

MINUTES

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

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on February 10, 1995,
at 12:35 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)
Sen. Bob Pipinich (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: SB 319
Executive Action: SB 256, SB 319, SB 173, SB 215, &
SB 116.

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

EXECUTIVE ACTION ON SB 256

Discussion:

SENATOR GARY AKLESTAD said he presented amendments at the hearing
and he said he would be happy to explain them.

CHAIRMAN SWYSGOOD asked if they were the amendments that
discussed the damage and discounts.

SEN. AKLESTAD said that one of the amendments would on page 11, line 20. He said there was a farmer at the hearing that asked that some of his information be passed out to the committee and he would like to pass that out at this time. He passed out three documents from the same individual. (EXHIBIT #1, #2, & #3)

CHAIRMAN SWYSGOOD said there was a letter in front of the committee from the Montana Grain Elevator's Association in response to the question that was asked at the hearing in regards to the number of complaints. (EXHIBIT #4)

CHAIRMAN SWYSGOOD asked if all three letters were from the same person, Ed Skeslien.

CHAIRMAN SWYSGOOD said they would take the first amendment that was on page 11, line 20.

SEN. AKLESTAD replied they would strike "damage and discounts" and lines 24-26 on that page, which would be from "Damage" through line 26 the word "subclass". The elevators and the Graingrower's thought that would cause some problems so he was going to take it out.

Motion:

SENATOR GREG JERGESON MOVED the amendment.

Discussion :

CHAIRMAN SWYSGOOD said it would now read "Weight for dockage and dockage are the same and cannot be calculated or discounted separately" and that would be the only thing that would be underlined. He said he did not understand what that was saying.

SEN. AKLESTAD replied it was the provision that when the farmer brings his grain in as a 350 bushel load, most elevators take 1% dockage at that time automatically so that it would be 3 1/2 bushel off at that time. When the samples are sent in and they come back at a little over 5/10 of 1% then they take dockage on the rest of the 240 bushel. This would say that they have to take one or the other. He did not think there was a lot of opposition to that.

CHAIRMAN SWYSGOOD asked if there was anyone here representing the grain elevators. He asked **Pam Langley** if she understood what has happened and asked her to explain. The way he understood it was there would only be one dockage allowed and that would be at the time the original one was taken.

SEN. AKLESTAD said it would depend on the elevator. He said that the first dockage across the scale would not be taken and the second one would be because that would be calculated off.

CHAIRMAN SWYSGOOD asked if that was the one that would be the dockage that would be sent.

Pam Langley, representing the Grain Elevator's Association, replied she did not understand the real intricacies that go on in the elevators. She said that the elevators said they could deal with that.

SEN. AKLESTAD said the language stated they would only calculate one instead of taking 3 1/2 bushel and took 7 bushel then when the sample came back they would not be able to take anything when it came off the scale. But when it came back they would get the total dockage and it would be calculated off of an actual dockage.

Randy Johnson, representing the Montana Graingrower's Association, replied they would agree with the amendment. He said they can handle how they discount dockage and do it consistently with the language. He said their thought is they will double the discount. He said at 1%, if subtracting 1% dockage at \$4.00 wheat it is a \$.04 discount. He said they would probably see the discount go to \$.08.

CHAIRMAN SWYSGOOD asked **Randy Johnson** if it was not going to have an adverse effect upon the producer?

Randy Johnson replied that would be their hope, unless the grain trade was vindictive or something.

CHAIRMAN SWYSGOOD said they were striking "damage and discounts" in the beginning and then they are going down into the underlined language and after "separately" they are striking "damage" all the way through "subclass".

Vote:

MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. AKLESTAD said that another amendment on page 14, line 21, it would be an insert after number (6) and an additional line would be added, line number 7 which pertains to the malt barley producers in the state. It would also take out canola producers; anyone who has a specialty crop that they had to, or wanted to, send their sample into a private lab, they would have that latitude to do so.

Motion:

SEN. BECK MOVED the amendment.

Discussion:

CHAIRMAN SWYSGOOD asked if that would be an addition to the new section 15.

SEN. AKLESTAD replied that was correct. It would be item number seven.

CHAIRMAN SWYSGOOD replied it would be item number seven which would eliminate the malt barley producers from any testing.

SEN. AKLESTAD replied that it would eliminate any demand that they send the sample to a state lab.

CHAIRMAN SWYSGOOD replied that he had problems with section 3, (15), and also section 16.

Vote:

MOTION CARRIED UNANIMOUSLY.

Motion:

SENATOR DON HARGROVE MOVED to strike section 16.

Discussion:

SEN. JERGESON said he understood in the midwest they were 2/10, and on the west coast they are on the 1/4, but he did not know how they ever knew that. He said he was not understanding the mathematics. He was almost thinking they should leave it in and then do some checking and it could be changed in the House. He was still uncertain if it was a good or bad provision.

SEN. BECK said that at the present time it was 1/4. He asked if it was 1/4 of 1% currently in the present law.

CHAIRMAN SWYSGOOD replied that was correct. That is what they buy on in the west.

SEN. BECK said they would be putting it at 1/10 of 1% in the law because there was nothing currently in the law, but that is the standard that they use.

SEN. HARGROVE said they do not really know, but it would potentially put the people on the west coast at a disadvantage, where most of the wheat goes. They do not know what the market is going to do. If it did not affect the market, then it could help them out a little bit, but the feeling was that it would affect the market.

SEN. NELSON said she wanted to hear from the Graingrowers on that.

Randy Johnson said they were really concerned because it would put Montana on a different system than the Pacific Northwest. That would mean the producers would be selling grain in Montana that would be completely isolated from the rest of the country. There would be two different pricing mechanisms for not only producers, but the local traders would have to deal with it. They think that would put them at a disadvantage. The second thing was the grain trade. They have looked at the various ways the grain trade would have to respond to that sort of change. They think they will not take less and they would not give them more for the protein scales. They are not going to allow themselves to be taken out of the market because of the scales. They were not going to take a loss. Looking at the difference between 1/4 and 1/10, there would be a stair-step effect. None of the premiums that were paid on the 1/10 scales would be higher than the protein prices currently. They could not use protein scales and use guaranteed bids.

SEN. AKLESTAD replied there was no doubt the elevator companies and the grain companies can do whatever they want to as far as reprisal. They have already experienced that and that is the reason for the bill. The scenario was given to the committee and the farmer is beat two out of three times. If the protein was 14 protein and it goes 13.9 then they already take the two tenths. At this point the producer is getting beat two out of three times.

CHAIRMAN SWYSGOOD asked **SEN. AKLESTAD** about his scenario on the 1/10's. He raises protein wheat that tests 14.7. Under the current system he will be paid 14.5, losing 2%. What would he rather lose, 2% or 7%? If they went to a guaranteed protein of 13, or whatever and he has 14.7 and gets paid 14, which one will cost the producer the most?

SEN. AKLESTAD replied that 14 would cost the most. He said that would be the gamble they would be taking.

CHAIRMAN SWYSGOOD said they sell most of the grain in Montana on the west coast and they pay on the 1/4. If Montana puts 1/10 as what they have to pay in, do you think that Montana as a grain shipper state can demand enough leverage for them to change the way they buy?

SEN. AKLESTAD said individually he was not sure that they could do that and he was not sure that all of the grain on the west coast was being sold on the 1/4 either. There might be instances where there is a difference in that. In Canada they are seriously thinking about going to the 1/10.

Vote:

MOTION CARRIED 7 to 2 with SENATORS DEVLIN, BECK, HARGROVE, JABS, NELSON, PIPINICH, SWYSGOOD, voting yes and SENATORS HOLDEN and JERGESON voting no.

Discussion:

SEN. BECK said it was not very long ago that the grain growers came in and said that the state was not getting the tests done and they were not getting the results and they were not getting paid. Now they were going right back to the state to do all of the testing and he was not sure that there was not enough FTE in there to comply. He asked Senator Aklestad to respond to what happened a few sessions ago.

SEN. AKLESTAD replied that pertaining to the testing lab, he thought there was a concern at one time and those concerns have been alleviated. In the bill he gives them latitude. As the samples increase, they will be able to budget to bring in more people to take care of that job.

SEN. BECK said that was one of the things that he was bothered by. The legislature will not be able to get in every 2 years to give them an adjustment, should they have to go to the Income Committee and get the adjustment.

SEN. AKLESTAD replied no, he did not. He said there was a provision in the bill that says they will automatically be able to spend the additional funds they bring in and as more samples come in, they can hire more help automatically.

SEN. DEVLIN asked about the sealed container and the moisture proof container. He asked what kind of a container would that take to be a moisture proof container.

SEN. AKLESTAD replied it would be some type of a plastic bag or something like that. It could also be some type of canvas. It would be left up to the department to come up with that.

SEN. DEVLIN said his other question was pertaining to the composite sample remaining in a sealed tamper proof container.

SEN. AKLESTAD replied he thought that was what he already was speaking to.

SEN. DEVLIN replied there was one that said moisture proof and one that was sealed and tamperproof container, the one that has to be held for 10 days.

SEN. AKLESTAD replied that they could hold the one for longer than 10 days and that would be some type of a sack or a container with a seal.

SEN. JERGESON said that section 15 was an important section. He said there were some problems 3 or 4 years ago about the results of tests being done by some of the private labs and the director of the Department of Agriculture at the time contacted **SEN.**

JERGESON and they talked about the problems. Before the hearing they kept track of how the samples were taken out of the truck. They would usually take a handful out of the back of the truck. After the hearing they were more careful about how they took the sample. He said the process would have never changed if the hearing had never had taken place. With respect to section 15, which is that tests ought to be sent to the state grain lab unless the producer requests otherwise, the intimidation would not effect the members of the legislature, but there are producers out there who are intimidated. At the hearing they discussed how easy it was to change the setting on the machines. The grain companies try to keep them as accurate as possible. When they were doing the test on the 1/10 instead of the 1/4 of 1% it would be easy for someone who was unethical to cause a problem. He said they should keep section 15 in.

CHAIRMAN SWYSGOOD said not long ago the state grain lab had problems also.

SEN. JERGESON replied those problems were relating to the national company changing their standards on the protein tests of spring wheat.

Ralph Peck said those were two separate instances. Falling numbers was one instance for which the procedure was reviewed and they took the samples and sent them back in to verify the results and in fact they found very little change. The other issue was grain inspection did recalibrate the machines and they said they could see a market impact where they adjusted the calibration of the machines. That was done nationwide and is presently in a law suit.

SENATOR BOB PIPINICH asked if they asked them to calibrate the machines periodically.

Ralph Peck said they calibrate the machines almost daily. Every week they send samples to the Department of Agriculture. He said that was a nationwide change and they questioned the change in that respect.

CHAIRMAN SWYSGOOD stated that section 15 was taking something that was allowed to presently happen and the bill would make it mandatory unless they opt out of it. He asked how much pressure it was going to put on the state grain lab to make a timely sampling and report back to the elevator and the producer. He

asked if there were going to have to be more people put on in the state lab to handle the potential influx of sampling for those people who do not opt out.

Ralph Peck he said they did not know. A survey was done and they contacted three individuals. One said that he would not see hardly any increase; one said maybe 20% to 30% increase; and one said they would see maybe a 40% increase. They did a fiscal note on the 30% increase, which would require about three additional FTE's in the state grain lab. Since that time the state lab has seen the civil penalties section of the bill. They would be very concerned to be sure to that they had the right and they have indicated a very large increase. He said that years ago it worked, it was an individual decision by the producers.

SENATOR LINDA NELSON asked if there were any instances where the state grain lab has been proven wrong and their tests have not been accurate.

Ralph Peck replied they were human beings. They monitor the equipment to make sure it is done right. It is a very rigid system that has been set up, but when they start grading grain, that is an individual's interpretation. The federal inspection service has a set system that they go through and if you are not comfortable with the test done at the state grain lab, the producer can ask for a retest. He said if the producer was not comfortable with the retest, they could take it to a federal grain inspection service appeal, which is in Boise, Idaho, and they would check the sample. If they were still not comfortable with that they could take it to a federal board of appeals in Kansas City, and they would check both of the samples. He said there were errors at times. He does monitor that continually.

SENATOR RIC HOLDEN asked if they do the section 15, they are sending it into the state. He said the producer would walk in and it was automatically on the contract. It will take a little longer to go through the procedure than if the grain elevator was doing the test, because of the mailing time.

Ralph Peck stated it depends on the location of the facility. One elevator company might be in Great Falls, and the state grain lab is in Great Falls.

SEN. HOLDEN said on the fiscal note he could see where the producer is going to come in and when asked by the elevator if he wants his sample sent into the state lab, the producer will just say no. He said it might not be as expensive as they might think because most of the time there is a good rapport between the grain elevator and the producers.

SEN. PIPINICH asked them to explain the amendments to section 15.

Randy Johnson replied it was attached to their testimony. Their amendments maintain the law as it is presently. The producer has the right to request the sample to go to the state lab as an option. The only thing that would be changed from current law is that they also except the language which maintains that the producers right to go to the state grain lab cannot be waived as a condition of sale. They felt when they couple that provision with the civil penalties, that will take care of the problems where there had been instances when the producer had been denied that right.

SEN. JERGESON asked **George Paul** to comment on section 15.

George Paul said as far as they were concerned, the main part of the bill was section 15. It is important to producers. He said they had a survey a few years ago. The question that was asked was: "Would you support changing Montana law so that all samples go to the state grain lab unless the right was waived by the producer?" He said 70% responded that they would support that change in state law. The grain growers result was 64% of their membership responded that they would support the change in state law. They opposed the amendment to section 15. They have every confidence that the producer's rights would be protected and the Montana state grain lab have enough funding to get the job done. They believe that it would be in everyone's best interest that as much grain as possible in the state of Montana be officially analyzed.

Motion:

SEN. DEVLIN MOVED the amendments (**EXHIBIT #5**) to section 15.

Discussion:

Doug Sternberg noted that numbers 1, 3, and 4 of **EXHIBIT #5** have already been passed.

SEN. SWYSGOOD replied that the amendment moved by **SEN. DEVLIN** was number 2 on **EXHIBIT #5**.

SEN. HOLDEN asked **SEN. AKLESTAD** what he thought about the amendment.

SEN. AKLESTAD replied he opposed the amendment. He said that it was stated earlier that it would help a "few" people and he said under the original language in SB 256 it would help the majority of the departments. He said the organization the amendment was presented by had a survey and 64% of their membership said they would like to have their sample automatically sent to the state grain lab unless they signed off on it.

Vote:

Roll Call Vote failed 5 to 4 with **SENATORS DEVLIN, NELSON, PIPINICH, AND SWYSGOOD** voting yes and **SENATORS BECK, HARGROVE, HOLDEN, JABS, and JERGESON** voting no.

Motion:

SEN. JERGESON MOVED to DO PASS SB 256 AS AMENDED.

Discussion :

SEN. JERGESON replied there were a lot of things in the bill that they did not discuss that were important.

SEN. DEVLIN replied he was going to resist the motion because he read section 15 as saying the elevator could tell the producer that if he wanted to sell his grain at the elevator, then he better sign the waiver. He said there was still the intimidation factor.

SEN. HOLDEN replied that if the elevator was going to try that then they would be in violation of some laws and be looking at a law suit. He did not think that the elevator operators would want to face a law suit.

CHAIRMAN SWYSGOOD replied that he was going to resist the motion. If you read section 15 and testimony and the letters passed out, there is a minimal amount of complaints that are received compared to the number of producers. He was concerned with the elevator having to keep the samples for 10 days after termination of the contract. They can make mistakes on taking the sample.

{Tape: 1; Side: b; Approx. Counter: B; Comments: There were a few minutes lost while CHAIRMAN SWYSGOOD was speaking..}

CHAIRMAN SWYSGOOD said that it would not be effective to keep the samples. He said the language would create problems. He did not think there were that many cases out there that many operators that intimidate producers who want their sample taken to the state grain lab.

Vote :

Roll Call Vote failed with 7 to 2 with **SENATORS DEVLIN, BECK, HARGROVE, JABS, NELSON, PIPINICH, AND SWYSGOOD** voting no and **SENATORS HOLDEN AND JERGESON** voting yes.

Motion:

SEN. JERGESON MOVE THAT THE VOTE BE REVERSED AND THE COMMITTEE ISSUE A DO NOT PASS AS AMENDED RECOMMENDATION.

Vote:

The vote was reversed and SB 256 was issued a **DO NOT PASS AS AMENDED** with a vote of 7 to 2 and **SENATORS HOLDEN** and **JERGESON** voting no.

HEARING ON SB 319

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD 47, Moore, said he was introducing SB 319 which was recommended by the Legislative Auditor. He said SB 319 would allow the Department of Livestock to collect beef check-off dollars and contract with an outside entity regarding those funds. It limits state liability and clarifies inspection procedures.

Informational Testimony:

Les Graham, representing the Montana Beef Council, said there were some amendments. (**EXHIBIT #6**) He said the bill would allow the Department of Livestock to cooperate with and contract with the Montana Beef Council in collection of overhead as established in the Beef Promotion and Research Act and pass at the federal level after that referendum. The amendments on page 1 would take out lines 22-30, and on page 2, they would take out lines 1-12. The department has been doing the process for years and the auditor said there was a space in the law that did not give them the authority to collect and contract with the Beef Council. He said they were cleaning up the language.

Proponents' Testimony:

Cork Mortensen, representing the Board of Livestock, said they supported SB 319 as amended.

John Bloomquist, representing the Montana Stockgrowers Association, stated that the bill is needed to clarify the statutory authority to the department. They support SB 319 with the amendments.

Lorna Frank, representing the Montana Farm Bureau, said they supported SB 319 with the amendments.

Leonard Lundby, a stockgrower from Great Falls, said he supported SB 319 as amended. He suggested that following the reference to the Beef Promotion and Research Act, the committee might add that it is known as the National Beef Checkoff.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. HOLDEN asked Leonard Lundby about the clarification.

Leonard Lundby replied that on page 2, line 14, he would like to add "otherwise known as the Beef Checkoff." He said that the producers know it as the "Beef Checkoff".

SEN. BECK asked Les Graham if they take all of that out with the amendments, will there be any need for a statement of intent in SB 319?

Les Graham replied he was not sure. He said he would hate to limit the department in any way in the future.

SEN. BECK asked if the intent was to authorize what they were currently doing to collect the beef checkoff and there would not be any spending by the Department of Livestock, it would be turned over to the Beef Council? If they get the bill in the form with the amendments, then that is what they want.

Les Graham replied that was correct.

CHAIRMAN SWYSGOOD asked about the statement of intent.

SEN. JERGESON replied that the amendments do not eliminate section 1 and there was still responsibility assigned to the department and they may have to adopt rules.

Doug Sternberg replied that line 19 was still left in the bill which speaks toward rulemaking. He said that they need to leave in the statement of intent.

SEN. PIPINICH asked if they could add on amendment number 6 of EXHIBIT #6, the National Beef Checkoff.

Doug Sternberg replied that he thought it would be necessary to clarify which Beef Promotion and Research Act they were referring to. He said he would double-check the name and include that in the amendments. He said amendment number 9 needed to strike the word "is" rather than "as". The first word on line 18 is the word that they want to delete. He said there were a few grammatical errors that needed to be cleaned up and he would do that.

SEN. BECK said they ought to get everything out of it that creates any rulemaking authority. He said he did not believe that they needed any rules to collect the checkoff. He asked what rulemaking they needed for that.

Cork Mortensen replied they did not have any rules now and he did not see any need for them.

SEN. BECK replied he did not think they needed to have rules to collect the checkoff. They were saying in the statute the Department of Livestock will collect the checkoff and be reimbursed for the cost of the collection or otherwise they will turn it over to the Montana Beef Council.

CHAIRMAN SWYSGOOD asked how they would establish what it is that they are reimbursed.

SEN. BECK asked if they were reimbursed presently.

Cork Mortensen replied they were being reimbursed presently. They get 5% of what is collected for the department's expenses.

CHAIRMAN SWYSGOOD asked if that was something the Department of Livestock set.

Cork Mortensen replied that was set jointly between the Department of Livestock and the Montana Beef Council.

CHAIRMAN SWYSGOOD asked if that was in-House and they do not need any rules.

Cork Mortensen replied they did that with the Montana Beef Council.

SEN. JERGESON said the point of the whole bill was simply because they had been doing it without the statute and the bill was the audit exception. They brought in the bill to codify what they had been doing. Some of that may require some rulemaking authority.

SEN. BECK replied he was trying to make the bill simple. If the Department of Livestock was getting 5% that they would receive, then they could simplify the bill.

SEN. DEVLIN asked **John Skufca** to address the committee.

John Skufca, Department of Livestock, said they were collecting by law under Title 81 to promote the livestock industry. They should get specific authority to collect the checkoff. They would not want a specific 5% because that could change, and they want the ability to change it with the Montana Beef Council.

Closing by Sponsor:

SEN. HERTEL replied the amendments simplified the bill and satisfied the concerns.

Motion/Vote:

SEN. PIPINICH MOVED the amendments on SB 319 and instructed Doug Sternberg make the necessary corrections on the amendments and clarify the language on amendment number 6. The MOTION CARRIED UNANIMOUSLY.

Motion/Vote:

SEN. PIPINICH MOVED SB 319 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

Discussion:

Doug Sternberg distributed copies of the committee bill that would be offered to the committee by the subcommittee on game farms (SB 215 & SB 173). (EXHIBIT #7) He was directed to put together the committee bill draft and the subcommittee was recommending it to the whole Agriculture Committee. He said there were a lot of issues discussed in the subcommittee.

SEN. HARGROVE asked Doug Sternberg where the last two amendments discussed in subcommittee were in the bill.

Doug Sternberg replied they were on the last page of (EXHIBIT #7). It was the amendment offered by SENATOR TERRY KLAMPE. They can decide whether or not to keep the language at the hearing on the bill.

SEN. DEVLIN said they came out with an alternative to the bills. They tried to zero in on who's responsibility it was on the game farms. They decided which department had control of the different aspects of the game farm industry. They decided both departments would have rulemaking authority. The exterior fencing was to be controlled by the Department of Fish, Wildlife, and Parks (FWP) and the interior quarantine was to be controlled by the Department of Livestock. All of the transportation, identification, tattooing of the animals, and the tagging of the game farm animals went to the Department of Livestock. They tried to put the guidelines out for each department on what their responsibilities were. They established an advisory board. It is a five-member board which will advise; there is one member from the FWP, one member from Department of Livestock, one member who is a veterinarian, one member from a Montana sports group, and one member from the game farm industry. He said they would advise both of the departments on the problems that may arise. He gave SEN. KLAMPE and SENATOR LARRY TVEIT a copy of the bill draft this morning.

SEN. HOLDEN asked if SEN. TVEIT was going to be at the meeting.

CHAIRMAN SWYSGOOD replied he was noticed by the secretary.

SEN. HOLDEN replied they should send a page for him.

CHAIRMAN SWYSGOOD replied there would be a hearing on the bill on Wednesday and there will be an opportunity for people to respond and ask questions.

SEN. KLAMPE said that with an LC number the public would not be able to get a copy of the bill.

CHAIRMAN SWYSGOOD replied they would not be able to get a copy of the bill until Monday.

Doug Sternberg said he could get a copy of the draft bill for the public. He said if the committee would concur, he could make copies available to the interested people in its present form.

Motion/Vote:

SEN. JERGESON MOVED that copies of the draft could be made and given to the sponsors of the two bills to distribute to the interested people. The MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. KLAMPE asked if the public could call the Capitol or pick them up at the Capitol?

CHAIRMAN SWYSGOOD replied no, you will be given copies to distribute.

SEN. KLAMPE asked if they would be given an unlimited number of copies.

SEN. BECK replied they would not be able to give them 500 copies.

SEN. KLAMPE replied they wanted around 20 copies for each.

SEN. JERGESON replied he was thinking 20 copies for each.

CHAIRMAN SWYSGOOD replied if that was alright with the committee then they would each get 20 copies of the bill and that would be a part of the motion.

SEN. BECK asked if the committee members had a copy of that.

CHAIRMAN SWYSGOOD said they did not need a motion to accept the committee vote because they had already accepted the motion at a previous meeting.

EXECUTIVE ACTION ON SB 173

Motion/Vote:

SEN. DEVLIN MOVED to TABLE SB 173. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 215

Motion/Vote:

SEN. DEVLIN MOVED to TABLE SB 215. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 116

Motion:

Discussion:

SEN. BECK said they tried to get all of the interested parties together and tried to reach a compromise. They did not want to hurt the producer. They also wanted to get rid of the price fixing problem at the retail end. They came to the conclusion to use LC 1321, which was ready for introduction. On page 4, section 7 of LC 1321, "the board after consideration shall make finding and conclusions and shall fix by official rule the formula under which minimum: (a) producer prices for milk in class I, II, and III, must be computed, (b) wholesale prices for milk in class I must be computed, (c) jobber prices for milk in class I must be computed". He asked who the jobber was referring to in the bill?

Ward Shanahan replied there was not a "jobber" represented here. Those are distributors who are fully-owned, people who distribute to the smaller stores.

SEN. BECK replied they were going to control the jobbers and the retail prices for milk in class I. They came to a consensus that the one area they would take out of the bill was "retail prices for milk in class I must be computed". They said they were going to substitute that for an amendment that was familiar that was in (d), "retail prices for milk in class I must be computed by the board in a manner so that it reduces the cost of milk to the wholesale level and are reflected in the price to the consumers at the retail level". In talking to Laurie Ekanger and some of the people, it acted like it did not do anything to the bill. He said they could go back to subcommittee and do some more work or they can go ahead in full committee and try to either strike some

sections out of the bill completely or put the language back in that some people claim will not do much to help the price or the price-fixing problem. It was up to the **CHAIRMAN**. He said as a member of the subcommittee, they were still concerned about protecting the producer. He said they could take the same bill (LC 1321) and they throw out the subsections where they can set the prices on wholesale, jobber, and retail milk, and they can maintain the producer prices for milk in classes I, II, and III as it must be computed. He said that **Ward Shanahan** would like to address that because it puts the processors in an awkward position. He said they could put the amendment that they asked for in the bill and he would like to have **Laurie Ekanger** address that because she says that it does nothing to the bill. He said he was receptive to taking out (b), (c), and (d) of the bill. He said he wanted to know the reaction and what it would do to the processors.

Ward Shanahan replied that LC 1321 was a bill that was drafted by the request of the producer's group. He said he only had limited authority to speak with respect to that. He did have the authority to speak on behalf of Meadow Gold dairies. They were going to stay behind the producers. He said the two things that were in LC 1321 was is the right to meet competition by contract. The discussion they had was dealing with the large contracts where large school districts have municipalities and for large retail sales outfits that they would then be bidding against each other for those type of contracts. The second part of it was dealing with the preference to purchase Montana milk, that is the sense of LC 1321. If they start taking things out then it will mess up the bill. It would guarantee that processors will start getting milk from out of state in order to get milk at a lower price to get in competition at the wholesale and retail level. If you leave the Montana producer all alone with his price regulated he will be in the same place. Who is going to buy his milk? If they put the preference in there they will be forced to buy a commodity at a fixed price. They supported LC 1321 in its original form. They would support it with the amendment he passed out. **(EXHIBIT #8)**

SEN. BECK asked **Laurie Ekanger** to explain what they thought about amendment (d).

Laurie Ekanger replied they were trying to eliminate SB 116 which would decontrol everything. Their position on LC 1321 was to endorse something on behalf of the Task Force and the Governor that does decontrol the retail level because it is already decontrolled at the wholesale level. They preferred to strike (d) on page 3.

CHAIRMAN SWYSGOOD asked if LC 1321 that they had before them had everything in it that the subcommittee recommended.

Doug Sternberg replied that LC 1321 had been introduced by **SENATOR SPRAGUE** and was now SB 364, which has been assigned to the Agriculture Committee.

Laurie Ekanger replied that SB 364 was the vehicle the subcommittee agreed to use. It does not have any of the amendments the subcommittee addressed.

Doug Sternberg said he had the amendments to SB 364. When the Agriculture Committee hears the bill they can consider the amendments suggested by the subcommittee.

Laurie Ekanger stated their preference would be to strike (d). She said they needed to stop fixing prices at the retail level. The reason they would prefer that to the language that **Ward Shanahan** handed out (**EXHIBIT #8**) is that SB 364 would only ask the Board of Milk Control to consider reducing the price when they set it that they continue to set the retail price at all levels. They can presently do that and it does not deregulate retail prices. They were bringing the bill to the legislature in reaction to the renew Government Task Force recommendation and the Governor's strong feeling that the state should get out of price fixing in the industry. They were willing to say at the producer level that was not as simple as it sounds and it would take some time. They would like to be able to move forward in getting out of price setting at the retail level. Their preference was to just stop setting those prices at the retail level.

CHAIRMAN SWYSGOOD replied that they should hear from the producers.

Les Graham replied that he represented the Montana Dairyman's Association which was made up of about half of the producers from Dairygold which support the concept that **Laurie Ekanger** was talking about and Meadow Gold supports the other side.

CHAIRMAN SWYSGOOD said he did not think that they were any closer to reaching a compromise that they were after the original hearing.

SEN. BECK replied that he thought they were. If the **CHAIRMAN** wanted the subcommittee to meet again they would come back to the Agriculture Committee with a definite proposal. He said he would like to know what the feelings were of the committee and if they were going to try to work with the subcommittee and try to pass a bill.

CHAIRMAN SWYSGOOD replied he appreciated the work of both of the subcommittees because the issues are very complex. He said there was a timeframe that they needed to meet. He said the producers were caught in the middle. He wanted to know what they accomplished.

SEN. JERGESON said he was reluctant to take executive action before hearing the bill. He asked if they had the bill and if they were posting it for hearing.

CHAIRMAN SWYSGOOD replied they were going to post it for hearing on Wednesday. He wanted to make sure they were heading in the right direction.

SEN. JERGESON replied he would feel comfortable if it is posted for Wednesday if the subcommittee hammered out the amendments and presented them along with the hearing so that as soon as they have heard the bill they can start taking executive action and going through the recommended amendments from the subcommittee.

SEN. PIPINICH replied he thought that both sides were in agreement and then as soon as they get out the door they disagree. He said if they go back in again the subcommittee will set the bill.

SEN. BECK said that **Laurie Ekanger** did not have a chance to come to the subcommittee meeting. **Ward Shanahan** was there and **Les Graham** was there. He said he was trying to come to a compromise that will please everybody, but that will probably not happen. He said they will come back and give the committee their top preference and they will give them one alternative as an amendment and allow the committee to make that decision after the hearing.

SEN. SPRAGUE said the intent was to not hurt the producer and to protect the producer and that the consumer would get a break. He said that was what he was saying.

SEN. BECK replied that he did not look close enough at the amendment. He thought that all parties were in agreement, but when looking at the amendment he thought there was a lot of room in the amendment that nothing would be done. He said that was his concern.

CHAIRMAN SWYSGOOD stated if they come back with SB 364 and have the hearing and after that the difference that exists now cannot be resolved and the committee is presented options, and they can decide which way to go. The producers are protected and the board is protected. He said they were talking about the wholesale, retail part of the bill. He said he heard some talk that both of them suggest deregulating both of them.

SEN. SPRAGUE replied that the processors say they could live with it either way. He said they could live with that, but the producer would not be protected in that case. He said the crunch is coming between how much profitability is reasonable and how much can be shared with the consumer.

Ward Shanahan replied that LC 1321 was drawn with two concepts in mind, that being the wholesale price contract and the preference

for purchasing of Montana milk. If you go back and kick the retail price or the wholesale price out and leave the other two provisions in there, the bill would really be messed up and they would have serious problems with the bill. He said he would have to check on if the committee took out the wholesale price contract or the preference for Montana milk out of the bill and deregulated the retail level. He said he would have to get some advice on that. He did not want the bill with all of those things in it.

SEN. HARGROVE said this was a very complicated issue. One of the options would be to use the original bill and let the market forces work. He said he could see something that might, for example, such as deregulating the wholesale. Then there would be the two major distributors and all that they do and there are also smaller organizations that would be left out. He said there was a lot of detail to address in a short amount of time.

SEN. DEVLIN asked if the subcommittee was going to meet after session.

SEN. BECK replied they were trying to get the milk to stop going in and out of state.

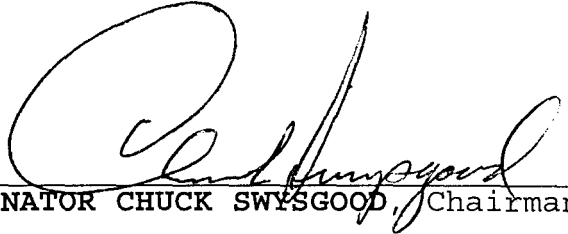
Ward Shanahan replied that was the meeting competition in LC 1321 was intending to do. He said that was why that was in there.

SEN. BECK replied they would meet after the floor session.

CHAIRMAN SWYSGOOD replied they would hear SB 364 on Wednesday.

ADJOURNMENT

Adjournment: 2:55 p.m.


SENATOR CHUCK SWYSGOOD, Chairman


JENNIFER GAASCH, Secretary

CS/jg

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE

ROLL CALL

DATE _____

2-10-95

[illegible]

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 10, 1995


MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 319 (first reading copy -- white), respectfully report that SB 319 be amended as follows and as so amended do pass.

Signed: Sen Devin V-Chair
Senator Chuck Swysgood, Chair

That such amendments read:

1. Title, lines 5 and 6.
Following: "BEEF;" on line 5
Strike: remainder of line 5 through "PRODUCTS;" on line 6
2. Page 1, line 20.
Strike: "(1)"
3. Page 1, line 22 through page 2, line 13.
Strike: line 22 on page 1 through "(g)" on page 2, line 13
Insert: "(1)"
4. Page 2, line 13.
Following: "cooperate"
Insert: "and contract"
Following: "council"
Strike: "by"
Insert: "for"
5. Page 2, line 14.
Following: "livestock"
Strike: "or" through "a"
Insert: "as established in the national Beef Promotion and Research Act of 1985, also referred to as the national beef check-off. Any"
6. Page 2, line 15.
Strike: first "is"
Following: "council"
Strike: "under which the department is reimbursed"
Insert: "must reimburse the department"
7. Page 2, line 16.
Following: "activities"
Strike: ";"
Insert: "."

 Amd. Coord.
Sec. of Senate

351628SC.SPV

8. Page 2, lines 17 through 19.
Strike: "(h)" on line 17 through "(i)" on line 19
Insert: "(2)"

9. Page 2, line 19.
Strike: "[sections 1 and 2]"
Insert: "this section"

10. Page 2, line 23.
Strike: "(2)(g)"
Insert: "(1)"

11. Page 2, line 26.
Strike: "(2)(g)"
Insert: "(1)"

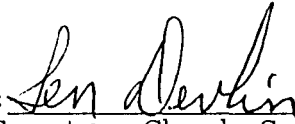
-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 10, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 319 (first reading copy -- white), respectfully report that SB 319 be amended as follows and as so amended do pass.

Signed:  V-Chair
Senator Chuck Swysgood, Chair

That such amendments read:

1. Title, lines 5 and 6.

Following: "BEEF;" on line 5

Strike: remainder of line 5 through "PRODUCTS;" on line 6

2. Page 1, line 20.

Strike: "(1)"

3. Page 1, line 22 through page 2, line 13.

Strike: line 22 on page 1 through "(g)" on page 2, line 13

Insert: "(1)"

4. Page 2, line 13.

Following: "cooperate"

Insert: "and contract"

Following: "council"

Strike: "by"

Insert: "for"

5. Page 2, line 14.

Following: "livestock"

Strike: "or" through "a"

Insert: "as established in the national Beef Promotion and Research Act of 1985, also referred to as the national beef check-off. Any"

6. Page 2, line 15.

Strike: first "is"

Following: "council"

Strike: "under which the department is reimbursed"


Insert: "must reimburse the department"

7. Page 2, line 16.

Following: "activities"

Strike: ";

Insert: "."

 Amd. Coord.
Sec. of Senate

351628SC.SPV

8. Page 2, lines 17 through 19.
Strike: "(h)" on line 17 through "(i)" on line 19
Insert: "(2)"

9. Page 2, line 19.
Strike: "[sections 1 and 2]"
Insert: "this section"

10. Page 2, line 23.
Strike: "(2)(g)"
Insert: "(1)"

11. Page 2, line 26.
Strike: "(2)(g)"
Insert: "(1)"


-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 256 (first reading copy -- white), respectfully report that SB 256 be amended as follows and as so amended do not pass.

Signed:  V-Chair

Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 11, line 20.

Strike: ", damage, and discounts"

2. Page 11, lines 24 through 26.

Strike: "Damage" on line 24 through "subclass." on line 26

3. Page 14, line 21.

Insert: "(7) This section does not apply to a producer or purchaser of any agricultural commodity, except wheat or feed barley, who is under contract to produce or purchase an agricultural commodity of a specific variety."

4. Page 14, lines 22 and 23.

Strike: section 16 in its entirety

Renumber: subsequent sections

5. Page 15, line 3.

Strike: "Sections"

Insert: "Section"

Strike: "and 16"

Strike: "are"

Insert: "is"

6. Page 15, line 4.

Strike: "sections"

Insert: "section"

Strike: "and 16"

-END-



Amd. Coord.
Sec. of Senate

351539SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 256 (first reading copy -- white), respectfully report that SB 256 be amended as follows and as so amended do not pass.

Signed:  V-Chair
Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 11, line 20.

Strike: ", damage, and discounts"

2. Page 11, lines 24 through 26.

Strike: "Damage" on line 24 through "subclass." on line 26

3. Page 14, line 21.

Insert: "(7) This section does not apply to a producer or purchaser of any agricultural commodity, except wheat or feed barley, who is under contract to produce or purchase an agricultural commodity of a specific variety."

4. Page 14, lines 22 and 23.

Strike: section 16 in its entirety

Renumber: subsequent sections

5. Page 15, line 3.

Strike: "Sections"

Insert: "Section"

Strike: "and 16"

Strike: "are"

Insert: "is"


6. Page 15, line 4.

Strike: "sections"

Insert: "section"

Strike: "and 16"

-END-


Amd. Coord.
Sec. of Senate

351539SC.SPV

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE
ROLL CALL VOTE

DATE 2-10-95 BILL NO. SB 256 NUMBER 1

MOTION: To strike section 16.

[illegible]

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE
ROLL CALL VOTE

DATE 2-10-95

BILL NO. SB 256

NUMBER 2

MOTION: To Amend Section 15

[illegible]

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE
ROLL CALL VOTE

DATE 2-16-95 BILL NO. SP 256 NUMBER 3

MOTION: Do Pass As Amended

NAME	AYE	NO
GERRY DEVLIN, VICE CHAIRMAN		X
TOM BECK		X
DON HARGROVE		X
RIC HOLDEN	X	
REINY JABS		X
GREG JERGESON	X	
LINDA NELSON		X
BOB PIPINICH		X
CHUCK SWYSGOOD, CHAIRMAN		X

12/9/94

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-10-95

BILL NO. SB 256

Senator Aklestad
Galata, mt. 59444

Senator Aklestad,

I asked the local elevators for a copy of their discounts and am attaching them with this letter. Also copies of my last grain sale contract and sample reports. I am also sending copies of two letters I sent earlier this year. The letter to the Montana Wheat and Barley committee was also sent to Senators Baucus and Burns, Congressman Williams and the Secretary of Agriculture. Everyone answered the letter except the Montana wheat and Barley Committee. The second letter, just has a few points I like to make.

Sample 03390 was the worst on this contract, lets analyze the dockage. I have 2.1 dockage and under the old system they would have taken 2.1% of the gross weight and that would be the end of it. Now under the new system, they still take the 2.1%. But they also have an additional charge if the dockage goes over .5 and this currently is two cents per half. They also have a charge for foreign material of three cents per half over .4 percent at Peavey. At Harvest States it's charged a little different. The schedule shows a ten cent discount would apply on my sample. So in looking over sample # 03390 we see they took the 2.1 dockage, charged .08 cents extra dockage, then they could have charged another .10 cents for foreign material under the 10/3/94 discount schedule. This would be .28 cents times the net bushels. 20,000 bushels times .28 cents comes to \$5,600.00 over and above the 2.1 they normally take. I sold this wheat for \$3.00 per bushel. A \$60,000 contract with an extra \$5,600.00 dockage. That comes to 9 percent of the total contract. That's 9 percent plus the 2.1 original dockage.

I hope this will be of some help.

Sincerely,



Ed Skeslien

222 12 th ave so.

Shelby, Mt. 59474

This was the same grain,
it was hauled in during
harvest and sold.

1 see no F.M and .8 pack.

DEPARTMENT OF AGRICULTURE
GRAIN STANDARDS ACT
INSPECTION CERTIFICATE

ORIGINAL
NOT NEGOTIABLE

MT. 15859

LEVEL OF INSPECTION

Original

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 2-10-95

BILL NO. SB 256

QUANTITY OF SAMPLE

Approx. 1200 grams

SKESLIEN LAND J#2

The sample identification and inspection results shown on this certificate are assigned only to the quantity of grain in the sample indicated and not to any identified carrier, container, or lot from which the sample of grain may have been taken. This certificate does not meet the inspection requirements of Section 5 of the Act.

Grade:

U.S. No. 1 Dark Northern Spring Wheat, Dockage 0.8%

Factor Results:

Test Weight Per Bushel

61.0 LBS.

Moisture

12.1 %

Damaged Kernels (Total)

1.5 %

Shrunken and Broken Kernels

0.3 %

Dark Hard and Vitreous Kernels

78.0 %

Official Criteria:

Protein

11.6 %, 12% Moisture Basis

Remarks:

Damaged Kernels (Total) includes:

1.5 % Frost Damaged Kernels

END OF RESULTS END OF RESULTS END OF RESULTS END OF RESULTS

NOT OFFICIALLY SAMPLED

I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to perform the inspection service covered by this certificate and that, on the above date, the following identified service was performed under the Act with the following results:

LAB CONTROL NUMBER: MT-93-34554

Account: WESTERMARK GRAIN

NAME OR SIGNATURE

Steven A. Darlinton

By: SC

This certificate is issued under the authority of the United States Grain Standards Act, as amended (7 U.S.C. 71 et seq.), and the regulations thereunder (7 CFR 800.0 et seq.). It is issued to show the kind, class, grade, quality, condition, or quantity of grain; or the condition of a carrier or container for the storage or transportation of grain; or other facts relating to grain as determined by official personnel. The statements on the certificate are considered true at the time and place the inspection or the weighing service was performed. The certificate shall not be considered representative of the lot if the grain is transhipped or is otherwise transferred from the identified carrier or container or if grain or other material is added to or removed from the total lot. If this certificate is not cancelled by a superseding certificate, it is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein. This certificate does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or other Federal law.

WARNING: Any person who shall knowingly falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any such actions, or otherwise violate provisions in the United States Grain Standards Act, the United States Warehouse Act, or related Federal laws is subject to criminal, civil, and administrative penalties.

Ed Skeslien

MONTANA ELEVATOR DISCOUNT SCHEDULE EFFECTIVE OCT 21, 1994

SPRING WHEAT TEST WEIGHT:

- 1 EA 1/2 LB 58-56
- 2 EA 1/2 LB 56-54
- 3 EA 1/2 LB 54-50

SENATE AGRICULTURE

EXHIBIT NO. 3

WINTER WHEAT TEST WEIGHT:

- 1 EA LB 60-58
- 2 EA LB 58-56
- 3 EA LB 56-50

DATE 2-10-95

MOISTURE:

- 3 EA 1/2% OVER 13.5-15.5

BILL NO. SB 256

HEAT DAMAGE:

- 3 EACH 1/10% OVER 0.0%

GERM & MOLD DAMAGE:

- 3 EA 1/2 OVER 0.0%

SPROUT DAMAGE:

- 3 EA 1/2% 0.0 to 4.0%
OVER 4.0% IS FEED WHEAT

FROST DAMAGE

- 3 EA 1/2% > ZERO TO 4.0%
OVER 4.0% FROST IS FEED

WHEAT

FM

- 3 EA 0.5% OVER 0.4%

SHRUNKEN AND BROKEN

- 3 EA GRADE

WOCL:

- 3 EA 1.0% OVER 0.0% TO 50%

CCL:

- 3 EA 1% OVER 0.0%

— STONES:

- 1 EA 1-4; OVER 4 - CALL

SMUTTY/MUSTY/SOUR
INFESTED

- SMUT -15; MUSTY -10; SCUR -15
-15

ANIMAL FILTH

- 15 1 TO 5; OVER 5 WILL
BE REJECTED.

INSECT DAMAGED KERNELS (IDK)

- 1 EA KERNEL TO 15 KERNELS
-2 EA KERNEL OVER 15

DOCKAGE ON ALL WHEAT:

- 2 EA 1/2% 0.6 TO 3.0%
- 3 EA 1/2% 3.1 TO 10%
- 4 EA 1/2% OVER 10%

PROTEIN & DHV SCALES AT DAILY MARKET VALUES

TREATED WHEAT: REJECT ALL TREATED WHEAT. IT IS UNLAWFUL TO
DELIVER TREATED WHEAT.

ERGOTY AND GARLICY WHEAT:

Applicable at buyers option only. If accepted,
discounts not less than -15 for ergoty, and -10 for garlic.

DISCOUNT SCALES ARE SUBJECT TO CHANGE WITHOUT NOTICE.

MONTANA



GRAIN ELEVATOR ASSOCIATION

5445 York Road
Helena, MT 59601

SENATE AGRICULTURE

EXHIBIT NO. 4

DATE 2-10-95

BILL NO. SB 256

February 10, 1995

TO: Senate Agriculture Committee
Sen. Chuck Swysgood, chairman
FROM: MGEA Board of Directors
Pam Langley, executive secretary

RE: SB256

SAMPLING: The question of how many complaints the Department of Agriculture receives from producers was asked Monday in the hearing on SB256. The attached letter from Ralph Peck answers that question. Based on his estimates, the 40 producers out of 10,000 represents 4/10's of 1 per cent of all producers. Of these, 12 became formalized complaints and were resolved without enforcement action. The change in the introduced legislation would force up to 10,000 Montana producers to sign waivers when delivering grain if they don't want samples sent to the state lab. [This cannot "be included as a condition in a contract for sale" (page 13, line 27).] The Grain Growers amendments would keep the current practice of sending samples to the state lab when requested in writing. **The question you face as you vote on this section (Section 15) is whether you want state government to require this extra paperwork and inconvenience and cost to up to 10,000 producers and elevators as grain is marketed? Is it worth it to try to solve a problem for a vocal, but very small minority?**

CIVIL PENALTIES: New civil penalties combined with sampling procedures in the Grain Growers amendments (not SB256 as introduced) would solve the vocal minority's problem because elevators who do not send samples to the state lab when requested could be fined. However, to the best of our knowledge, Michigan is the only state with administrative civil penalties in its grain law. To eliminate them, you would strike beginning on page 7, line 30 through page 8, line 17. **The bottom line is, do you vote for civil penalties to add teeth to state law to solve a problem for a minority or instead--in a time of downsizing state government and getting government out of people's lives--do you vote against them because they are more government regulation and more bureaucracy?**

PROTEIN: No other state attempts to regulate and interfere in the free market system to determine how protein is paid. The issue is not whether protein is paid on 1/10's, 1/5's, 1/4's or even 1/2's, but whether or not state government should interfere with the free market system which fluctuates from time to time. In addition, we do have a legal opinion which states regulating protein may be unconstitutional because it interferes with interstate commerce. Forcing protein scales on the market will cause out of state buyers to pay less for Montana grain. The Grain Growers amendments eliminate the proposed interference in the free market system. **Do you want to set up this artificial system in which state government interferes with marketing Montana grain, in our opinion hurts the Montana producer, and is probably unconstitutional?**



MARC RACICOT
GOVERNOR

MONTANA DEPARTMENT OF AGRICULTURE

AGRICULTURAL DEVELOPMENT DIVISION
309 N ROBERTS, PO BOX 200201
HELENA, MT 59620-0201

LEO A. GIACOMETTO
DIRECTOR
(406) 444-2144

FAX (406) 444-2408

W. RALPH PECK
ADMINISTRATOR
(406) 444-2482

February 8, 1995

MEMORANDUM

TO: Pam Langley
Montana Grain Elevators Association

FROM: Ralph Peck *Ralph*
Administrator

RE: Complaints from grain producers

According to the census taken by Montana Agricultural Statistics, there are currently 8,395 wheat growers, 5,971 barley growers, and 1,590 oat growers. Based on these figures, about 10,000 produce wheat and/or barley.

On an annual basis, we estimate that the Montana Department of Agriculture receives one inquiry per day for information, of these 30 - 40 evolve into complaints, and about a dozen are formalized into complaints for action.

The department does not keep any records of the numbers of requests for information or complaints, unless they are formalized grievances. Most of these, including the formal complaints, are resolved without the department taking enforcement actions prescribed under the statute.

Please feel free to contact me if I can be of any further assistance or answer any addition questions.

Serving Montana Agriculture

SENATE AGRICULTURE

EXHIBIT NO. 5DATE 2-10-95BILL NO. SB 256

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%."

SENATE BILL 319
(Sponsor - Senator Hertel)

AMENDMENTS

- (1) Page 1, Line 21
Following: "The department shall"
Strike: lines 22 through 30 in their entirety
- (2) Page 2, at Line 1
Strike: Line 1 through 12 in their entirety
- (3) Page 2 at Line 13
Strike: "(g)"
Insert: "(a)"
- (4) Page 2 at Line 13
Following: "cooperate"
Insert: "and contract"
- (5) Page 2 at Line 13
Following: "council"
Strike: "by"
Insert: "for"
- (6) Page 2 at Line 14
Following: "livestock"
Insert: "as established in the Beef Promotion and Research Act."
- (7) Page 2 at Line 14
Following: "livestock"
Delete: "or an equivalent, pursuant to the terms of (sections 1 and 2)."
- (8) Page 2 at Line 14
Following: (sections 1 and 2)
Delete: "provided that a"
Insert: "Any"

(9) Page 2 at Line 15

Delete: "as" 15 "

(10) Page 2 at Line 15

Following: "the beef council"

Delete: "under which the department is reimbursed for"

Insert: "shall reimburse the department for"

(11) Page 2 at Line 17

Delete lines 17 and 18 in their entirety

(12) Page 2 at Line 19

Delete: "(i)"

Insert: "(b)"

(13) Page 2 at Line 19

Following: "the administration of"

Delete: "(sections 1 and 2)"

Insert: (section 1)

LC1452

**** Bill No. ****

Introduced By *****

By Request of the Senate Agriculture, Livestock,
and Irrigation Committee

A Bill for an Act entitled: "An Act clarifying the administration and regulation of game farms by the department of fish, wildlife, and parks and the department of livestock; revising game farm provisions regarding licensure, definitions, inspections, importation, and reporting; creating the game farm advisory council; amending sections 87-4-406, 87-4-408, 87-4-410, 87-4-414, 87-4-415, 87-4-417, 87-4-419, 87-4-422, 87-4-424, and 87-4-426, MCA; and providing an effective date."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to clarify rulemaking authority of the department of fish, wildlife, and parks and the department of livestock with regard to the administration and regulation of game farms.

(1) It is intended that the department of fish, wildlife, and parks have primary authority with regard to rules governing:

- (a) game farm licensure;
- (b) reporting requirements;
- (c) exterior fencing requirements;
- (d) classification of species the importation of which may present a threat to the state's wildlife population;
- (e) general enforcement of game farm licensing violations.

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(2) It is intended that the department of livestock have primary authority with regard to rules governing:

- (a) transportation and identification of game farm animals;
- (b) health inspection and game farm quarantines, including interior facilities; and
- (c) importation restrictions on exotic species.

(3) It is intended that the department of livestock's rules address the issue of immediate depopulation of game farm animals that test positive for tuberculosis.

(4) It is intended that both the department of fish, wildlife, and parks and the department of livestock consider the feasibility of using DNA as an additional method of identification of game farm animals.

(5) It is intended that the game farm advisory council advise both the department of fish, wildlife, and parks and the department of livestock regarding the administration of game farm operations, which may include input into the rules adopted pursuant to this act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-406, MCA, is amended to read:

"87-4-406. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of fish, wildlife, and parks.

(2) "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and

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EXHIBIT 7
DATE 2-10-95

quarantine of game farm animals.

(3) "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.

(4) "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, or selling game farm animals or parts of game farm animals, as authorized under this part.

(5) "Game farm animal" means a privately owned caribou, reindeer, black bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana or any other cloven-hoofed ungulate as classified by the department.

(6) "Person" means an individual, firm, corporation, association, or partnership."

{Internal References to 87-4-406:
x 81-3-102 x 81-3-201 x 81-9-217}

Section 2. Section 87-4-408, MCA, is amended to read:

"87-4-408. Department jurisdiction -- applicability of livestock laws and rules. (1) The department has primary jurisdiction over game farms with regard to licensing, reports and recordkeeping, exterior fencing, classification of exotic species, removal of game farm animals under 87-4-410, inspection under 87-4-413, and enforcement of the functions listed in this subsection.

(2) ~~A game farm licensee must also comply with all applicable laws and rules administered by the~~ The department of

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livestock has primary jurisdiction over game farms relating to marking, inspection, transportation, importation, quarantine, and health, and the enforcement of the functions listed in this subsection."

{Internal References to 87-4-408: None.}

Section 3. Section 87-4-410, MCA, is amended to read:

"87-4-410. **Removal of game animals.** (1) If game animals are present on the land ~~which~~ that is to be covered by a game farm license, the license ~~shall~~ must be issued but must be conditioned upon the applicant complying with this section.

(2) Before the fence surrounding any ~~such~~ land to be covered by a game farm may be closed, all game animals must to the extent possible be driven ~~therefrom~~ from the land by the applicant, at the applicant's expense and under the direction of a representative of the department.

(3) If at the time the license is issued all game animals cannot be removed from the licensed land, the applicant and a representative of the department shall decide within 60 days the approximate number of remaining game animals of each indigenous species. This number is the "base number".

(4) The department may remove the base number of game animals from the game farm, at the expense of the department, by trapping them within 120 days from the date the number was determined.

(5) If the department decides not to remove the game animals or if some game animals were not successfully removed by

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EXHIBIT 7
DATE 2-10-95

trapping, the public must be granted access to harvest those game animals during a special hunt set for that purpose during the next regularly scheduled hunting season. ~~All administrative costs incurred by the department in arranging the special hunt or providing for hunting on the applicant's land during the regular season must be reimbursed by the applicant.~~

(6) After compliance with this section, any animals from the base number that remain and their progeny belong to the licensee, and the licensee may deal with them as provided for in this part."

{ Internal References to 87-4-410:
x 87-4-418 }

Section 4. Section 87-4-414, MCA, is amended to read:

"87-4-414. Game farm animals as private property -- source -- marking. (1) All game farm animals lawfully possessed on a licensed game farm are private property for which the licensee is responsible as provided by law.

(2) The licensee may acquire, breed, grow, keep, pursue, ~~capture,~~ handle, harvest, use, sell, or dispose of the game farm animals and their progeny in any quantity and at any time of year as long as the licensee complies with the requirements of this part.

(3) A licensee shall mark each game farm animal in a manner approved by the department of livestock as required under subsection (4) and that indicates ownership and provides individual identification of animals for inspection,

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transportation, reporting, and taxation purposes.

(4) The department of livestock is responsible for the control, tracking, and distribution of identification tags used for the marking of game farm animals. The department of livestock shall require that each game farm animal be marked with identification that:

(a) is unique to the animal;

(b) is nontransferable;

(c) has an emblem owned and registered by the department of livestock embossed on each identification tag; and

(d) allows for the identification of game farm animals from a distance.

(5) Game farm animals must be lawfully acquired by the licensee. Only a licensee may own or lease a game farm animal.

~~(5)~~(6) Except for importation permits and health certificates required under 81-2-703, laws applicable to game animals do not apply to game farm animals raised on a licensed game farm."

{Internal References to 87-4-414: None.}

Section 5. Section 87-4-415, MCA, is amended to read:

"87-4-415. Transportation and sale of game farm animals -- quarantine. (1) Prior to selling, transferring, transporting, or disposing of one or more game farm animals, the game farm licensee shall contact the department of livestock to request an inspection by a department of livestock stock inspector for all game farm animals except carnivores and omnivores. In the case of

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EXHIBIT 7

DATE 2-10-95

carnivores and omnivores, the game farm licensee shall contact the department to request an inspection by a department official. This section applies to all game farm animals, whether alive or dead.

(2) (a) Inspection under subsection (1) must include ~~examination of the game farm animal and all marks, tags, and tattoos to identify ownership prior to issuance of a certificate of inspection.~~

~~(b) A certificate of inspection must be made in triplicate and must specify:~~

~~(i) the date of inspection;~~

~~(ii) the place of origin and destination of the shipment;~~

~~(iii) the name and address of the owner of the game farm animals and of the purchaser or transferee;~~

~~(iv) be conducted pursuant to 81-3-203(1) through (3) and must include~~ the number, species, age, and sex of game farm animals transported or disposed of;

~~(v) ear tag numbers and tattoos on each animal; and~~

~~(vi) any other information that the department of livestock may require.~~

~~(c) A copy of the certificate must be:~~

~~(i) retained by the inspector;~~

~~(ii) furnished by the inspector to the owner or shipper of the game farm animals, to accompany the animals to their destination;~~

~~(iii) filed by the inspector with the department of livestock within 5 days of inspection; and~~

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~~(iv) provided by the department of livestock to the department within 10 days of inspection.~~

(b) A copy of the certificate must be provided by the department of livestock to the department within 10 days of the inspection.

(3) The department of livestock may quarantine any game farm animal pending inspection and health certification. The department shall advise the department of livestock regarding the importation or transportation of any game farm animal that the department reasonably believes may be infected with a disease specific to wildlife."

{ Internal References to 87-4-415:
x 87-4-416 }

Section 6. Section 87-4-417, MCA, is amended to read:

"87-4-417. **Records and reporting.** (1) Each game farm licensee shall keep and maintain for 3 years accurate written records of all purchases, transfers, and sales, births, and deaths of game farm animals showing:

(a) the number of each species of game farm animal purchased by the game farm licensee and from whom purchased;

(b) the number of each species of game farm animal transferred, or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) individual identification of each game farm animal purchased, transferred, ~~or~~ born, or died.

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Printed 8:32 am on February 10, 1995

EXHIBIT 7
DATE 2-10-95
1

(2) Within Unless a different reporting frequency has been established pursuant to subsection (3), within 2 weeks after January 1, April 1, and September July 1 of each year, the game farm licensee shall file a report with the director department, showing the number and species of game farm animals that were on hand as of January 1, April 1, and September July 1 and the number and species of game farm animals bought, sold, or propagated transferred, escaped, recaptured, born, or died during the reporting period.

(3) The department may by rule identify conditions under which:

(a) more frequent reports are required to allow the department to adequately monitor game farms where violations have occurred or problems are being resolved; and

(b) less frequent reports are required because of a history of proper game farm maintenance or an historical absence of violations."

{Internal References to 87-4-417: None.}

Section 7. Section 87-4-419, MCA, is amended to read:

"87-4-419. **Escape from game farm -- effect.** If a game farm animal escapes from a game farm, the game farm licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time 10 days of notification, the department may kill the animal. If recapture and killing of the animal are unsuccessful within a reasonable

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Printed 8:32 am on February 10, 1995

time, it the animal becomes the property of the state."

{Internal References to 87-4-419: None.}

Section 8. Section 87-4-422, MCA, is amended to read:

"87-4-422. Rulemaking. (1) The department may adopt and enforce rules that are necessary to implement the provisions of this part over which the department has primary jurisdiction and to coordinate regulation of game farms with the department of livestock .

(2) The rules may address but are not limited to the classifying of cloven-hoofed ungulates, requirements for facilities, reporting and recordkeeping requirements, ~~transportation and importation, restrictions on importation, identification, sale of animal parts,~~ and the care and maintenance of game farm animals.

(3) The department of livestock may adopt rules addressing the transportation and importation of game farm animals, restrictions on importation, identification, sale of animal parts, quarantine, and health regulations."

{Internal References to 87-4-422:
x 87-5-703}

Section 9. Section 87-4-424, MCA, is amended to read:

"87-4-424. ~~Department restrictions~~ Restrictions on importation of certain species -- classification. (1) The department ~~or the department~~ of livestock may restrict from importation for purposes of game farming any species or

Draft Copy

Printed 8:32 am on February 10, 1995

EXHIBIT 7

DATE 2-10-95

1

subspecies and their hybrids with native species that are determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution, habitat degradation or competition caused by feral populations of escaped game farm animals, parasites, or disease. Importation permitted by the department of livestock must comply with the requirements of Title 81, chapter 2, part 7.

(2) In order to properly regulate importation, the department shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock and notify the department of livestock of any changes in classification as they occur."

{ Internal References to 87-4-424:
x 87-4-407 }

Section 10. Section 87-4-426, MCA, is amended to read:

"87-4-426. Criteria for issuance of license -- fencing and enclosure requirements. (1) A game farm license may be issued by the department only to an applicant:

(a) who owns or leases the premises on which the operations are to be conducted;

(b) who has not been or whose principal manager has not been convicted of or who has not forfeited bond of \$100 or more for more than one violation of the fish and game laws or applicable regulations of any state or the United States within a 5-year period prior to application;

(c) who has not or whose principal manager has not at any

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time pleaded guilty to or been convicted of a felony, unless civil rights have been restored pursuant to law. A person may not apply for licensure during any time in which a deferred or suspended felony sentence is in effect.

(d) who is or whose principal manager is at least 18 years of age.

(2) A game farm license must be issued by the department if:

(a) the applicant has properly fenced the perimeter of the land upon which the game farm is to be located with fencing designed and constructed to prevent the escape of the species of game farm animal kept on the game farm and to prevent the entry of the same species of game animal or other native game animal species capable of interbreeding with or contracting diseases or parasites from game farm animals;

(b) the application is for a single location;

(c) it is demonstrated that the applicant or the applicant's principal manager has the necessary skills to properly care for game farm animals or intends to employ a person who has those necessary skills; and

(d) the application has not been denied under this section or issued with stipulations under subsection (3).

(3) An application for a game farm license may be denied in its entirety or issued with stipulations if necessary to prevent public safety hazards or significant negative impacts to Montana's wildlife resources. Denial of an application or stipulations attached to a game farm license must be based on one

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Printed 8:32 am on February 10, 1995

EXHIBIT 7
DATE 2-10-95
1

or more of the following potential impacts ascribed to the physical location of the proposed game farm:

(a) substantial loss or destruction of critical seasonal game animal habitat or habitat of federally designated threatened or endangered species under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., including but not limited to traditional critical breeding, birthing, rearing, and wintering areas;

(b) blockage or disruption of major traditional seasonal migration corridors or major travel routes;

(c) unacceptable threat of introduction or transmission of serious diseases or parasites to native wildlife populations, as determined by the state veterinarian appointed pursuant to 81-1-301;

(d) unacceptable threat of escape of captive game farm animals and establishment of feral populations that would result in habitat damage or competition with or genetic pollution of native wildlife populations;

(e) the creation of a significant threat to the safety of the general public and surrounding landowners by the shooting of game farm animals.

(4) If the department determines that it will propose, within the time allowed under 87-4-409(3), to deny a game farm license or issue a license with stipulations, the applicant must be given an opportunity to make changes to the application within 30 days of receipt of the department's written determination in order to mitigate or correct any problems or deficiencies. The department shall reconsider the application with the proposed

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Printed 8:32 am on February 10, 1995

changes within 30 days of receipt of changes to the application before granting, proposing to deny, or proposing to issue the license with stipulations.

(5) An applicant may request that the commission review a department proposal to deny a game farm license or to issue a license with stipulations by petitioning the commission for review within 10 days of the department's proposed decision. The commission shall decide whether to grant the license, propose to deny the license, or issue the license with stipulations. The commission's decision then becomes the department's proposed decision, subject to an opportunity for hearing under 87-4-428."

{ Internal References to 87-4-426:
x 87-4-412 x 87-4-428 }

NEW SECTION. **Section 11. Game farm advisory council -- appointment of members -- duties.** (1) There is a game farm advisory council to advise the department and the department of livestock on the administration of game farms in this state.

(2) The game farm advisory council must be composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

(b) one member of the fish, wildlife, and parks commission or the department of fish, wildlife, and parks;

(c) one member who is a representative of the game farm industry;

(d) one member who is a veterinarian licensed to practice

Draft Copy

Printed 8:32 am on February 10, 1995

EXHIBIT 7
DATE 2-10-95
1

veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the game farm advisory council shall serve 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The game farm advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102.

(5) Council members are not entitled to compensation or travel expenses as provided in 2-15-122.

NEW SECTION. Section 12. {standard} Codification instruction. [Section 11] is intended to be codified as an integral part of Title 87, chapter 4, part 4, and the provisions of Title 87, chapter 4, part 4, apply to [section 11].

NEW SECTION. Section 13. {standard} Effective date. [This act] is effective July 1, 1995.

-END-

{ Doug Sternberg
Legal Researcher
Montana Legislative Council
(406) 444-3064 }

Amendments to LC No. 1452
Draft Reading Copy

Requested by Senator Klampe
For the Committee on Agriculture

Prepared by Doug Sternberg
February 9, 1995

1. Title, following "council".

Insert: "providing state immunity from suit for damages arising from the spread of disease from a game farm animal to livestock;"

2. Page 15.

Following: section 11

Insert: "NEW SECTION. **Section 12. State immunity from suit.** (1) The state of Montana is immune from suit for damages arising from the spread of brucellosis, tuberculosis, or any other communicable disease from a game farm animal to livestock. (2) A cause of action exists for any person or class of persons damaged by the spread of a communicable disease from a game farm animal to livestock to bring a suit against the game farm licensee whose animal is found to have been the source of the disease.

NEW SECTION. **Section 13. Two thirds vote required.** Because [section 12] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage of [section 12]. If the required two-thirds vote is not obtained, then [section 12] is void."

Renumber: subsequent sections

MEMORANDUM

TO: Chairman Senate Agriculture Livestock & Irrigation
Committee-Senator Beck Chairman Subcommittee, SB 201

CC: Senator Sprague-Sponsor of the substitute bill

FROM: Ward Shanahan, Meadowgold Dairies

DATE: February 10, 1995

RE: Senate Bill 116 -Substitute

Senators Swysgood, Beck and Sprague:

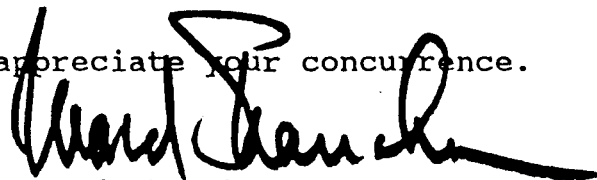
This is a request by Meadowgold for some modification to the amendment offered to Paragraph 7 of the Substitute Bill offered by the Governor's Task Force on Government Reorganization and adopted by the subcommittee.

I did not support the amendment since I had not seen it before the subcommittee meeting at 11:30 am February 9th. I sent it to my principal who suggested the following alternate language to clarify the role of the Board in the rule making that must follow:

Page Paragraph 7 (d) substitute language " (d) ~~notwithstanding~~ the formula, for retail prices for Milk in Class I must be computed by the Board in a manner so that reductions in the cost of milk at the wholesale level are ~~passed on~~ reflected in the price to consumers at the retail level."

If this change can be made Meadowgold can fully endorse the amendment. Thank you!

We would appreciate your concurrence.



Ward Shanahan
Meadowgold Dairies
33 South Last Chance Gulch
Tel: 406-442-8560
Fax: 406-442-8783

DATE Friday Feb. 10, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 319

Ex. Action SB 256, SB 116, SB 173, & SB ~~2~~ 215

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Leonard Lundby		319	X	X
Pes. Graham	as amended Mt. Beet. (Gen'l)	319	X	
Lorna Frank	Mt. Farm Bureau	319	X	
John Blomquist	Mt. Stockgrowers	319	X	
Cork Mortensen	Brd. of Livestock	319	X	
Larry Brown	Ag. Pres. Assoc	319		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY