

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN ROGER DEBRUYCKER, on January 18, 1995, at 8:00 a.m. in Room 402 of the State Capitol.

ROLL CALL

Members Present:

Rep. Roger Debruycker, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Judy H. Jacobson (D)
Sen. Loren Jenkins (R)
Rep. John Johnson (D)
Rep. William R. Wiseman (R)

Members Excused: none

Members Absent: none

Staff Present: Roger Lloyd, Legislative Fiscal Analyst
Florine Smith, Office of Budget & Program
Planning
Debbie Rostocki, Committee Secretary

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

Committee Business Summary:

Hearing: None
Executive Action: Department of Livestock
-Disease Control Program
-Meat and Poultry Inspection Program
-Predator Control Program
-Diagnostic Laboratory Program
-Milk and Egg Program
-Inspection and Control Program
Department of Agriculture
-Agricultural Development Program

Ms. Smith distributed a management memo outlining the guidelines for selecting and using of consulting services by State agencies, as per REP. JOHNSON'S request. EXHIBIT 1. Mr. Lloyd passed out an updated meeting schedule for the subcommittee. EXHIBIT 2.

EXECUTIVE ACTION ON Department of Livestock Disease Control Program

Motion/vote: REP. WISEMAN moved to accept Present Law Adjustment No. 4 on p. C-83 with the restriction that \$70,000 in each year may only be used as disease emergency funding. SEN. JENKINS seconded the motion. The motion carried unanimously.

Motion/vote: SEN. JENKINS moved to accept Present Law Adjustments No. 5 and 6; REP. WISEMAN seconded the motion. The motion carried unanimously.

Motion/vote: SEN. KEATING moved to accept New Proposal No. 1 on p. C-84; REP. WISEMAN seconded the motion. Motion carried unanimously.

**EXECUTIVE ACTION ON Department of Livestock
Meat and Poultry Inspection Program**

Motion/vote: SEN. KEATING moved to accept Present Law Adjustments No. 4, 5 and 6 on p. C-93; REP. WISEMAN seconded the motion. The motion carried unanimously. (REP. JOHNSON excused.)

Motion: SEN. KEATING moved to accept New Proposal No. 1 on p. C-93 to eliminate a meat inspector. REP. WISEMAN seconded the motion.

Mr. John Skukfca, Centralized Services Administrator, said that there were about 11 actual meat inspectors "out in the field."

Vote: The motion carried unanimously. (REP. JOHNSON was excused.)

**EXECUTIVE ACTION ON Department of Livestock
Predator Control Program**

Motion: SEN. KEATING moved to accept Present Law Adjustments No. 4, 5, 6 and 7 on p. C-90; SEN. JACOBSON seconded the motion.

Discussion: It was brought out that the testimony SEN. DEVLIN had presented concerned a budget amendment for the current fiscal year.

Vote: The motion carried unanimously.

Motion: SEN. KEATING moved to accept New Proposal No. 1 on p. C-91; REP. WISEMAN seconded the motion.

Discussion: In response to SEN. KEATING, Mr. Skufca said the new proposal would be eliminating the funding for the pilot position in the Department of Livestock. Federal Animal Damage Control (ADC) would be handling the pilot through contracted services. The new proposal does not eliminate the FTE in order to retain vacancy savings. SEN. JENKINS was in support of retaining the position because of the possibility that the department might not be able to contract with ADC in the future and/or that federal funding will be reduced.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON Department of Livestock
Diagnostic Laboratory Program

Motion/vote: SEN. JENKINS moved to accept Present Law Adjustment No. 1 on p. C-80; REP. WISEMAN seconded the motion. The motion carried unanimously.

Motion/vote: SEN. JENKINS moved to accept Present Law Adjustments No. 5, 6, 7 and 8. SEN. KEATING seconded the motion. The motion carried unanimously.

Discussion: Mr. Lloyd asked the committee for direction on how to fund the budget. See LFA Issues on P. C-81 of the budget book. SEN. KEATING said previously the Legislature had reduced general fund by \$45,000 and used state special funds derived from taxes on livestock. The funding was switched back in the executive budget resulting in a decrease in state special funding and replacement with general fund. Mr. Lloyd said the committee's executive action on the Central Management budget the previous day had accepted the executive's recommendation which used \$45,000 more of state special than had been the amount set in the 1993 special session. The executive funds with a higher percentage of general fund than what was actually provided in 1994 and what the Legislature is providing in 1995. In 1994 general fund picked up 10.1% of this program's total expenditures. The first option would continue this level of funding from the general fund. The second option would be 11.3% general fund.

Mr. Skufca said the executive's 12.9% was the funding which was appropriated for 1994 and the Legislative Fiscal Analyst (LFA) is going by how it was actually spent, because some money was reverted.

Tape No. 1:B:000

SEN. KEATING wanted to know why money was reverted. Mr. Skufca said due to concern about funding early retirements the department was allocated additional state special funding from the OBPP in the middle of the fiscal year for this purpose. They allocated part of it to the Laboratory Program to help pay off these costs and ended up with funds left over. In response to REP. WISEMAN he said three or four years ago the general fund portion of the laboratory budget had been 41%.

CHAIRMAN DEBRUYCKER wanted to know what percent of the work they do in the lab pertaining to general public health issues. Mr. Skufca said they did the general rabies control work which probably runs about \$50,000 per year and no lab fees are charged for that; therefore it is strictly general fund. He stated there were a number of diseases that could impact human health and this is why the general fund was left in the budget. In addition, milk testing had previously been all funded with general fund but the special milk assessment (state special) was used for this, which lowered the amount of general fund. The

rest of the reduction in general fund was related to the replacement of \$200,000 of their \$300,000 1993 funding request from general funding to state special funding.

In response to **SEN. JENKINS**, **Mr. Skufca** explained that Livestock had an interagency agreement with the Department of Fish, Wildlife and Parks (FWP) to do \$4,000 per year worth of lab work. However, this is a small percentage of the lab's work.

Motion/vote: **REP. WISEMAN** moved to accept New Proposal No. 1 on p. C-81. **SEN. KEATING** seconded the motion. The motion carried unanimously.

EXECUTIVE ACTION ON Department of Livestock
Milk and Egg Program

Motion/vote: **REP. WISEMAN** moved to accept Present Law Adjustments No. 4 and 5 on p. C-86. **SEN. KEATING** seconded the motion. The motion carried unanimously.

Discussion: **Mr. Lloyd** stated the Department of Commerce Milk Board collects the tax which funds this program. Legislation has been introduced to eliminate the Milk Board which raises the question of how Livestock will get its money. **SEN. KEATING** brought up the argument by some people that the State Milk Control Board was a duplication of the Federal Milk Control Board, and that both were not needed. **Mr. Skufca** said the Milk and Egg Program was a completely separate function from the Milk Control Board under the Department of Commerce. Livestock's function had to do with regulation as it related to public health but it was not involved in the actual collection of the special assessment on milk. In addition to the portion of the funding from this assessment which goes to the Milk and Egg Program, \$85,000 goes to the Diagnostic Lab Program and \$27,500 goes to Centralized Services. **Mr. Skufca** said if the bill to eliminate the Milk Control Board is not amended the State will lose this source of funding. The Department of Livestock would not have a problem collecting the assessment but allocating the money is what they would have difficulty taking over.

Regarding egg inspection funding, **Mr. Skufca** explained this \$30,000 was provided by the federal government. The same sanitarians take care of both milk and egg inspection work.

EXECUTIVE ACTION ON Department of Livestock
Inspection and Control Program

Motion/vote: **SEN. KEATING** moved to accept Present Law Adjustments No. 4, 5 and 6 on p. C-88. **REP. WISEMAN** seconded the motion. The motion carried unanimously.

Motion/vote: SEN. KEATING moved to accept New Proposal No. 1 on p. C-88. REP. WISEMAN seconded the motion. The motion carried unanimously.

Motion/vote: SEN. KEATING moved to close the section on the Livestock Department. REP. WISEMAN seconded the motion. The motion carried unanimously.

Discussion: Discussion took place regarding a letter REP. ZOOK and SEN. AKLESTAD had sent to all the departments regarding what they would do if their budgets were held at the 1994 level. Mr. Lloyd said it was his understanding that at the time of the budget hearings the departments would be presenting those areas where they would take the reduction if they were held at the 1994 base. CHAIRMAN DEBRUYCKER said it was his understanding this would be done using a written format.

Tape No. 2:A:000

EXECUTIVE ACTION ON Department of Agriculture
Agricultural Development Program

Motion/vote: REP. WISEMAN moved to accept Present Law adjustment No. 4 on p. C-130. SEN. JENKINS seconded the motion. The motion carried unanimously.

Discussion: Ms. Smith said the agency had some requested language which had been used in prior bienniums regarding the Agriculture in Montana Schools program. EXHIBIT 3. Mr. Lloyd said this pertained to Present Law Adjustment No. 7 on p. C-130.

Motion: SEN. JENKINS moved to accept PL Adjustments No. 5, 6, 7, 8 and 9.

Discussion: In response to SEN. JACOBSON, Mr. Lloyd said PL No. 7 was requesting an increase for the Agricultural Development grants. The Council makes grants and loans from the funds received from .76% of the coal tax. He explained that the LFA issue on the bottom of p. C-131 pertained to the Department of Commerce. The executive has requested in that budget a \$90,000 direct appropriation from these funds, which by statute are directed to the Agricultural Development Council. The issue is if the committee wants to appropriate the money to the Department of Commerce or to the Department of Agriculture. Mr. Ralph Peck, Administrator of the Agricultural Development Division, explained that in 1993 the Legislature had determined the \$90,000 for the Department of Commerce was to be used to support the foreign trade offices in Japan and Taiwan. Mr. Lloyd pointed out that if the motion passed, an issue would remain regarding PL No. 7.

Amended motion: SEN. JENKINS amended his motion to include accepting only PL Adjustments No. 5, 6, 8 and 9. REP. JOHNSON seconded the motion.

Discussion: REP. WISEMAN submitted the budget was being increased 10% each year of the biennium directly from the producers' pockets, and he was concerned with this trend.

Mr. Larry Barber, Director of the Wheat and Barley Committee, said the 10% increase was needed in order to establish a proper base level of funding. They are trying to get enough money in the bank to budget and to carry them through the ups and downs of grain cycles. The 1993 crop was 43% of normal. The 1995 crop may be on the other end of the spectrum. The committee is trying to find a budgeting level which will be able to meet their commitments. He added that other funding sources were decreasing and they were trying to get the budget "settled in" at \$1.5 - \$1.7 million. They feel their programs are very necessary both within the university system and the marketing system.

SEN. KEATING submitted that of the \$1 million increase in funding for the department, about \$600,000 is probably from increased grain tax revenues and the remainder is from federal funding increases.

Vote: The question was called for on the motion to accept PL Adjustments No. 5, 6, 8 and 9. The motion **carried** unanimously.

Motion: SEN. JACOBSON moved to accept PL Adjustment No. 7, with an additional \$90,000 in spending authority to be used as additional appropriation authority to the Department of Commerce, and to accept the requested language presented in EXH. 3 (1/18). SEN. JENKINS seconded the motion.

Discussion: Mr. Lloyd pointed out that the \$90,000 is not statutorily appropriated; it is included in HB 2. SB 83 combines five separate allocations (including the allocation to the Growth Through Agriculture Program) of the Coal Severance Tax into one account. The Legislature would then make appropriations for the five programs out of this account.

SEN. KEATING expressed opposition to spending the approximately \$400,000 which would remain in the Growth Through Agriculture account after the \$90,000 is given to the foreign trade offices and felt these funds should go into the general fund.

Mr. Leo Giacometto, Director of the Department of Agriculture, then spoke. He pointed out that the amount of funding for the foreign trade offices is determined by the Council. The funding level has gone from \$150,000 to \$90,000 in recent years. Mr. Lloyd said the executive budget contains \$75,000 in each year for the Growth Through Agriculture Council to transfer to the Department of Agriculture for their marketing program.

Mr. Giacometto said if SB 83 passed, the full Appropriations Committee would determine how the money was appropriated out of the account which would contain the five programs. Discussion ensued regarding the provisions of SB 83.

Tape No. 2:B:000

Vote: The question was called for on SEN. JACOBSON'S motion and the motion **carried** unanimously.

Discussion: SEN. JENKINS asked for more information regarding the possible addition of 2.5 FTE under New Proposal No. 1. Mr. Giacometto explained that when the budget was put together the department tried to include contracting for these positions but federal regulations require that the positions have state employees. He said funding for contracting for the positions was included in the contracted services portion of the budget under New Proposal No. 1.

Ms. Smith distributed information regarding the State Grain Laboratory budget. EXHIBITS 4 and 5. After learning that the division could not use contracted services under New Proposal No. 1, EXH. 4 outlines what the executive proposes to do in lieu of that. She stated the overall budget would experience no change in dollars or FTE if all three pieces of the executive's request for the grain lab were accepted by the committee.

Mr. Lloyd suggested the committee first decide whether or not to accept the grain lab at the total funding level and then decide whether or not 2.5 FTE per year should be included. If the FTE are approved the funding will be taken from contracted services and put into personal services. The \$135,000 amount under New Proposal No. 1 would not change.

Motion: SEN. JENKINS moved to accept New Proposal No. 1 on p. C-132, including 2.5 FTE. SEN. KEATING seconded the motion.

Discussion: Discussion took place regarding what would be done if funding for the 2.5 FTE was not equal to the \$90,263 per year for contracted services under New Proposal No. 1. Mr. Giacometto said the \$90,263 figures in the new proposal included funding for a federal supervision fee as well as the funding for the FTE.

Amended motion: SEN. JENKINS amended his motion to accept New Proposal No. 1 including 2.5 FTE, with total funding to remain the same, and to restrict that the FTE only be added if a new grain lab is opened. SEN. KEATING seconded the amended motion.

Vote: The question was called for on the amended motion. Motion **carried** unanimously.

Discussion: Ms. Smith asked for clarification regarding the executive's request that 9.9 FTE and approximately \$254,000 in each year continue to be restricted only for use pertaining to grain lab activity.

Motion/vote: REP. WISEMAN moved to continue the restriction as the executive had requested (p. 1 of EXH. 4). SEN. KEATING seconded the motion. The motion **carried** unanimously.

Tape No. 3:A:000

Motion/vote: SEN. KEATING moved to accept New Proposals No. 2, 3, 4 and 5, with No. 5 to be line itemed for use in the federal program for Christmas tree promotion. REP. WISEMAN seconded the motion. The motion carried unanimously.

Discussion: Mr. Lloyd directed the committee to the section of p. C-133 entitled "Agricultural Development Division Administration." The executive has funded this with the Agriculture in Montana Schools state special revenue and general fund. He suggested that the funding for this administration could be based on the same percentage of funds that it administers.


In response to SEN. KEATING, Mr. Lloyd said the Agriculture in Montana Schools program funding level is nearly \$11,000 per year from the checkoff, and \$81,000 in each year comes from general fund. Mr. Giacometto said that since the program is so small, the division pays its administrative costs.

Mr. Lloyd then discussed the LFA issue concerning the Wheat and Barley Committee fund balance (p. C-133). This committee has accepted the executive budget and this will result in a \$2.8 million fund balance at the end of 1997, which is one and one-half times what yearly disbursements would be. Mr. Peck explained that one year's budget is about \$1.6 million and \$2.4 million would be the ideal carry-over figure. The \$2.8 million figure was based on 1993, the biggest crop year in Montana history. He estimated this figure would be going down in the future.

A letter from the Association of Montana Aerial Applicators in support of the inclusion of five FTE in the portion of the Department of Agriculture's budget dealing with pesticides was left with the committee members. EXHIBIT 6. In addition a letter from the Montana Farm Bureau Federation in support of the FTE for the pesticide program was left with the committee. EXHIBIT 7.

ADJOURNMENT


Adjournment: 10:20 a.m.


ROGER DEBRUYCKER, Chairman


DEBBIE ROSTOCKI, Secretary

RD/dr

This meeting was recorded on three 60-minute audiocassette tapes.

	MONTANA OPERATIONS MANUAL		
	MANAGEMENT MEMO		
	MANAGEMENT MEMO NUMBER	I	88 4-6
	DATE ISSUED	5/1/88	
DATE EFFECTIVE		5/1/88	
SUBJECT	SELECTION AND USE OF CONSULTING SERVICES		

TO: All State Agencies

FROM: Ellen Feaver, Director
Department of Administration**SELECTION AND USE OF CONSULTING SERVICES**

This Management Memo, "Selection and Use of Consulting Services," 1-88-4-6, replaces the Management Memos previously issued in Volume IV of the Montana Operations Manual. Management Memos 4-81-4R (same as 4-84-04), entitled "Professional Personal Services Contracts," and 4-83-1R (same as 4-85-11), entitled "Recommended Private Consultant Selection Procedures," have been rescinded by the Governor. "Selection and Use of Consulting Services" (1-88-4-6) should be placed in Volume I of the Montana Operations Manual in the fourth chapter, entitled "General Policies."

I. INTRODUCTION

Contracting for various consulting services is a recognized alternative to some functions of state government. The purpose of this Management Memo is to provide minimum provisions to be followed in the selection of consulting services. It is the objective of this memo that the intent of the Legislature be interpreted in a manner that ensures the greatest fair competition in the selection of consulting services.

Agency directors or the person charged by law with the ultimate responsibility for administering each state agency, have the full authority and responsibility for determining the need for and securing outside contractual help. The information provided in this memo is intended to provide direction to agencies on how to solicit, select and contract for consulting services.

II. DEFINITIONS

According to Section 18-8-102, MCA, and for purposes of this memo, the following definitions shall apply:

"Consulting Service" means the human service of studying or advising an agency under independent contract; however, the term is limited to professional consulting service work provided to an

agency under an independent contract with a private consultant, but does not include the making of periodic or routine reports or the collection of routine data necessary for the proper monitoring of private providers of human services regulated by a state agency. The term includes only services for which payment is made from funds:

- (1) that are appropriated by the Legislature;
- (2) that are generated by statutory functions of the agency; or
- (3) that are received by the State from the federal government and that are awarded to the State without requiring the State to request the funds through a grant program.

"Private Consultant" means an entity that performs consulting services other than a state agency or employee.

"State Agency" means any state department, commission, board, office, institution, facility or other agency, including the university system or an institution of higher education.

Selection and contracting for consulting services are the responsibility of the using agency. All other services, as defined in Section 18-4-123, MCA, must be procured through the Printing and Procurement Division of the Department of Administration.

"Services" include such things as janitorial services, maintenance services, banking services, etc. Examples of typical "consulting services" include on-site instructors, financial advisors, special investigators, or computer specialists.

III. BACKGROUND

There are four areas of Montana Law that relate to the procuring of consulting services:

- (1) Section 18-8-101 through 112, MCA (the Consultant Selection Law), outlines the requirements that agencies must meet in selecting certain services if the contract is anticipated to exceed \$5,000.
- (2) Section 18-8-201 through 212, MCA, outlines the procedures for selecting licensed architects, engineers and land surveyors.
- (3) Section 18-4-301 through 314, MCA, describes the five different methods of procurement as established in the Montana Procurement Act.
- (4) Title 39, Chapters 51 and 71, describes the issues of

unemployment insurance and workers' compensation that need to be addressed in determining the employee/employer relationship.

The following procedure incorporates these four areas of statute, referencing where necessary the applicable administrative rules.

IV. SELECTION PROCEDURE

(1) Agency issues a request for proposal (RFP) to those individuals/firms who have indicated an interest in providing consulting services for the type of work the agency will be contracting. The notice should contain, at a minimum, the following information:

- (a) Preliminary project description;
- (b) Project budget range;
- (c) The procedures and selection criteria that will be used to select the finalists;
- (d) An agency contact; and
- (e) Closing date for proposals.

Agencies are encouraged to review Section 18-4-304, MCA, and 2.5.601 and 2.5.602, ARM, concerning use of the Request for Proposal process for guidance in the preparation of the RFP notice.

Nothing in this part is meant to discourage agencies from using the Request for Statement of Qualifications (RSQ) process prior to the issuance of the Request for Proposal if desired.

(2) Responses to the RFP are screened against predetermined criteria, and an interview may be held. Price may be used as one selection criteria or may be negotiated after an award is made.

Agencies are again encouraged to refer to Section 18-4-304, MCA, and 2.5.602, ARM, for specific guidance on conducting the screening process.

(3) The award is made and the reasons for the award are documented.

(4) Negotiation of price begins, unless price was used as a screening factor.

Agencies are encouraged to refer to 2.5.602, ARM, for guidance on negotiation and "best and final offers."

(5) Contract is issued. (See Contract Terms and Conditions below.)

Exemptions to the Selection Procedure

Due to the statutory exemptions in Section 18-8-103, MCA, the selection procedures set forth above do not apply to the employment of:

- (1) registered professional engineers, surveyors, real estate appraisers or registered architects (see Section 18-8-201 through 212, MCA);
- (2) physicians, dentists, or other medical, dental or health care providers;
- (3) expert witnesses hired for use in litigation, hearings officers hired in rule making and contested case proceedings under the Montana Administrative Procedure Act or attorneys as specified by executive order of the Governor (see Management Memo 4-84-03, Legal Services Review Committee);
- (4) consulting actuaries to the public retirement boards;
- (5) private consultants where the amount of the contract will not exceed \$5,000 (see Section 18-8-105, MCA).

Although the above professions are statutorily exempt from the requirements of Section 18-8-101 through 112, MCA (the Consultant Selection Law), agencies are encouraged to use these guidelines in the procurement of these professions' services. By using these guidelines, agencies will ensure a fair, open and competitive selection process for their consulting service and will be aware of the issues surrounding the employer/employee question and contract terms and conditions.

V. SOLE SOURCE AND EMERGENCY PROCUREMENT

Section 18-8-101, MCA, states that a sole source contract may be issued if no proposal is received from a competent, knowledgeable and qualified private consultant at a reasonable fee only after all private consultants who have requested to be placed on the agency bid list have been solicited.

Section 18-8-105, MCA, states that an agency need not solicit such bids in bona fide emergency situations.

Agencies are encouraged to refer to 2.5.604 and 2.5.605, ARM, for guidance on selection of consulting services in sole source or emergency situations.

VI. EMPLOYEE/EMPLOYER OR INDEPENDENT CONTRACTOR RELATIONSHIP

For Workers' Compensation, Unemployment Insurance, Social Security and state and federal income tax purposes, employment status is defined as either employee or independent contractor. The responsibility for tax withholding and/or benefit premium payment depends on this determination.

Agencies must make a determination, prior to entering into a contract, of the contractual relationship to be established with the private consultant; whether it is to be an employment relationship or a contract with an independent contractor.

Although federal and state definitions are not identical, agencies may use the following guidelines in determining employment status. To be considered an "independent contractor," a firm or individual must meet the following seven criteria. Failure to meet one or more criteria strongly indicates an employee/employer relationship:

(1) An independent contractor must be free from control or direction in the performance of service, using the judgment of the trade, occupation or business, rather than relying on the hiring agent's instructions.

(2) Independent contractors must demonstrate they are engaged in an independently established trade, occupation, profession or business.

(3) Independent contractors must demonstrate that services provided are not an integral part of the regular business of the hiring agent. The independent contractor must have the ability or opportunity to bear the costs of accidents or unemployment. This is referred to as the "relative nature of work" or "integration" test.

(4) A hiring agent does not have the right to unilaterally fire an independent contractor, and an independent contractor must have the right to sue for breach of contract if the hiring agent terminates the relationship without cause.

(5) An independent contractor must furnish the equipment, tools or knowledge necessary to perform the services.

(6) An independent contractor sets or negotiates the price of services.

(7) An independent contractor is usually paid on the basis of a completed project or on a basis consistent with other independent contractors in the same trade, occupation, profession or business.

If the firm or individual fails one or more parts of the seven-part test, they should be placed on the agency's payroll.

Agencies may request an FTE from the Office of Budget and Program Planning (OBPP) for this purpose.

After making a determination that the firm or individual is an independent contractor, but prior to signing a contract, the agency should obtain evidence from either the contractor or the Division of Workers' Compensation that the contractor has workers' compensation coverage or has an approved exemption from that Division.

Although agencies typically make the determination of the firm or individual's employment status, personnel at the Unemployment Division (444-3834) and the Workers' Compensation Division (444-6530) are available to assist in making this determination.

VII. WORKERS' COMPENSATION FOR CONSULTANTS

Consultants must obtain Montana Workers' Compensation coverage or an exemption from coverage as provided in Section 39-71-401, MCA. Exceptions are permitted for residents of states with reciprocal agreements with Montana and who are temporarily working in Montana. Currently, those states are Utah, Wyoming, Colorado, Nevada, Oregon, Washington, Idaho and South Dakota. In addition, consultants from other states may be covered by their own policy with an "all states' endorsement," which will provide coverage during their temporary work assignment in Montana.

VIII. LIABILITY OF INDEPENDENT CONTRACTORS

Occasionally, an independent contractor may be unwilling or unable to provide services to the State because of the potential liability involved in performing the requested services. When an agency desires to indemnify the independent contractor performing state services, the prior approval of the Tort Claims Division, Department of Administration (444-2421), is required.

IX. MONTANA PREFERENCE

When other considerations are equal, a preference must be given to a private consultant who is a bona fide resident of Montana as defined in Section 18-2-401, MCA, and whose principal place of business is within the State or who will manage the consulting engagement wholly from one of its offices within the State (Section 18-8-104, MCA).

Note: This in-state preference may possibly not apply to contracts funded by federal monies.

X. CENTRAL BID LIST

By statute, agencies are required to maintain (in their central office) a list of all consultants wishing to be considered for State work (Section 18-8-105, MCA).

XI. LFA/OBPP REVIEW

By statute, agencies shall, upon request, supply the Office of Budget and Program Planning and/or the Legislative Fiscal Analyst with information concerning their use of a private consultant (Section 18-8-111, MCA).

XII. RESTRICTION ON USE OF FORMER EMPLOYEES

Sections 18-8-106 and 2-2-201, MCA, concerning restrictions on the hiring of former state employees, apply to the hiring of consulting services.

XIII. CONTRACT TERMS AND CONDITIONS

Written contracts should be issued for all consulting services prior to the commencement of any contractual work. Agency personnel should consider including the following clauses in these contracts:

(1) Parties: State the full name and address of each party, including the Internal Revenue Service identifying number of the recipient of payment. This information is necessary because agencies are required to prepare 1099 Forms to report contracted services payments to appropriate taxing authorities.

(2) Purpose: Explain what the contract is intended to accomplish.

(3) Duties: Provide a clear description of the work the contracted party will perform. Describe the final work product, if any.

(4) Consideration: Include not only the contract amount but how and when it will be paid and how the contractor must present the invoice. If the contract does not include expenses, such as travel and lodging, the contract should expressly indicate this.

(5) Period of contract: State when performance will begin and when it must be completed.

(6) Liaison: Include names and addresses for both the contractor and the State.

(7) Agency assistance: Identify the assistance, if any, which the state agency is to provide (personnel, equipment, etc.) to the contracted party.

(8) Ownership and publication of material: Identify which party owns the working papers and end products of the agreement and which party is authorized to release information concerning work in progress.

(9) Workers' Compensation: State in the contract the requirement that the consultant furnish proof of Workers' Compensation coverage or approved independent contractor exemption in accordance with Montana Law prior to commencement of performance.

(10) Access to records: Require the contracted party to maintain reasonable records of his performance and allow access to these records by the agency and, where required by law, the Legislative Auditor and the Legislative Fiscal Analyst.

(11) Termination, cancellation and default clauses: Indicate how the contract may be terminated. Where possible, specify the State's remedy in the event that performance is not completed.

(12) Venue: Venue is usually the First Judicial District in and for the County of Lewis and Clark, Montana, and contracts are interpreted according to the Laws of Montana.

(13) Equal Employment Opportunity: State that no part of the contract award or delivery of services shall be performed in a manner that discriminates against any person on the basis of race, color, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin (Section 49-3-207, MCA).

(14) Approval of legal content: Each contract must be approved by a lawyer for the agency. The approval should be indicated on the bottom of the last page of the contract by the words "Approved for Legal Content by _____," followed by the approving attorney's signature or such other process as the agency finds appropriate to indicate legal review and approval. To facilitate contract administration when an agency will be issuing several similar contracts differing only in parties, compensation, time of performance or other minor elements, the agency may use a form contract approved by one of its attorneys.

(15) Arbitration or litigation clauses: Contracts must contain a statement as to whether it is subject to litigation or binding arbitration as prescribed in Section 27-5-114 (3), MCA.

(16) Assignment, transfer and subcontracting: Assignment,

transfer and subcontracting of the agreement cannot be made unless all parties agree in writing.

(17) Process for modification of agreement or previous agreements: Indicate that the contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written agreement, shall be valid or binding. Also, provide that the agreement is not to be enlarged, modified, or altered except upon written agreement signed by all parties to the agreement.

(18) Notice: All notices will be in writing and given to the contract parties.

(19) Severability: Contracts must contain a severability clause stating that if one part of the contract is found to be void, that the remainder of the contract remains operative.

(20) Indemnity: Indemnity to protect the State from product or service liability of the contractor must be included.

(21) Prevailing wage: Contracts in excess of \$25,000 must contain a prevailing wage clause (Section 18-2-403 (2), MCA).

END

NATURAL RESOURCES APPROPRIATIONS SUBCOMMITTEE **2**

Tentative Schedule

Chairman: Roger DeBruycker

EXHIBIT

DATE

1/18/95

Meeting Room 402

Secretary: Debbie Rostocki (4887)

8:00 AM - 12:00 Noon

LFA Staff: Roger Lloyd (5385)

Mark Lee (4581)

♦ Agency Order - Executive Action Following Each Program ♦

- | | |
|------------------------------|---------------------------------------|
| 1. Public Service Regulation | 5. DHES (Environmental Sciences) |
| 2. Livestock | 6. Fish, Wildlife and Parks |
| 3. Agriculture | 7. Commerce |
| 4. State Lands | 8. Natural Resources and Conservation |

Legislative Day	Weekday	Date	Topic/Agency	LFA Analyst
3	Wednesday	1-4-95	Orientation	Roger Lloyd
			Supplementals	Roger Lloyd
			PSR	Roger Lloyd
4	Thursday	1-5-95	Livestock	Roger Lloyd
5	Friday	1-6-95	Livestock	Roger Lloyd
7	Monday	1-9-95 (8:00)	RIT Explanation	Ray Beck (DNRC)
		1-9-95 (9:00)	FWP Capitol Gnds	Roger Lloyd
8	Tuesday	1-10-95	Agriculture	Roger Lloyd
9	Wednesday	1-11-95	Agriculture	Roger Lloyd
10	Thursday	1-12-95	State Lands	Roger Lloyd
11	Friday	1-13-95	State Lands	Roger Lloyd
13	Monday	1-16-95	State Lands	Roger Lloyd
14	Tuesday	1-17-95	State Lands	Roger Lloyd
			Exec. Action	Roger Lloyd
15	Wednesday	1-18-95	Exec. Action	Roger Lloyd
16	Thursday	1-19-95	DHES (Envir.)	Mark Lee
17	Friday	1-20-95	DHES (Envir.)	Mark Lee
19	Monday	1-23-95	DHES (Envir.)	Mark Lee
20	Tuesday	1-24-95	DHES (Envir.)	Mark Lee
21	Wednesday	1-25-95	FWP	Roger Lloyd
22	Thursday	1-26-95	FWP	Roger Lloyd
23	Friday	1-27-95	FWP	Roger Lloyd
25	Monday	1-30-95	FWP	Roger Lloyd
26	Tuesday	1-31-95	FWP	Roger Lloyd
27	Wednesday	2-1-95	FWP	Roger Lloyd
28	Thursday	2-2-95	Commerce *	Roger Lloyd
29	Friday	2-3-95	Commerce	Roger Lloyd
31	Monday	2-6-95	Commerce	Roger Lloyd
32	Tuesday	2-7-95	Commerce	Roger Lloyd
33	Wednesday	2-8-95	Commerce	Roger Lloyd
34	Thursday	2-9-95	Commerce	Roger Lloyd
35	Friday	2-10-95	Commerce	Roger Lloyd
37	Monday	2-13-95	DNRC	Mark Lee
38	Tuesday	2-14-95	DNRC	Mark Lee
39	Wednesday	2-15-95	DNRC	Mark Lee
40	Thursday	2-16-95	DNRC	Mark Lee
41	Friday	2-17-95	DNRC	Mark Lee
43	Monday	2-20-95	Wrap-up	Roger & Mark
44	Tuesday	2-21-95	Wrap-up	Roger & Mark
45	Wednesday	2-22-95	Wrap-up	Roger & Mark

* Montana Science and Technology Alliance first for a joint meeting with Education.
 NOTES: Saturday left open for catch-up. Transmittal break traditionally occurs after the 45th day

January 16, 1995

Nat. Res. Subcomm.

EXHIBIT

3

DATE

1/18/95

HB

DEPARTMENT OF AGRICULTURE

Program 50 - Agriculture Development

Requested Language:

"The department is authorized to make grants to state agencies from the growth through agriculture account as approved by the Montana agriculture development council in accordance with Title 90, Chapter 9, MCA. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount."

DEPARTMENT OF AGRICULTURE
Program 50 – Agricultural Development Division
State Grain Laboratory

Executive Budget – Adjusted Request

	Great Falls Lab		Special Session – Restricted		New Proposal		TOTAL	
	FY96	FY97	FY96	FY97	FY96	FY97	FY96	FY97
FTE	11.0	11.0	6.9	6.9	4.5	4.5	22.4	22.4
Personal Services	366,173	366,278	161,149	160,977	97,472	97,759	624,794	625,014
Operating Expenses	97,705	98,048	93,455	93,634	67,217	67,038	258,377	258,720
Equipment	<u>37,000</u>	<u>47,000</u>	<u>0</u>	<u>0</u>	<u>12,000</u>	<u>40,100</u>	<u>49,000</u>	<u>87,100</u>
Total Costs	500,878	511,326	254,604	254,611	176,689	204,897	932,171	970,834
Fund Source:								
SSR – Grain Services	500,878	511,326	254,604	254,611	176,689	204,897	932,171	970,834

DIFFERENCE:

FTE	-1.5	-1.5	-3.0	-3.0	4.5	4.5	0	0
Personal Services	(41,379)	(41,487)	(56,093)	(56,272)	97,472	97,759	0	0
Operating Expenses	0	0	56,093	56,272	(56,093)	(56,272)	0	0
Equipment	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Costs	(41,379)	(41,487)	0	0	41,379	41,487	0	0
Fund Source:								
SSR – Grain Services	(41,379)	(41,487)	0	0	41,379	41,487		

1. Move 1.5 FTE in FY96 and FY97 plus spending authority from Great Falls Lab to Grain Sub–Lab.
2. Move 3.0 FTE in FY96 and FY97 from Special Session Restricted to Grain Sub–Lab.
3. Spending authority for the 3.0 FTE moved to the Grain Sub–Lab from the restricted account, would move from personal services to operating expenses.
4. Grain Sub–Lab, spending authority would be moved from operating expenses to personal services to support the 3.0 FTE.
5. No additional FTE are being requested.

DEPARTMENT OF AGRICULTURE
 Program 50 - Agricultural Development Division
 State Grain Laboratory

Executive Budget Request

4
 DATE 1/18/95
 HB

	Great Falls Lab		Special Session - Restricted		New Proposal		TOTAL	
	FY96	FY97	FY96	FY97	FY96	FY97	FY96	FY97
FTE	12.5	12.5	9.9	9.9	0.0	0.0	22.4	22.4
Personal Services	407,552	407,765	217,242	217,249	0	0	624,794	625,014
Operating Expenses	97,705	98,048	37,362	37,362	123,310	123,310	258,377	258,720
Equipment	37,000	47,000	0	0	12,000	40,100	49,000	87,100
Total Costs	542,257	552,813	254,604	254,611	135,310	163,410	932,171	970,834
Fund Source:								
SSR - Grain Services	542,257	552,813	254,604	254,611	135,310	163,410	932,171	970,834

EPP REQUEST

OBPP Only CV: _____

AGENCY NAME: Agriculture

PRIORITY NUMBER: 11

REQUEST NAME: Grain Sub-Lab

PROGRAM NUMBER: 50

CV NUMBER: 55000

FY96 FTE: 2.5

FY97 FTE: 2.5

FTE % FUNDING: 100% State Special

FTE % FUNDING: 100% State
SpecialFY96 FUNDING: \$135,310
State SpecialFY97 FUNDING: \$163,410
State Special

TOTAL COST: \$135,310

TOTAL COST: \$163,410

FUNDING NOTES: Funding provided through fees for service

RELATED LEGISLATION: ☒ NO ☐ YES (If yes, draft copy MUST be attached)REQUEST SUMMARY:

Southeastern Montana Grain producers have requested official grain laboratory services. The purpose of this proposal is to provide a State Grain Laboratory Field sub-laboratory in southeastern Montana. Grain producers and the industry need access to prompt official inspection and grading services for contract settlement on grain transactions. Totally self supported on a fee for services, a sub-office located in south eastern Montana will provide grain analysis services, official sampling, and protein testing to the producers and industry. Availability of services in eastern Montana will enable the industry to more efficiently market grain.

The Grain Laboratory sub-office will receive supervision and support services from the State Grain Laboratory in Great Falls. If the sub office is not self-supported from services provided, it would be terminated with official laboratory service reverting back to Great Falls.

Personal ServicesFY 96FY 97

1 FTE Grade 14

Salaries

\$ 57,989

\$ 57,989

1 FTE Grade 10

0.5 FTE Grade 8

Overtime

\$ 5,000

\$ 5,000

Benefits

\$ 15,742

\$ 15,742

Sub total

\$ 78,711

\$ 78,711

Operations

\$ 44,600

\$ 44,600

Equipment

\$ 12,000

\$ 40,100

\$135,310

\$163,410

(Workers Comp Code 9412)

AGENCY CONTACT PERSON (PHONE): Ralph Peck - 2402



ASSOCIATION OF MONTANA AERIAL

PO Box 5415
Helena, MT 59604

1/10/95

Representative DeBruycker, Chairman
Natural Resources Joint Subcommittee
Appropriations, Finance and Claims

Mr. Chairman, members of the committee, for the record, my name is John Semple. I represent the Association of Montana Aerial Applicators.

Our association supports the Department of Agriculture, Ag Science Division budget portion dealing with pesticides. We strongly suggest the inclusion of 5 FTE's; a chemist, 3 ag specialists, and a training specialist. These positions are monetarily supported by user fees, or EPA funds, but not Montana general funds.

In simplistic terms, even though our industry likes minimal government controls we prefer enough FTE's so Ag can carry out its lawful mandates. We are concerned that the Department of Health and Environmental Sciences will assume those duties that Ag cannot fulfill if the positions were deleted. Our industry needs government oversight that is user friendly to us, not a large bureaucracy (and lots of federal funding) concerned mainly with health issues.

Thank you for your time and consideration in this matter.

**MONTANA FARM BUREAU FEDERATION**

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

January 17, 1995

Rep: Roger DeBruycker, Chairman
Jt. Sub-Natural Resources Committee

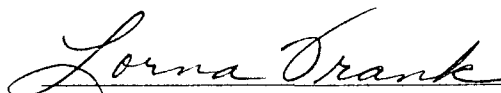
RE: Department of Agriculture budget

The Montana Farm Bureau wishes to go on record as being in support of several positions within the Agricultural Sciences Division of the Department of Agriculture.

The positions are Ag Specialist , 00340, a chemist to work in the worker protection program. Ag Specialist 00341, to manage and implement the worker protection compliance and enforcement activities. Position 00342, to assist and oversee the pesticide disposal project as well as activities in worker protection. Position 00605, to provide technical services for the feed and fertilizer programs and to provide technical assistance for the ground water program. One 00607 positions, half time for the noxious weed program and half time for the pesticide program.

We hope the committee will support these positions as they are needed within the department.

Thank you for your consideration on this issues.


Lorna Frank, Lobbyist