

MINUTES

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

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN KEN MESAROS**, on March 12, 1997, at
3:21 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 402 & HB 480 - 03/07/97
Executive Action: HB 402, HJR 27

HEARING ON HB 402

Sponsor: REPRESENTATIVE DON HOLLAND, HD 7, FORSYTH

Proponents: Mike Volesky, MT Assoc. of Conservation Districts

Opponents: None

Opening Statement by Sponsor:

REP. DON HOLLAND, HD 7, FORSYTH: HB 402 is at the request of the Rosebud Conservation District. It is designed to clean up some conflict in statutes and to give them authority to make interest earned on a conservation practice loan account more clear.

Rosebud Conservation District is the only district in the state that set up a loan program under statute. Since 1983 they have been offering no interest conservation practice loans to residents of the district. This loan account was set up originally with funds generated from their regular mill levy. Now the account is sustained with loan repayments and administrative fees. The districts do not have specific authority to manage interest earned from the loan account. Rosebud Conservation District needs clear guidance to manage the interest on the loan account that has been accruing over several years. This interest has been accruing, but they do not have the authority to spend it. The County Treasurer is holding this money so it is tied up and cannot be used by anybody. The proposed Legislation gives the Conservation District the authority to manage this interest which is earned from the funds and is then to be used in the conservation practice loan account.

The statute states that administrative fees or charges of loans must be deposited in the conservation practice loan account. Another statute states that all costs of the loan must be paid by the borrower except the administrative costs of the district. These statutes conflict with each other. The proposed Legislation cleans up this conflict in statute and allows the Conservation District to charge administrative fees by revising the statute. The existing statute says the Conservation District shall adopt rules in accordance with the Montana Administrative Procedures Act (MAPA). MAPA does not apply to them in any other case. However, conservation districts do have to go through a public process to adopt any local rules. This proposed Legislation removes a reference to MAPA, but leaves the requirement for the district to develop rules. Finally, the Conservation District, historically, has not charged interest on their conservation practice loans. However, the statutes are not clear regarding the matter. The intent of the original statutes pertaining to the establishment of a conservation district loan were to give conservation districts the authority to create a no or low interest loan program locally. This Legislation clarifies that the district may or may not charge interest.

Proponents' Testimony:

Mike Volesky, MT Assoc. of Conservation Districts: I appear before you on behalf of Rosebud Conservation District today. **REP. HOLLAND** explained the bill very well. This handout gives you an idea of what this loan program is about and how much is in it. **(EXHIBIT 1)** I want to stress that is the interest on the loan account itself. It's not interest charged on the loans because the loans are interest free. It would allow them to leave that interest in the account and use it for district operations or reduce their mill levy as well as using it for other conservation projects. As pointed out, one section states that administrative fees or charges on loans must be deposited in the Conservation Practice Loan Account, but in another section of statute it says that all cost of the loan must be paid by the

borrower except administrative costs. They certainly do conflict and this Legislation would clear that up. No other section of statute requires conservation districts to go by the MAPA. It's kind of an anomaly actually that it was mentioned. We don't know why that was put in when this Legislation was created because that act does not apply to subdivisions and State government. It applies to activities of State agencies. It doesn't make sense because districts are required to go through their own public rulemaking process regarding the loans. The Conservation District has not charged interest on these loans and they don't intend to, but the statute doesn't allow for districts not to charge interest. It needs to be made clear that, if a district chooses, they can loan money for this conservation loan program without charging interest. I urge your support on the bill.

{Tape: 1; Side: A; Approx. Time Count: 3:29 p.m.}

Questions From Committee Members and Responses:

SEN. REINY JABS: Did you state that this conservation district is the only one that had this program in the whole state?

REP. HOLLAND: As I understand it, Rosebud County is the only one that has set up this type of loan account.

SEN. JABS: They have \$240,000 loaned out. Is that right?

REP. HOLLAND: Yes.

SEN. GERRY DEVLIN: Is the 1.5 mill levy still in effect there?

REP. HOLLAND: No, because of I-105. I understand they now can only levy .74. I don't know at this time whether they're even levying that, but that's what they're entitled to.

SEN. DEVLIN: So your corpus would probably be growing more except for the interest coming back.

REP. HOLLAND: The loans are revolving; as the loans are repaid, it is available for reloan.

SEN. DEVLIN: How many years did this run to build up?

REP. HOLLAND: They started the loan program and started generating the revenues in 1983, but the interest didn't start accumulating until 1991 or 1992.

SEN. JABS: Every county has the .74 mill. Isn't that on their district? So it isn't more than most counties are levying.

REP. HOLLAND: No. I would assume they are all limited by I-105.

Closing by Sponsor:

REP. HOLLAND: It's interesting to note that it amounts to about \$129,000 which is quite a large amount for a conservation district loan program. Rosebud County has quite a bit of advantage because the mill brings in about \$173,000. So it doesn't take long to accumulate that kind of money with a tax base that large. These are some pieces of clarification that would help the district get on with the good job they are doing. This passed through the House with 100 yes votes so I would hope you could give us a positive vote on this and get this cleared up. Thank you.

CHAIRMAN MESAROS: If this passes favorably, do you have a Senator to carry this?

REP. HOLLAND: I don't have anyone to carry this. If you have someone in the Committee who would do that, I would appreciate it.

CHAIRMAN MESAROS: We will close the hearing on HB 402.

REP. HOLLAND: SEN. JABS and SEN. DEVLIN represent a portion of Rosebud County so maybe one of them would be interested.

SEN. JABS: I will carry it.

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

HEARING ON HB 480

Sponsor: REPRESENTATIVE DUANE GRIMES, HD 39, CLANCY

Proponents: Angela Janacare, MT Mining Association
Richard Dale, Golden Sunlight Mine

Opponents: None

Opening Statement by Sponsor:

REP. DUANE GRIMES, HD 39, CLANCY: Submitted and read written testimony. (EXHIBIT 2) This Legislation would mainly affect three industries or companies that we know of right now. They are listed on the handout. All this does is allow for tax deductions from an individual return. I understand this is extremely good soil fertilizer for up and down the front range area. Currently, those ranchers already write that off as a business expense. This doesn't affect them. This is intended to allow people like ConAgra and other people who sell products to be able to sell to individual users as well. This will be kind of an additional rationale for them to buy the product and sell it so it can begin to be used. This came out of a study that was done by someone from one of the Universities and in conjunction with Golden Sunlight Mine. It showed that some of these soil

fertilizers are very viable products and can be used very cost effectively. It is difficult to determine the market potential and just how broad this might be utilized. This is a small step. We had some questions in the House Tax Committee over just what it does allow. It only allows for individual income tax deductions which may seem to be a small thing. It may start the ball rolling with inorganic fertilizers and allow for the use of some of this byproduct that is currently not being used. Some of the people who were going to come couldn't make it because of the road conditions.

Proponents' Testimony:

Angela Janacare, MT Mining Association: There are three mining operations in the state which are marketing or attempting to market inorganic fertilizers produced as a byproduct of their operations. At Continental Lime near Townsend, they have a lime kiln dust and half inch reject rock. The half inch reject rock is sold to Diamond Hill Mine which is a Pegasus Mine right down the road from Continental. They mix it with their waste piles and this decreases the acidity of the piles. Their kiln dust is sold to DEQ and used in clean up of the upper Clark Fork.

The product produced at Ash Grove Cement is a cement kiln dust and is currently stored in a landfill. It can be used because it is high in potassium sulfate which also assists in decreasing the acidity of soils. We do have a representative here from Golden Sunlight Mine who can speak about the byproduct produced from their operation. It is an iron pyrite. The main purpose of this bill is to provide some tax incentives and hopefully increase the marketability of these products which are normally considered waste. Perhaps they can be taken out of landfills and piles and sold to consumers.

Richard Dale, Golden Sunlight Mine: Our operation produces about 400 tons per day of a fine grain pyrite substance that is now a byproduct. It is disposed of with other waste material from our process in our lined tailings impoundment. We have known for quite a while that this product has some uses in agriculture and the fields of agronomy as a soil amendment. It can't really be characterized as a straight fertilizer. Most of you are aware that most of Montana has basic soils. The use of this pyrite product creates an extended release application. It not only provides iron, but will change the Ph of the soil over a period of time making it more suitable for growing more productive plants. The money effect of this bill is small, but we see it as a way to start to generate interest in some of these byproducts. They have uses though they may be viewed with suspicion by some because of their association with mining. They are usable products and can contribute to the economy and our environment. We recommend this be considered as a way to help people buy this with some benefit to themselves beyond the use benefit and perhaps promote a market of our resources and thereby conservation.

{Tape: 1; Side: A; Approx. Time Count: 3:41 p.m.}

Questions From Committee Members and Responses:

SEN. GREG JERGESON: A bill that changes taxes has some affect somewhere. Was there a Fiscal Note for this bill?

REP. GRIMES: Yes. Basically it says no impact. Were this proposal effective, tax forms will not have to be changed. The negative revenue impact is estimated as minimal. Currently, the organic tax deduction is rarely used and they have no evidence that this will be used any more than that. Of course, it's going to be marketed and they are going to attempt to try to use it, but they couldn't come up with any significant fiscal impact.

SEN. DEVLIN: Does the Fiscal Note you have say 1995?

REP. GRIMES: Can I refer this to the Department of Revenue?

SEN. DEVLIN: Of course. I know it wouldn't affect 1995.

Bob Turner, Income & Miscellaneous Tax Division, MT Department of Revenue: The Fiscal Note does say 1995. In developing the Fiscal Note, we looked at 1995 to determine how much organic fertilizer was deducted that year. The year the inorganic fertilizer would start, as proposed in the bill, is 1997. That was a misprint in the Fiscal Note. I asked the auditor how many times they see the organic fertilizer being deducted on an income tax return. It was very minimal. I told the research people that and they said the impact from this would probably also be minimal because the deduction is for the individual. The businesses can already deduct it as a business expense.

SEN. JERGESON: When I was farming, I could buy this stuff and deduct it as a business expense and now it will permit me, as a city resident, to buy it for my lawn and then, if I itemize on my income tax, I would be able to deduct this.

Mr. Turner: That is correct. You can deduct it if you itemize.

SEN. DON HARGROVE: Does this have any application to the cement plant at Trident in the Three Forks area?

REP. GRIMES: That did not come up. I would assume there are others who could be affected by this that we didn't list. I would imagine their byproduct is similar to Ash Grove and very possibly could be affected. In other cases, there are some mines that don't have a byproduct that can be used because of the different content and makeup of the soil.

SEN. TOM BECK: How much is a ton of this inorganic fertilizer? Is there a price set on it? Do you have any idea?

Mr. Dale: It depends on the product. In our case, we're about willing to give it away. Our whole involvement is to try to make it easier for perhaps some entrepreneur to use our product and be able to sell it to the household or property improvement market. In the case of the limestone or cement byproducts, they do have a price but it's very low per ton. In the case where it has to be bagged and handled, it would increase the price, of course. I think the raw product is about \$40 per ton.

SEN. BECK: Is it something you want to get moved? Have you considered a tax credit instead of a tax deduction?

Mr. Dale: Yes, we have. That would make it much more attractive to the industries involved. We know that we're under the microscope and had some reservations about suggesting that. In our case, I can speak to that. If we were to build a facility to process this and make it available as a bulk product, either for an entrepreneur or some fertilizer company to make into individual use bags or whatever, we would have to invest over a million dollars. A tax credit for doing that would help us do it. It wasn't put forth because of a lot of other things we're dealing with. In impact, yes, that would have a lot more positive economic push to using these resources.

SEN. DEVLIN: Of the three locations on the sheet, do any of them sell any of it now?

Mr. Dale: The way it has worked so far is we have made bulk samples available to researchers, to the golf course in Three Forks and to various landscapers. Frankly, they love the product. It makes and keeps grass green. We don't have the facilities to set it up for selling it so we have not sold it. Where it has been needed as a demonstration project, we have made it available. I believe the cement operations do much the same thing to prove a marketability and create a need for it.

SEN. DEVLIN: Ash Grove Cement's byproduct is stored in a landfill now so they must sell it occasionally in bulk or experimental.

Mr. Dale: They sell more of it, but they don't have market enough to match the volume that they generate. Nor would we. We generate 400 tons of this material a day. There would still be some categorized as waste and disposed of in that light. The hope is that it will generate more market need for it and prompt people to look at using it.

SEN. JERGSON: The language on page 3, line 8 says that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction. Is the expense allowed as a deduction be only the purchase price of this fertilizer or would I be able to load my family up and drive to a plant and load it up and deduct the mileage, fuel, motel, etc.? Would those be considered as expenses in acquiring this?

REP. GRIMES: We were not that creative in the House. The intent was the cost. The Department of Revenue would probably tell you that it's the cost of the product.

SEN. JERGESON: Under existing statute, can I buy steer compost from K-Mart and deduct that?

Mr. Turner: No. Section 15-32-303 refers to organic fertilizer made by a company in Montana and there is only one of those, I believe.

SEN. JERGESON: Have we amended 15-32-303 with this bill to include companies that produce inorganic fertilizer? I guess it does. I live in the midst of a great natural gas field. I understand they can use natural gas to produce nitrogen based fertilizers. If somebody were to build a plant like that, they wouldn't be producing a byproduct of that fertilizer so people who purchase their product would not be able to deduct that under provisions of this act, right?

Mr. Turner: The way I interpret it, you would not be able to because it's not a byproduct.

SEN. JERGESON: So, next Session, if I had such a plant in my district I might want to amend this Section so those people can market this as something that allows people a tax deduction for using it.

Mr. Turner: I'm sure that's correct.

SEN. HARGROVE: Confirm for me that purpose for this is to help these folks get rid of something they would like to get rid of. It's a potential pollutant and problem for the environment so if you can find some way to use it productively, they want to do that any way they can. Is that the purpose of the bill?

REP. GRIMES: Absolutely. How extensive this helps is unknown. We're just hoping. Of course, if you made it a tax credit it has tremendous impact.

SEN. HARGROVE: I know the Holnam plant in Trident has been working with the University for a couple of years trying to get the right mix. Theoretically they can make a super strong cinder block with the residue from the kilns. I think they have one, but I'm not sure if it's production price yet.

SEN. JABS: Do you have to buy organic materials from a company? If I sell a load of manure to somebody, they cannot deduct it.

Mr. Turner: Yes, they have to buy from a company in Montana that has produced organic materials, not an individual.

Closing by Sponsor:

REP. GRIMES: The industry wanted to do something to help themselves out and it would not seem to be an overreach, but SEN. BECK'S question is right to the point. If it's the will of this Committee to expand that, I'm sure there are technical resources to help you do that. If not, this will at least start the ball rolling in the right direction. We will be able to use a byproduct that currently isn't used around the state and do some environmental good. Thank you.

CHAIRMAN MESAROS: Do you have someone identified to carry this?

REP. GRIMES: Most of these are in SEN. FOSTER'S senate district. I think he would want to carry it. It's at your discretion, MR. CHAIRMAN.

CHAIRMAN MESAROS: We will close the hearing on HB 480. Is there any objection to taking Executive Action on these bills today?

SEN. BECK: I don't have a problem with HB 402, but I would like to hold HB 480 until Friday so I could look at the tax credit.

CHAIRMAN MESAROS: That's fine.

EXECUTIVE ACTION ON HB 402

Motion/Vote:

SEN. BECK: MOTION TO CONCUR ON HB 402. MOTION CARRIES UNANIMOUSLY.

EXECUTIVE ACTION ON HJR 27

Motion:

SEN. BECK: MOTION TO CONCUR ON HJR 27.

Discussion:

SEN. LINDA NELSON: I sort of agreed with what Janet Ellis said about not pointing fingers and working more in a spirit of cooperation. That would be on line 7, page 2 - after the word "Governor" insert "to continue communications with" the President of the United States to require a federal solution. You would cross out "not to relent in his demand that" and between United States and require, you would say "to" require.

SEN. HARGROVE: Normally I am a major compromiser. However, in this case I don't think there has been communication yet and that is really the whole purpose of it. It's to get something going. It seems like it's been kind of one way.

CHAIRMAN MESAROS: SEN. NELSON, was that a motion or is that for discussion?

SEN. NELSON: I will move it.

Motion:

SEN. NELSON: MOTION TO AMEND LINE 7, PAGE 2 TO READ "BE IT FURTHER RESOLVED THAT THE LEGISLATURE SUPPORTS THE GOVERNOR'S EFFORTS TO ADDRESS THE PROBLEM AND URGES THE GOVERNOR TO CONTINUE COMMUNICATIONS WITH THE PRESIDENT OF THE UNITED STATES TO REQUIRE A FEDERAL SOLUTION TO PROTECT..."

{Tape: 1; Side: B; Approx. Time Count: 4:03 p.m.; Comments: Turned tape over.}

Discussion:

SEN. WALT MCNUTT: We don't have a dialogue going right now with that problem and they don't seem to understand the impact of brucellosis in the state and what our brucellosis free state means. I like the verbiage in there now.

SEN. BECK: This has been going on for the last year and a half and nothing has been accomplished although the Governor has been talking. We get no answers from the Park. We want to put their feet to the fire. This is a resolution saying we will not relent and demand that the President of the United States do something about it. I like this strong language.

Vote:

MOTION TO ADOPT SEN. NELSON'S AMENDMENT FAILS. SEN. NELSON AND SEN. JERGSON VOTE YES.

Discussion:

SEN. JABS: I would like to add to the whereas a statement such as, since there are more bison in the Park than they can accommodate or something like that to emphasize the fact that the Park is overgrazed. We're emphasizing disease, but the other problem is just too many bison. Perhaps it isn't worth it, but it was a thought.

CHAIRMAN MESAROS: We can hold final action on this if you would like to prepare an amendment. I don't want to rush anything through.

SEN. JABS: We'll see what the Committee thinks.

SEN. BECK: If you read the second "furthermore" on line 8, it says the federal solution to protect America's bison in a reasonable manner that will not harm the health or property of the citizens of Montana. That mentions property and we're

talking about the grazing. I don't know how you can emphasize it much better than what is in here.

SEN. DEVLIN: Bison management should be reflected in the way they graze that Park because that's part of animal management. I would like to see if **SEN. JABS** would bring forth an amendment. I certainly wouldn't mind putting it on here.

SEN. BECK: It certainly doesn't make any difference to me.

SEN. JABS: If you feel it's covered, that's fine.

SEN. BECK: Well, it says property in there, but you may want to emphasize that they're starving the bison. That's the problem.

SEN. JERGESON: I have some concern in relation to page 2, line 6 - "The Legislature supports the Governor's efforts to address the problem." Generally I would support the Governor's efforts including his conversations suggesting that the President find a federal solution to it, but on his last trip back to Washington D.C. I understand he volunteered that perhaps Montana would host some quarantine facilities and take bison to them at locations around Montana. I have some constituents that would like to provide quarantine facilities and provide this service. I also have constituents who are reticent about that because they are afraid that a quarantine facility, even a well-built one, may not contain diseased bison and that you would have them in other areas of the state. When we say that we support the Governor's efforts, does that mean we support an effort that we haven't delved into and analyzed whether it's a good idea and what risks are contained in that particular effort? I don't know whether we can somehow change the language to give ourselves some wiggle room on that, but it's kind of bothersome to me. Maybe we need a couple more days to think about this resolution.

SEN. DEVLIN: Until I see something concrete that they're going to start shipping bison to the Indian Reservations around the state, I don't think it's going to happen. There would be a hue and outcry like there was a second massacre. People in my area and **SEN. NELSON'S** area are not going to stand for it. You cannot fence bison.

SEN. JERGESON: His proposal also included the location of one of these facilities on nonreservation land. It's not that it's an Indian issue. There was the suggestion that Fort Belknap may be one of those locations. I'm getting letters from constituents that are quite concerned about it. So I'm not sure what they're reaction is to cart blanche saying we support the Governor's position without us having had any information as to what his proposals are.

SEN. DEVLIN: I would like to continue the hammer on Washington to get something done on this thing.

SEN. HARGROVE: I think it's kind of a stretch to use the words "address the problem" to nail him down on a lot of specifics. That's general enough to say we support him trying to address the problem, but we don't have to worry that it locks us into everything he might say in a conference someplace.

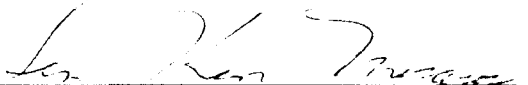
CHAIRMAN MESAROS: I didn't announce that we would be taking Executive Action today and it appears there may be some members that wish to draw up some amendments.

SEN. BECK: I withdraw my motion.

CHAIRMAN MESAROS: We will suspend Executive Action until Friday.

ADJOURNMENT

Adjournment: 4:12 p.m.


SEN. KEN MESAROS, Chairman


ANGIE KOEHLER, Secretary

KM/AK