

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN KEN MESAROS**, on February 10, 1997, at
3:11 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 269 - 02/04/97
Executive Action: None

HEARING ON HB 269

Sponsor: REPRESENTATIVE DICK KNOX, HD 93, WINIFRED

Proponents:

Bud Clinch, Director, MT Department of Natural Resources &
Conservation
Lorna Frank-Karn, MT Farm Bureau
Roger Jergeson, Rancher/Farmer, Chinook

Opponents:

SEN. DARYL TOEWS, SD 48, LUSTRE

Roger Bekker, Scobey

REP. SAM KITZENBERG, HD 96, GLASGOW

Larry Brown, Agricultural Preservation Association

Albert Bjarko

Sam Hoffman, Manhattan

John Brenden, Maddock

Zales Ecton, Farmer, Manhattan & Agricultural Preservation Association

Tom Loftsgaard

Thor Loftsgaard

Bruce Dighans, Farmer/Rancher, Peerless

Ed Carney, Scobey

Willie Bernard, Willow Creek

Ron Carlstrom, Willow Creek

SEN. CHUCK SWYSGOOD, SD 17, DILLON

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, HD 93, WINIFRED: Section 1, lines 13-17 makes the bid deposit procedure consistent between grazing and ag lands. At the present time, if someone submits a bid on ag land, they all have to put \$1 per acre up front. This will require that they put up 20 percent of the total bid. It would appear that this would be some deterrent to some of the spite bids that are going on around Montana. A large part of the bill is contained in lines 7-9, Section 2. This formula is being used successfully in North Dakota. There are some very positive things about this. The lessee knows up front what the costs are going to be to plug them into his projections. Under cash leasing, all federal farm program payments go to the lessee under this bill. The state will receive its share ultimately through this cash leasing process. That money goes up front to the individual who holds the lease. The operator can insure the entire crop, not just his portion. Under the provisions of this bill, a lessee will have the total control that you have if you're leasing from a private person under a cash lease or if you own the land. As far as what you do with that crop, what you put into that crop, how you market that crop, everything about it - you will have total control. The marketing aspect is something that is well worth reflecting on a little bit.

Under present statute, the state's share of the grain must be marketed by November 15 or the individual has to buy the grain from the state. Some people don't have a line of credit that enables them to do that. HB 269 gives the operator full control over marketing that grain as if it were grain raised on his own property. Another positive aspect of this is that income to the state from these school trust lands/ag lands is going to be more stable. You won't have quite the degree of fluctuation. Lines 22-26 are two areas that need to be discussed. The first one would be on Sub 3, lines 22-24. It states that the Board may

establish penalties, if there is evidence of wide disparity in rental rates in the county. I'm submitting an amendment that will basically provide that this change within the county will be under the provisions of this amendment. If you feel your land is not capable of producing yields that would compete or compile with the county average, you can go to the state and submit a request for reduction.

It will be based on soil survey that we already have in place. (EXHIBIT 1) The soil survey, for instance, that was used by the districts to determine CRP rates. All of us in agriculture understand, are familiar and recognize the fact that soil surveys exist for every farm. A soil survey exists for anyone that owns a farm. If you have land that is significantly lower in quality and your soil survey shows that, you can go to the Department and request a reduction. That can be granted at that level without holding a formal hearing. Following that, if you don't get the results you want, you can go into the formal appeal process that exists today. That appeal process has not been changed. In Sub 4, the Board may reduce cash rental if the county is declared a disaster area. There has been no change there.

Perhaps I should give an example of how this could work. An ag stat survey indicates that \$15 is the average cash lease and when you multiply that by .95, it comes to \$14.25 per acre. By using the soil survey as a basis and if it shows the soils are only capable of producing 22 bushel to the acre, it drops that cash lease down to \$11.20 per acre. A significant adjustment and this process is very workable. It will be available to anybody that's leasing state land. A problem that exists now is on page 3, Sub 6. This clause gives the Department a good deal more flexibility than they now have. Under current law, if a payment is late they have no choice other than to submit it for bid. Sometimes this gets tied up in a lengthy dispute over the value of the improvements. There have been instances where land has sat idle for a year or two while this process has gone on. After that there is a subsequent loss to the state and of course, the land is overgrown with weeds. We all recognize that's a problem. That Section of the bill will correct the problem.

{Tape: 1; Side: A; Approx. Time Count: 3:23 p.m.}

Proponents' Testimony:

Bud Clinch, Director, MT Department of Natural Resources & Conservation: For a substantial number of years the debate about the appropriate rental rate for ag leases has waged on. You've probably tracked in the paper over the last several years as to the Department being embroiled over this whole issue about appropriate rental rates for grazing, recreational use, cabin sites, outfitting and for agriculture. In fact, in the 1993 Session this body passed SB 424 which directed the Land Board to embark on a study to determine the appropriate rental rates for those various uses of state land. The Land Board appointed a

14-person committee that met monthly for, I believe, 18 months and examined the rental rates on all those various interests. You may remember that back in those days we were highly motivated by the debate over the recreational use concept and an appropriate rate for grazing as well. Nonetheless, this bipartisan task force met and examined the rental rates on all uses of which one of those uses was agricultural.

Ultimately, after considerable deliberations, that committee came to a conclusion on all those rental rates and ultimately made a recommendation to the State Land Board. They modified the rental rates for some of those uses. They recommended that some stay the same. They ultimately produced the results of that in a booklet entitled, Report the State Land Board from the Advisory Council Recommendations of September 20, 1994. Many of you may know that historically agricultural leases on the State School Trust Lands have been at one quarter crop share or 25 percent, the lessee pays to the State 25 percent of the crop in exchange for the rental. In evaluating that, the Committee basically agreed to maintain the crop share at that percentage. I would like to read an excerpt to you out of this booklet. **Rick Hartz** moved that the minimum crop share stay at 25 percent, seconded by **Lois Hill**, **SENATOR CHET BLALOCK** moved to amend the motion to include a recommendation to the Land Board that the State move towards a conversion to cash leases. The amendment was seconded by **Kelly Flaherty** and it passed unanimously. That was on September 20, 1994, and since that time the Department has worked on trying to come forth with an appropriate method to convert those one-quarter crop shares to a cash lease basis.

Current statute allows the Department, at the request of a lessee, to convert to crop share. We do that on approximately 10 percent of our leases. In fact, all of our high value commodities like sugar beets and potatoes are currently converted to a cash rental basis. The recommendation from the Advisory Council was to begin to move forward to a conversion of cash leases for all of those for many of the reasons that **REP. KNOX** mentioned to you; for instance, the ability for the applicant to insure the whole crop and to participate to the full extent in the federal farm program as well as a number of other reasons.

Over the last 12 or more months, the Department has been in contact with a number of other groups, particularly the various associations associated with this, and ultimately had conversations with them on what would be the appropriate methodology to convert to a cash lease. We ultimately sell on the procedure that's outlined in this bill, that's modeled after the State of North Dakota's procedure, where a state agricultural statistics organization does a telephone survey on an annual basis and then we apply a percentage of that to account for a certain level of error. In this case 95 percent and make that as the rental rate on a county-wide average. The Department feels that it's not only in the lessee's best interest, but certainly in the Department's best interest to go with the cash leasing.

It certainly lessens our administrative workload as well as provides the stability functions that **REP. KNOX** has mentioned.

I suspect most of the debate will be around setting the appropriate cash rental. Many people are in support of cash rental, but the question always asked is what exactly will it be and then I'll compare that with my existing crop share and if it's a better deal it's a better deal. Quite frankly, we don't know those numbers up front. We have a high degree of confidence in ag statistics because of the work they do for us on the grazing leases currently. In fact, we believe that the producers have a high degree of confidence in that organization as well. For all those reasons, the Department stands before you today and requests your support for this bill to convert to cash leases. We believe it's a win, win on behalf of both the lessees and the State of Montana. Myself and other staff members are here to answer or refer to any technical questions you may have.

Lorna Frank-Karn, MT Farm Bureau: At our last convention in November, Farm Bureau members voted to support cash leases on state lands. They had quite a bit of debate on the floor; however, it did pass that we would support this legislation. We have seen the amendments that **REP. KNOX** has shown and talked about. We are supporting it with those amendments.

Roger Jergeson, Rancher/Farmer, Chinook: Our family has been involved in state leases for 30 years. I only go so far as supporting this bill in the intent. I'm quite uneasy about your rate structure. **REP. KNOX**, it's kind of strange that you should mention the soil survey as an appeal process. Why not use that soil survey to set the rates to begin with? I've also been a member of the Blaine County ASCS, now called Farm Services Agency, for eight years. I've had a lot of exposure to leases as far as they come through and producers qualifying for payment eligibility. Some of them are off the reservation. They are \$22 for every acre plus a right to do business tax.

There is a lot of grudge bidding going on out there. The reservation has ended up with 5,000 acres of fire weed in one contiguous patch. Maybe they have more problems. If Montana Ag Statistic goes out there, it's not a fair guideline. Also coming through the ASCS office we'll see families where a producer, who has formed a subcorporation under himself, has family members leasing to each other and some of those are \$10 per acre. Whether the money ever changes hands is sometimes open to question so doing a survey of existing leases may be a pretty poor guideline.

If the Committee is not familiar with soil surveys, this box is the entire Blaine County soil surveys. **(EXHIBIT 2)** Also in here is what the Department of Agriculture is going to use for CRP bid number 14. Actually I'm standing up here shooting myself in the foot. I have a type 17 soil which has a CRP bid of \$37. I'm hoping there is some factoring in here, but I think this is an

example of some guidelines that might be better used than is written in the bill. I apologize to my fellow producers in Montana for maybe supporting this bill. I think it points out a very important need for a lessee's association in this state. If you're on that ag land and you're paying money, we need to have an organized group that meets regularly and we need a vote on that State Land Board. Thank you.

{Tape: 1; Side: A; Approx. Time Count: 3:33 p.m.}

Opponents' Testimony:

SENATOR DARYL TOEWS, SD 48, LUSTRE: I'm offering some opposition to the bill as it's presented primarily because the vehicle that's being used to take and drive the price that's being paid for rental ground is inappropriate. Daniels County, for example, has a lot of state land. To the south of them is Fort Peck Indian Reservation. They have rental rates that are based on market and that market is between \$10 and \$25 per acre. If you look at your bill, it says you can appeal to the Board if there is large disparity in your rates. I submit to you this is exactly what is going to happen in Daniels County. There will be a huge disparity of rates because it's the nature of the soils.

I'm offering these amendments with the idea that if we're going to have a cash lease, let's have a true cash lease. **(EXHIBIT 3)** Let's put in the bill that it's going to involve all the income off the properties and include all the government payments which I don't think the bill presently does. The formula I put in front of you is found on the second page. It's a soil-type formula and gives you real numbers to work with. If you look on the back page of the handout you can see what the soil-type charts look like. If you look on the bottom left hand corner of that page you will see that there are some very small strips on the bottom there, soil type 38; you'll see there are some larger strips, soil-type 57. Those are the two soils I used in examples for you. Within feet of each other there is a difference of soils that can grow from 26 bushels up to 40 bushels. I don't know how you're going to do a countywide average and come up with anything that makes sense unless you show that disparity and that's why we have to go to a soil-type vehicle to drive this cash lease thing.

Cash leases are appropriate, but they are only appropriate if they cut the staff and amount of work it takes in the office to manage these things. We need to go to only one system, not two to come up to that. If you look on page 2, soil 57 is a poor soil. It says it's a 26 bushel average if everything is perfect and everything is ideal. These numbers are the numbers given to us by the Natural Resource Conservation Service out of Bozeman. They use a factor of 7. That's management and says 7 out of 10 years you'll probably come close there. The price we use is \$4. We use it as an arbitrary price, that's a five-year rolling average of spring wheat. If you want to quarter crop share, you

need to factor that times .125 because most of the lands we have are only farmed every other year. They have a summer fallow rotation in them so therefore you have to take 25 percent and divide that by two to give you that factor. The difference between these two soils is a difference of \$9.10 and \$14 and that's within a couple feet when you see how that line goes across that field. That's a big difference and hard to arbitrate if you're going to go to a county wide average and that's why you need to use a different formula.

The third and fourth pages are the numbers for Daniels and Roosevelt County, different soil types. You can read across and do your own study on how it would affect each different soil type. I think that formula would bring it to a reasonable conclusion. I was going to get something for each of your counties, but it took too much paper and I'm too far from home. This was the best I could do. We asked the Department and others to please come up with something specific. I don't think we have, but unless we can come up with something very specific so we know where we're at, we need to kill this bill.

Roger Bekker, Scobey: We, in Daniels County, are in a unique situation. These little blue squares indicate Section 6 and 26 within each Township. The map I passed out to you is just Daniels County. **(EXHIBIT 4)** The black indicates State Trust Land and within our county, 25 percent of our land is State Trust Land. Anything done here in Helena has a huge impact on us. The Department of State Lands is a large landlord in our county and our livelihoods really depend on a lot of what they do. Submitted and read written testimony. **(EXHIBIT 5)**

REP. SAM KITZENBERG, HD 96, GLASGOW: This legislation is a monstrosity. Why? This legislation uses 95 percent of an undetermined value. This value being the most frequently reported per acre cash rental under similar circumstances in the county as reported by the Montana Ag Statistics. They have never processed this data. Daniels County is unique in that there are few similar circumstances. The cash leasing in Daniels County is done on land that has a considerably higher productive capacity than School Trust Lands which are concentrated in the western half of the county. The farms in western Daniels County where the typical operation contains 40-100 percent School Trust Lands cannot be compared to the eastern half where a farmer may cash lease from 5-10 percent or less.

There are other questions I would like to have you think about. In fact, this legislation raises more questions than it answers. First of all, where does it say in this bill that the lessee will receive the normal freedom to manage that a cash-rent contract has? Secondly, how many cash leases have to allow unlimited recreational access? Third, would this cash lease include a first option to purchase as in many cash leases? Fourth, how many cash leases are there where a group of bureaucrats and/or the Land Board will set an undetermined cash rental fee? Five,

in the case of grazing leases, they do not reflect the rest of the value being produced and the production capacity of the land and this bill doesn't either. Sixth, hay land is classified as ag land and cannot be compared price wise to small grain production. Seventh, the financial burden of this bill is in an area with such a high concentration of School Trust Lands that it will become overwhelming for the lessee and the financial institutions in the years where production is less than normal when you have less rainfall, crop disease, hail, insects, wind, fire and so on.

Finally, in almost every other area of the state, this bill will not have any major impact on most lessees. In other areas, because of this high concentration of School Trust Land, there is a definite need for special consideration and we would certainly like to have this Committee take all of these things into consideration before making the final recommendation. I recommend a DO NOT PASS.

Larry Brown, Agricultural Preservation Association: I haven't had a chance to study the amendments that have been offered today, but I would like to see what those numbers might be under that formula, what those amendments do and what is the opportunity as far as these numbers being advantageous to the lessee. We have all been privy to working on formulas with grazing leases, whether they be with the federal government on BLM, Forest Service or State lands and so forth and so on. Anytime you get into a formula there are a number of factors that have to be accounted for. I've been writing down a few things.

I've come up with basically 12 items that should be part of this formula. Some include the soil survey, the weather, the price of the commodity, the methodology itself, maybe payment equalization, risk, preference in bidding - that was mentioned - whether or not a neighbor or a relative would be able to have a chance to bid on this, farm payments, fallow lands, CRP, marginal lands, etc. It gets very complicated very quickly. The more factors you put into this, the more unhappy people are going to be. It's interesting to take a look at the overall situation in terms of how the administration might handle this. Most of the counties have a lot of State Land. What's good in the western part of the state might not be applicable in Carter County. There are a lot of factors that this bill affects. We would like to go forward in terms of working with **REP. KNOX** or anyone else that's interested to come up with something equitable. I can appreciate what the Department is facing in terms of their administrative responsibilities as well as their equalization of payment not only to the State Land issue, but also to the education department or the OPI in terms of maximizing revenues to the School Trust.

Albert Bjarko: Submitted and read written testimony. (EXHIBIT 6)

Sam Hoffman, Manhattan: My family has been involved in state leases for 68 years. Crop shares are historical. We haven't had any other way of splitting crop shares for state leases until this proposal was brought up. We've always had crop share and it's been fair. It's fair to the state and fair to the farmer. If he does well, they do well. If he doesn't do well, then they suffer the risk along with him which is the way it should be. Gallatin County is very diverse in soil types and rainfall. If you are over by Logan or in the Willow Creek/Three Forks area, your rainfall is going to be substantially less than it is along the mountains north and west of Bozeman and Gallatin Gateway. Coupled with that, in soil types, you have to consider water retention.

Fertility enters into productivity. If you put in lots of fertilizer and get any rain at all, you're going to do much better. This is a thing that throws everything askew because one farmer puts on a lot of fertilizer and raises more crop with the available rainfall and he pays more to the state. The other guy puts out less and pays less and you're going to be tied to this county average of 95 percent unless this changes through the amendments. That could be more fair. You could penalize the guy who puts a lot of money into the land in order to raise this crop. Negotiations are going to be rather difficult. Even though we are going to negotiate this, if this bill passes on a county level the State is not going to be involved. (Relates story and experience he had with the State.)

{Tape: 1; Side: A; Approx. Time Count: 3:56 p.m.; Comments: End of tape, some testimony lost.}

How many people were intimidated by the fact that the State Land Department was advocating that these leases be raised on the basis of their saying so. A lot of people are intimidated by government and the things that happen up here. If a person with authority tells them this is what we have to do, they're probably going to swallow that. I'm wondering how many people went from a fourth to a third on the basis of that statement alone which I thought was rather unethical. In our area, I don't know of any dry land that is leased for cash. There is a lot of land that's leased for crop share, some at a third, some State Land at a fourth. I don't know that for sure. I know mine is and I'm happy with it. I'm wondering what's going to happen if we have to negotiate with somebody. What if I have to negotiate with a guy from the State Land Department who has somewhat the same attitude that I dealt with before. It's going to be rather difficult for me to tell him that I live in this area where the ground is kind of sandy, which is just above the buffalo jump if you're at all acquainted with Gallatin County. I heavily fertilize and raise fairly good crops and I'm above the county average. If we negotiate this down on the level of 95 percent or whatever, are they going to be willing to take less money than they're getting from me now? I rather doubt it. I really don't expect to get it for less money than I am now. I don't really

want to. I think it's fair. You need to do something in this Committee to make sure that these kinds of situations don't arise. It would be good if we had an option to go either way. One time when I was at the Department of State Lands the man I was talking to said there were leases in Montana that were not returning very much revenue to the state. They were being stolen blind, but they couldn't prove it. He said he could give you examples of people who have a piece of state land in the middle of some of their own and that piece of state land makes 15 bushels and the rest of it makes 35, but we can't prove this person is ripping us off. I don't think you really need to. You need to go to this guy and say this is what the neighbors are raising because we checked and found out this is what they have. How come you don't have anywhere near that amount? Put the onus on them to prove why they're not doing a good job. I don't think you necessarily need to be able to prove that this guy is stealing because that is going to be very difficult. If you raise these leases too high, through whatever means, farmers are going to rebel and then they probably will cheat. I would like to see that option and some fairness. Thank you very much.

John Brenden, Maddock: Submitted and read written testimony.
(EXHIBIT 7) Proposed amendments if the bill is not killed.
(EXHIBIT 8)

Zales Ecton, Farmer, Manhattan & Agricultural Preservation Association: My concern with this bill is the cash lease. I'm on the west end of the county and it's dry. In the past, I've had drought and hail when the rest of the county has done rather well. Under those circumstances, I would have a substantial draw down in revenue and would have to come up with several thousand dollars in order to pay my lease. Obviously that would be a financial hardship for me. The grain or crop producer should have the option of maintaining a crop-share lease if it would be a good risk management tool for his operation.

Tom Loftsgaard: Submitted and read written testimony. (EXHIBIT 9) **REP. KNOX** brought up that this formula came from North Dakota. They have 35,000 acres of state crop land. We have 560,000 acres. Why are we using their formulas? I don't think they pay any personal property taxes either. That would change their ideas on formulas.

Bob Fouhy: Submitted and read written testimony. (EXHIBIT 10)
Presented signed petition from citizens. (EXHIBIT 11)

Thor Loftsgaard: I'm a student at Montana State University (MSU). I've lived and worked on the family farm/ranch operation for 19 years. Before this time, I've always felt that I could come back to Daniels County and take over the family farm. If this legislation passes, my dad has told me there will not be enough profit in Daniels County farms and that he will have to sell the family farm. This would mean my whole life plans need to be rethought. This bill could destroy my future in farming.

In order to save time, I'm going to pass this out and would like it entered as testimony. This is information according to the Crop & Livestock Cash Leases, Policy Changes & Leasing Pamphlet from MSU - Bozeman in 1997. (EXHIBIT 12)

Bruce Dighans, Farmer/Rancher, Peerless: Submitted and read written testimony. (EXHIBIT 13)

Ed Carney, Scobey: Submitted written testimony. (EXHIBIT 14)
There were a few comments I wanted to make concerning the map that was up here. A question you always get is where did all that land come from in Daniels County? Why did they locate it over there? All I can tell you is that most of that land is not 16 or 36. Most of that land is in-lieu land and lieu land is what the federal government allowed the various states to select in lieu of 16 and 36. The problem that exists and the reason that land is in Daniels County is that the Congress gave the various states the right to make these in-lieu selections, but also said that the land shall be as contiguous as possible to Section 16 and 36. That's the reason there is so much of it in that end of the state. I think the Governor at that time, probably in the 20's, got on his State Land Commissioner and said you fellahs have lots of acres of State Land that we should be selecting. The State at one time sold 100,000 acres of the present 220,000 they now have. This was sold at sales in 1926 and 1928. The farmers that bought this land lost it and the State took it back. Later, the State was in the loan business of loaning money out to farmers.

CHAIRMAN MESAROS: Excuse me, sir. Could you address the bill due to time constraints? We need to move this along.

Mr. Carney: Okay. No problem. I wanted to agree with the problems that **Sam Hoffman** brought out. I thought that was excellent testimony. Potential lessees do not know, when we talk about a cash lease, whether that's the full amount of acres in a tract of land or whether it's the seeded or cultivated acres. What does that refer to? That point needs clarification on what it refers to. Also, we have to know whether a man that raises barley will receive any considerations in the cash lease because some parts of the state have a rather significant production of malting barley. This is a crop that may produce as much as wheat and it may not. These various crops need to be analyzed for their ability to contribute to the School Funds.

Willie Bernard, Farmer: Submitted and read written testimony. (EXHIBIT 15)

Ron Carlstrom, Willow Creek: For many of the reasons previously stated, I am opposed to this bill. I'm afraid that we're going to end up mining our State Trust Lands. We're not going to be good stewards of the land. We need to take that into consideration. Most of the cash leases I've seen over the years

end up mining the land. They don't have crop rotation or good stewardship of the land.

SENATOR CHUCK SWYSGOOD, SD 17, DILLON: I very seldom appear before a Committee in opposition to a bill, but this one is of the nature that I am compelled to testify because in my county there are more acres of State Land than any other county in the state. The percentage of land may not be as much as Daniels County, but we have more acres of State Land in Beaverhead County than anywhere else. On page 2 it says 95 percent of the most frequently reported per acre cash rental. I don't know what the most frequently reported cash rental is. In my area there is very little dry land, but I do have a considerable amount of dry land and equally as much irrigated land. I wonder whether that cash rental is going to be the same for both those types of production. What we're being asked to buy here is a pig in a poke because we have no idea what this rental rate is going to be. I don't want to go home and tell my people I supported this bill without being able to tell them what it cost. I wasn't sent here to do that.

There is a lot of uncertainty in this bill. On page 2 there are a whole lot of things the Board can do. They can set special cash rentals for high production crops or they can even set special rentals for those where improvements have been made to increase the yields of land. An example is a piece of irrigated State Land in my area. This land was taken out of grazing, enhanced, and irrigation was applied to it to enhance the production. A pivot is now being installed. Are the corners the pivot misses included in the same rate as the production that's under the pivot? How many of these folks, who are unsure of what the rate's going to be and who have enhanced State Land to bring in more money for the schools and for the trust, are going to say it's not worth it? They may say to hell with it, I'm going to pull all this irrigation stuff off and let it go back to grassland. It is something you need to consider.

Since there is such wide disparity in types of soil and types of production capabilities, I don't know how they're ever going to come up with an equitable cash lease. I can just imagine the nightmare in my area and I'm sure those who have testified here have the same situation. I'm surprised there isn't a fiscal note with this bill because it certainly has some impact some way or another. Either on the producer or on the Department. If they're going to do all these exceptions, when we have a drought then they're going to reduce the cash rate. I want you to know up front that I don't have a bit of State Land. If they're going to make exceptions for improvements we put on State Land, they're going to have to look at each one of these on an individual basis the way I'm understanding this. The time and amount of money that's going to be spent doing that is going to be astronomical.

Mr. Carney: I have a handout for the Committee. (EXHIBIT 16)
In about 1960, the State Land Commissioner published, in our

area, the yield of wheat and barley of every one of his lessees. It was in the local paper. I think it was effective. My feeling was that those people that know the production of their neighbor's land probably realized that it was basically a fair method of informing people.

Written Testimony & Miscellaneous Exhibits:

Brian Hagan, Daniels County (EXHIBIT 17)
Roger & Susan Bekker, Daniels County (EXHIBIT 18)
Board of County Commissioners, Daniels County (EXHIBIT 19)
Darrel Tade, CPA & Farmer (EXHIBIT 20)
Myron Halverson (EXHIBIT 21)
Freight Rate Difference Information (EXHIBIT 22)
DSL Estimated Revenue and Costs (EXHIBIT 23)

{Tape: 1; Side: B; Approx. Time Count: 4:40 p.m.; Comments:
Insert new tape.}

Questions From Committee Members and Responses:

SEN. TOM BECK: The first thing I want to get clear is, is this bill an option to people or is it a mandate that's going to come down from the State Board of Lands?

Mr. Clinch: It currently exists as an option and we currently have converted about 10 percent of our ag leases to cash basis so it currently exists. This is an attempt to convert all of the remaining ones to a cash.

SEN. BECK: Most generally, if I was to rent cash I'm going to rent it on the worst case scenario. Do you understand what I'm saying? In other words, I'm going to rent it on the basis that we might have a drought, grasshoppers, hail, etc. so that I can cover my cash lease. Is that the basis you want to set this on and what would the impact be of the income coming into the State?

Mr. Clinch: I don't know if we've given anyone explicit directions on that. Through our earlier conversations with various groups, Farm Bureau as well as Grain Growers, we were led to believe that there's a great deal of confidence in the group known as Ag Statistics. We thought we would fashion these after the existing leases that are on a biannual basis.

SEN. BECK: I'm under the assumption that all State leases are still on the competitive bid basis and that you, in this particular case, would be setting the minimum bid on that particular piece of State Land.

Mr. Clinch: That's correct. They're all on a competitive basis. Upon renewal, they're competitively bid with the existing lessee maintaining a preference right. This cash amount that would be established would be the minimal amount just like the one quarter crop share is today.

SEN. BECK: In the event that this cash rent was high enough that nobody was interested, what would that do to the State's income?

Mr. Clinch: That would certainly be a decrease. That would be a real red flag that there was something wrong with the setting of those rates. We have someone in the audience today from Ag Statistics that we contacted. You may want to follow up with how they would accurately determine those rates.

SEN. GERRY DEVLIN: This fiscal note doesn't show us anything. Is this bill by request of the Department?

Mr. Clinch: Yes and we did craft the fiscal note.

SEN. DEVLIN: How come it doesn't say so?

Mr. Clinch: Because of the time frames imposed upon those bills having prefiled by January 1. We weren't able to meet that deadline because we were negotiating with the Farm Bureau and Grain Growers. **REP. KNOX** said rather than put something in that doesn't have the endorsement of those groups, we'll hold it over and I'll submit it under my name and you won't be able to have "at the request of the Department" on the bill.

SEN. DEVLIN: Thank you. **Mr. Bekker**, what did your private land lease or cash lease cost?

Mr. Bekker: Fourteen dollars per acre and I figure it's worth about \$3 an acre more because I get first option to buy it. It's from a man that has a small farm. He was getting out of farming and wasn't sure he wanted to sell it to me so I was willing to give him a few dollars more. This lies in the area of all that State Land.

SEN. DEVLIN: Does he help keep up the fences?

Mr. Bekker: He provides the materials; I provide the labor.

SEN. DEVLIN: Does he provide any bins or anything?

Mr. Bekker: This particular tract doesn't have any bins on it, but it's right next to me so I use my own bin.

SEN. DEVLIN: **Mr. Brenden**, when you talked about the third share and the guy paid for a third of the fertilizer and he furnished storage, you didn't say anything about the taxes.

Mr. Brenden: He pays his taxes too.

SEN. DON HARGROVE: The proponents mentioned these spite bids. Would you address that a little bit and how it would affect you folks in Daniels County?

Mr. Brenden: We've had that happen in the history of Daniels County before. Former **SEN. CARNEY** remembers in about 1956 a Texan came in and decided he wanted to farm all the State Land in Montana. That was cleared up and it went back to the lessees. I know of a particular case that got into it over a problem in the family. There was a divorce and one party thought they should farm this land forever and the kids came in and took it away. Consequently, in future years, this particular party bid that land up quite high. That land sat right in the middle of the people's farm and it was part of their holdings so they opted for that higher price. Those are examples. They are not the rule of thumb, but they can happen. That's what I worry about. If we only had 10,000 acres in Montana, Daniels County or any other county, you could live with spite bids, good bids, bad bids or what have you, but when you're talking one acre out of four, those are the ramifications that can happen to really hurt our community. We're only 2,200 people now. We've dropped 20 percent from the 1980's census to the 1990's census. We'd like to keep the communities going. We don't need to be driven to Great Falls for other jobs because we like to farm and like to work in our stores there.

SEN. LINDA NELSON: Mr. Loftsgaard, can you tell me what the mill levies are, in Peerless, for your school?

Mr. Loftsgaard: No, I cannot.

SEN. NELSON: Do you people support the bill with the amendments offered by **SEN. TOEWS**?

Mr. Loftsgaard: We just got the amendments and haven't had enough time to look at how they compute back to costs. I can't say whether we do or not.

SEN. NELSON: You're on the State Land Advisory Board. **Director Clinch** said the Board voted unanimously to move toward a cash lease. Did you have input? Did you agree?

Mr. Loftsgaard: I don't really have a problem with a cash lease, but it has to be fair. That's why I supported the idea. There is nothing wrong with a cash lease, but if I'm not making any money I can't support it. We're not using real numbers so we don't know whether we can afford it or not.

SEN. NELSON: Would you find out about the mill levies for the schools for me?

Mr. Loftsgaard: Yes, I can.

SEN. NELSON: I would mention that I submitted testimony for the Daniels County Commissioners that are opposed to this bill and that will be passed to the people.

SEN. REINY JABS: I live on the Indian reservation and we have cash leases and crop-share leases. All the land there is cash, the grazing, farm, irrigated and dry land is not on an annual basis. Each individual piece of land is a different price. How do you intend to do this and have you met all the administration costs? Have you figured in that part of it? How do you expect to do it fairly?

Mr. Clinch: We intend to enter into a contract with Agricultural Statistics who would do the data surveying and then, on a biannual basis, give us those county averages from each of those counties based on the reported figures that they acquired through their statistical inquiry. That would be the minimal amount for that county and all leases would be renewed at that amount. If they were competitively bid, we would be dealing on a per dollar basis rather than a 25 percent bid versus a 32 percent bid. The same rules would stay in effect where they could exercise their preference, maintain that lease and then they could appeal to the Department in the event they thought that was "a spite bid" or a bid above the community standards. We could hold a hearing on those just like we do annually for the competitive bids on grazing and agricultural today. This bill does not intend to increase the crop share, but merely convert it from a 25 percent crop share to an equivalent cash-rental basis. The rest of the process, in terms of bidding and appeals, would stay in place.

SEN. JABS: There can be quite a difference in the value of land just a few miles apart. We need to have flexibility to have different prices for the land even though they're in the same area. I lease land out to malt barley for crop share and I lease the place next to me for crop share and I have cash lease and everything else. The Crow Tribe is actually going to all cash lease and away from crop share. Personally, I wouldn't lease a crop share to anybody unless they're 100 percent trustworthy. How do you divide up your crop share on your land?

Mr. Hofman: Yes, I have crop share land. I have some that I own. My son and I have another half section that we lease from private people. We pay them a third and they pay a third of all the expenses including weed control and fertilizer.

SEN. JABS: How do you give the State their share of it?

Mr. Hofman: Sometimes I put it in a bid so I take one load and weigh it to find out what it's weighing and then I multiply that out by how many loads I get or how much is in the bin. Sometimes I measure the bin as well as weigh it and then when we haul it out, I get the final figure and then it's all adjusted at the point so they get exactly what they have coming. You would be amazed at how many times I have sent a check into the State that has cents on it. Like it's \$450.42 or whatever the figure is, but they get every penny they've got coming.

SEN. JABS: I know how it's divided up. I just wanted to let you know how inconsistent it can be, how you could make a mistake very easily or purposely.

VICE CHAIRMAN RIC HOLDEN: As a young farmer, I'm concerned about your bill and the cash areas of the bill. Where exactly is it in the bill that it talks about when the marketing year ends?

Jeff Hagener, Trust Lands Administrator: On page 3 it shows the rental rate is still due on November 15. There is no change in due dates and rental year.

VICE CHAIRMAN HOLDEN: Would you still be expecting a cash payment on or before November 15?

Mr. Clinch: That's correct. That's following the harvest.

VICE CHAIRMAN HOLDEN: On your cash lease under the bill, what would I be paying for? Would I be paying for seeded acres or would I be paying for everything in this section of land?

Mr. Clinch: I believe it's the entire acreage that would be included within that particular lease. It would include fallowed acres as well as oddball corners and those type of things.

VICE CHAIRMAN HOLDEN: Do you mean the acres that would be lying idle? I think our average, in Dawson County, is around 26 bushels per acre. Are you saying I would be paying for the ground that's lying idle?

Mr. Hagener: They are looking at most of these on the basis of a crop fallow. It's similar to what **SEN. TOEWS** had in there where you're making an adjustment of essentially taking half because you're considering only half of it is in production that year unless it's irrigated crops where it's always a continual crop.

VICE CHAIRMAN HOLDEN: Are you saying, if I have a section of State Land and part of it is roads and some of it is wasteland or whatever, I'd still be paying on all 640 acres?

Mr. Hagener: That's incorrect. You would only pay on the land that is classified and outlined as agricultural acres. If there are roads or something, they are already in the appraisal. If there is grazing land, you're paying for it under the AUM basis.

VICE CHAIRMAN HOLDEN: Sometimes we rotate different crops. Does that factor in? Generally, we get less money for barley and more money for wheat when we sell it. Currently, under the system, we pay the state based on whatever crop, but we get paid equally. It seems to me, under this new system, you would be punished if you were to plant a different crop even though it might be a smart thing to do in the way of crop rotation, but it would probably not be such a smart thing to do economically.

Mr. Hagener: The survey takes those similar circumstances into effect. I can't answer exactly how they would do the survey. My understanding is they would look at that and that's what the going rate is going out there considering those types of factors.

CHAIRMAN MESAROS: One of the more concerned questions was the differentiation of productivity even within the county. Has the Department had the opportunity to review that concept, especially **SEN. TOEWS** amendments? Could you respond to that concern?

Mr. Hagener: His amendment and the amendment that **REP. KNOX** offered are very much the same thing. They take into consideration that there is a differential between where you've got essentially an average productivity for the state. He gave the example where the average productivity may be 28 bushels. If it's clearly, and we'll refer to the soil surveys that have been talked about, a lesser amount then we would take that percentage to reduce that.

Closing by Sponsor:

REP. KNOX: We've had a great deal of discussion and it's all focused around process. My amendment delays the implementation of this act one year so that there will be two years of actual crop history data before any lease will be subject to the provisions of this bill. Perhaps we ought to go through some of the concerns that were voiced. **SEN. TOEWS'** amendments and my amendments address very much the same concerns and have very nearly the same effect. One of the assumptions running through all the discussion today is that these cash leases are automatically going to be an increase. That's not necessarily the case at all. There are certainly instances where you have a very good farmer and there are a lot of those out there in every community. I'm a farmer and have been all my life. Some of those people, on a 25 percent share, are producing a lot of dollars to the State. In that same area, when you come in with these averages, those type of individuals could see a reduction.

In fact, the projections I've seen worked up show that, over about a 10-year-period, the income to the State is going to be almost exactly the same as it would be under the present system.

REP. KITZENBERG stated that it wasn't clear to him whether the farm payments, under the provisions of this bill, would remain with the lessee. If that's not the case, we'll make sure that language is clear and that they do indeed remain with the lessee.

Mr. Brown suggested that his group would work with myself and the Department and anyone else that was interested on the various aspects of this bill. Obviously, I would be more than happy to work with anybody and with the Department to address some of these concerns that people have with this bill. Then we get into all the discussion about hail, insects, disease, difference in rainfall and soil types. This all has a bearing on this process that we're going to establish - input costs, fertilizer, chemicals, soil capability.

In my amendment, we addressed soil capability and rainfall wherever it can be applied by statistical records as a factor in determining higher or lower yields within a county. Fergus County is probably a classic example of that. I live in the northern part of Fergus County. We get about three to four inches less rainfall than the Lewistown area and the southern part. I know it can be documented and in many other counties it will be the same. This bill clearly provides for that and, in those instances, reductions can be made for those people in the lower rainfall areas.

Will this bill force school consolidations? I'm sure it would not. Operating capital would be more difficult to obtain. It would seem fairly logical to me that when you have a cash lease bill where you have control over all your inputs, where you can insure the crop 100 percent, where you have complete control over marketing the crop that it would indeed be easier to obtain operating capital where there's the uncertainty that goes with the present system. Regarding the issue of the cash rentals and having no idea what the cash rate would be, this statistical reporting service has done an excellent job in many other areas. I have no reason to believe that it would do otherwise in this area. They have two full crop years to determine, for a point of demarkation on this process, what that will be. The data will continually be updated and get better.


The main concern centers around a lot of the things I've already talked about. The various things that could go into establishing what a lease is worth. All over Montana you have professional farmers that have a thorough understanding of all of those problems whether it be insect, disease, hail, distance to market and transportation costs. In any of those situations you've got your peers and mine that will factor all of those things into these cash leases that are out there in great numbers right now. They do that. Nobody is dumb enough to forget to include distance to market, risk of hail, rainfall, soil type, and all the other things that go with establishing what a cash lease is worth in any given area. Change is never easy and this is a change. There are probably some problems with the bill that could be worked out. This process will be good for the operator and good for Montana. I ask for your support.

CHAIRMAN MESAROS: We will close the hearing on HB 269 and will not take Executive Action today.

ADJOURNMENT

Adjournment: 5:08 p.m.


SEN. KEN MESAROS, Chairman


ANGIE KOEHLER, Secretary

KM/AK