

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Rea, on March 22, 1993, at 3:15 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. Jim Burnett (R)
Sen. Gerry Devlin (R)
Sen. Gary Forrester (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: Sen. Halligan and Sen. Bruski-Maus

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 658
Executive Action: HB 658

HEARING ON HB 658

Opening Statement by Sponsor:

Rep. Dore Schwinden, District #20, said HB 658 addresses the issue of foreign grain pouring into the United States. This influx has affected the market price of grain and prohibited Montana farmers from getting their grain to market. He said this was not an attempt to stop Canadian trade. HB 658 would assess Canadian growers the same tax Montana growers have been paying on grain. He said the changes were simple. The annual assessment would be on wheat and barley and will be assessed at the first point of sale, delivery, or storage.

Rep. Schwinden said the assessment has been refundable in the past. Growers could ask for a refund, however, less than 2% ask for a refund. HB 658 would make delivered or stored grains non-refundable. HB 658 also has a severability clause. This would

protect the act if there was a constitutional challenge, although he said he did not think there would be a challenge. Rep. Schwinden said HB 658 addresses a fairness issue, if growers are going to have access to the "finest marketing system in the world" they should least pay for part of the upkeep of that system.

Proponents' Testimony:

Bob Stevens, Montana Grain Growers Association, supported HB 658. He said the Canadians boast the United States has become the second largest customer for Canadian wheat. If Canadians are going to use United States facilities, which affects the United States markets, they should pay part of the assessment.

Mike Murphy, Department of Agriculture, supported HB 658. He said the wheat and barley checkoff funds are used to promote and develop markets, conduct research, and to improve the transportation networks throughout Montana. Producers benefit from the use of these market systems and it would be appropriate that all users of the system contribute.

Pam Langley, Montana Grain Elevator Association, supported HB 658 (Exhibit #1).

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Aklestad asked if it was no longer possible to apply for a refund. Rep. Schwinden said it was changed in the House Taxation Committee to become nonrefundable. However, HB 658 was amended on the floor to continue the language to allow growers to receive a refund.

Sen. Aklestad said the "2%" who did not pay this fee could be very vocal and "raise a lot of cane for the wheat research and marketing committee". Rep. Schwinden replied affirmatively, and said they are assessed the tax. Sen. Aklestad said if the "2%" could not apply for a refund this could cause a problem for the grain growers. Rep. Schwinden said the current language would permit them to ask for a refund.

Sen. Aklestad referred to lines 17-20, page 3, and asked about the "refundable" references. Doug Sternberg, Legislative Counsel, said "refund" was reinserted as part of the original language and refers to the refundability of the assessment collected from the Montana grower. "Nonrefundability" is new language and refers to an assessment made on grain storage facility operators which was nonrefundable. The refundability refers only to the grower and leaves the present assessment refund process for the Montana Grower in place but specifically

provides on page 6, lines 10-11, that the assessment collected by the storage facility operator was non-refundable.

Sen. Aklestad asked if the checkoff would take place at the elevator, a commercial facility, and not when the farmer himself stores the grain. Rep. Schwinden said that was correct, and SB 30 sponsored by Sen. Aklestad addressed the original point of sale excluding the Agriculture Stabilization and Conservation Service (ASCS) and the loan problems associated with the sale.

Sen. Aklestad said SB 30 dealt with assessments at the point of sale, and asked if out of state or foreign grain would be assessed at storage time rather than sales time. Rep. Schwinden said the assessment would be taken at the point of initial delivery, storage or sale, whichever came first. He said the refundability was needed to avoid double assessments.

Sen. Koehnke asked which section of HB 658 concerned Rep. Schwinden in terms of a constitutional challenge. Rep. Schwinden said he no longer worried about constitutional challenges concerning HB 658. He was confident in the way the bill was drafted to make the assessment fair to everybody.

Sen. Koehnke said potatoes had a refundable assessment which has since changed to non-refundable. Rep. Schwinden said the appropriate test of HB 658 would be the immediate effective date. If the Canadians want to challenge the constitutionality of HB 658 for a "penny", then let them take it court and challenge it. He said he did not believe the Canadians would challenge HB 658 and if they did, the challenge would be defeated.

Sen. Koehnke asked if the "first handler" did the collecting. Rep. Schwinden confirmed that was correct.

Sen. Beck said HB 658 only dealt with grain elevators. He asked why feedlots, alcohol plants, and other possible purchasers were not included. Rep. Schwinden said, by and large, the other users were not the first point of sale or delivery of the grain.

Sen. Beck asked if Montana growers would receive a refund while Canadian growers did not, would that provision stand up constitutionally. Rep. Schwinden said it was not the Canadian growers loading grain on to their farm truck and driving down to Montana subterminals. He said it was the large elevator associations who have done "in house deals" to deliver grain which could not be sold in Canada and dump it on the Montana market. He said the proposed assessment was fair.

Sen. Beck asked if it would be difficult to get the sellers in Canada to pay the assessment and was that why the responsibility would be placed on grain elevators in Montana. Rep. Schwinden said the elevator, being the first point of sale, storage or delivery, has always been required to assess this tax. He said a good profit could be made on this commodity trade.

Sen. Beck said he had one final question. Sen. Pipinich said he had said that three times before and wanted to know if this was really his final "final" question. Sen. Beck said it was his "final" question. Sen. Beck said to change the effective date from immediate to July 1st to give the grain elevators some warning. Rep. Schwinden said the grain was "pouring" across the Canadian border. He said two unit trains have been loaded up with strictly Canadian sub-quality grain with no assessment. He said he would prefer the immediate effective date.

Sen. Beck said the assessment will probably be passed on to the person who buys the grain or "somewhere down the road". He said July 1st would allow HB 658 to take effect before next harvest season.

Sen. Devlin asked about the "sub-quality" grains coming down from Canada. Rep. Schwinden said there are vast differences in the quality of grain coming down from Canada. He said in some instances there is no difference from local grain. However in his own district the last two unit trains, 52 car trains, were frost damaged, low protein grains that could not be sold in the Canadian grain pools.

Sen. Devlin asked where the grain went after it left Montana elevators. Rep. Schwinden said he was not sure. He spoke with the Vice President of Operations for General Mills, who said once it reaches the milling ports no one knows its destination.

Closing by Sponsor:

Rep. Schwinden said HB 658 was important and fair. He thanked Doug Sternberg for the excellent job he did drafting the bill. He said Sen. Jergeson would carry the bill.

EXECUTIVE ACTION ON HB 658

Motion/Vote:

Sen. Beck MOVED HB 658 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: Meeting adjourned at 3:42 p.m.



SENATOR REA, Chair



DAVID MARTIN, Secretary

JR/dm

ROLL CALL

SENATE COMMITTEE AGRICULTURE DATE 3-22-93
MONDAY

MONDAY

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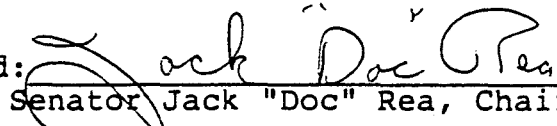
Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT


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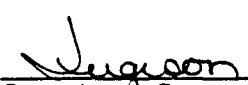
MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 658 (first reading copy -- blue), respectfully report that House Bill No. 658 be concurred in.

Signed: 
Senator Jack "Doc" Rea, Chair

 Amd. Coord.

 Sec. of Senate

 Senator Carrying Bill

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Montana Grain Elevator Association Testimony on HB 658
Senate Agriculture, Livestock and Irrigation Committee Hearing
March 22, 1993

Mr. Chairman, members of the committee, for the record my name is Pam Langley and I am representing the Montana Grain Elevator Association. The Montana Grain Elevator Association is comprised of some 150 grain elevators in Montana--ranging from small independents to those owned by large corporations.

The Montana Grain Elevator Association has and continues to support funding for the Montana Wheat and Barley Committee. The association's president, Mel Schulz, is an active member of the Montana Wheat and Barley Committee.

The association, at its board of directors meeting March 12, voted to support this legislation if three changes are made in the bill. The changes, which deal with legal issues and eliminating added costs to the grain industry, are:

1. **The language is changed in the legislation so that the out-of-state producer--whether he's Canadian or from another state--pays the fee, not the grain elevator operator.** The way this bill is drafted the cost is borne by the grain elevator owner--it assumes that overhead can and is passed on to the producer. However, in the highly competitive market, that is not necessarily true. In addition to this legislation increasing elevator fees, you will hear a bill--HB564--soon which also increases fees on elevators. The industry has seen tremendous consolidation in the last four years and the potential is very real for further consolidation, especially if these cost burdens keep increasing.

2. **The language is changed to include grain coming into this state to other than elevators comes under this legislation.** MGEA feels it is discriminatory to only have the assessment on grain purchased by elevators and not on end users such as seed dealers, feed manufacturers, feed lots, and alcohol plants.

3. **The language is changed to treat in-state and out-of-state grain the same to make the legislation constitutional.** The National Feed & Grain Association attorney in reviewing this legislation has stated that this bill as it is before you today violates the Commerce Clause of the U.S. Constitution because it treats in-state and out-of-state producers/grain differently. Montana producers may receive a refund of the assessment but the assessment is not refundable on grain coming from Canada.

MGEA does not believe it is responsible public policy to pass legislation you know may be unconstitutional. To do so is to set the state up for a costly and time-consuming court case--at a time when Montana's financial resources are limited. We would urge your support if the above changes are made.



National Grain and Feed Association

March 5, 1993

TO: Montana Grain Elevator Association

FROM: David C. Barrett, Jr., NGFA Counsel for Public Affairs

RE: ♦ *Montana Grain Assessment Legislation* ♦

BACKGROUND:

A bill has been introduced in the Montana legislature which would require grain elevator, warehouse and storage facility operators to collect non-refundable assessments on barley and wheat "delivered or stored in the state of Montana and sold through commercial channels." Montana growers may apply for refunds of any assessments made against them, but assessments made against non-Montana wheat or barley are not refundable. The main purpose of the bill is to make Canadian wheat and barley subject to assessments. However, it will also be applied against U.S. wheat and barley not grown in Montana.

ISSUE:

Whether the state of Montana can levy a nonrefundable assessment on non-Montana grain (when assessments levied on Montana producers are refundable)? Would such an assessment violate the Commerce Clause of the U.S. Constitution or treaties with foreign nations in the case of Canadian grain?

CONCLUSION:

The Montana legislation would violate the Commerce Clause of the U.S. Constitution and would not survive judicial challenge.

ANALYSIS:

The so-called Commerce Clause is set forth in Article I, Section 8[3] of the U.S. Constitution. It vests in Congress the power "[t]o regulate Commerce with foreign Nations and among the several States." Generally, if a tax is found to discriminate against out-of-state commerce, it is typically struck down without further inquiry." See e.g., Chemical Waste Management, Inc. v. Hunt, 112 S.Ct. 2009 (1992).

A joint resolution of the Senate and the House of Representatives of the state of Montana requesting a joint study by the Department of Fish, Wildlife, and Parks and the Department of Commerce to determine user conflicts between recreational and commercial use of public fishing reservoirs, public lakes, rivers, and streams and requiring a recommendation for conflict resolution methods including, if necessary, legislative proposals.

Whereas, recreational and commercial recreational use on water within the state of Montana has increased in recent years;

Whereas, conflicts between various recreational water users have increased in recent years;

Whereas, the Department of Fish, Wildlife, and Parks has the responsibility to manage recreational use on state water and the Department of Commerce is responsible for managing commercial uses on state waters;

Whereas, commercial outfitting and noncommercial outfitting are both important uses of Montana's waters,

Whereas, these uses are not mutually exclusive uses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in order to resolve use conflicts:

(1) The Department of Fish, Wildlife, and Parks and the Department of Commerce are urged to undertake and complete a joint study of recreational and commercial use conflicts on state waters, including, but not limited to:

- (a) soliciting names from concerned and interested outfitters and noncommercial recreational water users
- (b) establishing a committee comprised of an outfitter representative from the Montana Outfitters and Guides Association and the Fishing Outfitters Association of Montana, and a representative from Trout Unlimited, the Montana Wildlife Federation, and any other recognized regional or statewide conservation, recreational, or sportsman's group from the names solicited.

(2) The duties of the committee include, but are not limited to:

- (a) identifying the existing and projected future levels of recreational and outfitted use on the most highly used rivers in Montana;
- (b) identifying the impacts on the resources, including effects on water quality, health of the fisheries, effects on streambanks and adjacent lands;
- (c) identifying the types, location, season, duration, and frequency of conflicts;

- (d) identifying the impacts these conflicts have on the various users, including congestion, economics, and quality of experience;
- (e) soliciting public opinion on how to resolve user conflicts;
- (f) proposing a process and framework for resolving outfitter and/or recreational user conflict on Montana's waters.

(3) The committee will report back to the Fish, Wildlife, and Parks commission and the Montana Board of Outfitters with resolution methods, which might include, but are not limited to, proposed legislation. The committee will report back to the commission and the board by September 30, 1994.

BILLS BEING HEARD TODAY: HR 658

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