

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN KEN MESAROS**, on February 7, 1997, at 3:09 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: SB 281, 02/05/97
Executive Action: None

HEARING ON SB 281

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS

Opponents: Pam Langley, Schulz Grain, Great Falls; Shields
Valley Grain, Wilsall
Bryan Jones, Montana Grain Elevator Association

Proponents: REPRESENTATIVE PAUL BANKHEAD, HD 72, HERON
SENATOR LINDA NELSON, SD 49, MEDICINE LAKE

Opening Statement by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS: This bill does two things. It changes the requirement that a warehouse applicator financial statement has to be prepared by a Licensed Accountant. I've changed it to another comparable profession. It would also require the Department of Agriculture to adopt a fee schedule for the warehouse license based on the volume of the commodity storage for the warehouse. The reason for this bill is because I had a grain elevator owner in my area call me and explain to me how much it cost him to get a license to store grain. He stores less than 40,000 bushels of grain per year. The license for that is \$232. He does this as a favor to the people in the community and it's getting to the point where it costs him more to store the grain than he can charge them to store it and felt the license is discriminatory. He also feels he cannot afford to hire a Licensed Public Accountant (LPA) or Certified Public Accountant (CPA) to do his books because it would cost him another \$300 or \$400. His total would be about \$700 and he would have to charge people enough to cover that to store less than 40,000 bushels of grain.

I wasn't sure how to go about it when I first brought this bill forward. Evidently the Subcommittee that deals with the Department of Agriculture asked them to bring a schedule that would require graduated fees. The Department would come in for a doubling of the fees and all of the warehouses opposed that increase. They said it was too much for them to bear and, if that's what they had to do to stay in the Department of Agriculture's program, they would probably opt out and get into the federal program so it wouldn't cost them as much. This is a fair and equitable way to distribute these fees. The issue of the LPA may be debatable. I understand that the grain industry had some problems a few years ago. If there is a way you could permit these people who are small dealers to provide that convenience for the people in their area without putting them out of business it would be nice. **REP. PAUL BANKHEAD** would like to testify in favor of this bill, but he's in House Education now.

CHAIRMAN MESAROS: I will reserve the right for **REP. BANKHEAD** to appear as a proponent if he appears before we close the hearing.

Opponents' Testimony:

Pam Langley, Schulz Grain, Great Falls; Shields Valley Grain, Wilsall: These two smaller commodity dealers are opposed to this Legislation and are unable to be here today. They feel that the fees are already graduated when you take into consideration the number of licenses that Harvest States buys. They license 31 facilities in the state. If you multiply \$232 times 31, their fees are considerably higher than others. They are also licensed as state warehouses which is unusual for the large ones because the others are federal and pay equal fees into the federal on the warehouse side. Columbia Grain, General Mills and PB are all

federal. Also, they want you to think about the integrity of the grain industry from the standpoint of a producer. Do you really want someone who wants less financial responsibility and doesn't want to keep records the way other companies do? If they're not willing to put up \$232 for a license, do you really want them handling your grain? The potential for a fly-by-night to come into the industry becomes much greater. It becomes riskier for the growers in that area. I appreciate **SEN. STANG'S** effort to help a constituent.

{Tape: 1; Side: A; Approx. Time Count: 3:15 p.m.; Comments: Shuffling of papers covers some testimony.}

Bryan Jones, President, MT Grain Elevator Association: We represent about 140 grain elevators or suppliers to the grain business. Although we applaud **SEN. STANG'S** efforts to help a constituent, we believe this bill would not benefit farmers in Montana or agriculture in general. In fact, this bill may have a component that could potentially be damaging to farmers in Montana. The current structure of fees for commodity dealers and commodity warehousemen is the best mix available for all parties involved. This idea of graduating fees has been taken up in the past by the Elevator Association and the Department of Agriculture. They have never really come to a level where they felt the graduation that could exist between the smaller elevators and commodity dealers in the state and the bigger ones would be wide enough to really justify the administrative procedures of dealing with that and the money that would make the difference. As far as commodity warehousing, it should be noted at the outset that commodity warehousemen have the option for licensing the warehouses in two different ways. They have the option of licensing with the federal government or the state.

The major grain companies, with the exception of the major coop that we have in the state, are federally licensed warehouses. The reason for that is those companies have stored CCC grain over the years and in order to store that product you have to be a federally licensed warehouse. You don't have to be licensed as a federal and state warehouse both. In our view, a graduated warehouse fee would hurt the small and middle warehousemen. There is the potential, if the fee was raised too high, the companies at the wider end of the spectrum that have bigger warehouses would probably opt out of the program and become federally licensed. This would hurt the Department's agriculture revenues. The net result of that would be to increase the burden on all the other elevators that are state licensed which are primarily state licenses because of their size. In our view, the bill also suggests in Section 1 that it could potentially decrease the integrity of the financial reporting system by allowing less than a licensed accountant to prepare financial statements for grain companies. If we change the whole law, it would affect everyone in the state. We believe it could affect the way financial statements are for all grain companies.

As everyone agrees, commodities can be a volatile and risky business. Do we really want to have anything less than licensed people doing the accounting? I'm sure everyone can remember, in the recent past, warehousemen becoming insolvent and leaving Montana farmers unpaid for their products. There is a certain amount of risk in lowering the financial bar for commodity dealers and warehousemen.

The second part of this bill deals with commodity dealers' fees. Under the current structure, it's our view that commodity dealer licenses are already graduated based on the number of facilities that a particular company owns. The total percentage of the funds generated for the Department of Agriculture are paid by the companies that are bigger. The Department of Agriculture informed me that roughly 60 percent of their time, in terms of dealing with licensing and commodity dealer licenses, is spent with small entities or small companies. The other 40 percent is spent on the rest. Under the current structure, the vast majority of agricultural licensing in that budget is being paid by those who are receiving the smallest amount of benefit.

The state grain law is there to protect producers who deliver their wheat and barley to elevators to make sure they get paid for it. It seems somewhat dangerous to me in such a capital intensive and volatile market place to reduce requirements for businesses that are acting as commercial warehouses. Regardless of how big or small, they're acting as a commercial warehouse if they're storing grain and being paid for it. It reduces the requirements for reporting financial data on those operations. If we do this, how will the overall system be more secure for Montana farmers than it is right now?

There is also language in the Commerce Department that talks about what a CPA can and cannot verify. I'm not sure you can have someone who is not a CPA do these financial things. At a previous joint session meeting of the Natural Resources Committee, we discussed the fees and the graduation of it. If the industry could agree in terms of graduation, we would go forward with it. In speaking with the various parts of my Association, we have not found a graduation that we think will work for us and, in general, feel the flat fee of \$232 is probably the best approach.

Proponents' Testimony:

REP. PAUL BANKHEAD, HD 72, HERON: I support SB 281. The constituent spoken of by **SEN. STANG** is my constituent as well. When this first came to light, I approached it from a small business person's position. The deeper I got into it the more I understood that we have asked our government to maintain and guarantee certain things in this society. One of them is a safe, sanitary food supply. Part of these fees are about that and that's a good idea. I like to know, as a livestock producer, that I'm going to get good, clean grain and everything is going

to be fine. The general feeling about fees for a small business operator such as an elevator is, because the public has asked for this, that we can have the elevator not absorb the cost because we all know that doesn't happen with margins as they are, but pass it on. It is passed onto the livestock producer. That would be fine except when I take hogs to market, I don't negotiate. I get what I get and can't pass it on. Because the public asked for this, we should maintain this in such a way that we can stay in business and maintain the food supply in a safe and sanitary manner. The graduated fee makes sense and is workable for everybody. Regarding the records, there is only so much you can afford. We're not talking Exxon or Transamerica here. These are plain elevators and there are a lot of little elevators in Montana. They should be allowed the flexibility to provide records that will adequately meet the requirements and not cost an arm and a leg. This legislation does that.

SEN. LINDA NELSON: I wanted to offer something in the way of testimony. We talked about this considerably on the Natural Resources Subcommittee of Finance and Claims. We talked about the warehousing and decided that something really needed to be done and were glad to see that **SEN. STANG** had this vehicle to address this. There are a number of us on this bill that are a part of that. We were thinking of drafting a Committee bill that would have done something like this.

Questions From Committee Members and Responses:

SEN. TOM BECK: Is it your intent to have this revenue neutral after the fees are adjusted?

SEN. STANG: Yes, that would be my intent. Because of the makeup, there might be a little revenue raised or lost. I asked the Department to bring a proposed fee schedule. I wouldn't care if you put the fee schedule in the bill. A lot of us don't like this rulemaking authority that gives departments the ability to change things and hope the Committee would take a look at that fee schedule. You can make it revenue neutral or whatever you like.

SEN. BECK: That's the point I'm making. I see the fee was in the bill before and you crossed that out. You've allowed it to be rulemaking authority, but after July 1, 1988, it can't be changed without approval of the Legislature. I would like to know what the fees are going to be if that's possible.

{Tape: 1; Side: A; Approx. Time Count: 3:30 p.m.}

Ralph Peck, Director, Department of Agriculture: This handout lists the number of commodity dealers and public warehousemen we currently have licensed in Montana. **(EXHIBIT 1)** We can put different fee structures together with that to make this program revenue neutral. We haven't had the time and also haven't made a telephone survey to get all of the producers surveyed to come up

with what they would like to see for a fee structure. My position as Director of the Department has been that it's the Department's duty to serve the public. Those people should have input into the process and we shouldn't define the fee unless you direct us to do so. We can start all the way from \$50 at the bottom to the maximum of \$500 at the top and make it revenue neutral. There are a lot of combinations we can do. We'd love to have your guidance, but if you would like us to establish them we could certainly do that. The industry needs to have a lot of input in that process. We haven't developed a fee structure and under existing law, we would have to go through the rulemaking process. We would meet with the Grain Elevator Association and be sure we had input from all producers. If we couldn't get concurrence, we would hold a public hearing and get all the input possible before setting a fee structure that was graduated.

CHAIRMAN MESAROS: How does one arrive at \$232 for a fee?

Mr. Peck: Two sessions ago, the Natural Resources Subcommittee said this program should be 50 percent self-supportive. We worked with the industry in that regard. They decided they would like a flat fee. So, two sessions ago, they established a minimum fee of \$232 and as costs increase they said the Department, by rulemaking authority, could then increase those fees with the option to make anything increased graduated also. We couldn't exceed \$500.

CHAIRMAN MESAROS: For clarification, is it currently \$232 to \$500?

Mr. Peck: Yes. The statute gives us the ability to raise it to a maximum of \$500. The \$232 pays for half of the cost of the program.

SEN. GERRY DEVLIN: What does this guy charge a bushel for this storage? Do you know?

SEN. STANG: I believe he said the going market rate was around two or three cents a bushel to store it.

SEN. DEVLIN: A month?

SEN. STANG: Yes, and he could do this voluntarily but he couldn't afford to run the warehouse and can't put it on as some other fee or rent because if he does, he's subject to a \$10,000 fine. That's what brought this to his attention. He was trying to find another way to charge this so he didn't have to buy the license and the Department threatened to fine him. You can't afford to charge more or people aren't going to do it and there aren't that many people raising grain in the area.

SEN. DEVLIN: You mentioned you testified for commodity dealers. What kind of storage does the one at Wilsall have?

Ms. Langley: The one in Great Falls is solely a commodity dealer. He buys most of his grain in dealer-to-dealer transactions. Shields Valley Grain storage capacity is 130,000 in one facility. Then he has a smaller facility at Clyde Park with a storage capacity of roughly 61,000.

SEN. DEVLIN: Does he have to buy a ticket for both of those facilities?

Ms. Langley: Yes, \$232 times four. For Wilsall he pays \$232 for a commodity dealer and \$232 for a warehouse and he does the same at Clyde Park.

SEN. DEVLIN: There are some instances where there is a floor and everybody above a certain level is charged one fee and anybody below it is a separate fee on down. We do it for nurseries. Could something like that be arranged in this situation?

Mr. Peck: Yes, hopefully that would be part of the discussion. Removing the \$232 minimum removes the floor so you could have a \$50 or \$100 based floor. Then you could have two or three graduations or you could have a very complex one. That would be part of the rulemaking process where we would get opinions and input from all the people impacted and try to develop a fee structure that would meet the industries input.

SEN. DEVLIN: I see there are 57 that are 25,000 or less. Each of those are paying \$232 a piece aren't they?

Mr. Peck: That's correct. They are commodity dealers that buy and sell grain. The far column is the guys that store grain. I think **SEN. STANG'S** constituent was just storing grain. I don't know if he was going to buy and sell.

SEN. STANG: The constituent I brought this in for isn't a commodity dealer. When I was first going to introduce this bill I only wanted to deal with the public warehouse license. In talking to the Department they mentioned that the Natural Resources Subcommittee wanted them to look at their fee schedule. In order to accommodate the Department and the request of that Committee, I put both of them into this bill. It's fine if you just want the public warehouses.

SEN. HARGROVE: Is it safe to say the larger the warehouse or elevator, the cheaper it is per bushel? I suppose that depends on whether they stay full or not.

Mr. Jones: I don't think an elevator's basic capacity is any indication of the volume of commodity that may or may not go through there. There are some elevators that are in very good production areas. They may have a lot of capacity, but they don't move very many bushels.

SEN. HARGROVE: Could you make a guess from your feel for the whole industry as to whether that bears out? Do those that have more capacity stay full enough for it to be cheaper or is it not that uniform?

Mr. Jones: I think people would hope if they had bigger elevators and were paying for them they could put bushels through them to make that work. I'm not sure that's always the case.

SEN. BECK: Didn't we try to eliminate some of that duplication between the warehousemen and commodity dealer in SB 107 so they didn't have to buy two separate licenses?

Mr. Peck: We did clarify a lot of information in SB 107. We combined it in purposes of the State Grain Laboratory, but the two are separate licenses and remain separate.

SEN. BECK: I noticed, in this bill, you had some latitude before. Does the state pitch in 50 percent of this program also?

Mr. Peck: The existing process is it's 50 percent self-supported. The Executive Budget came in with a request to make it fully self-supporting which we could have done by rule should that be the direction. The industry presented testimony in that regard, considered that testimony and believed fees were high and charged enough and made the decision to keep it at a current funding level of 50 percent self-supporting and 50 percent General Funded.

SEN. NELSON: The Committee especially said they were to go out and try to work on something because their direction was to get this more self-supportive. Weren't they supposed to come back in two years with some sort of an indexing formula?

Mr. Peck: That was our understanding of the action of the Committee. They did ask that we work on that for the next two years and come back and take a look at the graduated fee structure and also the potential for more funding of the program. Under existing statute, the \$232 could be the base and it could go up to a maximum of \$500. With the modifications, there is no base so you could go all the way from zero.

SEN. NELSON: Do you see this bill as being workable? Could you come up with something that would be fair and comparable and work out the details so we wouldn't have to rehash this next Session?

Mr. Peck: We believe we can work with the industry and carry out the wishes of the Legislature. I think we would have to come back should the Legislature decide to change the amount of funding variability. The fee structure would have to be reviewed by the Legislature after 1998. If there are any changes in Subcommittee as far as the proportionate funding, General Fund versus fee revenue, then we would have to have some kind of bill.

CHAIRMAN MESAROS: How much is it currently costing the State?

Mr. Peck: Current budget was approximately \$130,000. This raises about \$68,000.

VICE CHAIRMAN HOLDEN: When you're talking about your constituent being a small-time elevator, are you saying that the license fee of \$232 is going to put this guy out of business?

REP. BANKHEAD: The directions were given from Appropriations and originally it was for \$464. We got to looking at it and the problem is, it's not just \$232. There are several of these kinds of things he is paying and when you add them all up they get to be pretty expensive. He's not making any money. He's helping his neighbors out by storing some grain to have seed because they don't have any place on their farms. Somebody comes along and says you can't have that in there. You can't help your neighbors out when you start complying with all the regulations because it comes out of your pocket.

SEN. BILL WILSON: You talk about warehousing the grain and the guy has an elevator and has to pay this fee. What about these bins? What are they classified as? They're storing grain in these bins on the farms. I see them all over.

SEN. STANG: I guess they're called grain bins. They're not an elevator. The elevator is where they haul to, collect it, and ship it out on trains or reload it on trucks to be hauled to another place. In some cases, they don't have their own storage bins. They store it there until a time they deem it's financially the right time to sell it and then ship it on. Is that right? I'm not a grain farmer.

SEN. WILSON: It's just a matter of timing. The guy warehouses it rather than selling it to a commodity dealer like Cargill. Does he pay this guy too? Is your constituent on a rail line?

SEN. STANG: This constituent, in particular, has the grain storage for the convenience of the few grain growers in the area. In order to help with that business, he also does feed and grain sales and sells other things to the ranchers in the area to try to keep the business going. If he relied solely on the income from the elevator, it wouldn't be there. It is the last elevator, to my knowledge, in Sanders County.

SEN. BECK: It sounds like they want to get this self-funding. If I read this bill correctly, it might be the time to really jack the fees up before July 1, 1998, because the Legislature has to adjust them after that. Am I correct in saying that?

SEN. STANG: Somewhat correct. The way this would work is not exactly the way I want it to work, but I was told I couldn't do it that way. The fees will be set by the Department through their rulemaking authority before July 1, 1998. If they want to

change those fees after that time, they must get Legislative approval. I would be happy if you wanted to put the fees in the bill and do it yourself without the Department doing it. Not knowing that much about the grain business, I thought it would be better to work within the system that's there for that.

SEN. BECK: Would you be favorable to putting it in as it was in existing law? If, after evaluation of a commodity dealer warehouse, the Department determines that the revenue for license fees is inadequate to accomplish the purposes of this chapter, the Department may, by rule, increase the license fee. That has been crossed out. Did you have a reason for doing that?

SEN. STANG: I've been around here long enough to know that giving an agency rulemaking authority can scare you to death. It would mean they could come in and go to the \$500 limit. Maybe as Legislators we wouldn't want them to do that and would then have to come in and change their rule. I thought it best to have them come before us before they make that change rather than have our constituents say, "Why did you let them do this?" In turn, they can say the Legislature did it and slap the blame off where it really belongs.

{Tape: 1; Side: A; Approx. Time Count: 3:48 p.m.; Comments: Turned tape over.}

SEN. WALT MCNUTT: You said if these fees get too high they will opt out of the state program into a federal program. Could you explain that a little more and give us some idea of what too high of a fee is that triggers this?

Mr. Jones: We're talking specifically about warehousemen. The primary, major company who is licensed as a state warehouse is Harvest States Cooperative. They have 31 elevators in the state. They are the only major company licensed as a state elevator. If it came to a point where they felt they were too high, they could leave the program and license their elevators with the federal government. There wouldn't be any revenue from those 31 facilities for the state. I talked with the Natural Resources Subcommittee and the reason they agreed that the program should be at least half funded, and the MT Grain Growers supported us, is that the benefit of these laws are primarily to benefit the producers. There is a huge benefit to the producers in the sense that the grain industry is solvent and good and they can get paid for their grain.

This is a chart given to us by the Department of Agriculture. **(EXHIBIT 2)** If you look at the fee structure for licensing and for commodity dealer licenses, the grain elevators are paying 50 percent of the budget for the Department of Agriculture. If you look at the pie chart, our industry is only receiving 16 percent of the benefit of those funds that the Department is spending on licensing and commodity dealers. We're paying 50 percent of the budget and we're only receiving 16 percent of the benefit. In a

sense, we subsidize the other components of the Department of Agriculture and what they do. Farmers and society as a whole benefit from a grain industry that can pay their bill. If an elevator is being paid for storing grain and it goes out of condition, they are liable and have to take the market loss for that. If grain goes out of condition with other people they may not be able to absorb the cost. The \$232 for a commodity dealer license is a very small amount of money to pay. If you put 30,000 to 40,000 bushels of grain in a bin, you have \$120,000 to \$160,000 worth of product sitting there. If you don't handle it right and some comes in wet or you get a load of heat damaged grain, something like that could destroy the whole bin. We're not talking about a small guy with a little bit of risk. We're talking about the potential for a lot of money if things don't work exactly right. There are a lot of risks associated with this business. You shouldn't do it or should charge more so you can afford to take on those risks.

SEN. REINY JABS: What is the advantage of being with the state or federal program?

Mr. Peck: It becomes a cost and convenience factor. In fact, I asked if we could do away with the state warehousing program and go federal. The answer was no because it provided a service especially for the smaller producers who didn't want to go through the expense of meeting federal OSHA and federal warehousing requirements. It was easier for them to walk through the state system. If they do not store Commodity Credit (CC) grain, there is actually a savings until they get to a certain size. Then they have to make the decision whether they want to stay with the state or go with the federal government.

SEN. JABS: Can they go back and forth? If they quit having CC, can they go back to the state?

Mr. Peck: Yes, we have two individuals who are looking at that right now.

SEN. JABS: In Hardin, for instance, he buys and stores grain. I have grain there now. In fact, you leave it there for 20 days after you harvest. After that they charge you three cents a bushel per month to store it. Does he have to have two licenses?

Mr. Peck: That's correct. At one time, we called them all warehousemen. When the coastal trading had some major problems, the law was revamped at that time. It was rewritten and separated out. Part of the reasoning was some people don't store grain, they just buy and sell it. Other people store it and some do both. We have a bonding and licensing requirement for both sections to be sure that when you store your grain they keep records on it, it doesn't disappear and if it does disappear or goes out of condition and you don't get paid, then you can come back to a bond that the Department of Agriculture has on that facility. The same thing if they buy it and you don't get paid,

you can come back to the bond. We actually go in and have authority under the law. It seems like we've had to do it about once a year. We close the facility out, sell the grain and settle up all the accounts and be sure the producers are paid the highest amount we can for the grain that's in their facility plus the bond.

{Tape: 1; Side: B; Approx. Time Count: 4:00 p.m.}

SEN. JABS: We had Pam Langley say she's representing two small grain commodity dealers and they're against this. You're representing a small warehouse. Why are they against it and you're for it?

SEN. STANG: The capacity of those so-called small ones, if you look at your chart, both come under the 50,000 to 125,000 capacity. I'm looking at people who are under 50,000. This gentleman in Plains is 40,000 or less. Both the people she talked about I wouldn't consider small. I would consider them in the middle since they were both above the 50,000. I think they were both commodity dealers. If you want to take the commodity dealers out of this it's fine. I was just trying to be accommodating to the Department and the directions they got from the Natural Resources Subcommittee. I thought this would be a good time to work on this proposal. I don't know why they're opposed to it. For example, say the fee for under 50,000 was \$50 and the fee for 50,000 to 125,000 was \$125 they would be saving \$250 for each place. There must be reasons other than the money they could save.

SEN. JABS: You said you're representing the small commodity dealers. Are you representing all of them or just these two?

Ms. Langley: These two. These two individuals testified against the increase in fees in the Committee that **SEN. NELSON** sits on for the hearing on increasing the fees. Incidentally, in that hearing I testified for **SEN. STANG** opposing the fees which was something I had never done before. I think the driving force behind this is the Legislature moving to fee funding of all of the programs. Nobody wants to pay the fees. The big guys in the Association said we're one company. Why are we paying 31 commodity dealer licenses. The little ones don't want to pay, the medium ones don't want to pay, nobody wants to pay is what is happening. The whole program is for grower protection. When you have Harvest States paying for 31 facilities twice, it is graduated. There may be a difference between the warehouse program that **SEN. STANG** is discussing and commodity.

SEN. DEVLIN: When the commodity dealers pay this, they have to be bonded also. They're insured. Is this what I'm seeing?

Mr. Peck: That's correct. When they get their license, they give us a financial statement that's signed off by a Licensed Accountant that says it's right and then, based upon the law, we

determine whether their financial assets and debts are correct and then determine the amount of bond they would be required to have based upon the volume that they buy and sell.

SEN. DEVLIN: That's in case they ruin a bunch of grain or something like that?

Mr. Peck: In case they don't pay somebody.

SEN. DEVLIN: Is there a similar thing when you license a public warehouse?

Mr. Peck: That is basically correct. It's to be sure that when you go to pick up your warehouse grain that you warehouse there, it's still there and in good shape and you can get it back.

SEN. DEVLIN: Are they insured?

Mr. Peck: It's required to be a bond. The bond can either be from an insurance company, a CD, or a letter of credit.

CHAIRMAN MESAROS: There was a comment that there may be something that precludes someone other than a Certified Accountant conducting these financial statements. Was that question answered?

SEN. STANG: I don't know that it was answered. The current law, at least interpreted by the Department, means they have to have a Licensed Public Accountant or a Certified Public Accountant review their books and prepare their financial statement. The way we would like it to read is it doesn't have to be one of those two people, but it has to be somebody who is in the accounting business. There are a number of accountants out there who are bonded and prepare books. They just haven't passed their CPA or LPA test. Most are tax practitioners and do mainly tax returns, but they do financial statements as well. As a matter of fact, I've done the financial statement for our store for the last 15 years because I have a degree in accounting and my bond person, who does our Fish and Game and liquor bond, has accepted that for years. Maybe there's not as much money tied up as there is in some of the granaries. If the Committee wishes, they could also tie that requirement to the smaller warehouses. Let the smaller warehouses go to someone in the accounting field where it won't cost them as much money. You probably can't talk to a lot of those CPA's for less than \$500.

SEN. HARGROVE: Is there a liability, licensing question or requirement that has this requirement in here for a licensed accountant?

Mr. Peck: This was debated fairly extensively after the Coast Trading incident. The discussion, at that time, was not to just require a CPA and eventually they concluded and it was put into law to have a Licensed Accountant or CPA. We tried to see if the

definition under state law applied for a tax practitioner. We couldn't find a definition in that regard. I visited with our attorney and there is some question whether the language we came up with meets the Department of Commerce's criteria under Licensed Accountant. We don't have an easy answer for that. We want to be sure the financial information we receive is prepared by someone who knows what they're doing and can verify it. The bill requires a compiled statement, not an audited statement. That was debated quite heavily when the bill was passed. We want to be sure the numbers are real.

SEN. JABS: On this chart you gave us, I see that one business can be duplicate, on both sides of this thing.

Mr. Peck: That's correct. Those are the total number of licenses we have out there. We have a lot more commodity dealers who are buying and selling grain than those that are storing it.

SEN. JABS: Storing only, but they could be both?

Mr. Peck: Yes.

SEN. BECK: Are we a little premature with this bill? Did the Finance and Claims Subcommittee on Natural Resources give you some direction about going back and meeting with the industry and establishing the fees for the coming year on a graduated basis? Rather than try to pass this bill, maybe we ought to have those fees up front to put into the bill before we passed it out of the Legislature. Do you have a comment on that?

Mr. Peck: I think that was our direction at one point. To go out and work with the industry to see what we could come back with and work towards graduated fees. In my opinion, there was some concern whether we would be able to succeed in achieving a graduated fee basis. There was indication that maybe Legislation should be looked at to force the issue. I don't know that there was ever a conclusion in that direction, but I was asked to visit with **SEN. STANG** and bring this information to his attention by a couple of the individuals in that Committee.

Closing by Sponsor:

SEN. STANG: The issue with the Subcommittee was that they would prepare a Committee bill or would use my draft to do it. Rather than go through the process of doing a Committee bill, they said go ahead and prepare the draft. The members of the Subcommittee signed onto this bill because they think it is something that needs done. The graduated fees need to be looked at. This bill would give the Department, through their normal rulemaking authority, two years to do it and bring the fees back to the Legislature like they would if the Committee had done the bill. Don't get caught in the smoke for the fire. The license is different than the bonding. The bond is what protects the grain that's in the elevator, not the \$232 license. The bond, if they

have the correct insurance, protects and pays if that grain goes bad. People still have to be bonded and I agree with that. The fee is just too high for somebody that is a small operator. At the risk of making somebody mad, it's kind of like the fox guarding the hen house. We have the industry determining their own fees. I would love to be able to tell the Department of Health how much they can charge to inspect my store. The Grocers Association should come up with those fees. They get outrageous at times, but I don't have anywhere else to go. If my fee is too high, I have to pay. I can pass it on to the customer until it gets too high and they decide to drive to Missoula to buy groceries. Then I don't pass it on to anybody. I'm pretty much in the same position as this guy. This is not a perfect bill, but it's an idea we can work on. I'm more than willing to work on it with this Committee and spend the time to do it.

The graduated fee schedule should and could work. It's fine if we need to change this bill to fit that and we may need a better definition of the accounting thing. I understand the need for good, sound books when people are loaning money or holding things. If someone was issuing a bond to a warehouse and didn't like the person who signed the financial statement or they did it themselves, they're going to require that they get it from somebody else before issuing the bond. I don't think the state needs to require it. A good, sound businessperson will not bond someone that comes in with a financial statement scratched on a piece of paper wanting a \$400,000 bond because the insurance company might have to pay if something happens. They're going to ask for more than that. Banks ask for more than that when they give you a loan. Changing this requirement may not help him at all because the bonding company may still want you to have a Licensed Public Accountant do this.

I'm more than willing to work with the industry and the Committee on the bill. It's a good small business bill. The bigger elevators may think they need to move on. I don't quite understand how maybe a \$25 or \$50 increase in their fee license spread over the amount of bushels they do is going to put them out of business; however, an increase in the \$232 to someone who has a limited capacity and has nowhere else to spread it could put them out of business. I hope we can work with them and come up with a schedule that will work over the interim, but we need this bill to do that.

CHAIRMAN MESAROS: We will close the hearing on SB 281 and will not take Executive Action today.

ADJOURNMENT

Adjournment: 4:15 p.m.


SEN. KEN MESAROS, Chairman


ANGIE KOEHLER, Secretary

KM/AK