

SENATE BILL NO. 256

INTRODUCED BY AKLESTAD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF LAW REGARDING AGRICULTURAL COMMODITY STANDARDS, STORAGE, MERCHANDISING, DOCKAGE, AND PROTEIN; EXEMPTING THE OPERATIONS OF THE STATE GRAIN LABORATORY FROM BUDGET AMENDMENT REQUIREMENTS; REVISING APPLICABLE PENALTIES; REVISING PROCEDURES FOR SUBMITTING SAMPLES TO THE STATE GRAIN LABORATORY AND FOR APPEALING ANALYSIS RESULTS; STANDARDIZING PROTEIN DISCOUNTS; AMENDING SECTIONS 17-7-402, 80-4-402, 80-4-409, 80-4-421, 80-4-429, 80-4-501, 80-4-531, 80-4-532, 80-4-608, 80-4-704, 80-4-705, 80-4-708, 80-4-721, AND 80-4-724, MCA; REPEALING SECTIONS 80-4-423, 80-4-707, 80-4-710, 80-4-723, AND 80-4-727, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-7-402, MCA, is amended to read:

"17-7-402. Budget amendment requirements. (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend additional federal revenue, additional tuition collected by the Montana university system, additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies, Montana historical society enterprise revenue resulting from sales to the public, additional revenue deposited in funds, other than the general fund, from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91, revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7, or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter;

(b) by the approving authority, which contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund,

1 unless an emergency justifies the expenditure;

2 (d) by the approving authority, unless it will provide additional services;

3 (e) by the approving authority, for any matter of which the requesting agency had knowledge at
4 a time when the proposal could have been presented to an appropriation subcommittee, the house
5 appropriations committee, or the senate finance and claims committee of the most recent legislative session
6 open to that matter; or

7 (f) to extend beyond June 30 of the last year of any biennium.

8 (2) All budget amendments must itemize planned expenditures by fiscal year.

9 (3) Each budget amendment must be submitted by the approving authority to the budget director
10 and the office of the legislative fiscal analyst.

11 (4) Money from nonstate or nonfederal sources that would be deposited in the state special
12 revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust
13 agreement, or donation, is subject to the review process provided in 17-7-114 and is exempt from the
14 requirements of this part.

15 (5) An appropriation that would usually be the subject of a budget amendment that is submitted
16 to the legislature for approval during a legislative session may not include authority to spend money beyond
17 the first fiscal year of the next biennium.

18 (6) A budget amendment to spend state funds, other than from the general fund, required for
19 matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

20

21 **Section 2.** Section 80-4-402, MCA, is amended to read:

22 "**80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions
23 apply:

24 (1) "Agent" means any person who contracts for or solicits any agricultural commodities from a
25 producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity
26 on behalf of any commodity dealer.

27 (2) "Agricultural commodity" means any grain, ~~beans, safflower, sunflower seeds, tame~~ mustards,
28 ~~rapeseed, flaxseed, oil seed crops,~~ leguminous seed, or other small seed, and all other agricultural
29 commodities or other crops designated by rule of the department.

30 (3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any

1 equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

2 (4) "Commodity dealer" means any person who engages in a business involving or, as part of the
3 business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer
4 of any agricultural commodity in the state of Montana. The term does not include:

5 (a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

6 (b) a person who buys agricultural commodities from a licensed commodity dealer;

7 (c) a person who does not purchase more than \$30,000 worth of agricultural commodities from
8 producers during a licensing year; however, once a person exceeds the \$30,000 exemption, the person
9 shall obtain a license and is not eligible for the exemption for the succeeding year;

10 (d) a person who is the producer of agricultural commodities that the person actually plants,
11 nurtures, and harvests; or

12 (e) a person whose trading in agricultural commodities is limited to trading in commodity futures
13 on a recognized futures exchange.

14 (5) "Delayed payment contract" means a written contract for the sale of an agricultural commodity
15 when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and
16 includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred
17 pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does
18 not include those contracts in which the parties intend payment to be made immediately upon determination
19 of weights and grades.

20 (6) "Department" means the department of agriculture provided for in 2-15-3001.

21 (7) "Depositor" means any person who delivers an agricultural commodity to a commodity dealer
22 for sale or who deposits an agricultural commodity in a warehouse for storage, processing, handling, or
23 shipment or who is the owner or legal holder of an outstanding warehouse receipt or who is lawfully
24 entitled to possession of the agricultural commodity.

25 (8) "Director" means the director of the department of agriculture.

26 (9) "Grain" means all grains for which standards have been established under the United States
27 Grain Standards Act (7 U.S.C. 71 through 87) and all other agricultural commodities, such as mustard, oil
28 seed crops, or other crops ~~which~~ that may be designated by rule of the department.

29 (10) "Grain Standards Act" means the United States Grain Standards Act (7 U.S.C. 71 through 87).

30 (11) "Inspector" means any person designated by the director to assist in the administration of parts

1 4 through 6 of this chapter. The term includes warehouse auditors or examiners.

2 (12) "Official grain inspectors" means any official personnel who perform or supervise the
3 performance of official inspection services and certify the results of inspections, including the grade of the
4 grain.

5 (13) "Official grain samplers" or "samplers" means any official personnel who perform or supervise
6 the performance of official sampling services and certify the results of the sampling.

7 (14) "Official grain standards" means the standards of quality and condition of grain that establish
8 the grades defined by the Grain Standards Act.

9 (15) "Official grain weighers" means any official personnel who perform or supervise the
10 performance of class X or class Y weighing services and certify the results ~~thereof~~ of the services, including
11 the weight of the grain.

12 (16) "Person" means any individual, firm, association, corporation, partnership, or any other form
13 of business enterprise.

14 (17) "Producer" means the owner, tenant, or operator of land in this state who has an interest in
15 and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

16 (18) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain
17 warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural
18 commodities are received for storage, handling, processing, or shipment. The term includes facilities ~~which~~
19 that commingle commodities belonging to different lots of agricultural commodities.

20 (19) "Purchase contract" means a delayed payment contract or other written contract for the
21 purchase of agricultural commodities by a commodity dealer.

22 (20) "Receipt" means a warehouse receipt.

23 (21) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt,
24 given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon
25 initial delivery of the agricultural commodity to the warehouse.

26 (22) "Station" means a warehouse located more than 3 miles from the central office of the
27 warehouse.

28 (23) "Subterminal warehouse" means any warehouse at which an intermediate function is
29 performed in which agricultural commodities are customarily received from dealers or producers and where
30 the commodities are accumulated prior to shipment.

1 (24) "Terminal grain warehouse" means any warehouse authorized by a grain exchange to receive
2 or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

3 (25) "Value of the grain" means the purchase price adjusted for commodity dealer premiums and
4 discounts.

5 ~~(26)~~ "Warehouse operator" means a person operating or controlling a public warehouse.

6 ~~(26)~~~~(27)~~ "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued
7 under part 5 of this chapter by a warehouse operator, except scale weight tickets."
8

9 **Section 3.** Section 80-4-409, MCA, is amended to read:

10 **"80-4-409. Confidentiality of records.** All financial statements of warehouse operators and
11 commodity dealers required under the provisions of parts 5 and 6 of this chapter shall must be kept
12 confidential by the department and are not subject to disclosure except:

13 (1) upon written permission of the licensee;

14 (2) in actions or administrative proceedings commenced under the provisions of parts 4 through
15 ~~6~~ 7 of this chapter;

16 (3) when required by subpoena or court order;

17 (4) when disclosed to law enforcement agencies in connection with the investigation or prosecution
18 of criminal offenses; or

19 (5) when released to a bonding company approved by the department."
20

21 **Section 4.** Section 80-4-421, MCA, is amended to read:

22 **"80-4-421. License suspension and revocation -- renewal.** (1) The department may revoke,
23 suspend, or modify a license when it has reasonable cause to believe that the licensee has committed any
24 of the following acts, each of which is a violation of parts ~~5 and 6~~ 4 through 7 of this chapter:

25 (a) failure to maintain all initial licensing requirements, including insurance, bonding, and net asset
26 requirements. In determining compliance with net asset requirements, the department may consider the
27 licensee's status under any prior or current bankruptcy proceedings, as well as any outstanding civil
28 settlements or judgments.

29 (b) aiding or abetting another person in the violation of the licensure or any other provisions of
30 parts ~~5 and 6~~ 4 through 7 of this chapter;

1 (c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1,
 2 part 2;

3 (d) failure or refusal to allow inspection or maintain and provide records, reports, and other
 4 information required by the department;

5 (e) failure or refusal to post storage and other charges as filed with the department;

6 (f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

7 (g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525
 8 and 80-4-527;

9 (h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural
 10 commodities to cover outstanding warehouse receipts as required under 80-4-531;

11 (i) discrimination in charges by a warehouse operator as provided in 80-4-524;

12 (j) failure to provide payment for any agricultural commodity; ~~or~~

13 (k) failure to satisfy a judgment entered as a result of a violation of this chapter; or

14 (l) violation of or failure or refusal to comply with any other provision of parts 4 through 6 7 of this
 15 chapter or rule adopted by the department.

16 (2) The department may refuse to issue or renew a license if the applicant or licensee:

17 (a) has a license as a warehouse operator or commodity dealer that was previously or is currently
 18 suspended or revoked. In determining the sufficiency of cause ~~hereunder~~, the department shall consider
 19 the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

20 (b) does not satisfy the bonding, insurance, or net asset requirements as specified in subsection
 21 (1)(a) or any other provisions required as a condition to licensing;

22 (c) has been convicted of a criminal offense and the denial or refusal is made after considering Title
 23 37, chapter 1, part 2.

24 (3) The issuance of a license based on information provided by the applicant ~~which~~ that the
 25 department subsequently determines incorrect must be considered void, and any conduct under that license
 26 is a violation.

27 (4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions
 28 of the Montana Administrative Procedure Act.

29 (5) The department is authorized to issue summary revocations, suspensions, or denials without
 30 hearing pursuant to the procedures established in 2-4-631."

1 **Section 5.** Section 80-4-429, MCA, is amended to read:

2 "**80-4-429. Penalty.** (1) (a) Except as otherwise provided, ~~any~~ a person who violates any
3 provision of parts 4 through ~~6~~ 7 of this chapter or rules promulgated under parts 4 through ~~6~~ 7 or who
4 impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized
5 representative in the performance of a duty under parts 4 through ~~6~~ 7 of this chapter is guilty of a
6 misdemeanor ~~and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not~~
7 ~~more than \$1,000, or both.~~

8 ~~(2)(b)~~ (b) A person who refuses to permit inspection of licensed premises, books, accounts, records,
9 or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or
10 purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a
11 misdemeanor.

12 ~~(3)(c)~~ (c) A person acting as a commodity dealer or warehouse operator who knowingly sells
13 warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails to pay
14 for purchased agricultural commodities is guilty of a felony.

15 (d) A person acting as a commodity dealer or warehouse operator without having obtained a license
16 or who in any way represents that the person is a commodity dealer or warehouse operator when not
17 licensed violates the provisions of parts 5 and 6 of this chapter and is guilty of a felony.

18 (e) A person who issues or aids in the issuance of a fraudulent receipt for an agricultural
19 commodity is guilty of a felony.

20 (f) A person who knowingly submits false information to or knowingly withholds information from
21 the department when information is required under parts 4 through 7 of this chapter is guilty of a felony.

22 (g) A person is guilty of a felony if the person knowingly delivers or upon the exercise of
23 reasonable diligence should have known of the delivery to a commodity dealer or warehouse operator an
24 agricultural commodity that contains:

25 (i) a fertilizer defined in 80-10-101;

26 (ii) a poisonous, deleterious, or other substance not registered or approved by federal or state
27 statutes, regulations, or rules; or

28 (iii) a registered or approved substance that has not been used or applied according to label
29 directions or other government standards.

30 (2) (a) In addition to the penalties set out in subsection (1), the department may issue a civil

1 penalty of not more than \$2,500 for each violation of a provision of this chapter. Each occurrence
 2 constitutes a separate offense. The department shall adopt rules for the administration of penalties under
 3 this subsection (2) that include but are not limited to a penalty matrix that schedules categories of violations
 4 and accompanying penalties. The penalty matrix must consider:

5 (i) the gravity of the violation;

6 (ii) the violator's ability to pay and the economic impact of the penalty on the violator;

7 (iii) the violator's full compliance history and whether any good faith efforts were made to mitigate
 8 the violation and to cooperate in the department's investigation;

9 (iv) the duration of the violation; and

10 (v) any other matters that justice may require.

11 (b) The provisions of Title 2, chapter 4, parts 6 and 7, apply to and govern proceedings under this
 12 subsection (2).

13 (c) If after investigation the department determines that there has been a violation that cannot be
 14 appropriately addressed by the penalties assessed under subsection (2)(a), the department may seek a civil
 15 penalty not to exceed \$2,500 for each offense by filing a complaint in district court. Venue for the action
 16 is the district court for the first judicial district.

17 (d) All penalties collected under this subsection (2) must be deposited in the state general fund."
 18

19 **Section 6.** Section 80-4-501, MCA, is amended to read:

20 **"80-4-501. License necessary to operate public warehouse.** (1) ~~No~~ A person may not act as a
 21 warehouse operator without first having obtained an annual license from the department. This requirement
 22 ~~does~~ and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do
 23 not apply to operators of warehouses that are federally licensed under the United States Warehouse Act.
 24 However, if a federally licensed warehouse operator engages in business as a commodity dealer, the
 25 provisions of parts 4 through 7 apply to the commodity dealer activity.

26 (2) If a warehouse operator operates two or more warehouses in the same city or immediately
 27 adjacent ~~thereto~~ to the city or in the same immediate area, in conjunction with each other and with the
 28 same ~~work force~~ workforce, and if one set of books and records is kept for all ~~such~~ the warehouses and
 29 cash slips, scale weight tickets, and warehouse receipts, and if checks of one series are used for
 30 agricultural commodities stored ~~therein~~ in the warehouses, only one warehouse operator's license is

1 required for the operation of ~~all such~~ the warehouses."

2

3 **Section 7.** Section 80-4-531, MCA, is amended to read:

4 **"80-4-531. Duty to deliver stored agricultural commodities -- weights and inspections -- modifying**
5 **agreements -- damages.** (1) The duty of the warehouse operator to deliver agricultural commodities stored
6 is governed by this part. Upon the return of a properly endorsed warehouse receipt to the warehouse
7 operator and upon payment or tender of all advances and legal charges, agricultural commodities of ~~the~~
8 equivalent grade and quantity named ~~therein~~ in the receipt must be delivered to the holder of the warehouse
9 receipt.

10 (2) The holder of the warehouse receipt is entitled to an official inspection, as specified by the
11 federal grain inspection service in the regulations implementing the United States Grain Standards Act.
12 Inspections other than official must be agreed to in writing by the warehouse operator and the holder of
13 the warehouse receipt.

14 (3) (a) The holder of a warehouse receipt is entitled to class X or Y weights or better, as specified
15 by the federal grain inspection service in the regulations implementing the United States Grain Standards
16 Act.

17 (b) In the event that an approved class X or Y weight is unavailable at the warehouse of origin, the
18 following weights take precedence in this order:

19 (i) destination official or certified class X or Y or better; or

20 (ii) railroad track scale weights.

21 (4) The parties to a storage agreement are bound by an agreement made under this section and
22 intended to supplement or modify the optional sections of the warehouse receipt if the agreement offer is
23 made in writing and the receiving party fails to reject the offer in writing within 10 days of receipt of the
24 written offer. In order to be valid, the agreement offer must state in boldface type that the receiving party
25 has 10 days to reject the offer.

26 (5) A warehouse operator's duty to deliver any agricultural commodity is fulfilled if delivery is made
27 pursuant to the contract with the depositor as rapidly as it can be done by ordinary diligence. When
28 delivery is made within 48 hours from date of demand or as agreed upon in writing by all parties concerned,
29 the delivery complies with the provisions of this section. An extension of the delivery period may be
30 granted by the department upon written request.

1 (6) All redeliveries must be made at the warehouse or station where the agricultural commodity
2 was received unless otherwise agreed.

3 (7) At the option of the depositor, the warehouse operator shall deliver the agricultural commodity
4 at a terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural
5 commodity on that date, less any freight and storage charges to the terminal and less other charges ~~which~~
6 that may be allowed by the department.

7 (8) In addition to other penalties provided, a warehouse operator failing to deliver agricultural
8 commodities within the time provided in this section is subject to suit by the person entitled to delivery of
9 the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages
10 or liquidated damages of 1/2 of 1% of the value for each day's delay."

11

12 **Section 8.** Section 80-4-532, MCA, is amended to read:

13 **"80-4-532. Delivery of grain from different warehouse.** (1) ~~Any~~ A warehouse operator owning
14 or operating more than one warehouse in this state may deliver grain from one warehouse in settlement
15 of warehouse receipts issued for grain stored in another warehouse ~~when grain for storage has been~~
16 ~~presented at any warehouse in excess of its available storage capacity.~~ The warehouse operator is
17 responsible for redelivery at the point of receipt.

18 (2) Nothing in subsection (1) confers upon the warehouse operator a right to make delivery of grain
19 of substantially lower value than that delivered for storage, though of the same technical grade, in
20 settlement of warehouse receipts.

21 (3) The warehouse operator shall at all times keep on hand in bonded warehouses grain of
22 sufficient quality and quantity to settle all outstanding warehouse receipts.

23 (4) Freight and other charges must be determined at the point of receipt."
24

25 **Section 9.** Section 80-4-608, MCA, is amended to read:

26 **"80-4-608. Payment of ~~purchase price~~ value of grain -- definitions.** (1) A person required to be
27 licensed as a commodity dealer shall pay 90% of the ~~purchase price~~ value of the grain to the owner or the
28 owner's agent for agricultural commodities upon delivery and demand by the owner or agent and the
29 remaining 10% not later than 30 days after delivery by the owner or agent unless otherwise agreed to in
30 writing by the parties. Title to agricultural commodities sold to a commodity dealer under this section

1 transfers to the commodity dealer upon physical delivery of the commodity.

2 (2) As used in this section, the following definitions apply:

3 (a) "Delivery" means the transfer by the seller of title to and possession of agricultural commodities
4 to the commodity dealer or to another person in accordance with the agreement between the seller and the
5 commodity dealer.

6 (b) "Payment" means the actual payment or tender of payment of the agreed ~~purchase price value~~
7 of the grain by the commodity dealer to the seller."

8

9 **Section 10.** Section 80-4-704, MCA, is amended to read:

10 **"80-4-704. Establishment of standard grain grades.** (1) The department shall by rule establish
11 standard grades to apply to all ~~grain~~ agricultural commodities bought by commodity dealers and stored or
12 handled by warehouses in this state. The department shall adopt as state grade and dockage standards
13 all grades for ~~grain~~ agricultural commodities established by the United States department of agriculture.
14 For purposes of this chapter, any reference to a grade also includes a reference to a protein analysis, or any
15 other factor provided by department rule, if the analysis affects the price to be paid.

16 (2) ~~Grain~~ Agricultural commodity standards adopted by the department do not apply to ~~grain~~
17 agricultural commodities contracted for before the effective date of the adoption of ~~such~~ the standards."

18

19 **Section 11.** Section 80-4-705, MCA, is amended to read:

20 **"80-4-705. Rules governing dockage, damage, and discounts -- sample inspection.** The department
21 shall adopt rules governing the dockage on inferior grades, which ~~shall~~ apply in all executory contracts
22 entered into after their adoption. If the price or amount to be paid depends on terminal weight or grade,
23 the rules ~~shall~~ control the dockage insofar as dockage affects the price to be paid. Weight for dockage and
24 dockage are the same and cannot be calculated or discounted separately. Damage and stone discounts
25 must be by grade, other than sprout and insect damage, which can be discounted separately. Discounts
26 for dark, hard vitreous must be based on federal grain inspection service subclass. The department shall
27 ~~also~~ provide for sample inspection of grain, adopt rules governing sample inspection, and provide that the
28 sample inspection, when made, is final."

29

30 **Section 12.** Section 80-4-708, MCA, is amended to read:

1 **"80-4-708. Examination of grain cars, hopper cars, or trucks at destination.** (1) An official ~~grain~~
 2 agricultural commodity inspector, sampler, or weigher, before opening the doors or lids of a car or truck
 3 containing ~~grain~~ agricultural commodities upon its arrival at any of the places designated by the department
 4 for inspection, shall first ascertain the condition of the car or truck and determine whether any leakages
 5 have occurred while the car or truck was in transit, determine whether the doors or lids were properly
 6 secured and sealed at the point of shipment, and make a record of those facts in all cases, giving seal
 7 numbers.

8 (2) After examinations have been made, the official ~~grain~~ agricultural commodity inspector,
 9 sampler, or weigher shall securely close and reseal the opened doors or lids, using the special seal of the
 10 department.

11 (3) A record must be kept by the official ~~grain~~ agricultural commodity inspectors, samplers, or
 12 weighers of all original seals broken, the number of seals, and the date when broken. An official ~~grain~~
 13 agricultural commodity inspector, sampler, or weigher shall break the seal, weigh, and superintend the
 14 loading of all cars or trucks of ~~grain~~ agricultural commodities subject to inspection. Any other person who
 15 breaks the seal or officially weighs the cars or trucks of ~~grain~~ agricultural commodities is guilty of a
 16 misdemeanor."

17
 18 **Section 13.** Section 80-4-721, MCA, is amended to read:

19 **"80-4-721. Fees for inspection, testing, and weighing grain agricultural commodities -- disposition**
 20 **-- investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of ~~grain~~
 21 agricultural commodities.

22 ~~(2) Payment of the fees referred to in subsection (1) must be divided equally between the~~
 23 ~~warehouse operator and the holder of the warehouse receipt.~~

24 ~~(3) These fees or proceeds are a lien upon the grain until paid.~~

25 ~~(4)~~(2) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing,
 26 and protein testing of ~~grain~~ agricultural commodities, ~~shall~~ must reflect as nearly as possible the actual cost
 27 of the services.

28 ~~(5)~~(3) All those fees and charges must be paid to the department and deposited with the state
 29 treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in
 30 the state special revenue fund ~~may~~ must be used to pay approved claims for expenses incurred in

1 inspecting, grading, weighing, and protein testing ~~of grain~~ agricultural commodities.

2 ~~(6)(4)~~ The department may direct the board of investments to invest funds from the state special
3 revenue fund pursuant to the provisions of the unified investment program for state funds. The income
4 from ~~such~~ investments must be credited to the proper department account in the state special revenue
5 fund."

6
7 **Section 14.** Section 80-4-724, MCA, is amended to read:

8 **"80-4-724. Coloration of grain agricultural commodities treated with injurious or toxic substances.**

9 Any grain agricultural commodities treated with any injurious or toxic substance or chemical must at the
10 same time be colored or dyed a color contrasting with the natural color of the grain agricultural commodity
11 so that the treated grain is readily identifiable as having been treated with an injurious or toxic substance
12 or chemical. A person who fails to comply with these requirements is subject to the penalty provisions in
13 80-4-429. This section does not apply to the application of pesticides to agricultural commodities
14 according to label directions for the treatment of pests that might be present in the agricultural
15 commodities."

16
17 **NEW SECTION. Section 15. Agricultural commodity sampling and appeal procedures.** (1) At the
18 time of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or
19 sale, each warehouse operator or commodity dealer shall take a representative sample from each load of
20 agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's
21 name on it. A composite sample consisting of a minimum of 1 ½ quarts of the representative samples
22 delivered, based on volume of bushels delivered as agreed to by the deliverer, must be submitted directly
23 to the state grain laboratory for analysis as to grade, dockage, protein, and other factors affecting the price
24 to be paid, for which the laboratory is able to analyze, unless the deliverer waives in writing the right to
25 submit the sample to the state grain laboratory. A written request for waiver of the right to submit the
26 sample to the state grain laboratory may not be a precondition or condition of sale or be included as a
27 condition in a contract for sale of an agricultural commodity. The warehouse operator or commodity dealer
28 shall retain a minimum of 1 ½ quarts of the remaining composite sample in a sealed, tamperproof container.
29 The deliverer may waive in writing the right to have the sample sealed. The sample must be retained until
30 10 days after contract settlement or until after an appeal has been submitted to the state grain laboratory.

1 All methods of sealing samples under this subsection must be approved by the department.

2 (2) If waiver is exercised under subsection (1) and the depositor or warehouse operator or
3 commodity dealer is dissatisfied with the results of a private analysis, the depositor or warehouse operator
4 or commodity dealer may appeal to the state grain laboratory. The appeal must be submitted to the state
5 grain laboratory with a statement of facts. The warehouse operator or commodity dealer shall submit 1 ½
6 quarts of the representative sample to the state grain laboratory for appeal analysis.

7 (3) If the depositor or warehouse operator or commodity dealer is dissatisfied with the results of
8 the state grain laboratory analysis, as provided in subsection (1) or (2), the depositor or warehouse operator
9 or commodity dealer may appeal to the federal grain inspection service (FGIS), United States department
10 of agriculture. An FGIS appeal must be made within 10 working days of the state grain laboratory's
11 analysis. The sample for FGIS appeal must be a portion of that agricultural commodity retained by the state
12 grain laboratory when it conducted its analysis. The FGIS results on the state grain laboratory appeal
13 sample are final and binding. In the absence of an appeal to FGIS or in the case of an agricultural
14 commodity for which there are no FGIS standards, the state grain laboratory's analysis is final and binding.

15 (4) Each warehouse operator or commodity dealer shall post in a conspicuous place a placard,
16 issued by the department, stating the procedures provided for in this section.

17 (5) All samples submitted for analysis are the property of the state grain laboratory and subject to
18 its disposition under state grain laboratory rules.

19 (6) An agricultural commodity purchased for resale as seed is exempt from the requirements of this
20 section.

21

22 **NEW SECTION. Section 16. Protein scale.** Payment based on protein must be based on 1/10 of
23 1%.

24

25 **NEW SECTION. Section 17. Repealer.** Sections 80-4-423, 80-4-707, 80-4-710, 80-4-723, and
26 80-4-727, MCA, are repealed.

27

28 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
30 applications, the part remains in effect in all valid applications that are severable from the invalid

1 applications.

2

3 NEW SECTION. **Section 19. Codification instruction.** [Sections 15 and 16] are intended to be
4 codified as an integral part of Title 80, chapter 4, and the provisions of Title 80, chapter 4, apply to
5 [sections 15 and 16].

6

7 NEW SECTION. **Section 20. Effective date.** [This act] is effective July 1, 1995.

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0256, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to revise grain laws, requiring Montana elevators to send producers' samples directly to the state grain laboratory of the Department of Agriculture for quality determination unless the producer requests, in writing, that the elevator laboratory determine quality; and exempting operations of the grain lab from budget amendment requirements.

ASSUMPTIONS:

1. Every grain producer has the right to submit samples to the state grain laboratory for quality determination.
2. There will be an estimated 30% increase in laboratory work volume because of this legislative change.
3. Revenue and expenditure projections are based on FY94 actuals.
4. A total of 3.00 FTE will be added for implementation of this bill: 1.00 grain sampler/lab assistant (grade 6) and 2.00 grain inspectors (grade 12).
5. Equipment needs include an electronic scale, divider, and a sizer/shaker with sieves in FY96 at a cost of \$4,590 and a dockage machine in FY97 for \$6,500.
6. Additional supplies will be needed for providing the expanded service.
7. The federal user fee expense will increase 30%, proportionate to the increased work load.
8. All revenue received will be deposited in the state grain laboratory state special revenue account.
9. Approximately 50 - 100 producer complaints will be received per year concerning warehouses and commodity dealers. Complaints will be handled by telephone or site visits to resolve issues.
10. Travel of field personnel will increase.
11. Approximately 6 - 8 pages of administrative rules will have to be promulgated.
12. No civil penalties will occur in FY96 or FY97.
13. The Executive Budget recommendation for the state grain laboratory includes 22.40 FTE and \$796,861 in FY96 and \$807,424 in FY97 of state special revenue appropriation authority. In addition, there is a new proposal for a grain sub-lab in eastern Montana which includes 2.50 FTE and \$135,310 in FY96 and \$163,410 in FY97 of state special revenue authority.

(continued on page 2)

Dave Lewis 2-2-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Gary Aklestad 2/3/95
GARY AKLESTAD, PRIMARY SPONSOR DATE

Fiscal Note for SB0256, as introduced

SB 256

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	3.00	3.00
Personal Services	71,578	71,728
Operating Expenses	26,960	26,400
Equipment	<u>4,590</u>	<u>6,500</u>
Total	103,128	104,628
<u>Funding:</u>		
State Grain Laboratory (02)	100,168	102,228
Commercial Dealer/Produce (02)	<u>2,960</u>	<u>2,400</u>
Total	103,128	104,628
<u>Revenue:</u>		
Grain Services (02)	288,324	288,324
<u>Net Impact:</u>		
State Grain Laboratory (02)	188,156	186,096
Commercial Dealer/Produce (02)	<u>(2,960)</u>	<u>(2,400)</u>
Total	185,196	183,696

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

With volume increases anticipated, the laboratory would reduce fees in accordance with 80-4-721(4), MCA, so revenues would match expenditures for services provided.

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)
- No
- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

The Montana Department of Agriculture, State Grain Laboratory, is part of the nationwide official inspection system designated by the USDA/FGIS to perform official federal inspection within the geographic boundaries of Montana. The United States Grain Standards Act, Section 7(f)(1)(A)(vi) was amended on November 24, 1993, to eliminate the authority for delegated and designated states to use monies "collected from providing official inspection and weighing services of grain for the maintenance of other agricultural programs. Accordingly, all monies collected for performing official inspection and weighing services of grain under the Act must be used to maintain those programs exclusively."

(continued)

Allocating the laboratory's revenue to the general fund would be in violation of the USGSA.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? Yes No (if no, explain)

d) Does the need for this state special revenue provision still exist? Yes No (Explain)

See (b) and (f).

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No. All money expended through this program is in compliance with legislatively established appropriations.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Yes. MCA Section 80-4-721 states "(4) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of grain, shall reflect as nearly as possible the cost of the services. (5) All those fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund may be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of grain."

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The dedicated revenue provision results in accounting/auditing in compliance with USGSA Section 7(f)(1)(A)(vi) and MCA Section 80-4-721.