

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN KEN MESAROS, on January 17, 1997, at 1:00 p.m., in Room 413/415.

#### ROLL CALL

**Members Present:**

Sen. Kenneth "Ken" Mesaros, Chairman (R)  
Sen. Ric Holden, Vice Chairman (R)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. Gerry Devlin (R)  
Sen. Don Hargrove (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Walter L. McNutt (R)  
Sen. Linda J. Nelson (D)

**Members Excused:** Sen. Bill Wilson (D)

**Members Absent:** None

**Staff Present:** Doug Sternberg, Legislative Services Division  
Angie Koehler, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 107, 01/08/97  
Executive Action: SB 43, SB 73

#### HEARING ON SB 107

**Sponsor:** SEN. TOM BECK, SD 28, DEER LODGE

**Proponents:** Pam Langley, MT Agricultural Business Association  
and MT Grain Elevators Association  
Candace Torgerson, Women Involved in Farm Economics  
Bob Stephens, MT Grain Growers Association  
Lorna Frank-Karn, MT Farm Bureau  
Steve Browning, Anheuser Busch  
David Tweet, Anheuser Busch  
Joe Knox, Great Western Malting  
Gary Pearson, Farmer, Fairfield, MT  
Steve Rockhold, Coors Brewing Company  
Herb Karst, Farmer, Sunburst, MT

Dan Andrews, Farmer, Power, MT  
Rodney Cole, Farmer, Choteau, MT  
Gary Arnst, Farmer, Valier, MT  
Diane Anderson, Farmer, Power, MT  
Gerald Miller, Farmer, Conrad, MT  
Michael O'Brian, Farmer, Conrad, MT  
Peter G. Rebisl, Farmer, Dillon, MT  
Harvey Nott, Farmer, Bridger, MT  
Glenn Ophus, Farmer, Big Sandy, MT  
Rex Manuel, Farmer, Fairfield, MT  
Jeff Yager, Farmer, Laurel, MT

Opponents: None

Opening Statement by Sponsor:

SEN. TOM BECK, SD 28, DEER LODGE: I am presenting SB 107. I have submitted written testimony. (EXHIBIT 1)

Informational Testimony:

Ralph Peck, Director, MT Department of Agriculture: I am submitting written testimony. (Mr. Peck read his testimony.) (EXHIBIT 2 and 3) We also submit a technical amendment for this bill. (EXHIBIT 4)

{Tape: 1; Side: A; Approx. Time Count: 1:27 p.m.}

Proponents' Testimony:

Pam Langley, MT Agri Business Association and MT Grain Elevator Association: The MT Agri Business Association is particularly interested in Section 6, nitrogen fertilizer. We do not want commercial fertilizer used for any purposes other than to promote the growth of grain, not for adulteration afterwards. We encourage that you pass the bill. The MT Grain Elevator Association supports this bill as introduced. In terms of any malt barley amendments, there is a division of opinion and the Board voted to stay neutral. This allows individual companies to testify as they see fit. We would like to respond in regard to the final amendment submitted by Mr. Peck by the time you take Executive Action.

Candace Torgerson, Women Involved in Farm Economics: The people in WIFE have worked with Mr. Peck extensively on this bill. We support it. I was given no direction on how they feel about the amendment so I cannot speak for them in regards to that.

Bob Stephens, MT Grain Growers Association: We have worked with the Department of Agriculture on this bill. We would like to support it with the Department's amendment and the Malting Barley Association has an amendment we support as well.

**Lorna Frank-Karn, MT Farm Bureau:** We also had people working with the Department on this bill. We are in support of it as it was brought to us in December. We're not sure about the amendments, but they sound okay.

**Steve Browning, Anheuser Busch Companies:** I am distributing the amendments that are referred to. **(EXHIBIT 5)** In his testimony, **Mr. Peck** mentioned two options. A third option has been developed that is a middle ground between the first two. Option 2 is exempting malt barley entirely, Option 1 is exempting those with written contracts and Option 3 is in between. It basically gives growers the right to waive their right to submit a sample if they so choose. Option 3 is preferred.

**David Tweet, Regional Manager for Busch Agricultural Resources Inc., the agricultural subsidiary of Anheuser Busch:** I have some information that may help you understand some of the comments I will be making. **(EXHIBIT 6)** We support the bill with the amendment for malting barley, Option 3. We have some petitions and they have been hand carried from growers from our areas. **(EXHIBIT 7)** The petitions represent growers both irrigated and dry land, contracted and open market. I would be happy to answer any questions.

**Rick Neild, Vice President, East Bench Grain & Machinery, Dillon, MT; Director of MT Grain Growers Association:** The company also belongs to the MT Grain Elevators Association. We contract up to a half million bushels of malt barley. We also produce malt barley for Great Western Malting. They pay a premium for our malt barley and our growers' malting barley. Great Western looks at barley differently than other malt companies such as Coors or Busch. The differences could lie in judging color, means of germination, blotter, peroxide, mold percentages and I believe they all have differences in the factor standards. Great Western Malt has a very fair set of minimum factor standards that must be met to achieve malting barley. Our relationship with them and our growers has been excellent. This system works very well.

I feel the most important thing to remember is that malting barley is a specialty crop. The companies buying it should be the one grading it so they can place it in their system where they need it. If our barley producers do not meet the malt companies minimum factor standards for malt barley or for instance, if they lost their crop, they are released by an "act of God" clause in this contract. I feel the state grain labs are excellent for all classes of wheat and feed grain. We use the state grain lab as an elevator regularly. Remember, malt barley is a specialty crop. We send these samples to the malt company.

We also have a unique and timely situation with our loading of malt barley versus, in our case, the Union Pacific Railroad demurrage. We ship our malt barley samples to Pocatello, Idaho overnight and know the grade of the car the next morning. This barley has also been graded at harvest time. Germination takes

48 hours with a peroxide test. I put it on germ immediately, after each individual car is loaded. It would take Great Western two days to germinate it. So I'm running one day ahead. All of this saves time and money to the producer in the end. Railroad demurrage is \$50.00 a day per car after 48 hours. The system is not broke so why are we trying to fix it. I do not think we need more government intervention when it would probably result in a lower premium to our growers and could result in an end to contracting barley in Montana. I support SB 107 with option 3.

*{Tape: 1; Side: B; Approx. Time Count: 1:45 p.m.}*

**Gary Pearson, Farmer, Fairfield, MT:** Submitted and read written testimony. (EXHIBIT 8)

**Steve Rockhold, Coors Brewing Company:** Submitted and read written testimony. (EXHIBIT 9)

**Herb Karst, Farmer, Sunburst, MT:** Submitted and read written testimony. (EXHIBIT 10) There are many other people in the room who, in the interest of saving time, would not like to present oral testimony. I would like to ask if the Committee would allow them to stand and state their name and location as concurrence with the testimony we have presented to this point.

**CHAIRMAN MESAROS:** Those who would like to go on record, but not offer testimony could come forward and state their name and position for the record.

*{Tape: 1; Side: B; Approx. Time Count: 1:55 p.m.}*

**Dan Andrews, Power, MT:** I'm an irrigated, dry land producer of malt barley. I've produced it most of my life for all three major contractors. We desperately need this amendment to SB 107.

**Rodney Cole, Choteau, MT:** I produce wheat and malt barley. I've grown malt barley for about 25 years. I concur with previous testimony.

**Gary Arnst, Valier, MT:** I raise malting barley and wheat. I support Option 3.

**Diane Anderson, Power, MT:** I primarily raise malting barley and I am also a member of the Anheuser Busch Barley Grower Advisory Committee. I support Option 3.

**Gerald Miller, Conrad, MT:** I raise malt barley and wheat. I support Option 3. I am also on the Anheuser Busch Barley Grower Advisory Committee.

**Michael O'Brian, Conrad, MT:** I am a malting barley grower. I would strongly urge you to look at Option 3. I think it would be a good thing for all of us growers. (EXHIBIT 11) Submitted written testimony.

**Joe Knox, Great Western Malting, Brady, MT:** I support Option 3.

**Pete Rebisl, Dillon, MT:** I support SB 107 with Option 3. I am a farmer and grow malt barley.

**Harvey Nott, Bridger, MT:** I've grown for seven different malting barley companies in 26 years. I've never had a problem with any of the contracts or any of the companies. I support amendment 3.

**Glenn Ophus, Big Sandy, MT:** I'm a dry land wheat and barley farmer. I produce malt barley for the open market. I support SB 107 with the amendment, Option 3.

**Rex Manuel, Fairfield, MT:** I thought you should know that Fairfield is the malting barley capital of the U.S.A.

**Jeff Yager, Laurel, MT:** We raise barley for Coors. We're in favor of SB 107 with Option 3.

**Opponents' Testimony:** None.

**Questions From Committee Members and Responses:**

**SEN. TOM BECK:** There is one section that has a lot of repealers in it. Would you explain the sections that are repealed?

**Mr. Peck:** We could walk through some. 80-4-423 is repealed because the bill establishes the penalty standards and requirements are established elsewhere in the bill. 80-4-535 is repealed because the amendments in Section 80-4-536 establish an improved system for termination of storage contracts. 80-4-707, 710, 723 and 727 are consolidated into the new Section 20.

**{Tape: 1; Side: B; Approx. Time Count: 2:00 p.m.}**

**SEN. GERRY DEVLIN:** Coors coordinates their equipment with the state grain lab?

**Mr. Rockhold:** Yes.

**SEN. DEVLIN:** How often is this done?

**Mr. Rockhold:** Every year, twice a year. We do that in the spring. We use samples from the previous harvest and typically, in regard to protein, we come up with seven different samples and send those to the state. Whatever their analysis is, we bring those back and make our machines coordinate with those. I also go back at harvest time, pull a sample and send it to the state to make sure we haven't gone whacko or anything like that.

**SEN. DEVLIN:** You stay in touch with the state grain lab on your own?

**Mr. Rockhold:** Yes. We maintain a standard sample from the state out of those tests and we test that machine every day to make sure it hasn't gone whacko.

**SEN. DEVLIN:** I would like to address the same question to Busch.

**Mr. Tweet:** We grade all of our grain for every factor individually. We have approximately 35 locations counting elevators, malt houses and those who malt for us. We are connected via telephone lines with our grain analyzers. Every elevator and system has the same machine, same programming. Our theory is that you should be able to haul to Fromberg, Montana or West Fargo, North Dakota and get the same protein readings.

**SEN. DEVLIN:** Do you coordinate your machinery with the state grain lab?

**Mr. Tweet:** No.

**SEN. DEVLIN:** Is there a reason not to? The other outfit sends a sample there once in a while to see if they're tracking.

**Mr. Tweet:** We do occasionally on an informal basis when we think there is a wide disparity. Frankly, we don't have much of a problem with protein. If we do find something, then we inform our people that something may be a little off and we should be looking deeper. Protein has not been a large issue for us.

**SEN. DEVLIN:** Is that the only thing you would coordinate with the state lab?

**Mr. Tweet:** Yes.

**SEN. GREG JERGESON:** Is there anything in the sections that are being repealed and are now being consolidated into Section 20 that currently exempt malt barley contracts from the provisions of this act?

**Mr. Peck:** We don't believe there is. There is a question where the law was rewritten several years ago. It defined warehouses versus commodity dealers. Commodity dealers are not contained in the state grain lab definition. It all talks about warehousemen. They have the right to send it to the state grain lab and commodity dealers are not discussed. In this case, most of the malt companies are commodity dealers. They are not warehousemen. Our interpretation has always been that the bill you see in front of you was as it exists today. That was legislative intent, but there is that question and, of course, that's why we're here today.

**SEN. JERGESON:** As I read those sections, it seemed to me that they're pretty consistent with the language in the new law and that malting barley contracts are not excluded. What is the case with durham?

**Mr. Peck:** Durham is also included in the state grain laboratory.

**SEN. JERGESON:** Is there more or less durham raised in Montana than malt barley?

**Mr. Peck:** I think there is more durham.

**SEN. JERGESON:** Compared to spring wheat, there is considerably less durham raised.

**Mr. Peck:** Yes.

**SEN. JABS:** You stated that this lab is funded through fees from the producers. You mentioned you wanted the state to help you out in emergencies. How does that work?

**Mr. Peck:** As it exists now, we collect the fees and they go into a state special revenue account. In order to spend them we have to have be authorized. In a high use year the money is there, we just don't have the expenditure authority. We would come into the budget office, justify why we're doing it, request the expenditure authority to spend those fees, then that goes before the Finance & Claims Interim Committee and they review it. If it meets the requirements of the law and it's justified, then we would be allowed that budget amendment. Under the old criteria, without this change, we have to say it's an emergency because we think we need that lab providing services to Montana agriculture. Interpretation is, if it's not a famine, a pestilence or a flood some might say it's not an emergency.

**VICE CHAIRMAN HOLDEN:** There is an amendment dealing with \$232.00 per facility for the license. Did I understand that is how you're currently doing it now?

**Mr. Peck:** You're correct. The only change to the language is "per facility". That is how we assess the fees right now. Per facility, they pay \$232.00 for a license to buy and sell grain.

**VICE CHAIRMAN HOLDEN:** Have you seen Option 3 that Anheuser Busch and Coors have brought?

**Mr. Peck:** Yes.

**VICE CHAIRMAN HOLDEN:** Could you clearly state what your opposition would be to this position?

**Mr. Peck:** This provides the producer the right to exempt themselves from the provisions of the state grain laboratory requirement under contract. I think that is a viable option. It's up to the individual then, if they're persuasive enough with the company or other individual they're contracting with in regard to whether that provision is in that contract or not. That becomes a private party action. Without any of these options, as it exists today, the producer has the right to

request in writing that it's sent to the state grain lab. If they want to they can contract away that right.

**VICE CHAIRMAN HOLDEN:** Are you in total opposition to this position?

**Mr. Peck:** We want to do what the industry would like us to do. We could not get it resolved or get a consensus earlier. I think they have come a long way in reaching a consensus by coming forward with Option 3. No, we are not opposed to this. We would really like some definition of what direction you would like us to operate the Department of Agriculture in that portion of this statute.

**SEN. BECK:** I don't understand why you don't want to deal with the state grain lab. Why can't they do the sample? Why do you have to do it yourself? What are the advantages and disadvantages? What kind of a thumb do you have over the producers on this?

**Mr. Tweet:** Each company has a different process to make a different product. When we start working with quality factors, what bothers Coors, as far as degree of damage goes, may not bother us or vice versa. Each company knows what they need to use. I don't think one large generic Federal Grain Inspection Service (FGIS) grading system will be able to address that.

**SEN. BECK:** Wouldn't the state grain lab give you a very unbiased, total, neutral sample of what is actually in the grain? Can't you go from there to deal with the producer?

**Mr. Tweet:** I think they would certainly be unbiased. I think their standard of degree of damage they are held to by FGIS procedures and grading would not be similar to what our own malting and brewing people use. To reiterate, this would put us in a lot different rating position than our neighboring states. Idaho, Wyoming, North Dakota, etc. can grade their own.

**SEN. BECK:** We don't grade the way Idaho and other states do? Do we need to make some changes there to make this work?

**Mr. Tweet:** We have in the past. When we contract barley in Idaho, we grade our own grain, as does Coors and Great Western. If we change this so that all barley producers have the right to appeal to the state for settlement purposes, it would put us in a different ball game than the other states.

**SEN. BECK:** Are you looking at this as an appeal process? That someone might send their grain sample to the state?

**Mr. Tweet:** When you have to buy large quantities of barley, one must assume that you could conceivably have all of your grain appealed to the state.



**SEN. BECK:** Could that work both ways? What if you had a sample of grain that you overgraded and the state said it wasn't quite as good as what you figured?

**Mr. Tweet:** Conceivable.

**SEN. JERGESON:** I want you to walk me through a transaction under current law. There is some dispute as to whether or not an exemption does or does not exist. You deliver your barley under contract and they take a sample and send it to their lab. What happens? Do you settle based upon those lab results?

**Mr. Karst:** Do you want me to walk you through exactly what happens?

**SEN. JERGESON:** Yes.

**Mr. Karst:** Each malting company may have a little different procedure, but presently this is the way it works for us with Coors. First of all, we have to understand that state grades primarily determine plumpness and protein. I don't think the malting companies have any big problem there. It's when you get into the harvest damage and germination that it becomes very subjective. These are areas that malting companies feel very uneasy about having one objective test for what they consider somewhat subjective. Germination isn't germination when it comes to the malting process. This is how it works for me. I harvest my grain and put it in a bin. I have taken samples myself at harvest time. Coors collects those samples and runs some preliminary grades to get an idea what the bin samples are. If it doesn't look like there's a problem with germination, for instance, then I'm given the go ahead to deliver my grain. As I deliver my grain and before it is dumped or changes hands, they test it for plumpness, protein, moisture and color because that's an objective way of determining if there has been harvest damage to the grain. They have machines that test the color of the grain. If it has been weather damaged, that will show up in the color machine. That is all done prior to dumping, prior to a transaction taking place. At that point, I dump my grain. When I pull my tailgate, I know exactly what the price for that grain is going to be.

**SEN. JERGESON:** You've raised this crop all year, been in the business a long time and so, as a producer, you gain a pretty good appreciation for the quality of your crop before it has every been sent to a lab anywhere. Let's say samples sent to Coors come back and don't meet quality standards written in your contract so they aren't going to take your barley. What avenue of appeal do you have at that point?

**Mr. Karst:** As a producer, I would have two avenues of appeal. First, I would appeal to my agronomist. He would reprobe my bins, get new samples, send them down to the quality lab where, after they do a visual test, will also do a more extensive

germination test to see what actually happens to the kernels during the germination process. If it's a borderline situation on harvest damage, they do a very detailed test if it looks like that's necessary. If my barley is rejected and I still disagree at that point, I suppose my avenue would be through the courts as with any legal contract. I could use the state grade and say their protein machine is out of whack. The state said it was this. I assume, in a case such as this, it would be a civil action between myself and Coors.

**SEN. JERGESON:** Rather than having an avenue of appeal to the Montana Department of Agriculture, your avenue of appeal, after you've appealed to the people who already gave you one grade, is to higher an attorney, go to court and take on Coors. That's your avenue of appeal?

**Mr. Karst:** If I felt they were in violation of a contract, yes.

**VICE CHAIRMAN HOLDEN:** We heard testimony that Coors tests or double checks their machines with the state and we also heard testimony that your organization does not. Doesn't it seem reasonable, to eliminate some of your liability exposure and ill will that some producers might have of your organization, that you should double check your machinery with the state grain lab and use that as a neutral base?

**Mr. Browning:** What they're trying to say is that they have uniform, quality control where this is coordinated at all the different buying stations and they have standards that all of their equipment is calibrated to. They have the utmost confidence in those standards. They don't test with the federal equipment either. Their equipment is calibrated, it's state-of-the-art. They think it's the best equipment and the people they contract with have confidence in that equipment. Each company does it differently because, in part, they all have different processes in terms of what they do with the product. They are the end users of the product and they know what their needs are and how they can determine whether those needs are being met.

**SEN. DEVLIN:** Who does the state grain lab tune their machines with?

**Mr. Peck:** The Federal Grain Inspection Service monitors the state grain laboratory on a weekly basis. Internally, we have a set of samples we check daily. Then we send a subsample of what we do every week to the FGIS and they check it. We have some calibration samples we run every day to check our machines. Every week we send a sample that we run in ours and they check it to be sure we're getting the same results.

**SEN. DEVLIN:** Where is that at?

**Mr. Peck:** Boise, Idaho is our local office and the national office is in Kansas City.

**SEN. DEVLIN:** Is that what you do with your equipment? Do you coordinate it with the federal machinery?

**Mr. Rockhold:** We're aware of what the Department of Agriculture does with their machines. We don't send samples into Boise, Idaho. We send samples to the state grain lab and have confidence. We do double check with our whole grain analyzers in Golden, Colorado and our lab down there. That machine does check with the machines in Boise. So we do have a back check there.

**SEN. DEVLIN:** You stated your company has state-of-the-art machines. Do you tune this to the federal machinery at all or is your machinery so superior that maybe the federal government should tune to you?

**Mr. Browning:** Every machine is checked every morning when they come into work.

*{Tape: 1; Side: B; Approx. Time Count: 2:21 p.m.; Comments: End of tape, some testimony lost.}*

We do coordinate all of our machines to our research center in Fort Collins. I cannot say for sure that they coordinate with the FGIS, but I would be very surprised if they do not. I know we are quite aware of what the state grain lab proteins and moistures are. I do not think we are out of whack.

**SEN. DEVLIN:** I realize you look for a lot of other things besides proteins and moisture and all. I was just curious if you checked your machinery against a higher authority or anybody at all.

**Mr. Browning:** My machinery is checked against our Fort Collins research center. I apologize. I should know whether Fort Collins is checked with FGIS. I can have that for you on Monday morning if you like.

**SEN. DEVLIN:** That would be fine. Thank you.

**SEN. HARGROVE:** How often do you experience difficulty between what your standards are and what you're contracted for? Do you come up with tests that don't meet what you want?

**Mr. Rockhold:** Speaking for Coors, it's pretty rare. That is the reason why we're in Montana. We don't experience many crop problems in Montana.

**SEN. HARGROVE:** Is it high enough to give me a percentage?

**Mr. Rockhold:** The last time I checked, we had about a six percent rejection rate on an average.

**SEN. HARGROVE:** How about Anheuser Busch?

**Mr. Tweet:** It would depend on the years. Some years, if we've had a devastating amount of moisture at harvest, that becomes a large issue. We've had over half of our barley contracts not able to be accepted before. That is a very rare occurrence. This year we will be over a 95 percent acceptance ratio and we've been in excess of 90 percent for five or six years that I remember.

**SEN. HARGROVE:** Would Coors make the same comment as far as the year and the moisture?

**Mr. Rockhold:** Very much so. It's pretty rare that we run into a bad year. The one I can remember is 1992 when the crop started to mature it started to rain and didn't stop until October.

**SEN. MCNUTT:** Are there any growers that are unhappy with their arrangement with your contract?

**Dan Andrews:** I've been a producer with Anheuser Busch for several years. I would like to walk you through it real quick. When I pull up underneath the probe in Fairfield, every load is probed and graded before I dump in the pit. If there is a problem with that load, I know that. I have the option, if they haven't rejected my load, of not dumping that load. I can take it back home and store it. There is a provision in Anheuser Busch's contract that, if it's off-grade and doesn't meet the criteria of the original contract, there can be a negotiation between the buyer and seller at a discounted price. You know that before you bring it back to dump it. If Anheuser Busch doesn't have the option of going through that grading system, by the time it goes through a state grade type thing, it's already in the pit and probably in the car. That can be big problems, not only for Anheuser Busch, but for us producers the next year. If they have trouble shipping that barley, they're going to look somewhere else. We do have options. Maybe we don't have the option of going to the state and then saying, "Hey, the state graded this as number one choice malt. I'm going to force you to pay me." We don't have that option. It's not a perfect world out there, but it's working. We do have some protection.

**Closing by Sponsor:**

**SEN. BECK:** I grow barley in my area. I don't have any contracts with any of the malt barley producers. I've heard all kinds of stories, but I will say this much. I do not want to run the malt barley producers out of Montana and I would like to see us put Option 3 into this bill. It puzzles me how this whole thing works when it comes to the testing of the grain. I would think you would like to have the opportunity for double checks and some things to make sure. Evidently the producers are happy with what they have. If they're happy, I'm happy. Let's put Option 3 in there and let's pass this bill onto the House.

**CHAIRMAN MESAROS:** We will not take Executive Action today. I will instruct our legal advisor to review the amendments for formatting. We will take Executive Action next week. This concludes the hearing on SB 107.

**EXECUTIVE ACTION ON SB 43**

**Discussion:**

**VICE CHAIRMAN HOLDEN:** I would like to bring us up-to-date. If you recall, on Wednesday I asked **CHAIRMAN MESAROS** to set the bill aside so I could consult with the groups involved with this legislation. **SEN. DEVLIN** offered a motion to table my bill and that motion was defeated in Committee. I want to thank each of you that supported me regarding that motion and allowed me the opportunity to let the legislation sit for a day so I could meet with the groups that are here now. After I've had the chance to talk with those groups, I've decided to ask for a motion to table the bill.

**Motion/Vote:**

**VICE CHAIRMAN HOLDEN:** MOVED TO TABLE SB 43. MOTION CARRIED. ALL IN FAVOR.

*{Tape: 2; Side: A; Approx. Time Count: 2:31 p.m.}*

**EXECUTIVE ACTION ON SB 73**

**Amendments:**

**Doug Sternberg:** **SEN. CRIPPEN** did ask me to prepare some amendments. I worked with the Department of Fish, Wildlife and Parks on the amendments. They attempted to address the concerns that were raised in the hearing. **(EXHIBIT 12)** I can explain the amendments. They are extensive, but I think I can go through them relatively quickly. There are some amendments dated 01/13/97. Those were presented by the Department at the hearing, but they don't include several items. We never did act on those. These amendments are dated 01/17/97. The question was raised about not only importation, but possession of those wild species and should be addressed in this bill. **SEN. CRIPPEN'S** intent in these amendments was to include the concept of possession. The Department will be allowed to address possession with regard to importation, authorization and penalty provisions and so on. Throughout these amendments, you will see the word "possession" in numerous places. Amendment number 5 has to do with the clean, gray and dirty list. **CHAIRMAN MESAROS** asked me to talk to **Dr. Siroky** with regard to clearly distinguishing that the authorization permit issued by Fish, Wildlife and Parks must be clearly distinguished from the animal importation permits issued by the Department of Livestock. Amendment number 8 slightly broadens the amendment brought in by the Department to include in

the rulemaking process not only the Department of Agriculture and Livestock but also the Public Health and Human Services. Amendment number 10 is clarifying that regularly established and recognized zoos and educational institutions can be exempt from the provisions of this bill if they prove to the Department that their proposed facilities are adequate to provide secure confinement. The second paragraph of number 10 is the same as presented by the Department. Amendment 14 does add a specific statutory definition of possession with regard to the importation statutes so that it puts a person on notice as to what it means to possess one of these animals.

**SEN. BECK:** That means a circus could come to Montana and that doesn't declare somebody in possession of the animals.

**Doug Sternberg:** No. Although, that is a good question because we have personal use in there. I know we're going to cover roadside zoos. To specifically address that question, I know **Bob Lane** from the Department of Fish, Wildlife and Parks is here. He could probably clarify that. A circus arrangement would be using those animals for personal use, although not resale.

**Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife & Parks:** In response to **SEN. BECK'S** question, those kinds of things that exhibit, like circuses, are already regulated under the menagerie statute. These provisions specifically exempt those things that are already regulated. We would not change the regulation of a circus.

**SEN. DEVLIN:** They are already covered under another section of law, menageries.

**Mr. Lane:** That's correct. We recognize that and in this bill, other amendments specifically set out other areas of law we don't intend to change because there is already adequate regulation.

**Doug Sternberg:** Number 26 is the amendment that **Mr. Lane** was just referring to. That says the animal importation and possession statutes that we're passing here do not apply to various parts of law that are referenced in Subsection A and B. Number 5 is provision that implements, in statute, the indication and statement of intent that we will exclude educational institutions and zoological gardens from the import and possession requirements as long as they provide adequate and proper facilities to contain imported wildlife. Amendment number 28 adds Subsection 3 to the penalty provision. I believe it was put in there by **SEN. CRIPPEN** to address **SEN. NELSON'S** concerns that a person might already be in possession of a gray or dirty list animal at the time this law goes into effect. The legal effect of that amendment will be to institute a one year amnesty program, for people who already possess those animals, as of the effective date of this act. It will allow them to report their noncompliance with the Department. They won't be prosecuted for a noncompliance that they report. We're adding a termination

date for Subsection 3 to clearly indicate that one year from the date this bill goes into effect, the amnesty program will terminate and the law will be in place. Number 30 and 32 will effectively change the date this bill will become effective from October 1, 1997 to January 1, 1998. Number 31 includes the language in amendment number 26 where the Commission will be adopting rules. We're including that new Subsection 5, rulemaking authority, so the Commission can get started right away.

**SEN. DEVLIN:** I can't remember why we were changing the effective dates.

**Doug Sternberg:** It included the Department's suggested amendments. I'm sure they must have a very good reason for that.

**SEN. DEVLIN:** I would like to know.

**Mr. Lane:** We're trying to structure this so we can adopt rules deciding which animals are safe to let in the state prior to the effective date. We don't want to have impacts that we don't intend upon those people who are already bringing things in like in the pet trade, for example. We would rather decide whether they should come in or not before the effective date to smooth the transition of this. That's why we chose to have rulemaking authority start when the bill was passed, if it's passed, and an effective date later on. The only problem is, we don't think we can get all the rulemaking and all the examination of the species done in an adequate manner by October 1st. So we're asking for an extension of that effective date so we can get the rulemaking process done.

**SEN. DEVLIN:** Is it written in here that you can't get a head start on this?

**Doug Sternberg:** It's written in the effective date in Subsection 2, page 5. To facilitate rulemaking by the Commission, the provisions of this bill that clearly authorize the Commission to develop rules are effective immediately. The rules cannot go into effect before the effective date of the act.

**SEN. HARGROVE:** Recognizing the joint nature of this and the number of responsibilities, could we get an indication from the Department of Livestock that these amendments are okay?

**Luella Schultz, Department of Livestock:** I checked with Dr. Siroky before coming today and we've prepared a statement that says we agree with the intent of SB 73 to restrict the possession of animals determined to be detrimental to the health of the wildlife, livestock and the people of Montana and/or to be detrimental to the agriculture in Montana. The Department of Livestock urges this Committee to insure the decisions incorporated into the restrictions of imports or prohibition of possession are made by and within the expertise and authorities

of the specific regulatory agencies. This was done in 1987 for the game farm rules. We urge that same scrutiny to make sure we're on track.

**SEN. BECK:** What kind of animals are on this black, gray and clean list? Just a brief recounting, I don't want to belabor it. Is the wolf included in this list?

**Doug Sternberg:** No. The gray wolf is governed by federal law.

**Motion:** SEN. DEVLIN MOVED TO ADOPT AMENDMENTS. (EXHIBIT 12)

**Discussion:**

**SEN. NELSON:** Which amendments? All of them or the ones put out by **Doug Sternberg**? There is another set by the Department of Fish, Wildlife and Parks.

**Doug Sternberg:** The amendments dated January 17, 1997. The Department brought those amendments initially when they presented the bill. After the hearing, there were other concerns that were raised. I've been working with **SEN. CRIPPEN**, the Department of Fish, Wildlife and Parks and **Dr. Siroky** so we have everybody's concerns covered. Everything should be in the amendments dated January 17, 1997 with the exception of **SEN. JERGESON'S** concern.

**Vote:** MOTION CARRIED. ALL IN FAVOR.

**Doug Sternberg:** **SEN. JERGESON** had me prepare an amendment also. I will pass that around now. (EXHIBIT 13) The bill does require people to provide a certain amount of documentation to the Department of Fish, Wildlife and Parks as to why they think a particular "gray list" animal is eligible for importation. **SEN. JERGESON** was concerned that there may be some expense involved with the Department's research in determining whether an animal on the gray list was allowed to be imported. His concern was that any fee that the Department was charged in conducting the research be covered and that the fee be commensurate with the Department's costs involved in determining whether that animal should be imported.

**Motion:** SEN. JERGESON MOVED THE AMENDMENT. (EXHIBIT 13)

**Discussion:**

**SEN. JERGESON:** Say somebody down in Ekalaka decides they want to import an animal on the gray list. There is going to be some cost to the Department to make sure that if he says it's going to be a certain kind of enclosure that is going to keep that animal contained, it is. They're going to have to send a warden or somebody to check out the details and the application as well as any of the other factors they may have and the ability of the person to import that animal. I do not think that the people purchasing hunting and fishing licenses in Montana ought to be



responsible for the cost of reviewing and analyzing applications for the importation of these animals. I think, in fact, that could be argued to be diversion. This is offered so the Department can recover the costs of this new regulation.

**SEN. DEVLIN:** I want to know if the other two agencies that are involved here are going to be able to recover their costs. The Department of Livestock may incur some costs and so might the Department of Health depending on what the animal or plant is. Is the Commission going to take the money and pay them some too?

**SEN. JERGESON:** If I read the language correctly in the amendments, the Department of Fish, Wildlife and Parks shall consult with the other Departments and they will offer their input, but it is not the responsibility of the other Departments to review the applications and make the decision as to whether or not to grant an application to import a particular animal. In the review of the applications, it doesn't appear that it goes beyond a consultation role. If there is some way for them to charge fees in interdepartmental transfer of one kind or another for consultation services, I don't have an objection to that. It appears to me that we're asking whether it's one department or a number of departments that take on a new regulatory role which inevitably has some costs. I think the people who are asking to do something that causes additional costs to these Departments ought to pay a fee to cover the cost of it.

**SEN. DEVLIN:** Did the Department approach you for this amendment or did you just want to put on?

**SEN. JERGESON:** I asked this question of **Pat Graham** the other day. He gave me a handwritten note saying he thought it had been an oversight. Apparently it was never discussed in the development of **SEN. CRIPPEN'S** amendments we have before us.

**SEN. DEVLIN:** I guess you could go to the Fiscal Note if it has any worth at all. It says the impact on the general license count is \$2,650 the first year and \$350 from then on. It depends on where they had to travel to. They don't have anything else to do anyway.

**SEN. JERGESON:** As you remember from our days together on the Natural Resources Subcommittee, we would often spend hours over that amount of money and whether to include it in a budget or not. I don't see any reason why the general license purchasers ought to be paying for this regulation which will allow people to import these strange animals.

**SEN. BECK:** I don't think this will break the Department of Fish, Wildlife and Parks, the Department of Livestock or anybody else at the present time. This law doesn't go into effect until January 1, 1998. They have written the rules. I can't believe the impact is going to be that great. I would rather wait and

see what their impact is. They could say, "This is what it's costing us and we should be reimbursed for our costs."

**SEN. JABS:** They said they're going to put up a list of the gray, black and clean areas. The big expense will be getting started.

**SEN. BECK:** The big expense is going to be the Department themselves in order to do this. I don't think the applicants are going to be a great expense. You're asking that an applicant come in and put a fee up if he wants to apply. I don't know what the list is going to look like before it's done or what animals are going to be on it. That's what I'd like to look at a little bit more before we take full Executive Action on this.

**SEN. JERGESON:** It's not just my concern about this Department. There are other agencies and other bills that we have. Someone could come in with a minor, little bit of regulation they wanted to do about a particular kind of livestock that's not traditional to what we're used to and we say, you're going to regulate this animal, but we aren't going to charge the people applying, that want to buy or sell that animal, a fee for the regulation covered by the Department of Livestock. We're just going to expect the cattle and sheep producers of this state to pay for it, there might be a little different attitude in this Committee.

**SEN. BECK:** Is the Fish and Game asking for this? Isn't **SEN. CRIPPEN** carrying this for the Fish, Wildlife and Parks?

**SEN. JERGESON:** Might be. They ought to add that there should be a fee in here.

**SEN. BECK:** Well, they didn't put it in.

**SEN. DEVLIN:** I feel there is quite a bit of money being spent that is directly beneficial to protecting the wildlife of this state. That's why the Department of Fish, Wildlife and Parks asked for the bill in the first place, I believe. For the amount of money involved, I don't think I can support the amendment.

**Vote: MOTION FAILED. TIE VOTE.**

**CHAIRMAN MESAROS:** We will complete Executive Action on Monday, January 20, 1997 if possible.

ADJOURNMENT

Adjournment: 3:00 p.m.

  
SEN. KEN MESAROS, Chairman

  
ANGIE KOEHLER, Secretary

KM/AK