

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION SUBCOMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on February 7, 1995, at  
8:00 a.m.

#### ROLL CALL

**Members Present:**

Sen. Gerry Devlin, Vice Chairman (R)  
Sen. Don Hargrove (R)  
Sen. Linda J. Nelson (D)

**Members Excused:** None

**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: This was a subcommittee meeting  
concerning SB 173, and SB 215  
Executive Action: None

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

**Discussion:**

CHAIRMAN GERRY DEVLIN stated the items of transportation and inspection were the responsibility of the Department of Livestock. He asked if that was acceptable. SENATOR LINDA NELSON AND SENATOR DON HARGROVE replied that was acceptable. CHAIRMAN DEVLIN stated that the identification would be controlled by the Department of Livestock. It would include tattooing and tagging. He asked if that was what they had agreed to at the previous meeting. SEN. HARGROVE replied they had agreed.

CHAIRMAN DEVLIN said the quarantine facilities and holding area within the complex, would be controlled by the Department of Livestock. CHAIRMAN DEVLIN said disease, blood letting, and all of that would be under the Department of Livestock. CHAIRMAN

**DEVLIN** said the inspection and the guidelines for the exterior fence would be in the FWP. **SEN. NELSON** replied it had been their responsibility. **CHAIRMAN DEVLIN** said it was agreeable with the Department of Livestock and the game farm operators to leave that the same way.

**SEN. NELSON** said they needed to discuss the Environmental Assessments (EA) and the Environmental Impact Statements (EIS).

**CHAIRMAN DEVLIN** asked if they had thought they should remain with the FWP. **Doug Sternberg** replied generally those were considered in the context of the licensing provisions and if they were to leave the general licensing with FWP, it would be logical that FWP would continue to be in control of the EA's and the EIS's. **CHAIRMAN DEVLIN** said they would be the lead agency with the licensing.

**CHAIRMAN DEVLIN** asked if they were to work on the statement of intent, and what did entail as far as the departments' parameters.

**SEN. NELSON** asked if the subcommittee had changed anything from the way it was currently. **CHAIRMAN DEVLIN** replied that the identification was changed because the Department of Livestock had a tattoo and the FWP had a tag and these were done at separate times. **Paul Sihler** said it depended on how it was done, but they could say FWP had some authority for transportation and for identification under the current law. While the Department of Livestock had the responsibility, the FWP had some rulemaking authority related to those issues. He said if they wanted to give transportation and identification to the Department of Livestock, then he suggested the rulemaking authority be changed in the statute. He stated in the section where primacy would be discussed, the FWP would have primacy over permitting and they would have primacy over transportation and identification. He said that would be a change.

**Les Graham** said he supported what **Paul Sihler** had said and there had to be fair lines of regulatory authority on both sides.

**CHAIRMAN DEVLIN** asked **Mr. Sihler** to repeat his suggestions for the legislative council. **Paul Sihler** said that there were two sections of the bill, one was rule making and the other was the section regarding primacy. He said that he thought that the responsibilities should be divided out in both of those sections to make it clear which agency was responsible for what activities. He said that the FWP was comfortable with that as long as they had some standard set in statute so that they know that identification would be visible at a distance and tied to an individual animal.

**CHAIRMAN DEVLIN** said that he had not gotten to the Governor's amendments yet, and he asked if they dealt with identification and in what depth. **Paul Sihler** said that the amendments turned

identification over to the Department of Livestock, and they change the language on identification, saying that the Department of Livestock was responsible for identification and it was on page 6 of the "gray bill", which included the Governor's amendments. He said that it must be unique to the animal, nontransferable, have an emblem owned and registered by the department, and allow for the identification of an animal from a distance. He said that those were the things that they were interested in for identification. He said that they were what had been discussed in the meeting today.

**Cork Mortensen** said that **Paul** had mentioned the emblem. **Paul Sihler** said that it would be owned and registered by the Department of Livestock.

**SENATOR TERRY KLAMPE** said that there was a person from FWP who had told him that he had a hard time identifying the current tags from a distance, so he said that there should be the consideration of a change there. He said that it was the person in the field who had to deal with that problem. He said **Lynn Neilson** from the Hamilton area had to deal with the escape of a white-tail deer from the Wallace Ranch. He asked that there be some suggestion from the department.

**Paul Sihler** said that included as one of the standards that they were comfortable with identification that there be some way of identifying the animal at a distance. He said that they were not locked into that being one tag that would serve all of those needs. He said that there it might be possible to have a combination of identification to achieve all of the needs. He said that would be up to the Department of Livestock. They included in the amendment by the Governor a provision be identifiable from a distance for the previous reasons.

**CHAIRMAN DEVLIN** said that now they were going to have to define distance.

**SEN. KLAMPE** said that the recommendation by the FWP person was 50 yards. **CHAIRMAN DEVLIN** asked if that was with the naked-eye. **CHAIRMAN KLAMPE** said that was correct.

**Les Graham** said he had 30 years of experience in animal identification. He said that FWP prior to coming to the following conclusion had a tag that was used on sows and it was big tag. He said that retention rate on that or any animal if it was wild or domestic was impossible and so then they revised that tag. He said that they were advised by the Department of Livestock and other companies who manufacture the tag. He said that was why they had the current tag. He said that he believed in individual animal identification, but there would not be an ear left if there was something that big put on the animal that would be easily readable in all situations.

**CHAIRMAN DEVLIN** said that it would have to be very large to be seen from such a distance. He said that if they were looking for a number, there are tags on cows that they cannot see the number in most cases.

**Paul Sihler** said that they were just trying to define what the department interests were in the matter. He said that they did not try to specify the type of tag. He said that maybe in some way you can identify an animal in one fashion and provide a means for it to be seen from a distance in another fashion. He suggested tags, something around the neck or something around the ankle that was bright. He said some standard needed to be set. He said that they were willing to leave that to the Department of Livestock.

**Cork Mortensen** said that they had a series of meetings and discussed the tagging issue and the type of tags after the last legislative session. The meetings were with the FWP and the game farm industry. He said that it would be his intent relative to tag selection, type of tag, etc., to bring the industry and FWP into the discussion. He said that he agreed with **CHAIRMAN DEVLIN** that 50 yards was quite a distance to read a tag. He said that they decided upon a two-part tag that had the numerals and the letter visible from the front and the rear. Beyond that he questioned how much better they could do from a practical standpoint.

**CHAIRMAN DEVLIN** said that he had a little experience with tags and they were not that easy to read at any distance.

**SEN. KLAMPE** said as a point of clarification the intention was not to read the tag at 50 yards, the intention was to see it at 50 yards and determine whether the animal was a game farm animal or not.

**CHAIRMAN DEVLIN** said that he thought that they wanted to read the number on the tag.

**Paul Sihler** said that it was for an escaped animal, so that a person did not have to read a lip tattoo in order to identify a game farm animal.

**Les Graham** said that he agreed with **Paul Sihler**.

**Doug Sternberg** said that presently the statute does say the FWP has primary jurisdiction over game farms and the licensee was also required to comply with the laws of the Department of Livestock related to marking, inspection, transportation and health. He said that was present code and that was consistent with what the subcommittee was discussing. In the rule-making section, it says that FWP may adopt and enforce rules that were necessary to implement the provisions of the part and coordinate the regulation of game farms with the Department of Livestock.

The rules may address but are not limited to classifying what animal constitutes a game animal, requirements for facilities which would still lie with FWP, recording and recordkeeping, which the subcommittee had not discussed, transportation and importation. Transportation would be the responsibility of Department of Livestock. Importation was addressed in the amendments offered by the Governor on page 10 of the "gray bill". Restrictions on importation and identification would be handled by the Department of Livestock. Sale of animal parts was not discussed by the subcommittee. There was something in SB 173 that addressed the sale of animal parts. Care and maintenance of game farm animals was another aspect that was not discussed by the subcommittee. He said that those were all presently with the FWP. Section 87-4-422 was the section that should be revised and made clear which agency was going to have rule-making authority in which area. The importation section in the Governor's amendments on page 10, section 9, subsection (1) of the "gray bill", retains FWP of the Department of Livestock restricting importation of species that pose a threat to native wildlife and the new subsection (2) specifically places with the Department of Livestock restrictions against importations of species that were determined to pose a threat to wildlife or livestock through parasites or disease. The first part allows both departments authority to restrict importation for threats to wildlife through genetic dilution, habitat degradation, and competition, and the Department of Livestock may restrict importation of game farm species that pose a threat to wildlife or livestock through parasites or disease. He said that the reference in the amendment to Title 81, chapter 2, part 7, was to the Department of Livestock's general importation authority restriction on the importation of animals. He said that tied in and at least with the Governor's proposal; that was how it was being broken out with importation.

**CHAIRMAN DEVLIN** said to review what happened to an animal. He said to suppose that he was a game farmer. He said that if he went out of state to buy some stock, what kind of inspection did he need when he came into the state? He asked how it was handled now.

**Cork Mortensen** said that the first step would be for the importer to request an import permit from the Department of Livestock which lists the disease testing requirements for coming into the state, primarily relating to brucellosis and tuberculosis depending upon the origin. He said at that point the Department of Livestock would determine whether or not to issue the import permit. He said that the veterinarian of the state of origin would perform the necessary tests to qualify the animal for entry into the state of Montana. He said that if further testing was required upon arrival or afterwards, such as a 60-day retest for either one of the diseases, that would be specified at the time. He said that the test would be accomplished at origin as prescribed, a health certificate issued, and the animals moved to destination. If a quarantine upon destination was required, the

shipper would know that in advance, and the necessary documentation, and see that the follow-up tests were done at the prescribed time.

**CHAIRMAN DEVLIN** asked when the animal arrived in the state, would he have to go directly to the facility? He asked if the animal was put in the quarantine pen when he arrived.

**Cork Mortensen** replied that the animal should be put in the quarantine pen upon arrival, at the discretion of the state veterinarian, depending upon what the retest requirements were. He said that they should be required to be penned in such a manner that they could not come in contact with the resident animals.

**CHAIRMAN DEVLIN** asked if the state veterinarian would make that call.

**Cork Mortensen** said that it would depend on the particular state of origin and the disease problems. He said that was the reason for the import permit in advance. This would give the Department of Livestock the opportunity based on history or presence of the disease on origin.

**CHAIRMAN DEVLIN** asked if there was any way that they could say no to the import permit.

**Cork Mortensen** replied that they can refuse to allow the animal to come into the state.

**SEN. NELSON** asked how many animals were being imported into Montana. **Les Graham** replied that there were not very many in the last 2 years. He said that if the subcommittee thought the import system was not strict, the Department of Livestock has gone as far as to restrict high-powered show animals, such as bulls, and cows over the years. He said the import permit request was generally made through a veterinarian in the state of origin because a health paper had to accompany the animal. He said the system has worked well. He said that did not only include livestock, but also some exotic birds and other animals.

**Paul Sihler** said that FWP had one interest related to importation. He said that they wanted to have the ability to make sure that what had happened in Texas was not going to happen in Montana. He said that in Texas there were animals from all parts of the globe that were brought into the state. He said that there were escapes and populations which caused conflict with the native populations. There were hybridization problems and the FWP believed that the Department of Livestock was doing a good job on disease and parasite related areas, the FWP wanted to have the ability to restrict species when it came to impacts on wild populations. He said that in the Governor's amendments give the Department of Livestock the responsibility of regulating

importation over disease and give FWP the authority to regulate relating to wildlife impacts.

**CHAIRMAN DEVLIN** said that they were now getting into the dual responsibility. He said he did not know how they were going to get trust built up between the two departments.

**Les Graham** asked why they couldn't come up with a restriction list that was in the rules now and in place by the Department of Livestock which was done know with current items. He said that they did not want them in there either.

**CHAIRMAN DEVLIN** asked if that would be satisfactory to the FWP.

**Karen Zackheim** replied that was what they currently had. FWP develops a restriction list. She said that the issue came over time when scientific information became available to demonstrate that there might be a problem from something else and then it needed to be changed. She said that currently that process had to go through the FWP commission and they would have to approve any changes to the list.

**CHAIRMAN DEVLIN** asked how often the list was changed and how long had it been since the list was changed. **Karen Zackheim** replied that it was done 2 years ago. **CHAIRMAN DEVLIN** asked before then when was it changed. **Les Graham** replied that he did not think that there had been much of anything. **Karen Zackheim** said that they were just gathering the information based on experiences in other states and countries. **Les Graham** said that had not been a point of contention. He said that he did not see any reason for the dual responsibility. He said that there would have to be an import system set up with the FWP. He said that he thought it should all be there with the list going to them. **Karen Zackheim** said that currently FWP sets up the list and the Department of Livestock has to check both restrictions that FWP place and the Department of Health and Environmental Sciences control and restrictions on certain animals and they do all of the import permits and health certificates. They just check to see what requirements there are for other agencies to make sure that other agencies needs are being met.

**CHAIRMAN DEVLIN** asked if they get the list from FWP and they take care of the importation.

**Karen Zackheim** said that was correct and they can call FWP if they have any questions.

**Paul Sihler** said that their interest was not in a permit system like the Department of Livestock has. They were interested in maintaining the status of the list.

**CHAIRMAN DEVLIN** asked if that was in the Governor's amendments.

**Paul Sihler** replied that was the intent of the amendments.

**CHAIRMAN DEVLIN** said that he thought that they should go farther in the bill than rule-making authority. They want to narrow it down as far as they can. He said he realized that both departments were going to have to have some leeway to establish rules.

**SEN. KLAMPE** said that current law 87-4-424 outlines that pretty well and if there was no problem between the two departments and the people represented at the meeting, he did not see any reason to change that.

**Doug Sternberg** said that it was section 9 of the Governor's amendments, page 10 of the "gray bill", leaving out subsection (2), and the lines in the beginning referencing the Department of Livestock and reinserting the stricken language. He said that was what the current law was.

**Paul Sihler** said that he suggested that the Department of Livestock was not saying that they had a problem with the way that they were doing things currently and FWP did not have a problem with the way things were being done currently so why doesn't the subcommittee just take that section out of the bill.

**CHAIRMAN DEVLIN** said that he understood that there was a problem between the two departments. He said that FWP wanted to be involved with what the Department of Livestock was always doing.

**Les Graham** said that there cannot be joint rule-making authority on these issues because it becomes a matter where that takes a long time and they get bogged down within the two agencies. He said that rule-making authority has to be clearly with one department or the other.

**SEN. HARGROVE** said that he agreed with that. He said that had been the problem before. He said that they needed to specify at least who had primacy for that rule.

**Doug Sternberg** said that they could leave classification of ungulates with FWP, which would allow them to maintain the list of animals of ungulates that might be suggested for game farming, and transfer the actual importation restrictions to the Department of Livestock, so that they have control over the actual process of importation.

**CHAIRMAN DEVLIN** said that was the way they were doing it right now. He asked if they were doing that under law or under rule.

**Karen Zackheim** said that the list was under rule-making.

**SEN. TVEIT** said that the section in the bill would define who was responsible in statute. He asked if that was taken out where do they go.

**CHAIRMAN DEVLIN** asked if that was section 9.



**SEN. TVEIT** said that was true. He said that they were setting up criteria and addressing it through statute. He said that it pretty well cleared up the responsibility of the Department of Livestock on importation.

**SEN. TVEIT** asked if transportation was going to be in the hands of the Department of Livestock. He said that on the bottom of page 6 it said that regarding transportation of game farms, the licensee was to contact the FWP to request an inspection by the Department of Livestock inspector of game animals. He said that he had a problem with that with the lack of management that the FWP was doing now and then months later they would come around and give the game farmer permission to move an animal. He said that was probably the reason that the bill was introduced.

**Paul Sihler** said that they had a problem with that also. He said that the Department of Livestock should have responsibility over transportation.

**Doug Sternberg** said that apparently there was a mistake in the Governor's amendments. He said that somehow that left the requirement to contact the FWP to request the inspection from the Department of Livestock for transportation to transfer that to the FWP. He said that he understood that it was the intent of FWP to keep it with the Department of Livestock all along. He said that it was a mistake in the proposed amendments.

**Paul Sihler** said that it was the intent to divide up the responsibilities so that the Department of Livestock could have that responsibility.

**CHAIRMAN DEVLIN** said that the exception was alright, the carnivores and the omnivorous. He said that the FWP was going to keep them.

**Doug Sternberg** asked if he was to leave the importation restrictions as they were in present code. He said that he would take section 424 out of the bill and leave it the way that it was.

**SEN. TVEIT** asked how it read in the code, was it different than what was in the bill.

**Doug Sternberg** replied that it said "the department or the Department of Livestock may restrict from importation for purposes of game farming any species or subspecies" and that was the present code.

**CHAIRMAN DEVLIN** said that there were two departments.

**Doug Sternberg** said that presently it states that both of the departments may restrict from importation and may impose importation restrictions. He said that apparently that had been interpreted by the departments that the importation restriction

process lies with the Department of Livestock while the listing of the species lies with FWP and that was the way that it was interpreted.

**CHAIRMAN DEVLIN** said that maybe that should be put in the statute. He asked if they could do that. **Doug Sternberg** replied that they could do that.

**SEN. KLAMPE** continued with the scenario about bringing the animal into the state and quarantining them. He said that the next step that he felt would be important to consider would be commingling and providing exclusive pasture for game farm animals so that they do not graze with the cattle. He said that had been a problem in other states, in New York and Pennsylvania. He said that he thought that it would be prudent to put that into the bill. He said that he had a short paragraph that he could read. He said that it would not be a big burden and he did not believe that the cattle ranchers would oppose it.

**CHAIRMAN DEVLIN** asked if there were game farms where they run the cattle in the same pen.

**Les Graham** replied that currently there were none.

**Karen Zackheim** said that it could happen.

**Les Graham** said that if he owned a few cattle and wanted to put them in there and the state veterinarian said that they were healthy, he did not see where that would be a problem. He said that he did not see where the problem would lie if the clean bill of health was there and the importation restrictions had been met and everything was in order and all of the testing requirements were met. He said that it was private property and the person could do it.

**SEN. TVEIT** said that as the sponsor of SB 215 it was outside the text of what the committee was working with and he would object to that amendment. He said that should not be dealt with at that time.

**CHAIRMAN DEVLIN** asked **SEN. KLAMPE** if his amendment would be that a game farmer could not mix livestock and game.

**SEN. KLAMPE** said that in a meeting in Miles City, **Dr. Siroky** had made the statement that there was commingling of game farm animals in the New York experience where tuberculosis (TB) from the game farm animals did infect the cattle and they lost their TB-free status. He said that **Dr. Siroky** said that there was commingling. He read the following paragraph. The applicant has made provisions to ensure that no commingling or exposure occurs between game farm animals and wild or domestic livestock. To meet the requirements of the subsection the applicant should provide exclusive pasturage for the game farm animals and may not

allow grazing on that pasturage by any domestic livestock. The applicant must also provide a buffer zone around the open area.

**CHAIRMAN DEVLIN** asked **SEN. KLAMPE** if the deer in the country picked up blue tongue. He said that was in wild population in white tail deer. He did not know whether that was contagious to cattle or not. He said that they could not get away from the wild herds of deer with the cattle and they get diseases. He said that they might come up with a disease that might be contagious to livestock and there would be no way that they could separate them then.

**SEN. KLAMPE** said that outlined the reason for precaution.

**Les Graham** said that the game farm industry would not approve of that because the issue would be overly restricting. He said that it would be the job of the state veterinarian to restrict. He said that in New York and Pennsylvania they were mixing the game farm animals with the dairy cattle. The point was that he did not see any reason for that. The requirements had been met on the importation and disease control issues that faced the state veterinarian at the present time.

**CHAIRMAN DEVLIN** said that if they were not clean they would not be there.

**SEN. HARGROVE** stated that the original bill stated that the Department of Livestock may quarantine any game farm animal pending inspection and health certification. He said that once that was accomplished there would really be no reason to do that. He said that animals mix all over the place, even elk mix with cattle and white tail deer are always in the herds. He said that if there was a reason, it was already stated in the bill.

**SEN. KLAMPE** said that they were equating wild elk with game farm elk and they were not the same animal once they have been a game farm animal. He said that TB was not in the wild and it was now. The test for TB was only 80% accurate, meaning that one in five could have TB even after the testing.

**SEN. HARGROVE** said that he was pointing out that if there was a reason, it could be done. It would be determined by the veterinarian.

**CHAIRMAN DEVLIN** said that the FWP would give the list of the exotic animals to the Department of Livestock. He asked who was in charge of recordkeeping.

**Karen Zackheim** said that presently it was FWP.

**CHAIRMAN DEVLIN** asked if the people sent the information directly to the FWP.

**Karen Zackheim** replied that was correct.

**CHAIRMAN DEVLIN** said that they kept track of the numbers that way. He asked if that was alright with everyone. He asked if there had been any problems between the two departments about the recordkeeping.

**Karen Zackheim** said that in general she had not heard a lot of complaints. She heard a few individual game farmers who wondered why they had to do three reports during the year. She said they had talked about doing fewer reports, but FWP likes getting the multiple reports because they can do the recordkeeping on a more regular basis and they tend to see more accurate records.

**CHAIRMAN DEVLIN** asked if he was correct in saying that they had to keep records in three different places.

**Karen Zackheim** said that the game farmer had to send one in and keep their own records.

**Dennis Iverson** said that the only complaints that he had heard were that they did not have to do reports any more than what was necessary for FWP. He said that at one point FWP suggested that they could go to two reports per year and perhaps go to an annual report in the future. He said that they should look toward something along those lines.

**Karen Zackheim** said that the FWP did not feel that they were ready to go to an annual report. If they could put together a data base with the Department of Livestock where all of the information was put in, they would possibly would be able to keep track of the animals on a more regular basis. For now they would like to have the reporting.

**Dennis Iverson** said that they did not disagree with that. Once the data base was set up he did not see the point of continuing the reporting three times per year. He said that maybe that could figure out some way statutorily to taper that off by rule. They would be in favor of that.

**Paul Sihler** said that one of the FWP concerns relating to recordkeeping was theft. He said that was the way that theft was demonstrated, through records. He said that they had talked some yesterday about tissue samples. He said that if there were tissue samples being taken, the FWP would be comfortable with reducing the reporting requirements.

**CHAIRMAN DEVLIN** said that they had talked about freezing those samples and having them in-house and not processing them.

**Paul Sihler** said not to process them, but to have the sample in storage in case a question arose. He said that they discussed yesterday also that the FWP should pay the cost of processing if there was question and indeed if there was a case of theft they had recourse to recover that. He did not think that was unreasonable.

**CHAIRMAN DEVLIN** asked if they needed to write that into the bill.

**Doug Sternberg** said that they should. They needed to address it because the reporting periods were set up by statute. Presently there were three reports required. He said that the Governor's amendments reduce that to two, in January and in July, on page 9 of the "gray bill". **SEN. TVEIT'S** suggestion was to reduce that to an annual report. He said that the subcommittee needed to decide whether they wanted to change the present three reports to a two or one or leave it the same.

**SEN. HARGROVE** asked if part of the reason for some of the problem that rather than a data base there was some perception that they were used as policing action and to intrude and look over their shoulders. He said that if it is a pure data base that was something that everyone wants and he thought that would be a very cooperative thing. He suggested that "annual" would be enough with some phase-in period.

**CHAIRMAN DEVLIN** said that if there was a place with a problem he could see how they would want the reports. If a problem arose on a specific game farm he could see why they would want to report more often. He said that the game farmers would not disagree with that.

**Dennis Iverson** said that he would not have a problem with that at all. He said that if they identified a problem game farm, then there should be a mechanism for them to go back to three reports in the year.

**CHAIRMAN DEVLIN** asked if they could put that in statute or could they do that by administrative rule.

**Paul Sihler** said that one way that they might be able to do that would be that if there was a game farm that was permitted and they had some sort of problems to enable the FWP to put some conditions on renewing a permit. He said that they could put the conditions in statute.

**Doug Sternberg** said that he was still not sure how often to have the normal unoffending game farm operator to be required to report. The Governor's amendments say two, and that splits the difference. He asked if they were to keep it with two and put in a provision that if during any licensed year some problems arise that the FWP in the following licensed year may require additional reporting as often as necessary.

**Dennis Iverson** said that he agreed with that, but once they get set up and cleaned up and operating that they would be reduced to annual reporting.

**CHAIRMAN DEVLIN** said that he did not know how to work that in.

**SEN. KLAMPE** asked if transferring of the lease of the game farm, presently allowed in statute, was going to be a problem as far as reporting.

**Karen Zackheim** replied that it should not be, if the two times per year reporting are required. If a license was transferred and if there were stipulations on the license for more frequent reporting, that would probably transfer with the license. If there were no stipulations, then it would only be the two times per year reporting. She said that the phasing down of the reports would take them until the next legislative session to get everything in place and working to see if annual reporting can be done.

**Dennis Iverson** agreed with that. He said that he expected it to take them a few years to get down to annual reporting. He said that he did not want to have another bill in the next session if they could help it.

**Karen Zackheim** said that they did not know how long it would take them to phase the reporting period down to annual reporting. She said that what was what they used to keep track of what was happening on a game farm. She said that until they had a chance to work through the process it would be too difficult to go right to annual reporting.

**Les Graham** asked if FWP was going to require more reporting during the year, why could they not require less reports of some game farms.

**Karen Zackheim** said that maybe that would be a good way to do it. It would also let FWP see how the annual reporting would work for them without having everyone doing it at once. Typically it would be based on a history of recordkeeping to identify the problems of the game farm operation, if there were past violations or no violations.

**Paul Sihler** said that they would be comfortable with that, but there would be inconsistency in the industry. Who would have what sort of recordkeeping reports. He said that it was not an issue for them, but there was an issue raised during the session about consistency.

**CHAIRMAN DEVLIN** asked what the opinion of the subcommittee was. He said that the options they had were that they could put it into statute, he said that he did not want to have to put all of that into statute.

**SEN. NELSON** said that was her problem also. She would like to be able to leave it up to the discretion of FWP, but apparently there has been personality conflicts or something. She said that she hated to lock that into numbers.

**SEN. HARGROVE** said that it was a hard question since they were coming from a starting point where there has been some conflict. It might tend to solve the problem if they were to put in a 1-year reporting requirement or a phase in a 1-year reporting requirement.

**CHAIRMAN DEVLIN** asked if there could be some way that they could do it by if there had been a history of violations in the last designated amount of time. Then the FWP would only demand one report per year.

**Dennis Iverson** said that he liked the way they were headed because that would say that there was a no incentive for an operation that had a lot of violations and if the person was a good operator, there was an incentive of only having to report once a year. He said that might help the industry if the committee could figure out a way to put that in statute.

**SEN. NELSON** asked if **Mr. Iverson** thought that it should go in statute.

**Dennis Iverson** replied that it was up to the subcommittee, but he was concerned with having the call be completely subjective. He said that some problems could arise from that.

**CHAIRMAN DEVLIN** said that there had been some horror stories on the wardens out in the field.

**Dennis Iverson** said that he liked the idea of an incentive.

**Paul Sihler** said that maybe the thing to do would be to put something in statute and then either terminate it after 2 years of 4 years and that would require the bill to come back into the legislature. He said that they could experiment with it. There could be something put in the statement of intent about how the legislature wants the two departments to come back and report on the progress and the legislature would then make a final decision on it based upon what had happened.

**CHAIRMAN DEVLIN** said that the committee had not discussed the advisory committee either. He said that might be the vehicle that they need.

**SEN. TVEIT** asked **Doug Sternberg** on page 2, under Section 2, the FWP and the Department of Livestock had a dual role of primacy, is that right?

**Doug Sternberg** replied that was correct.

**SEN. TVEIT** asked about section 3 under the amendment of section 2, 87-4-410, what happened to the Governor's amendments that amended SB 215, what happened to 87-4-409, the Governor fully removed from SB 215?

Doug Sternberg replied that 87-4-409 was added by an amendment to SB 215, not appearing in the original draft of SB 215.

SEN. TVEIT only wanted to know where that section had gone. Which was another issue that was not yet discussed by the subcommittee, the major action issue under that.

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Dennis Iverson said that he was trying to get to where Paul Sihler was going in a less awkward way. He said that he liked the idea of an experiment, if it did not work in a time limit, but what if it did work and after the time was up they liked the way that the system was working. He said that he was still trying to avoid having to bring the bill back in the next legislative session. He asked if they could write in a way that was established by statute to have that section terminated with instructions that would say that if everything was fine, then establish the whole thing by rule, it would not be necessary to come in and establish it by rule.

CHAIRMAN DEVLIN said that it would just be a sunset on that section.

Dennis Iverson said that they would instruct them to continue by rule under certain conditions. He said that he was trying to eliminate having to come back to the legislature with the bill.

Paul Sihler said that the issue may be how the section was designed so that it was not doing anything but that. He said that they did not want to be the permitting authority.

Dennis Iverson said that it would have to be a subsection that would drop out and then go to rule.

SEN. HARGROVE said that was another way to look at it. If they put in the discretionary, the incentive mode as it was now, he suspected that the chances were that people would be happy with that. He said it was the lesser chance that they were going to change it. This statute was no different than any other. If the problem arises, they will have to come back in and change it, and maybe just put that in and leave it there and forget about it and probably not change it, but they can if it was necessary.

Doug Sternberg asked since both SEN. TVEIT's bill and the Governor's bill suggested changes in the number of times that reporting was to be required, the difference between three and one, that they split the difference and require two per year and allow FWP to require more or less frequent reports when necessary, either to more closely track game farms that have had previous problems or to reflect less frequent reporting to reflect proper game farm maintenance and management or small scale operations or where problems had not developed over a period of time. He asked if that sounded correct.



**CHAIRMAN DEVLIN** asked what that sounded like to the FWP. He said that maybe they could try to put that in like that and then when that was all put together they could go over the entire bill.

**Doug Sternberg** said that the full committee may want to address that issue also.

**Dennis Iverson** asked if FWP was required to draft rules as how they would go about making the determination of going up to three or down to one report per year. **Dennis Iverson** said that then the details could be worked out during rulemaking.

**Doug Sternberg** said that you could not leave something that open in statute. He said that his idea was to keep it in the context of FWP rulemaking.

**CHAIRMAN DEVLIN** said that they would get some language like that and then finalize it after it had been drafted.

**Doug Sternberg** said that there was one other change in the Governor's suggestion in the recordkeeping area. That was to also include records of animals leased. That was not presently part of the reporting requirements and it was very clearly and specifically put in numerous places that FWP would like to keep track of leasing of animals among game farms. He asked if the subcommittee would like to include a leasing provision in the recordkeeping requirements.

**CHAIRMAN DEVLIN** said that he thought that the leasing would require some action from the Department of Livestock. He said that if the animal was taken across county lines, then it had to be inspected.

**Cork Mortensen** said that if a person was leasing an animal, premises change would be involved and the Department of Livestock would become involved.

**Karen Zackheim** said that based on the number of discussions with game farmers who were doing lease arrangements and the current recordkeeping requirement had animals that were owned and sold, they do not account for leasing. She had suggested clarifying the report to allow the leasing. This would simplify matters for both FWP and the game farmers.

**CHAIRMAN DEVLIN** said that the lessee or the lessor would be doing the reports.

**Karen Zackheim** said that the person who was leasing the animal would be filing the report, wherever the animal was housed.

**Paul Sihler** said that was a situation where it was FWP's understanding that there was something that the game farmers would like to do and the statute was not very clear. The FWP was trying to provide a mechanism for that. If the game farmers do

not want to do that, then take it out and if there was a better way to do that, then change it.

**CHAIRMAN DEVLIN** said that it seemed that if someone was leasing then they would just go through the Department of Livestock for the move.

**Mark Bridges** said that identification was permanent in the animal. Ownership does not change, premises may or may not change. A person may lease an animal but share the offspring. Say that the lease agreement was to lease 20 elk and the person leasing the elk would get 15 calves and the lessor would get 5. During identification time the 15 would be tattooed with that person's tattoo and ear tags and the other 5 would still be the lessor's elk. He said that his elk were still legally his elk, but they were being used by another game farmer. He asked why would the lessee report for the person who still owned the elk?

**CHAIRMAN DEVLIN** replied that it was because they would be confined in that person's fence.

**Karen Zackheim** said that it was because of location and counting and identification on a game farm.

**Mark Bridges** asked if the game farmer would not report to the FWP where they were at on the reporting form.

**Karen Zackheim** said that would come in on the one transfer report, but once that were at someone else's if they were accountable then they were just accountable one time. The lessor would be the one taking care of them so it should be their responsibility. If it was put on the report, then that game farmer would sign that they were responsible for the animals that they were leasing.

**CHAIRMAN DEVLIN** asked if she foresaw someone asking to send the lease in to FWP.

**Karen Zackheim** said that they had not.

**SEN. KLAMPE** said that another complicating factor was the possibility was that someone who was not a licensed game farm may try to purchase an animal and put it on the game farm, or lease it to the game farm, or loan it to the game farm. He said that he would like to hear some comments on that. He said that in SB 173 only a licensee may own or lease a game farm animal. He said that he thought that was an important distinction.

**CHAIRMAN DEVLIN** said that he thought that was the way that it ought to be.

**Les Graham** said that he thought that was in the permit requirements already. He said that he thought that was already covered.

**Karen Zackheim** said that the ownership was there, but the leasing was not.

**CHAIRMAN DEVLIN** said that if a person was to lease him an elk and he did not have the approved permit then he cannot lease the animal. He asked how to put that in statute.

**Dennis Iverson** said that **SEN. KLAMPE** was talking about going the other way.

**SEN. KLAMPE** said that in SB 173 it was stated that only a licensee may own or lease a game farm animal. He said that he did not see where that would be objectionable.

**CHAIRMAN DEVLIN** said that would make it clear enough. He asked if that was in statute or not.

**SEN. KLAMPE** said that it was not. It was in SB 173 as another regulation that they thought was necessary.

**SEN. TVEIT** said that would be a good point. He said then it did not need it in the other place for leasing.

**CHAIRMAN DEVLIN** said that he thought that would cover it all.

**Dennis Iverson** asked what that may do to a partnership. Would that prohibit a person in putting up half of the money for an elk that belonged to someone else. Would that say that he could not own that elk unless he had a dual license.

**CHAIRMAN DEVLIN** said that they would have to be under another name.

**SEN. TVEIT** said that to have an elk on his land there would have to be a clearance of the fencing, everything else.

**Dennis Iverson** asked if that language would prohibit him from owning half of someone's elk herd unless he was licensed.

**Karen Zackheim** said currently there were situations like that. There were legal agreements as to who owns the elk. The person that was the licensee was responsible for the reporting requirements and complying with the regulations, but they can have their own legal agreement. In terms of the requirements for reporting and the facilities, the person who has the license would be responsible.

**CHAIRMAN DEVLIN** asked if they were interested in the partners.

**Karen Zackheim** said that they could be.

**CHAIRMAN DEVLIN** said that he was sure that there were a lot of game farms that had family members involved in them.

**Karen Zackheim** said that the licensee was responsible as the owner.


**CHAIRMAN DEVLIN** said that he thought that the amendment was something that should be put in the bill and look at it and take the other part about leasing out.

**Doug Sternberg** asked if section 417 would not include the references to leasing, but there would be a provision in section 414 dealing with game animals as private property, adding a sentence at the end of subsection 4, that would say, only a licensee may own or lease a game farm animal.

**CHAIRMAN DEVLIN** said that might not be completely right. They will write it down and then discuss it later.

ADJOURNMENT

Adjournment: 9:20 a.m.

  
SENATOR GERRY DEVLIN, Chairman

  
JENNIFER GAASCH, Secretary

GD/jg

ROLL CALL

2-7-95

B:CC a. M.

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