

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN KEN MESAROS, on January 20, 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)
Sen. Bill Wilson (D)

Members Excused: None

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: HB 57, 01/16/97
Executive Action: HB 57, SB 73, SB 132, SB 107

HEARING ON HB 57

Sponsor: REPRESENTATIVE ROGER DEBRUYCKER, HD 89, FLOWEREE

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. ROGER DEBRUYCKER, HD 89, FLOWEREE: This bill was brought to me by the Department of Agriculture. Submitted written testimony. (EXHIBIT 1) I have some letters that support combining the two committees. (EXHIBITS 2-4)

Informational Testimony:

Will Kissinger, MT Department of Agriculture: I can give you a brief overview of what the bill does and then answer questions. The Alfalfa Leaf-cutting Bee Committee was established in 1981 and assigned to the Department for administrative purposes to advise the Department on rules and regulations regulating the Alfalfa Leaf-cutting Bee industry in Montana. In 1981 the bees had a high value. They are sold by the gallon. At that time they were up to about \$200.00 per gallon. Now the price has gone down considerably and the focus of their program has changed as well. Initially, the Committee was set up to advise the Department more or less on a regulatory basis because the industry was new to the United States and Montana.

There were a number of diseases and parasites which were affecting these bees throughout the country. They were afraid they were going to come into Montana so we had authority in the law to have quarantines, to destroy bees that had diseases or parasites. They have learned through management practices through the years that they can control these diseases and so on. The responsibilities of the Committee have diminished considerably. They have only met once a year in the last few years to go through present issues affecting the lab. There is a check-off on alfalfa seed grown in Montana and that money, like the wheat and barley committee, is used to fund research on diseases, parasites, funguses, etc. which affect alfalfa seed and to prove the varieties of alfalfa seed. (EXHIBIT 5) Submitted written testimony from **Ralph Peck, Director, MT Department of Agriculture** which he continued to explain.

Questions From Committee Members and Responses:

VICE CHAIRMAN RIC HOLDEN: What group asked you to present this bill?

REP. DEBRUYCKER: The Department of Agriculture asked me to bring this bill before you, but it was at the request of the two committees.

SEN. REINY JABS: Is this Committee funded by the fees?

REP. DEBRUYCKER: No. It isn't a license, but it's a fee charged on alfalfa seed.

Closing by Sponsor:

REP. DEBRUYCKER: I don't have a Senator to carry this.

VICE CHAIRMAN HOLDEN: I will volunteer.

CHAIRMAN MESAROS: We will close the hearing on HB 57.

EXECUTIVE ACTION ON HB 57

Motion/Vote:

SEN. TOM BECK: MOVED DO PASS. MOTION CARRIED.

EXECUTIVE ACTION ON SB 73

Amendments:

VICE CHAIRMAN HOLDEN: Have we actually had any amendments approved?

SEN. BECK: We moved some didn't we?

Doug Sternberg: Yes. The Crippen amendments dated January 17, 1997 were adopted. (EXHIBIT 6)

VICE CHAIRMAN HOLDEN: Have there been any other amendments proposed or passed since last time?

SEN. BECK: SEN. JERGESON had an amendment and we voted it down. (EXHIBIT 7)

Doug Sternberg: Those are the only two that I've been approached with.

SEN. LINDA NELSON: I have another question. How is a person going to know about this list? How are they going to be apprised of these animals that they can't have?

{Tape: 1; Side: A; Approx. Time Count: 1:15 p.m.}

Bob Lane, Chief Legal Counsel, MT Department of Fish, Wildlife and Parks: Both departments are going to have to put forth educational effort on this. Education is going to be an important component. We've extended the effective date to give us time to review these animals that are now being brought in so we won't impact anyone until we've come up with a list, had a public review process, had an opportunity for the public to participate in the adoption of the list and enough time to accomplish all of this.

VICE CHAIRMAN HOLDEN: On page 3, line 29 of the bill, I made a notation that the Department of Livestock and the Department of Agriculture were supposed to be included in the rulemaking authority. Was that amendment ever realized in the adoption of the Crippen Amendments?

Doug Sternberg: It was. It is amendment number 18 on page 3. That section inserts that language into the statute and we also put it in the statement of intent in amendment number 8.

Motion:

SEN. HARGROVE: MOVED SB 73 DO PASS AS AMENDED.

Discussion:

VICE CHAIRMAN HOLDEN: I have some problems with this bill and won't vote for it. I voted for the amendments that went onto this bill. I want to point specifically to page 2, line 4. It appears that if the Department wants to inhibit something from coming into this state, they have a current section of law and can develop rules to address the problem we're working with in this particular piece of legislation. I think that statute is actually quite broad. It could mean a lot of different things. I think the current statutes provide us with protection at this point for what we need to do. I'm definitely not satisfied with giving the Department the ability to develop a clean, dirty and gray list. People I visited with, before I came here, said, "Do not pile more on us. If you have a current statute, take care of it." I think this is a bill that will pile on us and build each and every session hereafter once it gets started.

SEN. BECK: Are you interested in going as far as a substitute motion to table this bill?

VICE CHAIRMAN HOLDEN: I will listen to the rest of the conversation if anybody has anything to say and I would be interested in that substitute motion.

SEN. HARGROVE: I will vote for the bill. The major reason being that I've been spending a fair amount of time in the interim and even Saturday here on the Negotiating Rules Committee for the game farm. There is so much emotion involved and so much fear of hybridization and mixing. It has raised the level of attention very high. I have to say, the game farmers have a threshold of abuse they accept that's a lot higher than mine. Nevertheless, they do accept that kind of intrusion and try to understand how it goes. The game farmers were here and testified in support of it. The Department of Livestock is in support of it. It seems just about everybody involved supports it.

I agree with VICE CHAIRMAN HOLDEN, it does add to things. Of course, there are a number of people that were on the game farm last year and saw the level of fussing that went on. The potential still exists. We've gone through a lot of discussion to keep that from happening this time. There were a lot of bills ready to go on this negotiative rules thing and the consensus council have held that down. I'm making a subjective judgement that this would kind of address that. VICE CHAIRMAN HOLDEN has a good point from a legislative standpoint, but I am going to vote for it for that reason.

SEN. JABS: I know people hate rules, but you have to have rules. The way most weeds came in is that people thought they were

pretty flowers. Pretty soon there are weeds all over the country. The same with animals. A lot of people bring in some stupid animals, I must say, for pets and then get tired of them and turn them loose. I will support the bill as well, because I think we need some rules.

Vote: MOTION CARRIES. SB 73 DO PASS AS AMENDED.

{Tape: 1; Side: A; Approx. Time Count: 1:23 p.m.}

EXECUTIVE ACTION ON SB 132

Motion:

SEN. BECK: MOVED DO PASS.

Discussion:

SEN. BECK: This is just saying that there is no permission required for bird hunting and some other hunting, just big game hunting at the present time. Is that what this bill is about?

CHAIRMAN MESAROS: Current statute says you must have permission to hunt on private land if you're hunting big game. This will extend that to all hunting. Right now, if a landowner fails to post their property, it is open to other activities. With this bill you must have permission first.

SEN. JERGESON: We passed the law requiring permission to hunt big game animals in 1975. I had the question then why it separated hunting big game animals from others. It didn't make a lot of sense to me. There was some rationale that I don't even remember. I don't have any problem with the bill and what it's trying to do. Reflecting on the testimony from Mr. Youngberg from MT Farm Bureau, I would like to point out that I had an experience this past summer where I live in town. A fellow that ranches south of Chinook didn't want his pickup beat up from a hailstorm so he parked in my open garage without asking for permission. I thought it a bit ironic since he would like to have people ask his permission to enter his property in the country. The whole concern about access and entering upon or using other people's property is not of exclusive interest to agriculture. There are a whole lot of folks where it's an issue.

Vote: MOTION CARRIES. SB 132 DO PASS.

EXECUTIVE ACTION ON SB 107

Amendments:

Doug Sternberg: The first amendment was one that was presented by **Ralph Peck, Director, MT Department of Agriculture** when the bill was presented. (EXHIBIT 8) I can explain what that will do. There was another amendment also. That was the Option 3 amendment. (EXHIBIT 9)

SEN. BECK: The first amendment, the one that you sent out, was to specifically explain that the \$232.00 was per facility because some have dual licensing in those facilities and they didn't want to have a charge on being an elevator operator and a commodity broker. We wanted to make sure it was defined that they were only going to be billed once for a license.

Doug Sternberg: Amendment number 3 is to clarify that the fee collected is a fee per facility. It is \$232.00 for each facility that's covered under a single license rather than a person paying \$232.00 for their commodity dealer license and expecting to have any number of facilities covered. It's per facility. That is the essence of amendment number 1.

Motion/Vote:

SEN. BECK: MOVED AMENDMENT NUMBER SB010701.ADS. AMENDMENT IS ADOPTED. (EXHIBIT 8)

Motion:

SEN. DEVLIN: MOVED AMENDMENT NUMBER SB010702.ADS DATED 01/20/97. (EXHIBIT 9)

Discussion:

SEN. DEVLIN: I was fairly well convinced by the testimony that there are completely different type of tests that some of the brewing companies have. As you can see from the samples that went around the table, they not only look for weight and moisture like our grain lab does, but a lot of other things that happen to malting barley that they have to be aware of and find out. For that reason, I moved the amendment.

SEN. JERGESON: I'm opposed to this amendment. In the first place, I don't think when you reach a magnitude where a third of the barley crop in Montana is marketed as malting barley that you're any longer in any category of a specialty crop. Specialty crops are what have been exempted from the state grain laboratory laws in Montana. This may set a precedent for exemptions for other crops that we produce. They're talking about Pasta Montana being constructed in Great Falls. What if that firm starts telling producers of durham that they're not going to sign a contract with them unless they waive their right to submit a

sample to the state grain lab. Some of the reasons by which they judge durham are often different from the criteria that's used to judge winter or spring wheat. Why wouldn't that be subject to exemption from this? You may finally reach the point where, do we even want to have a state grain laboratory?

Some folks say the malting barley producers seem to be happy with this. Why should the legislature protect somebody who is happy with the change? To a degree, there has been an element of intimidation engaged in by the malting barley companies, in particular, Anheuser Busch and Coors, to get the producers to support this kind of change in our law with the threat that they will not contract in Montana unless this change is made. That irritates me. These producers may be as happy with this as little business men are if a gang goes around and tells them you pony up a \$100.00 and we'll make sure you're protected from the violence that we're prepared to do to you if you don't pay up. The legislature would say, "Well, we're going to protect those small businessmen from that kind of treatment."

Sometimes we have to decide that there is a level of protection needed that sometimes the victim doesn't recognize they need. I'm opposed to this amendment although I suspect it's going to pass. Quite frankly, I'm not sure this won't foretell the ultimate elimination of the state grain laboratory in its entirety. Then all producers in Montana will be at the beck and call of the large multi-national corporations which purchase grain from Montana producers.

VICE CHAIRMAN HOLDEN: It was my understanding from listening to testimony that the protein level the state grain lab would be measuring was not the major concern.

SEN. JERGESON: That's not the only thing the state grain lab does and can measure. They measure thins and brokens and plumps. I've sent a lot of barley samples into the state just to see if it would come anywhere close to what the malting companies might be interested in and received a whole listing of different categories that they've checked. I'm not sure what different kinds of things the malting companies claim to be checking for that the state grain lab is not capable of doing.

VICE CHAIRMAN HOLDEN: If we pass the amendment, who is actually going to get hurt by it?

SEN. JERGESON: If we pass the amendment, there will not be a contract signed by anybody that does not include this waiving the right to submit a sample. The companies simply won't offer a contract without that waiving being done. I think there are some producers that could get hurt. Most producers are satisfied with and don't appeal the testing that's done by a malting company. I'm not sure what the problem is. If you look at what's in the repealed sections, Section 20 is little more than a rewrite of those. I would argue that in the repealed sections, this waiving

the right to submit is not included in those sections and that this is a major change in public policy in a bill that's said to be a housekeeping bill. If somebody introduced a bill for this specific purpose, I don't know what its fate would be in the legislature. They're trying to piggyback this policy change onto a housekeeping bill.

{Tape: 1; Side: A; Approx. Time Count: 1:36 p.m.}

VICE CHAIRMAN HOLDEN: I'm wondering if the law would permit the barley grower to get a state grain lab check. If a barley owner/grower thought he was getting slighted by a brewster, got a sample and went back to the company with it, people would hear about it. If they began to have a lot of differences in their analysis, they're going to start having some liability claims and court actions.

SEN. JERGESON: Say I deliver some winter wheat, spring wheat, etc. to Columbia Grain and they send it to their company lab and the results come back and I doubt them. I can appeal to the state in which case, the analysis of the state grain lab, is what prevails for the settlement on that grain. If the producer receives a sample back from the malting company and doubts the results, they could still send a sample in to the state, but their liability then is to go to court. They would then have to try to prove that the malting company's sampling was in error with the state results as the only evidence. That would be an expensive proposition. I don't think many producers are going to be willing to hire lawyers and take on Anheuser Busch or Coors.

SEN. JABS: As of now, if they send a sample in and they're not satisfied, does the state prevail?

SEN. JERGESON: I would argue that it does. I don't know.

SEN. JABS: Is that fair? As I understand, part of their criteria, as competitors of each other, is they go by color and taste and things like that. Each one has a different criteria of what variety of barley they want. If you force one of these breweries to take an inferior product, aren't you going against or hindering their business?

SEN. JERGESON: They're not near as competitive as the farmers are. I don't have any confidence that Coors or Anheuser Busch won't start rejecting more barley because they do want prettier and better tasting beer. They will be tougher on it and the farmer really has no effective, affordable means of appeal with passage of this bill.

SEN. HARGROVE: If you are opposed to Option 3, are you in favor of any of the options?

SEN. JERGESON: It looked to me like it's mostly a grammatical difference in the way those amendments are set up. I don't see any material difference in either of the options.

SEN. NELSON: I know they lined up for this. I think it's a very strange thing to ask to be exempt from using the state lab. Even with this "may" in there, it doesn't seem like something we would want to put in law.

SEN. MCNUTT: I thought so too. When this group came in here, it was kind of like old home week. I spent 20 years at Choteau and we did a lot of work with the barley growers. It is kind of akin to sugar beet growing and that sort of thing. They have a real point here because I know for a fact that both Coors and Anheuser Busch have different criteria on what they want to buy. I'm going to vote for the amendment because I think they need this in their contract. I asked a few of them, "Are you having problems?" They said, "Well, you're dealing with corporate America. Yeah, we have problems, but we have a remedy." If they don't like what's going on, they have a committee that goes in and they talk about it. They can also send a sample to the state lab and take it to the committee. You're not slamming the door on them entirely. I didn't get the impression that they're unhappy with this. They wanted this.

SEN. DEVLIN: They are in the bill. We're trying to take them out. They are under these regulations if we don't take them out with the amendment. I don't believe that, under the various characteristics that those companies look for in their barley, the state lab is set up to do those types of observations. They probably could be, but the state would have to hire some malting expert to make those determinations on color and blight.

SEN. BECK: At the present time, they are exempt. They do not have to go to the grain lab. We're changing the definition of agricultural commodity. They were called a broker or whatever. That's why they're under this and why they're asking for the exemption. It's the very exact thing that **SEN. MCNUTT** is talking about, different breweries ask for different qualifications for their barley and the state grain lab is pretty much straightline on everything they test. They test the same for all commodities. Anheuser Busch might be looking for color, frost damage, sprouting, etc. This is what they explained to me and this is why they're asking to be exempted. I would like to see you put the amendment in here for now. If it becomes a problem, I think we can always come back and put it in later. Right now it's a real problem if we put it in because they would want the whole bill killed and there are some other good things in the bill. The message I got from them is if we didn't add that third option, they didn't want see you have any part of...

{Tape: 1; Side: A; Approx. Time Count: 1:45 p.m.; Comments: End of tape, some testimony lost.}

SEN. NELSON: Clarify for me then, could the beer companies use this as leverage to not use the state grain lab?

SEN. BECK: I couldn't say. I think it's up to the producer whether they want to go to the state grain lab or not. I think the beer companies want to keep that test to themselves. I think they want to test for the cracked kernels and all the rest. My concern is one other part of it. I don't know how much grain is produced in Montana right now by the breweries. If we make it too tough on the breweries, they may not want to do business in this state and might quit writing some contracts. I wouldn't say they would go completely out of the state, but I would almost bet they would put pressure on certain individuals. Then you might see the grain grown in Idaho, Wyoming or some other state. I don't want to see them lose that incentive. These guys said they get \$1.50 to \$2.00 per bushel higher for the malting barley than they would feed barley. If they're willing to accept it and it becomes a problem, I guess that's their problem. My concern, right now, is that I want to protect them. I thought we were protecting them by having the grain lab included in here. They are saying the opposite. They feel they have more protection by not having it in.

SEN. MCNUTT: Coors and Anheuser Busch have a set of standards that they write in their contract for buying malt barley. In the past, some people have not been able to sell to Coors, but Anheuser Busch has taken that barley. You're contracting to bring in something to specifications. This is not just blanket malt barley. We need to keep that in perspective. All malt barley is not created equal which is why they're asking for this.

SEN. JABS: They told me 50 percent of their barley is bought out of the contract so they don't contract everything they buy. They buy a lot of it from the open market.

SEN. JERGSON: Several years ago, Coors bought most of their malting barley in Colorado. The malting barley farmers down there decided they would form an organization and bargain on the price with Coors. They did and wouldn't sell Coors any of their barley. Coors went out and bought feed barley until they broke that organization. You mentioned that these producers think they have protection. The protection is that we won't withdraw on you as long you go along with our demands. Maybe we don't have any choice. Maybe we can't do anything about it in Montana.

Last session we had an important water bill and a prominent Democrat came before this Committee and said, "If you don't pass the amendments to this bill that we want, Micron won't locate in Montana." That kind of economic threat is going to change public policy in Montana. I was offended when **Evan Barrett** came in with that kind of message and let him know it. In a way, I'm offended that the malting companies have said, "This law is either going to be changed to suit us or we simply will withdraw from making

any contracts with producers in Montana." Maybe we can't do anything about it, but I don't think it's a very good thing.

SEN. HARGROVE: I suppose we have to make a judgement whether it's a threat or a fact of life. Is the market working, are they actually going to withdraw some contracts? Then we probably have a right to know that to put it into our thinking in considering this amendment. If it's strictly manipulation, then we shouldn't. How are we ever going to make that judgement?

CHAIRMAN MESAROS: In the days preceding this hearing, I have had quite a few phone calls from the barley producers regarding this issue. This amendment will be placing it on an individual basis and it's their prerogative to react to the market basis and place. We all witnessed the united support and it would be prudent to include their wishes. They are the ones who are directly involved with it. I think this will give them the flexibility to react accordingly.

VICE CHAIRMAN HOLDEN: Because this Committee is recorded and the minutes will be reviewed later, I want to make a clear observation on the testimony that we had that dealt with the state grain lab testing their equipment against Coors. Coors already had a standard procedure of testing their equipment to the state grain lab. Anheuser Busch sounded as if they did not. They probably test against the federal system in some way. I thought perhaps we should bring in legislation to require the breweries to test their equipment to the state grain lab like Coors already testified that they did. I haven't brought up that amendment and I'm not going to. I think those breweries should take action on their own to get their equipment in sync with the state grain lab so we don't have to legislate that later or address that part of this whole issue.

SEN. BECK: Good message. Sounds to me like Coors was already doing it. It sounds like Anheuser Busch was not. There are other distributors out there and I don't know how they test it. I believe Western Grain buys a lot of malting barley, but I think they are in the process of moving the barley to one of the breweries. It could go to Rainier or any of the breweries. I hope it would encourage them to have standardized equipment because if there is anything along the line that would upset the growers it would be something on that order.

Vote: AMENDMENT NUMBER SB010702.ADS ADOPTED. (EXHIBIT 9)

Motion/Vote:

SEN. BECK: MOVED SB 107 DO PASS AS AMENDED. MOTION CARRIES.

ADJOURNMENT

Adjournment: 1:53 p.m.


SEN. KEN MESAROS, Chairman


ANGIE KOEHLER, Secretary

KM/AK