

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION**

**Call to Order:** By CHAIRMAN CHUCK SWYSGOOD, on February 6, 1995,  
at 1:00 p.m.

**ROLL CALL**

**Members Present:**

Sen. Charles "Chuck" Swysgood, Chairman (R)  
Sen. Gerry Devlin, Vice Chairman (R)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. Don Hargrove (R)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Linda J. Nelson (D)

**Members Excused:** Sen. Bob Pipinich (D)

**Members Absent:** None

**Staff Present:** Doug Sternberg, Legislative Council  
Jennifer Gaasch, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 256  
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: ; Comments: .}

**HEARING ON SB 256**

**Opening Statement by Sponsor:**

SENATOR GARY AKLESTAD, SD 44, Galata, introduced SB 256. He stated SB 256 was to try to address the complaints of the farmers when marketing their grain. He stated the first 10 pages of the bill were put together by a coalition of organizations and the elevator association. On page 11, line 23, of SB 256, it was the

thought of the people of Montana, that they were getting docked for their grain. Many of the elevators in Montana when the person crosses the scale with the truck, take a 1% dockage out of a 500- bushel load, and they take 5 bushels off. Then when the sample was sent in, regardless of where it was sent, when it came back the farmer had more than 5/10 of 1% additional dockage. The producers feel they are in a double dockage situation when that occurs. Lines 23 and 24 take care of that situation. The rest of the language on that page, he had heard there was concern on that language and he stated he would consider the debate that he hears today and then he might consider looking at the language. He stated on page 13, section 15 was a new section. He stated as it was right now the producer has the option to send it into the state grain lab. The producer tells the elevator operator when he comes in to the elevator. SB 256 will make it so when the producer comes into the elevator and makes an agreement on the contract, if the producer signs in 3,000 bushel increments, 5,000 bushel increments whichever, when crossing the scale, the end-gate samples would be taken as many loads to make up the 3,000 or 5,000 bushel. **SEN. AKLESTAD** stated the sample was taken and the composite sample was taken of the 3,000 or 5,000 bushel sample, part of it would be poured into a tamper-proof container and sealed and the other half would be sent into the state grain lab. That would be a change from the way it was being done today because now the producer has to ask for the sample to be sent in. SB 256 automatically has the sample going to the state grain lab unless the producer signs off on it. Also at that point, if the producer did not want the container to be saved by the elevator they could also sign off on that. **SEN. AKLESTAD** referred to page 14, section 16. He said it also contained major changes in the legislation. He stated right now the scale was on the 1/4 of a percent. He stated when a person sold their grain and they had 13% protein the producer would get a certain price and if the producer had 13.9 they would get paid for 13.75 rather than 13.9. On the tenths, the producer would get paid 13.9. He stated with the old way the producer gets shorted two out of three times. He stated that the grain trade would perhaps testify that they sell on the quarter on the coast and we would be on the tenth. He stated he would like to remind the committee that there are others thinking about going to the tenth. **SEN. AKLESTAD** stated he would like to offer an amendment to the bill. He stated the amendment was pertaining to malt barley producers in Montana. He stated they felt under the bill their contracts would be jeopardized. They do not want it sent to the state grain lab.

**Proponents' Testimony:**

**George Paul, representing the Montana Farmer's Unions, read his written testimony. (EXHIBIT #1)**

**Ronald Munson, a farmer from Shelby, MT., read his written testimony. (EXHIBIT #2)**

Dale Fossen, a farmer from Joplin, MT., read his written testimony. (EXHIBIT #3)

Lyle Shannon, a farmer from Fairfield, MT., read his written testimony. (EXHIBIT #4)

Art Adamson, a farmer from Shelby, MT., read his written testimony. (EXHIBIT #5)

Ted Lange, representing the Northern Plains Resource Council (NPRC), stated they were in favor of SB 256. He stated NPRC was concerned with the grain protein measurement and they were concerned that the farmers were getting the right price for their product. He stated in 1993 the farmers had lost millions of dollars in wheat protein premiums due to incorrect protein measurements. He stated by making the protein measurement more consistent it would be a big step in the right direction. He passed out a fact sheet. (EXHIBIT #6)

Opponents' Testimony:

Merlin Boxwell, representing the Montana Graingrowers Association, stated they supported SB 256 only with the amendments which were attached to the testimony that he read. (EXHIBIT #7)

Maureen Cleary-Schwinden, representing Women In Farm Economics, read her written testimony in support of SB 256 with the amendments that were offered by the Garingrowers. (EXHIBIT #8)

David Davison, a farmer from Highwood, MT., representing Montana Farm Bureau, read his written testimony in support of SB 256 with the amendments. (EXHIBIT #9)

Proponents' Testimony:

Doug Hellinger, a farmer, stated he supported SB 256 as introduced.

Norman Sullivan a grain farmer from Geraldine, MT., read his written testimony. (EXHIBIT #10)

Ed Skezlien, a farmer from Shelby, MT., stated that he would like a letter entered into the minutes that he had sent to SEN. AKLESTAD. (EXHIBIT #11)

Opponents' Testimony:

Gary Pearson, a farmer of malt barley in Fairfield, MT., read his written testimony opposing SB 256. (EXHIBIT #12)

**Gary Russell**, stated he was opposed to SB 256, specifically sections 11, 15, and 16. He stated he had 12 years' experience in the grain industry as both a terminal manager and a grain buyer. He stated he was a farmer near Brady, MT. He stated that the attempt to legislate the grain industry in SB 256 will bring about pain in the grain industry. He stated it would not help the farmer. He asked by using the 1/10 of 1% in section 16, what would realistically happen to the farmer? **Mr. Russell** stated the farmers could not operate in Montana buying on the 1/10 of 1% and selling it on the west coast on the quarter of 1%. He stated they would be forced to make a change. He stated they would be penalized, not rewarded. He stated that he saw no need to legislate a system that was already working in the market place as section 15, paragraphs 2-6, were already being carried out. He addressed the first paragraph. He stated in current practice the most grain in Montana being scaled in private laboratories by either the purchasing company's private lab or a third party private lab. He stated the farmer always has the option for state laboratory testing at any stage. Private labs within the state provide many useful helps free of charge. They analyze their bin samples in a timely fashion. That service would possibly disappear with the passage of SB 256. He stated section 11 would bring about changes in the grain industry which would penalize the grain farmer in Montana. The margins may increase and a farmer that raises good wheat will not see the benefits. He stated section 11 should be amended or struck from the bill.

**Jean Schoonover**, representing Hemsted Farms in Dutton, MT., stated she opposed SB 256 as written. She stated that SB 256 could make the difference between a net loss or profit on a small farm. Without the amendments she opposed SB 256.

**Mike Orgus**, representing the Montana Grain Elevator Association, read his written testimony opposing SB 256. (EXHIBIT #13)

**Brian Whitehorn**, a farmer from Choteau County, stated he was opposed to SB 256, specifically sections 11, 15, and 16. The Great Falls Tribune made a comment that **Mr. Whitehorn** read, "When the state attempts to regulate natural market forces it only magnifies the problem." In section 11, SB 256 combines dockage and discounts for dockage. He believed that the combination will not help the farmer, and could perhaps harm the farmer. He stated that section 15 changes procedures that he believes were working for the majority of Montana's farmers. If in fact there are companies who were not doing their jobs correctly, the impositions of civil penalties should suffice. He stated in section 16, SB 256 creates a protein payment procedure that simply will not work unless the entire industry adopts it.

{Tape: 1; Side: B; Approx. Counter: ; Comments: .}

**Bob McDonald, representing Harvest States,** read his written testimony. (EXHIBIT #14)

**Ronald Pepos, representing Inspectorate, a Coastal Grain Inspection agency,** stated they were opposed to SB 256. He stated they were third party independents. He stated section 16 writes them out of the business. With the wording in section 15 and all of the paper work it would be impossible for them to do business. He urged the committee to look at the bill closely. (EXHIBIT #15)

**Pam Langley, representing the Montana Agricultural Business Association,** stated that anything that hurt the grower would hurt them also. She stated they strongly supported section 7.

**Tom Johnson, a grain farmer from Lincoln County,** stated he was opposed to SB 256 as written. He supported the amendments that were offered by the Montana Graingrowers.

**Leonard Lambert, a farmer and a grain elevator owner and operator,** stated he was opposed to SB 256. He stated the main reason was it would hurt the producer and it would not help the elevator operator's much either.

**Jerry Swanson, a farmer from north of Cut Bank, MT.,** stated he was opposed to SB 256. He was concerned that he would lose his right of appeal for grain testing. He stated he was in support of the amendments proposed by the Montana Graingrowers Association.

**Zales Ecton III, representing the Agricultural Preservation Association and he raises wheat and barley in southwest Montana,** stated he was opposed to SB 256. They did support the amendments offered by the Montana Graingrowers. Their concern was page 14, lines 22 and 23, dealing with the 1/10 of 1% protein. They would want that taken out of SB 256.

**E. Monte Wetter, representing Scoular Grain Company,** sent a letter to the committee. (EXHIBIT #16)

**Informational Testimony:**

None

**Questions From Committee Members and Responses:**

**SENATOR TOM BECK** asked **Jim Grindy** to give him his points of interest. **Jim Grindy** said that he hauled in wheat at 3% dockage that was not thrashed. Then he takes a dockage on the 97% that was good wheat. He would take money off the 97%. He stated that was double dockage. He questioned the legality of that.

**SENATOR GERRY DEVLIN** asked **Mike Orgas** how often do the members calibrate their test equipment? **Mr. Orgas** replied they calibrate them on the west coast and in the state grain laboratory. He stated it depended on the company. He stated General Mills does not do their own grain testing. **SEN. DEVLIN** asked **Gary Russell** the same question. **Mr. Russell** replied they tested their elevator every day with 13 samples. They ran their own tests right there. He stated it was important for the elevator to test most accurately. **SEN. DEVLIN** asked if they still added dirt to export grains out on the coast. **Mr. Russell** stated that was not being done any longer. He stated it was counterproductive. He stated if the farmer had 1% dockage that would be a cost to the shipper of \$1,665. **SEN. DEVLIN** asked if from time to time Minneapolis pays on the 1/10. **Mr. Russell** replied that in Minneapolis they do and that was a different market than what Montana has to function under. He stated that every once in a while they may be able to ship some grain back. He stated the grain goes west and there are no 1/10 in the west.

**SENATOR DON HARGROVE** asked **George Paul** who was a proponent of the bill as it was presented. He stated he thought **Mr. Paul** should be able to address the aspect of what the market was. Have they done some analysis of the market, the west coast particularly, and what would it so to us? **Mr. Paul** replied they had previously visited with the **Montana Graingrowers Association** and **Mr. Orgas**. He stated in visiting with them they all support the bill except sections 11, 15, and 16. He stated they had previously discussed with the **Montana Graingrowers** and also **Mr. Orgas** on section 11. The producers told them they were not strongly supporting or opposing the amendments to section 11. He stated in section 16, when the markets elsewhere buy and sell and fluctuate between 1/10, 1/5 and 1/4, he had never seen fluctuations like that mirrored in Montana. He thinks that needed to be looked at further. He said section 15 was the most important part of SB 256. He stated it was important to have the samples better taken care of and also to eliminate the intimidation factor. The samples would be going automatically to the state grain lab, unless the producer waives that right. He stated the producer could still go to the free market. He stated they were not interested in accepting the Montana Graingrowers amendment to section 15. He stated they were not pleased, but they have negotiated on section 15.

**SENATOR REINY JABS** asked **SEN. AKLESTAD** if each sample would be sent in to the state grain lab. He asked if a sample would be sent in from every truck that came through? **SEN. AKLESTAD** replied that the composite sample would be sent in if the producer so desired. The composite sample would be several end-gate samples making up either 3,000 or 5,000 bushel increments, whatever was stated in the contract. He stated half would go into the composite sample and half would be sent into the state grain lab unless the producer waived that on the contract. The

composite sample would remain at the elevator unless that was also waived in the contract.

**SENATOR LINDA NELSON** asked **SEN. AKLESTAD** to address the business about the deliverer may waive in writing to have the sample sealed. Why would he waive that? **SEN. AKLESTAD** replied that if he felt that he was going to get a fair and equitable grading by either the in-house lab or a third party lab, he could sign off. He stated he was only trying to give the producer an option.

**SENATOR RIC HOLDEN** asked **SEN. AKLESTAD** to explain the fiscal note and how that was to effect the budget. **SEN. AKLESTAD** replied that the fiscal note would not effect the state budget at all. He stated it would be handled by the producer. He stated when the producer sends the grain into the state lab, the lab was self-sustained at the time and the amount that the producer paid for the sample paid for the fiscal note. He stated that on the second page of the fiscal note, there would be more samples coming in so there would be more potential for the price to come down.

**CHAIRMAN SWYSGOOD** asked **SEN. AKLESTAD** a question concerning the state grain lab. He stated that right now the producer has the option to send a sample to the state grain lab if there were some concerns about the previous sample taken. He asked who was intimidating who here, that they cannot get that process done? **SEN. AKLESTAD** replied that the producers who had contacted him feel like they were intimidated by having to ask to have it sent to the state grain lab. They do not like to ask to have that done. He stated if they do ask to have it sent in, the elevator operator may ask the producer if he trusts their lab or not? The producer may just decline and say alright, do not send it in. **CHAIRMAN SWYSGOOD** asked **SEN. AKLESTAD** if he was correct in saying that now they were going to mandate this unless the producer waived it on the contract. **SEN. AKLESTAD** replied that was true, and the waiver would be a lot easier than what was stated by a opponent. He stated the waiver would be on the contract not creating extra paper-work.

**SENATOR GREG JERGESON** asked **Merlin Boxwell** about his testimony. He stated that the grain trade would adjust to the changes in a way that would not reduce the company's income. He stated that they do not like the regulation so they would find some way to adjust and they were going to cost producers money, is that the basis of your statement? **Mr. Boxwell** replied that they were going to look out for their interests so there would not be a corner to back them into. He stated in item number one they make the point with respect to the discounts on shrunken and broken kernels and that would cost them dearly. **SEN. JERGESON** stated that all the way through the testimony **Mr. Boxwell** discussed how the grain trade in reaction to additional regulation would take it from the producer. He stated if he understood the premise of section 15 of SB 256, it was to eliminate the opportunities to the producers to be intimidated whether or not they send in to

the state grain lab. Given all of the threats and reactions given in **Mr. Boxwell's** testimony that the grain trade can take in reaction to the regulations in SB 256, are you surprised that some producers might feel that the grain trade would exercise a negative reaction from them if the farmer asked for their sample to be sent to the state grain lab? **Mr. Boxwell** replied that he believed that farmers were not easily intimidated in the area where he was from. He stated that intimidation was not a problem that he saw. He stated the question that might be asked would be how many official complaints had been filed with the department? **SEN. BECK** asked **Lyle Shannon** if the Anheiser Bush on the malt barley would not fulfill the contract with the malt barley farmers if SB 256 was passed, was that true? **Lyle Shannon** replied that they would eliminate their contracting program. **SEN. BECK** asked **Mr. Shannon** if he thought that was intimidation to a certain extent? **Mr. Shannon** replied yes. He replied that when he dumps a load of wheat for Anheiser Bush he knows what they will get for a price. **SEN. BECK** asked **Mr. Shannon** if he had 3% cracked kernels in the malt barley or something like that, they would get nothing, correct? **Mr. Shannon** replied that they would not get anything or they would be discounted.

**SEN. DEVLIN** asked **Ralph Peck** how many complaints had come into the Department of Agriculture? **Mr. Peck** replied that they receive complaints every year in regards to individuals not being able get state grain lab samples. He stated they do ask them if they had asked for that in writing because that is a requirement. He stated that was generally worked out between the person filing the complaint and the grain facility to which they deliver grain. He stated that once in a while they do have to call and remind the elevator that they do provide that service. **SEN. DEVLIN** asked if they received quite a few complaints. **Mr. Peck** replied that it would vary on the amount and quality of the crop that year and the value of protein.

**SEN. NELSON** asked **Dale Fossen** if he had a fear of the retaliation and if he had trouble having his grain tested by the state grain lab? **Mr. Fossen** replied that they had a problem with General Mills because the first sample was sent to Coastal and they were not pleased with the sample and so he wrote a letter that the sample be sent to the state. He stated that the very next day they sent it back to Coastal. He stated that was as far as they got.

**SEN. JERGESON** asked **George Paul** how the intimidation was used by the grain trade and if he felt there might be a comparison there between if a farmer goes in and requests a sample be sent to the state grain lab? **Mr. Paul** replied that they get a lot of calls. He stated there were a lot of producers that were intimidated. He stated there was an individual that did not come to the hearing today and testify because they were intimidated. He stated that the intimidation factor does exist and years ago the law was just flip-flopped and the language that **SEN. AKLESTAD** was putting back into the law would put it back to the way that it



was before. He stated there did not used to be this type of an intimidation factor.

**Closing by Sponsor:**

**SEN. AKLESTAD** stated he would like the committee to change the Graingrowers Association, WIFE and the Farm Bureau to opponents rather than proponents in the minutes. **SEN. AKLESTAD** stated after hearing the concern in that he would consider amending the bill on page 11, line 24, which would take care of the last sentence, but not the first sentence. **SEN. BECK** asked him to explain that. **SEN. AKLESTAD** stated the amendment would take out the word "damage" on line 24 through line 26 to "subclass". **CHAIRMAN SWYSGOOD** asked if he would then have the first sentence there of the underlined language. **SEN. AKLESTAD** replied that was correct. **SEN. AKLESTAD** stated he would not be in favor the word "malt barley" in there, the amendment was structured purposely so they would only deal with wheat and wheat barley. **SEN. AKLESTAD** stated the amendment would take malt barley out of the bill. He stated the waiver sample would be put right on the contract, creating no extra paper work. He stated that in the grain market there was just a discount market at the time. He stated that SB 256 was trying to correct the problem. He emphasized that they were not only dealing with the farmer, but the economy in the State of Montana and the United States. He stated he was opposed to the amendments that were proposed by the Graingrowers. SB 256 was for the producers.

**EXECUTIVE ACTION ON SB 207**

**Discussion:**

**Doug Sternberg** stated there were some amendments on SB 207. He stated there was the possibility of including several other actions into the part about agricultural activities. He stated on page 2, line 6, there was a suggestion to put in a reference to timber harvesting, thinning and timber regeneration; another was burning, stubble and slash disposal; another was plant nursery and commercial greenhouse activities.

**CHAIRMAN SWYSGOOD** stated that he assumed there would be another bunch of activities that wanted to be included.

**SEN. BECK** stated that the three should be included.

**SEN. DEVLIN** stated that on line 14, "at the end from local governmental zoning" as an amendment.

**Doug Sternberg** stated at that the codification section should address that concern. He stated they would all be codified in the chapter of Title 76 that deals with local and municipal government regulation and so he stated that they were already covered.

**SEN. BECK** asked if all three entities were included, state, local and municipal. **Doug Sternberg** stated he believed it was local and municipal. **Doug Sternberg** stated that it did not fall under the state Subdivision and Platting Act.

**SEN. DEVLIN** asked **Doug Sternberg** about the wording on the bottom of page 2, on the zoning for agriculture and the word "prohibit". He said they should not prohibit zoning for agriculture. **Doug Sternberg** stated that was another amendment. On page 2, line 20, **SEN. MESAROS** suggested after the word "trees", including the phrase, "trees including commercial timber". Line 29, there was a suggestion to strike the words "apply to" and add the word "prohibit".

**SEN. JERGESON** stated that he had a concern with the time of place issue. He stated that the concern was on page 2, in conversion from one activity to another. He was concerned that there might be a problem with the conversions that could cause problems with other property owners.

**Doug Sternberg** stated that in section 3 the first sentence does specifically address existing agricultural activities to say that a person cannot adopt an ordinance that prohibits an activity that was already ongoing or that forces the termination of an existing agricultural activity. He stated on line 6, of page 2, the line specifically says that when converting from one agricultural activity to another that was considered an agricultural activity.

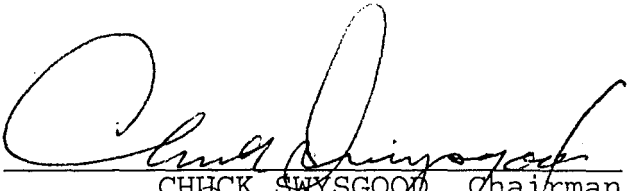
**SEN. BECK** asked what would happen if that was struck from the bill? **Doug Sternberg** replied that if "(n)" was taken out, that it would narrow the scope of section 2 by saying that only those activities would be considered to be agricultural activities and simply converting from one agricultural activity to another would not constitute an activity. It would apply to activities that were ongoing only to section 3.

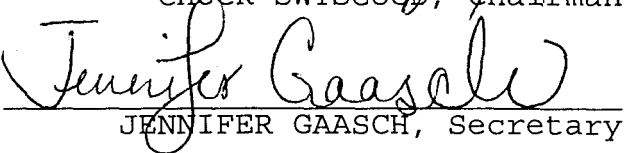
**SEN. HOLDEN** stated in that regard they would have a problem any time they wanted to switch activities.

**SEN. DEVLIN** asked **Doug Sternberg** where the language came from in six? **Doug Sternberg** stated that it was all new. **SEN. DEVLIN** asked if it came from a specific source? **Doug Sternberg** stated that he did not draft the bill, but he could find out that information.

ADJOURNMENT

Adjournment: 2:57 p.m.

  
CHUCK SWYSGOOD, Chairman

  
JENNIFER GAASCH, Secretary

CS/jg

**MONTANA SENATE  
1995 LEGISLATURE  
AGRICULTURE COMMITTEE**

## ROLL CALL

DATE \_\_\_\_\_

2-6-95

[illegible]

SEN:1995  
wp.rollcall.man  
CS-09



# MONTANA FARMERS UNION

Norman Sullivan, President

300 River Drive North  
P.O. Box 2447  
Great Falls, MT 59403-2447  
Phone 406 • 452-6406  
Fax 406 • 727-8216

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-6-95

BILL NO. SB 256

Before the  
Senate Committee  
on  
Agriculture, Livestock and Irrigation

Senator Chuck Swysgood  
Chair

Hearing on  
Senate Bill 256  
Amending Montana Grain Law  
Senator Gary Aklestad, Sponsor

Testimony of  
Montana Farmers Union  
by  
George Paul  
Executive Director

Room 413-415  
Montana Capitol Building

February 6, 1995

Good afternoon. My name is George Paul. I am executive director of Montana Farmers Union, a non-profit farm and ranch organization representing some 4,000 families across Montana. Montana Farmers Union promotes the interests of rural Montanans. This organization rises in support of Senate Bill 256.

Montana farmers, and grain traders and the business community and the State of Montana all have an interest in knowing as accurately as possible the quality of each year's grain crop. Quality determines value. From that value taxes are set, bills are paid, profits are taken, disposable income is determined, businesses are supported; communities flourish or not based in large part on the determination of crop quality each year. Crop quantity is important but crop quality determines the economy. Senate Bill 256 advances the interests of accurately determining crop quality.

The standards by which grain is graded in the United States are established by the federal government through its Federal Grain Inspection Service (FGIS). FGIS is the official grain testing agency in America. FGIS provides for certification of grain laboratories to conduct official grading according to the standards. In Montana the Federal Grain Inspection Service has designated the State of Montana as the agency certified to conduct official grain grading.

Designation of the State Grain Laboratory by FGIS to conduct official grading is significant for two reasons. First, the lab is certified by FGIS. Both personnel and equipment must meet rigorous FGIS standards. Training is required so grain inspectors and graders attain and maintain skill levels necessary for federal licensing. Lab equipment is kept to standards with calibration checks performed at scheduled intervals, some on a daily basis. Second, The laboratory is operated by the State of Montana, a truly objective and independent third party with no financial connection to either the buyer or seller. The State lab provides the only determination of crop quality by official methods and standards. Senate Bill 256 encourages use of the official grain lab by both buyers and sellers.

Some say this bill will cost producers millions of dollars. Montana Farmers Union believes the current law may have already cost producers and their rural communities much more than that. We are involved in this effort with Senator Aklestad because of producer complaints associated with trying to sell their grain. Among these chronic complaints are:

1. Producer composite samples being mixed or tampered with before arriving at the State Grain Laboratory.
2. Elevators not retaining a file sample.
3. Elevators not retaining a file sample of sufficient size.
4. Intimidation of producers to discourage requests for official grading.

We believe that New Section 15 of SB256 addresses these issues and should become a part of state law. This section, first, is producer friendly narrowing the opportunity for producer intimidation while retaining a producer right to not have grain officially graded. Official grading would be automatic but not mandatory. Second, it is grain trade friendly by narrowing the appearance of impropriety when handling grain samples. This should improve the relationship between buyer and seller. Third, by more grain being officially graded the interests of both buyer and seller are protected and the quality of commerce improved.

As recent as last Friday we understand an amendment will be offered which effectively guts Section 15 by deleting current bill language effectively returning the proposed changes to current law. We believe current law is ineffective and would urge you to reject any amendment to New Section 15 which does nothing to address the intimidation factor which currently exists. We further would ask rejection of any amendment which does nothing to improve sample integrity and affords the grain trade opportunity to avoid an appearance of impropriety.

We also understand that an amendment will be offered to remove Montana malt barley producers from this law. Given the special circumstances involved with this effort we will neither oppose nor support this amendment.

page 3  
Montana Farmers Union  
SB256

We will consider our position on other amendemnts as they arise. But for now, please consider this a good business bill, or put another way, a bill promoting good business and an improvement on a strained business relationship between grain sellers and buyers. We urge you to support Senate Bill 256. Thank you.



## SENATE AGRICULTURE

EXHIBIT NO. 2DATE 2-6-95BILL NO. SB 256TESTIMONY

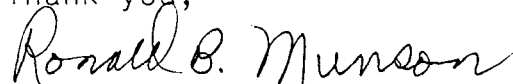
## Senate Bill 256

I support S.B. 256 because it defines some of the problems going on in the grain industry. Having the state grain lab test the grain samples will solve some of these problems. The state lab is the only way to get an impartial test. We are expected to accept a sample from the grain trade lab, yet they wouldn't consider accepting a test done by producers. This system seems very one sided. Grain samples should automatically be tested at the state grain lab, unless a waiver is signed. This keeps the producer from being put in a defensive position by having to request a state sample.

Another problem this bill addresses is the way protein premiums are paid to the producer. If the sample comes back 13.9, we get paid for 13.75. This is a bonus the grain trade has had for years, and it is time for this to be corrected. This bill takes care of this inequity by requiring payment on the tenth of a point, instead of on the quarter point of protein.

The last time I contracted grain with the Peavey Elevator Company, the price and amount of bushels took up one line on the contract, and the specified discounts took up 13 lines. The grain trade's attitude that they are in charge and can impose extreme discounts on producers needs to change, and this bill will help both the producer and grain trade to act more responsibly.

Thank you,



Ronald B. Munson, producer  
760 N. Marias  
Shelby, Mont. 59474  
ph (406) 434-2489

## TESTIMONY FOR MONTANA SENATE AG. COMMITTEE

Date: February 6, 1995

Subject: Support for SB 256

Presented to: Senate Agriculture Committee

Members of the Senate Ag. Committee, my name is Dale Fossen and I farm with two brothers at Joplin, Montana. We are third generation farmers. I am here today to testify in support of SB 256. I have recently had an experience concerning the very subject matter of this bill.

On December 13, 1994, we contracted with General Mills of Joplin to deliver 4,000 bushels of Harrington Malt Barley. That Harrington was delivered in December 1994. Prior to the sale of that malt barley to General Mills, we contracted with Columbia Grain of Rudyard to deliver 12,000 bushels of the same Harrington malt barley. We did deliver that barley and the state grain test of that barley proved choice #1 malt. We then climbed into a bin that once held 10,000 bushels and probed what was left to sell to General Mills. They sent the sample to their grain lab and the test also proved satisfactory--choice #1 malt barley. We therefore contracted with them on December 13 to deliver that malt barley pursuant to contract B 46073. I have copies of that contract and the grain test results with me.

After the delivery, General Mills sent the new sample to their testing lab--the same lab that they had previously sent the, probed sample to. This time the results were far from satisfactory. Their test now showed some very different results--no longer choice #1 malt. We were looking at \$.46 per hundredth weight less than the contract said. I asked that the sample be sent to the state grain lab. They refused to do so. I contacted the Montana Department of Agriculture--namely Ralph Peck. He informed me that I had to make a written request. I did that in a letter dated January 14, 1995. The next day I called General Mills to see if they sent the samples to the state. I was informed by Scott Johnson, the manager, that he had been instructed by Tom Willis of the Great Falls' office to send it back to their own grain lab. At that point I informed him that he was in violation of Montana State Law. He informed me that it was General Mills' policy not to send malt barley samples to the state grain lab. I informed him that according to state law that at least a pint of that sample must still be in his elevator. He told me that all of the sample had been sent--none of it remained. I told him that it sure is convenient now that there would not be any sample left to send to the state.

I next informed Ralph Peck and Ed Greenwood of the Department of Agriculture of the incident. They informed me that the Department's attorney would proceed on the matter. I contacted our attorney and he began preparing legal papers for pursuit of our rights in court. About a week later, I stopped at

General Mills to see if their lab results were back--they were. The test now showed we had choice #1 malt barley again. A miracle apparently had happened. We accepted full payment of the contract as written but not before General Mills tried to hit us with a \$.05 discount for things that were within the contract limits. A farmer must constantly be aware and alert.

Many farmers are reluctant to pursue the matter as far as we had because they feel intimidated by the large grain companies. Many others are afraid to speak up as I am now for fear of retaliation by the large grain companies. One farmer who was present when I complained to General Mills the first time told me that they had done the same thing to him, but he was afraid to say anything because he was a small farmer and this elevator was the closest elevator and he couldn't afford to haul his grain a longer distance.

We can't lose sight of the fact that the grain companies are in business to make money. One of the ways they make money is to buy as much of my grain as cheaply as they can. Therefore, I must use every tool at my disposal to guarantee as honest a test of my grain as is possible. We are also in the business to make money. All we ask for is an honest, unbiased test. On our farm, we sample every truck load that goes into the bin and send each bin sample to the state grain lab to be tested as soon after harvest as possible. In this manner, we have a handle on the kind and type of grain we have in storage. When we contract with an elevator, we have a good idea as to what we are selling. We are not afraid to pay the small amount of money that the state grain lab charges to insure that we have an impartial test. Many of our delivered contract sales are also sent by the elevator at our request to the state grain lab for testing. As you can see, we sometimes pay twice for state grain lab testing--we believe that the benefits far outweigh the potential for loss of money on grain contracts.

We firmly believe that the testing of our grain by the state grain lab is a must for us. It isn't that we think the grain companies are trying to cheat us but that we should be paid for what the grain is really worth--we believe that the state grain lab can best provide that unbiased test of quality. As to the argument that sending so many samples to state grain lab would take too much time, I respond that we are already waiting 4-5 days while the samples are sent to the grain company labs anyway. In our case those were really wasted days--adding up to almost a month from time of delivery until payment time.

I support the requirement of state grain testing for all grains including malt barley. I also support the strengthening of the law concerning violations by grain companies such we experienced. A slap on the wrist is not enough when millions of dollars are at risk over grain quality testing.

Intimidation can be a mighty big stick in this industry. We as farmers must all learn to stand up for our rights and speak up when there are violations. It appears to me that this is the time to speak up. Let's act positively. I request that you pass SB 256.

EXHIBIT 3  
DATE 2-6-95  
I SB 256

I would be glad to answer any questions you might have concerning this matter. You may also look at any of the paperwork that shows the grain tests and the contract with General Mills.

Thank you,

  
Dale Fossen

## SENATE AGRICULTURE

EXHIBIT NO. 284DATE 2-6-95BILL NO. SB 256

Mr. Chairman and Committee Members.

My name is Lyle Shannon and along with my wife Judy we operate L Bar J Ranch. We farm 7 miles East of Fairfield on the Greenfield Irrigation project. We Farm 600 Acres of which 560 Acres is Irrigated Malt Barley that is grown under contract with Busch Agricultural Resources Inc.

When I became aware of senate bill 256 and the revisions to this bill proposed by Sen. Alkestad, I was concerned what these revisions might do to the contracting program in our area. Busch Agricultural Resources Inc. personnel informed us that it would end their contracting program in our area. The Standards by which Busch Ag. accepts our contracted malt barley are ~~very~~ different than how the State grades Malt Barley. If Busch Ag. was forced to accept the State grading system ~~they would~~ they would end the contracting program in Montana. The end of our contracting program would be an economic disaster to me and other contract growers in our area. This would also have a negative effect on the general economy of this area.

On Feb. 1st. Rod Cole, Gary Pearson and myself all contract growers meet with Sen. Aklestad and we expressed to him our concerns relating to this bill. Sen. Aklestad informed us that he was aware of our concerns and proposed an additional section to the bill that would eliminate contracted Malt Barley from the regulations proposed under this bill. I thank Sen. Aklestad for the addition of this section. I thank the committee for hearing my testimony.

*Lyle Shannon*

In favor of SB 256

Feb 6, 1995

The state grain Lab is Federally  
Licensed. therefore if ALL Grain  
is graded through this Non Bias  
entity the results will be  
Consistent, & Continuous from the  
Producer to the user.

The State grain Lab is the catalyst  
to this bill and will facilitate the  
workings of the rest of this Bill

Art Adamson

2935 Deann

Shelby, Mt 59474

SENATE AGRICULTURE

EXHIBIT NO. ~~25~~ 5

DATE 2-6-95

BILL NO. SB 256

# DRAWING THE LINE ON GRAIN PRICING

## Campaign to Win Back Protein Premiums

A Northern Plains Resource Council Factsheet

January, 1995

6  
95  
SB 256

### Millions of Dollars in Protein Premiums

Montana wheat farmers lost millions of dollars in wheat protein premiums in 1993 due to incorrect measurement of grain protein by the Federal Grain Inspection Service (FGIS). NPRC estimates that several thousand producers were adversely impacted by faulty calibration of wheat monitors across the region. At the request of members affected by the faulty measurements, Northern Plains Resource Council (NPRC) has joined as a named plaintiff in a proposed class action lawsuit targeting the FGIS.



The FGIS has admitted to using flawed calibrations from May through December, 1993, to measure the protein content of winter and spring wheat. Though the FGIS has acknowledged the error, the U.S. Department of Agriculture (USDA) has no plans to investigate the extent of farmers' losses or to reimburse farmers.

### What went wrong?

The errors resulted from an FGIS decision to approve the use of a new protein measurement device beginning May 1, 1993. The agency's old technology measured near-infrared reflectance (NIRR) from ground-up wheat samples. The new method measures near-infrared transmittance (NIRT) through samples of whole grains. After using this new technology for several months, the FGIS announced that it would

adjust its standard calibration in December, 1993.

Many farmers who sold grain between May 1993 and January, 1994, contend that the new transmittance method underestimated protein content, and was particularly biased in the high-protein ranges found in Montana. Many producers had their grain tested by independent labs, which found significantly higher protein levels than the FGIS tests.

### Are you affected?

If you sold spring or winter wheat between May 1, 1993 and January 24, 1994, you probably received less than your fair share of premiums.

### Is there any recourse for farmers?

Yes. First, affected farmers must claim that they sold grain during that period to show they were affected. This claim goes to USDA, which will assess the problem and determine whether to reimburse impacted farmers for its mistake.

A full refund of claims could cost millions of dollars, which would require congressional approval and a budget appropriation. Our congressional delegation must know that many people are affected who demand repayment.

If USDA refuses to compensate farmers, the next step would be to file a class action lawsuit to regain the lost premiums.

### What can you do?

There are two very important steps to take.

- Join as a member of Northern Plains Resource Council. NPRC is a statewide grassroots citizens' orga-



SENATE AGRICULTURE

EXHIBIT NO. 6

DATE 2-6-95

BILL NO. SB 256

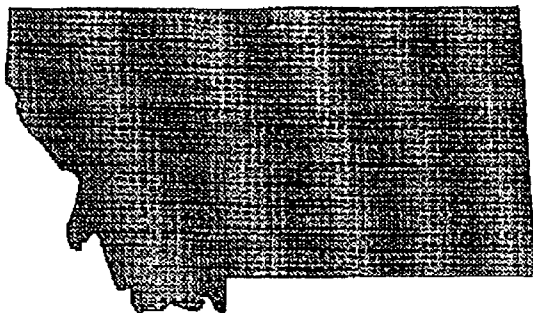
Mr. Lang

nization working on natural resource and family agriculture issues.

NPRC is organizing the effort to seek reimbursement for farmers. It is very important that as many farmers as possible join in this effort. Otherwise, USDA, or a federal judge, will not be convinced of the importance of the protein mismeasurement. Given enough public interest, NPRC plans to commit resources to developing a strategy that involves farmers in the legal process.

Our strength is in our members, and members play a central role in leading the organization and shaping its goals. An individual annual membership is \$25, which gives you access to staff, research, and periodic updates on this and other issues.

• The second thing you can do is sign on as a named plaintiff in the proposed class action. The first



step is to file an administrative claim under the Federal Tort Claims Act, essentially to alert USDA that you are seeking payment for its mistake. The forms are available through NPRC.

You don't have to be a member to file an administrative claim. If you are a member, however, NPRC will provide you with the four-page form and instructions on how to complete it. Further, as a member you will receive periodic updates of the progress of the effort. Most importantly, by being a member you can help create the public pressure necessary to win the campaign to regain lost protein premiums.

### *What are costs of joining the proposed lawsuit?*

If a class action lawsuit does happen, the law firm of Mullendore, Tawney, and Watt has agreed to pursue the case on a contingency basis. In other words, the law firm would expect no monetary compensation unless farmers successfully recover some or all of their lost premiums. For more specific information, refer to the law firm's "Representation Agreement," which may be obtained from NPRC.

As in any lawsuit, it is possible that the defendant (USDA) may countersue. If such a countersuit were successful, named plaintiffs could be held liable. However, the likelihood of a countersuit is "extremely remote," according to Grant Parker of Mullendore, Tawney, and Watt — especially considering the legitimate losses a lawsuit would seek to address.

### *Join NPRC*

The most important thing you can do to win on this issue is to get involved. And the best way to do that is to join Northern Plains Resource Council, a non-profit, community-based organization dedicated to healthy rural communities, environmental quality, and family agriculture.

NPRC conducts research, community organizing, and lobbying, as well as employing legal strategies when necessary, to achieve the goals established by our membership.

- ☐ General membership (\$25 per year)
- ☐ Family membership (\$40 per year)
- ☐ Living lightly (\$15 per year)
- ☐ Range Rider (\$50 per year)
- ☐ Rough Rider (\$100 per year)
- ☐ Bottom Line Rider (\$200 per year)
- ☐ Ghost Rider of the Big Sky (\$500+ per year)

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Fill out and return to:  
NPRC, 2401 Montana Ave #200  
Billings, MT 59101

For more information call (406) 248-1154





SENATE AGRICULTURE

EXHIBIT NO. 7

DATE 2-6-95

BILL NO. SB 256

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

Testimony of the  
Montana Grain Growers Association  
before the Senate Ag Committee  
on SB256

February 6, 1995

Mr. Chairman, Members of the Committee, for the record my name is Merlin Boxwell. I farm at Cut Bank and am the President of the Montana Grain Growers Association. Our organization supports SB256 with some amendments that are attached to my testimony, which I will offer in a moment.

This bill cleans up current grain law, changes budget amendment requirements of the state grain laboratory, makes some needed language clarification, makes adulteration of grain a felony, specifies that state law applies to federally licensed warehouse operators and puts in place a system of civil penalties.

However, it does do some things that we believe would harm the wheat and barley industries in Montana and cause Montana farmers to lose millions of dollars. Several of the changes that are aimed at more closely regulating how the grain trade pays farmers for their commodities, we believe, will in fact allow them to more heavily discount our grains and pay us less for them. The grain trade will adjust to these changes in a way that does not reduce their companies' income. In fact, those portions of this bill that introduce more risk or exposure to their business or that put Montana at a disadvantage in the marketplace, will cause them to adjust in a way that increases their income.

For that reason, we would propose the following amendments to SB256:

1. On page 11, lines 24-26, we would strike the following: "Damage and stone discounts must be by grade, other than sprout and insect damage, which can be discounted separately. discounts for dark, hard vitreous must be based on federal grain inspection service subclass."

Currently, the grain trade has different discounts for the various defects that grain may have. For example, they list separate discounts for shrunken and broken kernels, heat damaged kernels, frost, sprout, foreign material, etc... Each of those discounts are taken separate from grade discounts. If we force them to only take discounts by grade, they will be forced to assume the worst. They will have to assume that for each grade, all of the above defects are present and adjust their grade discounts accordingly. In other words a producer who only has one defect in his number 2 wheat, foreign material, for example, will be discounted the same 30-50 cents per bushel as the producer who delivers wheat with foreign material, sprout damage, frost damage, stones, insect damage, etc... This would cost us dearly and be unacceptable.

2. Our second amendment, which I will not read in full, would retain our current system of commodity sampling and appeal procedures, while at the same time retaining several changes that Senator Aklestad is proposing that will strengthen and clarify producers rights to use the state grain lab. Currently producers have the right to request that any grain company send their grain sample to the state grain lab for official third party testing. This system works well and more and more producers are seeing the importance of testing by an officially licensed FGIS lab and are using it. However, there have been some abuses of this system and a few producers have been denied the right to send their samples to the state lab. Our amendments to this section, which retain two important provisions that the Senator proposes will cure this problem, while leaving in place a voluntary system. First, we retain the language that specifies that a grain company cannot make a waiver of the right to submit the sample to the state grain lab a condition of a sale. When that is

coupled with the civil penalties that are provided for in a previous section of this bill, we believe this problem will cease. Second, our amendment retains, as an option, the producer's right to request that the sample retained by the elevator be placed in a sealed tamperproof container.

This, we believe, will assure us the right to use the state grain lab while at the same time preserving our option to use private labs when they make more sense.

3. Our third amendment is on page 14, line 19. In this same section, we would ask that the words, "Malt barley or" be inserted at the beginning of subsection number 6. The amendment simply excludes malt barley from the provision of this section. Malt barley that is sold to the brewing companies is not sold under FGIS standards. These companies buy specific malt varieties under their own grading systems. Malt growers have voiced a concern that Montana producers would most likely lose this market if the right to waive a state grain lab test cannot be a condition of sale or contract.

4. Our fourth amendment simply asks that the entire section 16 regarding protein scales, on page 14, lines 22 and 23 be struck. While we believe that producers would be more closely compensated for the actual protein they have under a system that used a scale based on 1/10 of a percent, we do not believe we can mandate this provision. We cannot legislate a system that is not consistent with the rest of the world. This would put us at a real disadvantage and buyers would bypass Montana wheat for wheat from other states. And, most likely, if this section were enacted, the grain trade would simply stop buying protein on scales and would go to guaranteed protein bids. For example, in spring wheat, they would simply offer prices for guaranteed 12% spring, 14% spring, and 15% spring. If a producer did not meet the guarantee, he would simply get the price for the next lower guarantee or his wheat would be rejected. A producer who had 13.9% protein wheat and got paid for 12 %, would not be too happy. Our organization will continue to work with the grain trade, domestic and foreign buyers to move toward a system that more closely defines and compensates for protein.

Montana is known for its high quality wheat. We depend heavily on export markets. In fact, nearly 80% of our wheat goes into foreign markets. Those markets are primarily Japan, Korea, Taiwan, and the Philippines. They are cash customers. They dictate the conditions of our sales. Although we would like to, we cannot legislate sales parameters in Montana that take us out of these markets or at the least, make us residual suppliers to both export and domestic markets.

Mr. Chairman, members of the Committee, thank you for your time and I would ask that you amend this bill before passing it on. I would be willing to try to answer any questions at the proper time. Thank you.

February 6, 1995

AMENDMENTS REQUESTED BY THE MONTANA GRAIN GROWERS ASSN TO  
SB256.

1. Section 11. Section 80-4-705 **Rules governing dockage, damage, and discounts -- sample inspection.**

page 11, line 20, strike the words "damage, and discounts"

lines 24 - 26, strike "Damage and stone discounts must be by grade, other than sprout and insect damage, which can be discounted separately. Discounts for dark, hard vitreous must be based on federal grain inspection service subclass."

2. Section 15. **Agricultural commodity sampling and appeal procedures.**

page 13, lines 21 -25, strike "A composite sample consisting of a minimum of 1 1/2 quarts of the representative samples delivered, based on volume of bushels delivered as agreed to by the deliverer, must be submitted directly to the state grain laboratory for analysis as to grade, dockage, protein, and other factors affecting the price to be paid, for which the laboratory is able to analyze, unless the deliverer waives in writing the right to submit the sample to the state grain laboratory."

insert in its place: Either the depositor, upon written request, or the warehouseman or commodity dealer has the right to have one half of the composite of the samples taken consisting of a minimum of 1 1/2 quarts, submitted directly to the state grain lab for analysis as to grade, dockage, protein or other factors affecting the price to be paid, for which the lab is able to analyze.

Line 28 - 29, delete "in a sealed, tamperproof container. The deliverer may waive in writing the right to have the sample sealed. The sample must be retained"

Line 30, after "...to the state grain laboratory." insert "The depositor, upon written request, has the right to request the retained sample to be placed in a sealed, tamperproof container."

page 14, line 2, delete "waiver is exercised under subsection (1) and"

3. page 14, line 19, (6) strike "An", insert "Malt barley or an"

4. Section 16. **Protein scale.**

page 14, line 22 and 23, strike entire section. "Payment based on protein must be based on 1/10 of 1%."

**FEBRUARY 6, 1995**

**Senate Agriculture Committee members: RE: SB256**

**Mr. Chairman and members of the committee, for the record my name is Maureen Cleary-Schwinden and I represent Women Involved in Farm Economics, WIFE, a group of hard working women who farm in all regions of the state.**

**I am also a grain producer, ...my husband and I farm in Northeastern Montana.**

**Getting a decent price for our products is one of the major goals within the organization I represent. Montana farmers produce some of the highest quality grain in the state, yet we are saddled with grain car shortages, high transportation costs and often, a poor market price.**

**All of these dynamics joined, make farming a very risky business. What I believe Senator Aklestad is trying to achieve through this bill is to address the situation of disparity, and we appreciate this gesture.**

**Yet we have some of the same concerns regarding the specific language, and its impact on grain farmers, as the Grain Growers previously mentioned. Therefore, we would stand in support of the amendments to make the intent of this bill better for farmers.**

**Marketing grain is a global interest, and what may APPEAR to benefit grain producers in the state of Montana, through such mandates as protein payments based on 1/10th of 1%, will actually end up hurting us. Why? Because our organization believes the grain market is no longer something we do around our neighborhood, or with our elevator down the road, ...it has become a sophisticated and technological business of which we must understand the total impacts on the grain market if we are to survive as small businesses.**

**In order for Montana grain producers to compete in the global marketplace, we must maintain flexibility in our Montana marketing approach. To lock producers**

and the grain trade into a corner, through legislative mandates, may leave potential buyers no other option than to go to OTHER states and OTHER countries to buy grain. If we begin the precedent of restrictive mandates, we may be closing doors, rather than opening them.

As small businesses, farmers wish to preserve the right to make THEIR OWN choices when it comes to managing and marketing their farming operations.

Therefore what this bill appears to be addressing IS a real concern, but WIFE is not convinced the METHOD of addressing the problems are in our best interest as grain producers dealing with the reality of a global marketplace. WIFE encourages legislation which enhances and protects our right to farm as independents, but would discourage legislation which would hinder our ability to make a profit.

In conclusion we would recommend that language be maintained to require sealed samples of all commodities, as our policy endorses this in order to protect producers.

Again, we thank Senator Akelstead for his efforts to protect grain producers in our state and we hope for a bill that will address these concerns. I would be available to answer any questions and I thank you for the opportunity to address the committee.

Maureen Cleary-Schwinden  
lobbyist/legislative chair  
WIFE of Montana



**MONTANA FARM BUREAU FEDERATION**

502 South 19th • Bozeman, Montana 59715  
Phone: (406) 587-3153

SENATE RESOLUTION  
EXHIBIT NO. 9  
DATE 2-6-95  
BILL NO. SB 256

February 6, 1995

Mr. Chairman, members of the committee, for the record I am Dave Davison, a farmer from Highwood. I am a member of the Montana Farm Bureau and serve as chairman of the Wheat and Feed Grains Committee, I am also on the Board of Directors. In addition I serve on the Wheat and Feed Grains Advisory Committee and Wheat Standards Committee for the American Farm Bureau Federation.

Farm Bureau supports SB-256 with the amendments suggested by the Montana Grain Growers.

There were some concerns prior to the amendments, those concerns were with the 1/10th of 1% protein scale. Farm Bureau members feel this would single out Montana producers for different treatment. The voting delegates at our 75th. annual convention last fall passed a resolution that supports uniform state and national standards for marketing all ag commodities.

Our next concern was sending all samples to the State Grain Lab. While we support producers using the state grain lab, we feel this could create a need for more personnal and a larger facility. The producers I spoke to would still like to use the grain lab for analysis of samples they select to send to the lab for their own operation or upon request of a warehouse. As I understand this is how it is now used.

We believe this bill with the amendments gives the producer needed assistance and protection without adding a hardship to warehouse and commodity dealers. Thank you for allowing me the opportunity to testify on this important piece of legislation.

Dave Davison

SENATE AGRICULTURE

EXHIBIT NO. 10

DATE 2-6-95

BILL NO. SB 256

Before the  
Senate Committee  
on  
Agriculture, Livestock and Irrigation

Senator Chuck Swysgood  
Chair

Hearing on  
Senate Bill 256  
Amending Montana Grain Law  
Senator Gary Aklestad, Sponsor

Testimony of  
Norman Sullivan  
Farmer, Geraldine, Montana  
and  
President, Montana Farmers Union

Room 413-415  
Montana Capitol Building

February 6, 1995



Good Afternoon,

I am Norman Sullivan, a grain farmer from Geraldine. Based on my past experiences with discrepancies of the results of my grain samples, taken at the time of delivery, and sent to company labs, I have my samples sent to the official State Lab. I therefore support SB256 in its current form.

I am also President of Montana Farmers Union. Our organization fully supports Senator Aklestad in his efforts to create a producer friendly grain law. Thank you.

## SENATOR GARY AKLESTAD

WE THE UNDER SIGNED CONTRACT MALT BARLEY GROWERS ARE  
AGAINST ANY MANDATED REQUIREMENTS TO SEND SAMPLES TO  
THE STATE GRAIN LAB FOR INSPECTION.

THIS TYPE OF MANDATED LEGISLATION COULD JEOPARDIZE OUR  
MALT BARLEY CONTRACTING PROGRAMS IN THE STATE OF MONTANA:

NAME	ADDRESS	COUNTY	PHONE
------	---------	--------	-------

MARK COVERDELL	10 1ST RD NW	TETON	467-2161
----------------	--------------	-------	----------

Carl hesmerite	380 1st LNE	TETON	467-2198
----------------	-------------	-------	----------

Jack T. Jones	550 Div Brook with		467-2264
---------------	--------------------	--	----------

Emil M. Lerman	652nd Ashcroft Rd	FORT SHAUN MT	CASCADE 264-5179
----------------	-------------------	---------------	------------------

Mike Borden	12 1st RD NE	+	467-2635
-------------	--------------	---	----------

Evann Verwick	750 4th LNE	Fairfield	Teton 467-2834
---------------	-------------	-----------	----------------

Lami Van der Hey	351 6th Lane NE	Fairfield	467-2862
------------------	-----------------	-----------	----------

Michael Mammel	460 3rd Lane NE	Fairfield	467-2305
----------------	-----------------	-----------	----------

Jeff Buck	161 1st Rd NE		467-2237
-----------	---------------	--	----------

Robert Comphouse	154 11th Lane	Fort Shaw	467-3111
------------------	---------------	-----------	----------

Larry Lewis	310 4th Road NE		467-2212
-------------	-----------------	--	----------

Steve R. White	Box 45	FAIRFIELD MT	467-2078
----------------	--------	--------------	----------

Exhibit 11 is a petition which consists  
of 13 pages of signatures. The original  
is stored at the Historical Society at  
225 N. Roberts St., Helena, MT 59620  
-1201. Phone number - 444-2694.

February 6, 1995

Chairman Swysgood and Senate Ag Committee members:

I would like to take this opportunity to thank the committee for giving me a chance to express my concerns regarding Senate Bill 256.

My name is Gary Pearson. I grow malt barley that is contracted with Anheuser-Busch on the Fairfield bench.

The revising provisions regarding Agricultural Commodities Standards in this bill would have drastic ramifications to our contracting program with Anheuser-Busch.

Anheuser-Busch and Coors contracts, require stringent specifications, as to the quality of the malt barley that is acceptable under their contracts. Imposing state or FIGS grade requirements, or even the hint of imposing these requirements could drive private malt barley contracting companies to look for their barley needs in states that have fewer governmental regulation as set forth in this bill. As producers we need only laws and regulations that are compatible with industry requirements.

Malt barley producers and malt barley contractors have a good working relationship with each other. Although this relationship may not be perfect, I would hate to see any mandated laws from Helena that would disrupt this existing balance.

Companies that are mandated to certain grading and management criteria will only end up protecting themselves from financial losses due to these regulations. Some of the changes in the amendments to this bill will ultimately change the way the grain industry does business in Montana. The change in the cost of buying and selling of grain commodities will be passed on to the producer as usual, and we producers are the only ones to loose..

I would like to present this committee with a copy of a petition, signed by producers from the Conrad, Valier, Brady, Sunburst and Fairfield areas. I have already given the original copy to Senator Aklestad. These signatures represents a large portion of the malt barley producers from these areas.

I support the amendments purposed by the Montana Grain Growers Association.

Again I thank your committee for letting the producers have a say in their own destiny.

Thank you,

Gary Pearson  
240 9th Lane S.W.  
Fairfield, Montana 59436  
(406) 467-2062

MONTANA



**GRAIN ELEVATOR ASSOCIATION**

5445 York Road  
Helena, MT 59601

SENATE AGRICULTURE

EXHIBIT NO. 13

DATE 2 - 6 - 95

BILL NO. SB 256

MGEA Testimony  
SB256 Hearing in Senate Agriculture Committee  
February 6, 1995.

Mr. Chairman, members of the committee, for the record my name is Mike Orgas and I am representing the Montana Grain Elevator Association. Several other members of the grain trade are here today.

Our board of directors Friday voted to support Senate Bill 256 with the amendments proposed by the Montana Grain Growers Association concerning grade discounts, protein and sampling procedures.

Some members do remain concerned about the addition of administrative civil penalties which they see as more government interference in their lives. However, others on our board of directors see administrative civil penalties as a way to strongly encourage any "bad actors" in our trade to clean up their acts--and, we--like other industries--do have our bad actors. One board member suggested the maximum be lowered from \$2,500 to \$1,000.

We could live with Sen. Aklestad's bill as introduced but we do not think it is in the best interest of Montana agriculture in general or the Montana producer. Our industry would have to--and could--adapt to the changes Sen. Aklestad is proposing for grade discounts, dockage, protein and sampling procedures. It would mean extra paperwork, could be cumbersome, and would interfere with the free enterprise system, but we could do it.

We support the MGGA amendments for two reasons:

1. The legislation as drafted interferes with the free market system, setting up an artificial marketing system.
2. It is the producer who would be hurt.

**Grade Discounts**

Artificially regulating grade discounts will cause a reaction by elevators that will not be beneficial to the producers of Montana. Elevators would be forced to take the worst possible combination of factors for a # 2 grade and discount across the board for the risk of receiving this type of grain. This would punish the producer with only one discountable factor and reward the producer with many things wrong. Do we want in Montana to punish the producer for producing better grain?

The issue of dockage comes about in part because countries that we sell to want buy their grain cleaner and cleaner because of the cost of ocean freight. They do not want to pay freight for dockage or matter that they don't use. Therefore, the exporters are discounting for dockage in excess of the percentages that they have to sell. This money is used to buy cleaner grain to blend with the dirtier grain they buy. Eventually if the grain they buy is too dirty, then it will have to be cleaned or we will not make the sales to our foreign buyers. If we have no where to sell it,

we can't buy it from the Montana producer.

### **Protein**

We also could adapt to the effort in SB256 to regulate the free market in relation to protein. However, by mandating scales for protein, we would be creating an artificial market, making Montana an island that would require unorthodox schedules for buying and selling grain. This would not help to fairly price our grain.

The market place fluctuates from time to time. Currently, the coast markets are paying on quarters while the Minneapolis market is paying on fifths. Not too long ago, Minneapolis was paying on tenths. That will continue to fluctuate in the market place and it is not in Montana's best interest to be an island with unorthodox schedules for buying and selling grain.

### **Sampling Procedures**

The provision in Senate Bill 256 requiring that samples be sent to the state lab unless the producer signs a waiver is not practical for the way agriculture operates in Montana and forces the producer to sign a waiver or the sample will be sent to the state lab. Now, he or she has a choice.

As a practical matter, elevators would have to send every sample to the state in an orderly fashion--perhaps every day or every other day. Thus, if the producer did not go into the elevator and sign the waiver immediately, the sample would be sent. This would be especially cumbersome for the grower during harvest. However, the elevator operator would have no choice. Without a signed waiver, he faces an administrative civil penalty. Keeping track of signed waivers also would add more paperwork and cost in an elevator--a cost that would have to be passed on to the producer.

When producers often sell grain on the phone and do not go into the elevator to sign the contract, it is highly unlikely they will want to go in to sign the waiver so the sample does not go to the state lab. Grades by the state lab are also higher priced than the private labs and independent labs.

The proposal in this legislation for tamper proof containers is well meaning, but not practical or logical. To assure sample integrity, the producer would have to be in the probing area watching every move by the elevator operator when sampling is occurring until the sample is sealed which is not at all practical. If the producer does not trust the elevator in doing business, then he or she should take the business elsewhere. The cost of this system will also cost the producer in the long run.

In closing, I am available for questions as are other members of the grain trade here today. We also could be available if you have questions when your committee takes executive action.

SENATE AGRICULTURE

EXHIBIT NO. 14

DATE 2-6-95

BILL NO. SB 256

Date: February 6, 1995

To: Montana State Senate Agricultural Committee,

Re: Senate Bill #256

My name is Bob McDonald, I'm the regional director for Harvest States cooperatives western region based out of Great Falls. As you may know, Harvest States is a farmer owned and controlled grain marketing, food processing and farm supply cooperative with producer and local cooperative members in the area from the Upper Midwest to the Pacific Northwest.

My experience in many aspects of grain marketing including the actual export of prompts me to offer these comments on Senate Bill #256. I think that it is important to consider some of the realities of the grain marketplace and the impact that some of the provisions of Senate Bill 256 could have on the ability of Montana farmers to get the best possible market and price for their grain.

First, some observations. As I have mentioned, exports are a primary market for much of Montana's grain. Many organizations, including Harvest States and others represented here today, have invested a lot of time, money, and effort to promote Montana grains into export channels. The primary export market for Montana grain are Pacific Rim countries which, for the most part are cash customers as opposed to U.S. government enhanced buyers. As you might imagine, cash customers are much more demanding. They will demand much tighter specifications for such things as dockage, falling numbers, protein and various types of damage content.

Like most other businesses, the customer is king in the grain business. Those wanting to do business in the grain marketplace either show a willingness and ability to meet the customers needs, or the customer looks elsewhere.

With these observations in mind, I'm concerned that some of the provisions in Senate Bill 256 will put Montana grain marketing out of step with the important export market that we've worked so hard to promote. In effect, these provisions would make Montana and island of sorts that export buyers will come to only after exhausting all other alternatives in other productions areas.

The proposed changes dealing with dockage, damage, protein and discounts would make it much more difficult for Montana grains to meet the requirements for export buyers. The bill requires payment for protein contents in increments of 1/10th of one percent. In the trade, protein pricing is based in increments of 1/4 of one percent, or for occasional eastbound shipments of 1/5th of one percent.

The proposed changes in sampling and testing procedures initially would force an additional paper flow on an already overburdened industry. The wording

would imply that composite sampling would extend over the amount of deliveries at the option of the producer. As there are many variations in quality, this procedure would put the local elevators marketing position in limbo. Once again, tight export specs would dictate the local elevators need to know exactly where they stand.

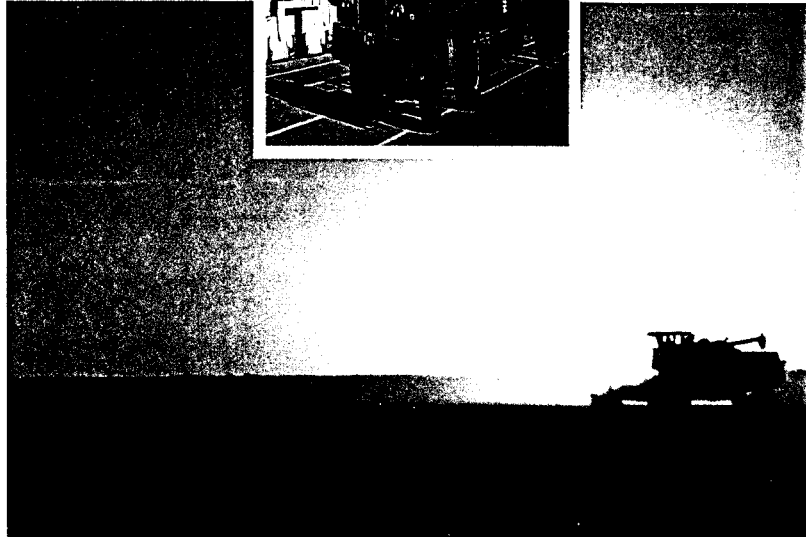
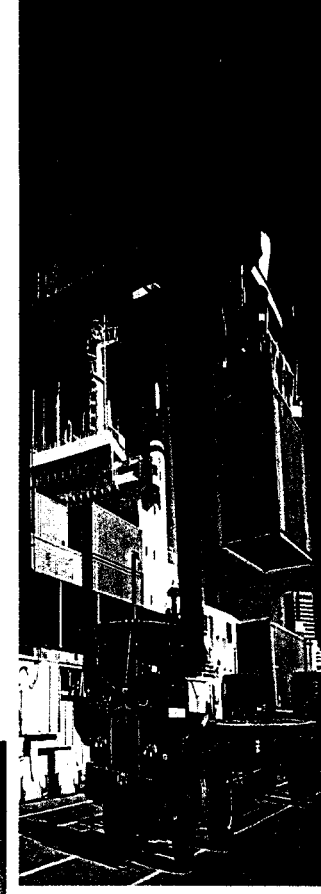
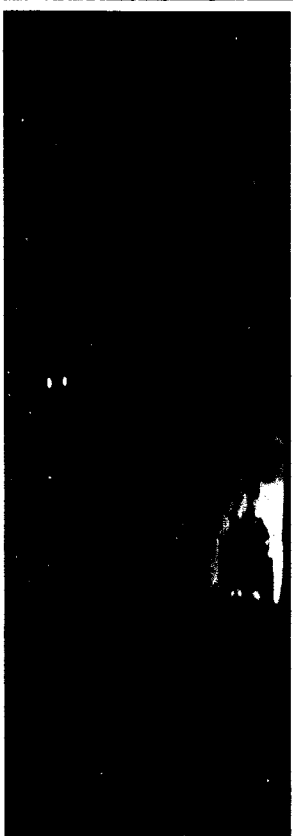
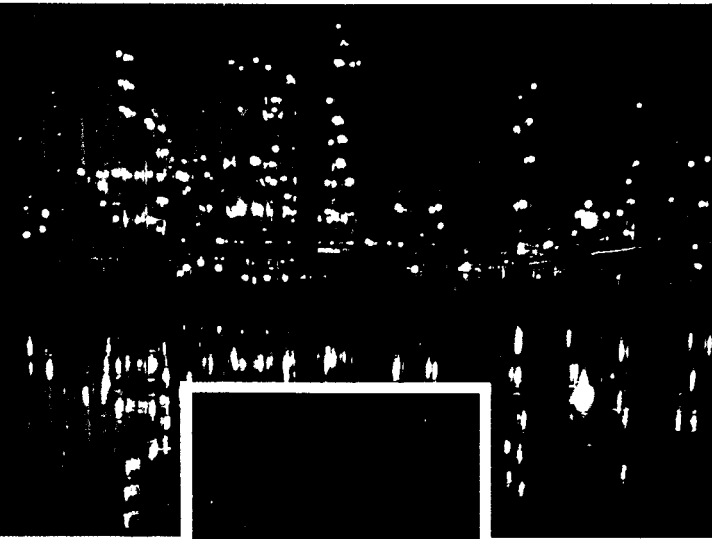
All of the situations I've just noted won't stop the grain marketing process, but they do put the local elevator in a position of greater uncertainty. When grain buyers are dealing with uncertainty, it's predictable that they will protect themselves. How will they protect themselves ? by offering a lower bid.

The law is already in place for producers to have their grain tested by the State Grain lab and also to appeal any private lab's results to that same State Lab. Most Harvest State member producers use our own private lab simply because it's quicker and also cheaper.

In closing, I would simply urge the committee to consider carefully the long term ramifications of the provisions I've mentioned to the future of the Montana grain trade. Thank you for the opportunity to speak to you today.

EXH. #15  
2-6-95  
SB 256

15  
-95  
56



The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.



**INSPECTORATE**

**DEDICATED TO THE ELIMINATION OF RISK**



SENATE AGRICULTURE

EXHIBIT NO. 16DATE 2 - 6 - 95BILL NO. SB 256GRAIN COMPANY January 31st, 1995

Senator Chuck Swysgood  
Helena Montana

RE: Grain Bill SB 256

Section 11 80-4-705 Starting on Line 19 where it reads: Weight for dockage and dockage are the same and cannot be calculated or discounted separately. Damage and stone discounts must be by grade, other than sprout and insect damage, which can be discounted separately. Discounts for dark, hard vitreous must be based on federal grain inspection service subclass.

These changes are an attempt to regulate free enterprize in Montana. Artificially regulating prices in this means will cause a reaction by the elevators of the state that will not be beneficial to the producers of the state. Elevators will be forced to take the worst possible combination of factors for a # 2 grade and discount across the board for the risk of receiving this type of grain. This would punish the producer with only one discountable factor and reward the the producer with many things wrong. **Do we want to punish the producer for producing better grain?**

Many countries that we sell to want to buy their grain cleaner and cleaner. The freight that they pay for ocean freight is the main factor. They do not want to pay freight for dockage or matter that they don't use. Therefore the exporters are discounting for dockage in excess of the percentages they have to sell. This money is used to buy cleaner grain to blend down the dirtier grain they buy. Eventually if the grain they buy is too dirty then it will have to be cleaned or we will not make the sales to our foreign buyers. Senator Acklestad wants to mandate that we sell the terms we want to, to the foreign buyers by regulating dockage. We think the buyer is the party to dictate terms not the seller in the world grain trade. **By regulating Montana Grain in this fashion, we are creating a product that no one will want eventually.**



NEW SECTION #16 page 14 line 13

Some of the same reasons that have been explained about dockage are analogous to Protein. By mandating scales for protein we would be creating an artificial market making Montana an island that would require unorthodox schedules for buying and selling grain. This would not help to fairly price our grain. This would hinder trade in and out of the state. **Let the free market prevail and seek its own level.**

NEW SECTION # 15 PAGE 13

This section is trying to steer the producer to the state for grades with the exception of that he can sign off on state grades if he writes a waiver. The malt companies of Montana do not and have not ever used state lab results. They will not use state lab results. We would be risking losing these companies by this mandate. Grades by the state lab are also higher priced than the private and the independant labs. Unfortunately the state is also unflexible when unexplained differences appear between them and FGIS in Portland. These factors have cost the Montana producer more than once in the past. We recommend that the producer have the flexibility to use an independant lab as well as the state.

**Senator Acklestad's contention on tamperproof containers is well meaning, but not practical or logical.** The producer would have to be in the probing area watching every move by the elevator person when sampling his grain (not practical). If the producer does not trust the elevator in doing business then the business should be taken elsewhere. If a person is devious enough a tamperproof container will not hold him back. The cost of this system will also cost the producer in the long run.

I hope this clears up for you what we have trying to explain to the Senator. If you have any questions please call.

Sincerely

A handwritten signature in cursive script that reads "E. Monte Wetter". The signature is written in dark ink and is positioned above the printed name.

E. Monte Wetter  
Scoular Grain Company

DATE February 6  
 SENATE COMMITTEE ON Agriculture  
 BILLS BEING HEARD TODAY: SB 256

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Randy Johnson	MGLA	SB 256	✓ w/ Amend	
Zales Ector III	APA	SB 256		SB
Larry Brown	Ag. Pres. Assoc.	SB 256		AMEND X
Jean Schmonace	Senatudi Focus	SB 256		AMEND X
Jean Harman	Golden West Farm	SB 256		Amend X
Wileen May Schwind	WIFE	SB 256	with Amendments X	
Ed Lange	NPRC	SB 256	X	
David A. Davis	Mont. Farm Bureau	SB 256	X	
Steve Branning	Anheuser Busch	SB 256		amendments X
Dan DeBuff	DeBuff Enterprises	SB 256	X w/ amendments	
Mr. T. Telf	MGLA	SB 256	X with MGLA Amendment	
WALT Adams	Montana's Farmer Magazine	SB 256		

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 6, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 256

Executive Action on SB 207 & HB 170

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
PLEASE PRINT ↓				
RONALD B. MUNSON	SELF	256	✓	
George Paul	MT Farmers Union	256	✓	
Art Adamsen	Self Farmer	256	✓	
Norman Sullivan	Farmer/self	256	✓	
DOUG HELLINGER	self Farmer	256	✓	
Ronald PEPOS	Incorporated Coastal Grain Inc	256		✓
Bob Hellinger	Farmer	256	✓	
Ed Skerlien	FARMER	256	✓	
Bob Henderson	HANDSON STATES			✓
Dale Fosson	Self	256	✓	
Lloyd KANNICK	FARMER	256	✓	
Mary Cady	Farmer	256	✓	
CARL CLARK	FARMER	256	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 6, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 256

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
MIKE ORGA	MONTANA GRAIN ELEVATOR ASSOC	256		
Pam Langley	Montana Agricultural Business & Montana Seed Trade	256	Amend	
Bruce TAFT	FARMER	256	✓	
Gary Russell		256		X
Gary Wiest	Farmer	256		X
Gary Pen	Farmer			
Brian Whitehorn	Farmer	256		✓
MERWIN BOXWELL	MEGA	256	✓	
CHUCK MERDA	FARMER	256	Amend	
Tom Johnson	FARMER	256		✓
JERRY SWENSON	" "	256		✓
DAVE COOPER	" "	256		✓
LEONARD Lambott	Farmer/Drainage	256		
			Admended	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY