary Mason (R)  
Rep. Bill Rehbein (R)  
Rep. Sam Rose (R)  
Rep. Dore Schwinden (D)  
Rep. Wilbur Spring (R)  
Rep. Wayne Stanford (D)

**Members Excused:** Rep. Jay Stovall

**Members Absent:** Rep. Larson

**Staff Present:** Dave Bohyer, Legislative Council  
Jaelene Racicot, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SB 328, SB 279, SB 259  
Executive Action: SB 328, SB 279

#### **HEARING ON SB 328**

##### **Opening Statement by Sponsor:**

**SEN. JOHN HERTEL, SD 15, Moore**, stated that SB 328 would establish a lien for fertilizer with liens on other materials already included in the law. At the present time, a lien can be taken against a crop to pay for an operating loan from the bank, for pesticide applicators, for custom combiners etc...**SEN. HERTEL** urged the committee to pass SB 328.

Proponents' Testimony:

Pam Langley, Montana Agricultural Business Association, stated that SB 328 passed the Senate Agriculture Committee unanimously. EXHIBIT 1.

Ed Naughten, Farmers Union Oil Company in Great Falls, stated SB 328 would protect all farmers. He said the company did \$15 million worth of business in 1992 and of the \$15 million, two liens were filed. Mr. Naughten stated that in past years SB 328, if it were law, would have been very useful to protect their investment. Farmers Union Oil Company lost \$100,000 one year because a lien could not be filed against a crop.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. ROSE asked if they would be able to have a lien on a crop until the fertilizer bill was paid. SEN. HERTEL replied that was correct.

REP. BARNETT asked if SB 328 would protect the aerial applicator. SEN. HERTEL said that it would.

REP. BARNETT asked if it would be protection for small businesses selling fertilizer. Ms. Langley stated that SB 328 did protect them as well.

Closing by Sponsor:

SEN. HERTEL closed.

REP. ROSE was asked to carry SB 328 on the House floor.

HEARING ON SB 279

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, SD 37, Dillon, stated that SB 279 addressed a concern that irrigation districts have with subdivisions. This bill states that when a parcel is created and it crosses the defined section line, the irrigation district assessment boundary would be included in the survey of the acreage that was created.

Proponents' Testimony:

Jo Brunner, Montana Water Resource Association, stated that SB 279 was very important to the irrigation districts. A division of land often causes problems for the irrigation districts and for the ones who have purchased the land. Irrigation districts

have the ability to decide how to deliver water and divert the water. Then, when the land is subdivided, the irrigation districts may not have a way to get that water to the newly created parcels.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SPRING asked if SB 279 applied to the Gallatin Valley Irrigation Districts' small independent ditches. SEN. SWYSGOOD said that it did not, it applied to irrigation districts.

Closing by Sponsor:

SEN. SWYSGOOD closed.

#### HEARING ON SB 259

Opening Statement by Sponsor:

SEN. JOHN HARP, SD 4, Kalispell, stated that SB 259 is a code commissioner bill. This bill institutes what the supreme court has determined is law. The primary purpose of this is to change the code to fit the law as determined by court judgment. He stated that the court said where the land is condemned and the utility has paid for the easement once it is unfair to require them to pay for the easement again. If the relocation of a powerline is at the request of a landowner, then the land owner should bear the cost of relocation. SB 259 deletes the requirement that utilities pay for one-half the cost of relocation.

Proponents' Testimony:

Greg Petesch, Code Commissioner Legislative Council, stated that a code commissioner bill is a clean-up bill. Where there are problems in the code, he prepares a list of suggested legislation. The Senate Judiciary Committee requested the bill. The purpose for these type of bills is to allow a person reading the code to know what the law is. Currently, if one would read the statute which SB 259 addressed it would appear the utility company can be required to pay half of the costs of relocating a powerline.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BARNETT asked Mr. Petesch what would happen if there was no record of an easement being granted and the powerline was

requested to be relocated. Who would pay to have it relocated. Mr. Petesch said if there was no easement for the powerline, the landowner can demand whatever price he wants. The landowner could tell the utility to get the powerline off his land. The power company has the right of condemnation to take the easement, but they would be required to pay full market value for the easement.

REP. ROSE asked about relocation of power lines for safety precautions. SEN. HARP stated that most of the time utility companies are very cautious to remove a line that may be dangerous to the general public.

Closing by Sponsor:

SEN. HARP closed.

REP. SPRING was asked to carry SB 259 on the House floor.

EXECUTIVE ACTION ON SB 328

Motion: REP. BARNETT MOVED SB 328 BE CONCURRED IN for the purpose of discussion.

Discussion: REP. SCHWINDEN said that he was concerned when the proponents talked about banks filing liens against the crops.

REP. REHBEIN stated that the bank has first lien on a farmer's crop and a fertilizer lien would come somewhere down the list after the bank.

REP. ROSE stated that he had a constituent who sells fertilizer in Choteau and two or three of his customers filed for bankruptcy. This constituent did not receive money for his fertilizer.

REP. MASON said that what SB 328 did was help protect the fertilizer businesses and he urged the committee to concur in SB 328.

Motion/Vote: SB 328 TO BE CONCURRED IN.

Vote: A roll call vote was called. The motion carried with REP. SCHWINDEN AND REP. REHBEIN voting no. REP. LARSON was not present to vote on the motion.

EXECUTIVE ACTION ON SB 279

Motion: REP. BACHINI MOVED SB 279 TO BE CONCURRED IN for the

purpose of discussion.

Discussion: REP. MASON said he thought SB 279 was an essential piece of legislation.

Motion/Vote: SB 279 TO BE CONCURRED IN.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON SB 259

Motion: REP. BACHINI MOVED SB 259 TO BE CONCURRED IN for the purpose of discussion.

Discussion: REP. ANDERSON suggested that the committee not pass SB 259 just to take care of situations that are covered under the Supreme Court ruling.

REP. SCHWINDEN agreed with REP. ANDERSON. He said that Montanans have gotten along fine since 1979, and he questions the merits of the bill.

REP. SPRING asked the committee to defer executive action on SB 259 until a later date.

REP. BACHINI withdrew his motion.

REP. KELLER asked Dave Bohyer to explain the reasons for the bill.

Dave Bohyer cited the McTaggart case and stated that the power company had already paid for the easement and the court found that they were asking the company to pay twice for the lien that they had already purchased once. The court determined this was unconstitutional. Therefore, if there was an easement and the landowner requests to have a powerline moved, the landowner would be required to pay 100% of relocation of the line. The landowner has been paid once and the court determined that the landowner should not be paid again.

REP. SPRING said that if the committee wanted to pass the bill out, he would support the motion.

Motion: REP. BARNETT MADE A SUBSTITUTE MOTION TO TABLE SB 259.

Motion/Vote: TABLE SB 259.


Vote: A roll call vote was called. The motion carried 8-6. REP. LARSON and REP. STOVALL were absent to vote on the motion.

ADJOURNMENT

Adjournment: 4:03 P.M.



VERN KELLER, Chairman



JAELENE RACICOT, Secretary

VK/jr

# HOUSE OF REPRESENTATIVES

## AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

3/2/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY	✓		
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.		✓	
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING	✓		
REPRESENTATIVE WAYNE STANFORD	✓		
REPRESENTATIVE JAY STOVALL	✓		✓
CHAIRMAN VERN KELLER	✓		

HOUSE STANDING COMMITTEE REPORT

March 2, 1993

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Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 328 (third reading copy -- blue) be concurred in .

Signed: \_\_\_\_\_  
Vern Keller, Chair

Carried by: Rep. Rose

Committee Vote:  
Yes 10, No 2.

471649SC.Hpf



HOUSE STANDING COMMITTEE REPORT

March 2, 1993

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Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 279 (third reading copy -- blue) be concurred in.

Signed: \_\_\_\_\_  
Vern Keller, Chair

Carried by: Rep. Tash

Committee Vote:  
Yes   , No   .

471650SC.Hpf

HOUSE OF REPRESENTATIVES  
AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/2/93 BILL NO. SB 259 NUMBER \_\_\_\_\_

MOTION: REP BARNETT MADE A SUBSTITUTE  
MOTION TO TABLE SB 259

MOTION CARRIED

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD		✓
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY		✓
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.	ABSENT	
REPRESENTATIVE GARY MASON		✓
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE	✓	
REPRESENTATIVE DORE SCHWINDEN	✓	
REPRESENTATIVE WILBUR SPRING		✓
REPRESENTATIVE WAYNE STANFORD		✓
REPRESENTATIVE JAY STOVALL	ABSENT	
CHAIRMAN VERN KELLER		✓

# HOUSE OF REPRESENTATIVES

## AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

### ROLL CALL VOTE

DATE 3/2/93 BILL NO. SB 328 NUMBER \_\_\_\_\_

MOTION: TO MOVE SB 328

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.		
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN		✓
REPRESENTATIVE SAM ROSE	✓	
REPRESENTATIVE DORE SCHWINDEN		✓
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

Agriculture Lien Law Clarification -- SB 328  
House of Representatives Agriculture Committee Hearing  
March 2, 1993

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 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--no one testified against it or lobbied in opposition to it in the Senate.
7. This legislation passed the Senate 40-5 on second reading, 48-2 on third reading.
8. This legislation would give farm supply outlets a secured lien on the crop only and would not affect current priorities. Seed, hail, threshers, labor and warehouse liens remain ahead of this lien.
9. 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. It's only fair that the fertilizer dealer also be entitled to file a lien the same as a pesticide or seed dealer or applicator or any of the others who provide input into a crop.

Submitted by Montana Agricultural Business Association

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 259  
DATE 3/2/93 SPONSOR(S) J. Harp  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
ED NEUGHTEN	FARMERS UNION OIL CO	✓	
DAN WALKER	US WEST	✓	
GENE PHILLIPS	PP&L	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Agriculture

COMMITTEE

BILL NO.

SB 279

DATE 3-2-92 SPONSOR(S) Swysgood

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>J. B. Hunter</u>	<u>MABA</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.