

## 1 SENATE BILL NO. 107

2 INTRODUCED BY BECK

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS REGARDING AGRICULTURAL  
6 COMMODITY STANDARDS, STORAGE, AND MERCHANDISING; EXEMPTING REVENUE COLLECTED FROM  
7 THE ADMINISTRATION OF THE STATE GRAIN LABORATORY FROM BUDGET AMENDMENT  
8 REQUIREMENTS; REVISING APPLICABLE PENALTIES; REVISING PROCEDURES FOR SUBMITTING  
9 SAMPLES TO THE STATE GRAIN LABORATORY AND FOR APPEALING ANALYSIS RESULTS; AMENDING  
10 SECTIONS 17-7-402, 80-4-402, 80-4-405, 80-4-409, 80-4-421, 80-4-429, 80-4-501, 80-4-536, 80-4-701,  
11 80-4-702, 80-4-703, 80-4-704, 80-4-705, 80-4-706, 80-4-708, 80-4-721, 80-4-722, 80-4-724, AND  
12 80-4-725, MCA; REPEALING SECTIONS 80-4-301, 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306,  
13 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707, 80-4-710, 80-4-723, AND 80-4-727, MCA; AND  
14 PROVIDING AN EFFECTIVE DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

19 **"17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (6), a budget  
20 amendment may not be approved:

21 (a) by the approving authority, except a budget amendment to spend:

22 (i) additional federal revenue;

23 (ii) additional tuition collected by the Montana university system;

24 (iii) additional revenue deposited in the internal service funds within the department or the office  
25 of the commissioner of higher education as a result of increased service demands by state agencies;

26 (iv) Montana historical society enterprise revenue resulting from sales to the public;

27 (v) additional revenue that is deposited in funds other than the general fund and that is from the  
28 sale of fuel for those agencies participating in the Montana public vehicle fueling program established by  
29 Executive Order 22-91; ~~or~~

30 (vi) revenue resulting from the sale of goods produced or manufactured by the industries program

1 of an institution within the department of corrections; or

2 (vii) revenue collected for the administration of the state grain laboratory under the provisions of  
3 Title 80, chapter 4, part 7;

4 (b) by the approving authority if the budget amendment contains any significant ascertainable  
5 commitment for any present or future increased general fund support;

6 (c) by the approving authority for the expenditure of money in the state special revenue fund unless  
7 an emergency justifies the expenditure;

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

9 (e) by the approving authority for any matter of which the requesting agency had knowledge at  
10 a time when the proposal could have been presented to an appropriation subcommittee, the house  
11 appropriations committee, or the senate finance and claims committee of the most recent legislative session  
12 open to that matter, except when the legislative finance committee is given specific notice by the approving  
13 authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements  
14 of Montana state law, have occurred since the matter was raised with or presented for consideration by  
15 the legislature; or

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

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

18 (3) Each budget amendment must be submitted by the approving authority to the budget director  
19 and the legislative fiscal analyst.

20 (4) Money from nonstate or nonfederal sources that would be deposited in the state special  
21 revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust  
22 agreement, or donation, is exempt from the requirements of this part.

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

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

28

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

30 **"80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions

1 apply:

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

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

8 (3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any  
9 equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

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

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

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

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

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

20 (e) a person whose trading in agricultural commodities is limited to trading in commodity futures  
21 on a recognized futures exchange; or

22 (f) a person who buys agricultural commodities used exclusively for the feeding of livestock and  
23 not for resale.

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

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

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

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

6 (9) "FGIS" means the federal grain inspection service, a program administered by the federal grain  
 7 inspection, packers, and stockyards administration (GIPSA).

8 ~~(9)(10)~~ "Grain" means all grains for which standards have been established under the ~~United States~~  
 9 ~~Grain Standards Act, 7 U.S.C. 71 through 87,~~ and all other agricultural commodities, such as mustard, oil  
 10 seed crops, or other crops, ~~which~~ that may be designated by rule of the department.

11 (11) "Grain standards" means the official standards of quality and condition of grain that establish  
 12 the grades defined by the Grain Standards Act or those standards adopted by department rule.

13 ~~(10)(12)~~ "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through  
 14 87.

15 ~~(11)(13)~~ "Inspector" means ~~any~~ a person designated by the director to assist in the administration  
 16 of parts 4 through ~~6~~ 7 of this chapter. The term includes warehouse auditors or examiners.

17 ~~(12)(14)~~ "Official grain agricultural commodity inspectors" means ~~any~~ official personnel who  
 18 perform or supervise the performance of official inspection services and certify the results of inspections,  
 19 including the grade of ~~the grain~~ grain agricultural commodities.

20 ~~(13)(15)~~ "Official grain agricultural commodity samplers" or "samplers" means ~~any~~ official  
 21 personnel who perform or supervise the performance of official sampling services and certify the results  
 22 of the sampling.

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

25 ~~(15)(16)~~ "Official grain agricultural commodity weighers" means ~~any~~ official personnel who perform  
 26 or supervise the performance of class X or class Y weighing services and certify the results ~~thereof~~ of the  
 27 services, including the weight of the grain agricultural commodity.

28 ~~(16)(17)~~ "Person" means ~~any~~ an individual, firm, association, corporation, partnership, or any other  
 29 form of business enterprise.

30 ~~(17)(18)~~ "Producer" means the owner, tenant, or operator of land in this state who has an interest

1 in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

2 ~~(18)~~(19) "Public warehouse" or "warehouse" means ~~any~~ an elevator, mill, warehouse, subterminal  
3 grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural  
4 commodities are received for storage, handling, processing, or shipment. The term includes facilities ~~which~~  
5 that commingle commodities belonging to different lots of agricultural commodities.

6 ~~(19)~~(20) "Purchase contract" means a delayed payment contract or other written contract for the  
7 purchase of agricultural commodities by a commodity dealer.

8 ~~(20)~~(21) "Purchase price" means the final price after premiums and discounts are assessed.

9 ~~(22)~~ "Receipt" means a warehouse receipt.

10 ~~(21)~~(23) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt,  
11 given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon  
12 initial delivery of the agricultural commodity to the warehouse.

13 ~~(22)~~(24) "Station" means a warehouse located more than 3 miles from the central office of the  
14 warehouse.

15 ~~(23)~~(25) "Subterminal warehouse" means ~~any~~ a warehouse ~~at which~~ where an intermediate  
16 function is performed in which agricultural commodities are customarily received from dealers or producers  
17 and where the commodities are accumulated prior to shipment.

18 ~~(24)~~(26) "Terminal grain warehouse" means ~~any~~ a warehouse authorized by a grain exchange to  
19 receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

20 ~~(25)~~(27) "Warehouse operator" means a person operating or controlling a public warehouse.

21 ~~(26)~~(28) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued  
22 under part 5 of this chapter by a warehouse operator, except scale weight tickets."  
23

24 **Section 3.** Section 80-4-405, MCA, is amended to read:

25 "**80-4-405. Maximum bond amount.** The maximum amount of any public warehouse operator bond  
26 may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1  
27 million, except:

28 (1) any bonds compensating for net asset deficiencies prescribed in parts 5 and 6 of this chapter  
29 must be added to the maximum bond amount. In the event that the public warehouse operator is also  
30 licensed as a commodity dealer, only one net asset deficiency amount is required; and.

1 (2) the maximum bond amount must be adjusted each year based upon the percentage increase  
2 or decrease in the annual average index of prices received by Montana farmers for food and feed grains as  
3 computed by the Montana crop and livestock reporting service."  
4

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

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

9 (1) upon written permission of the licensee;

10 (2) in actions or administrative proceedings commenced under the provisions of parts 4 through  
11 ~~6~~ 7 of this chapter;

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

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

15 (5) when released to a bonding company approved by the department."  
16

17 **Section 5.** Section 80-4-421, MCA, is amended to read:

18 **"80-4-421. License suspension and revocation -- renewal.** (1) The department may revoke,  
19 suspend, or modify a license when it has reasonable cause to believe that the licensee has committed any  
20 of the following acts, each of which is a violation of parts ~~5 and 6~~ 4 through 7 of this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (c) has been convicted of a criminal offense and the denial or refusal is made after considering Title  
19 37, chapter 1, part 2.

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

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

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

27  
28 **Section 6.** Section 80-4-429, MCA, is amended to read:

29 **"80-4-429. Penalty.** (1) Except as otherwise provided, ~~any~~ a person who violates any provision  
30 of parts 4 through 6 ~~7~~ of this chapter or rules promulgated under parts 4 through 6 ~~7~~ or who impedes,

1 obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative  
 2 in the performance of a duty under parts 4 through ~~6~~ 7 of this chapter is guilty of a misdemeanor ~~and is~~  
 3 ~~punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than \$1,000,~~  
 4 ~~or both.~~

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

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

12 (4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(4)(f)  
 13 who fails to pay in full all amounts due to a ~~commodity dealer~~ producer for the sale of agricultural  
 14 commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by  
 15 this chapter.

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

19 (a) a nitrogen fertilizer added to harvested grain;

20 (b) a poisonous, deleterious, or other substance not registered or approved by federal or state  
 21 statutes, regulations, or rules; or

22 (c) a registered or approved substance that has not been used or applied according to label  
 23 directions or other government standards."

24

25 **Section 7.** Section 80-4-501, MCA, is amended to read:

26 **"80-4-501. License necessary to operate public warehouse.** (1) ~~No~~ A person may not act as a  
 27 warehouse operator without first having obtained an annual license from the department. This requirement  
 28 ~~does~~ and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do  
 29 not apply to operators of warehouses that are federally licensed under the United States Warehouse Act.  
 30 However, if a federally licensed warehouse operator engages in business as a commodity dealer, the



1 provisions of parts 4 through 7 apply to the commodity dealer activity.

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

8  
9 **Section 8.** Section 80-4-536, MCA, is amended to read:

10 **"80-4-536. Termination of storage contract -- sale of agricultural commodities for charges -- notice**  
11 **required.** (1) Storage of agricultural commodities may be terminated by the depositor at any time by the  
12 payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand  
13 for delivery of the agricultural commodities or a notice to the warehouse operator to sell the commodities.

14 (2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of  
15 the storage contract entered into prior to the expiration of the storage contract, the warehouse operator  
16 ~~shall~~ may, upon the expiration of the storage contract, sell so much of the stored agricultural commodities  
17 at the local market price at the close of business on that day as is sufficient to pay the accrued storage  
18 charges. ~~He~~ The warehouse operator shall then issue new warehouse receipts for the balance of the  
19 agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts.  
20 If the warehouse receipt is not returned, the warehouse operator may apply for an encumbrance to the  
21 grain settlement records for outstanding storage in lieu of reissuance of the warehouse receipt subject to  
22 the provisions of subsection (3). The warehouse operator shall notify all warehouse receipt holders who  
23 are subject to the provisions of subsection (3) of the provisions of this section 30 days prior to the end of  
24 the storage-period license year.

25 (3) All storage contracts on agricultural commodities evidenced by a warehouse receipt must be  
26 terminated within 3 license years. The termination date for those storage contracts must be calculated by  
27 considering the license year during which the contract was issued as the first license year, plus 2 additional  
28 license years, for a total of 3 license years."

29  
30 **Section 9.** Section 80-4-701, MCA, is amended to read:

1           **"80-4-701. Official ~~grain~~ agricultural commodity inspectors, samplers, and weighers -- designation**  
 2 **of seasonal inspection points -- assignment of inspectors.** (1) The department shall provide inspectors,  
 3 samplers, and weighers to enforce this part. At all inspection points designated by the department, the  
 4 department shall provide sufficient official ~~grain~~ agricultural commodity inspectors, samplers, and weighers  
 5 to inspect and weigh all ~~grain~~ agricultural commodities subject to state inspection.

6           (2) The department may, during the grain-marketing season, appoint inspectors to visit the  
 7 grain-growing districts to investigate the grading, dockage, and weighing of grain and to enforce the rules  
 8 of the department.

9           (3) Expenditures for the inspection and weighing at the points designated by the department may  
 10 not exceed total fee receipts at those points."

11  
 12           **Section 10.** Section 80-4-702, MCA, is amended to read:

13           **"80-4-702. Qualifications of official ~~grain~~ agricultural commodity inspectors, samplers, and**  
 14 **weighers.** Official ~~grain~~ agricultural commodity inspectors, samplers, and weighers must be qualified in  
 15 accordance with the Grain Standards Act. Official ~~grain~~ agricultural commodity inspectors, samplers, and  
 16 weighers may not be directly or indirectly interested in the handling, sorting, shipping, purchasing, or selling  
 17 of agricultural commodities, grain, or grain commodities."

18  
 19           **Section 11.** Section 80-4-703, MCA, is amended to read:

20           **"80-4-703. Penalty for misconduct.** (1) ~~Any~~ An official ~~grain~~ agricultural commodity inspector,  
 21 sampler, or weigher who is guilty of neglect of duty, ~~or~~ who knowingly or carelessly inspects, samples, or  
 22 weighs ~~grain~~ agricultural commodities improperly, or who directly or indirectly accepts any money or other  
 23 consideration for neglect of duty or improper performance of duty is guilty of official misconduct and is  
 24 punishable as provided in 45-7-401.

25           (2) ~~Any~~ A person who improperly influences or attempts to improperly influence ~~any~~ an official  
 26 ~~grain~~ agricultural commodity inspector, sampler, or weigher in the performance of ~~his~~ the inspector's,  
 27 sampler's, or weigher's duties is guilty of bribery and is punishable as provided in 45-7-101.

28           (3) Upon conviction of an offense described in subsection (1), an ~~officer~~ official agricultural  
 29 commodity inspector, sampler, or weigher must be removed by the department pursuant to procedures  
 30 established by department rule."

1           **Section 12.** Section 80-4-704, MCA, is amended to read:

2           **"80-4-704. Establishment of standard grain agricultural commodity grades.** (1) The department  
3 shall ~~may~~ by rule establish standard grades to apply to all grain agricultural commodities for which a United  
4 States department of agriculture grade has not been established and that are bought by commodity dealers  
5 and stored or handled by warehouses in this state. The department shall adopt as state grade and dockage  
6 standards all grades for grain agricultural commodities established by the United States department of  
7 agriculture. For purposes of this chapter, any reference to a grade also includes a reference to a protein  
8 analysis or any other factor provided by department rule if the analysis affects the purchase price.

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

11  
12           **Section 13.** Section 80-4-705, MCA, is amended to read:

13           **"80-4-705. Rules governing dockage -- sample inspection.** The department shall adopt rules  
14 governing the dockage on inferior grades, which shall apply in all executory contracts entered into after  
15 their adoption. If the purchase price ~~or amount to be paid~~ depends on terminal weight or grade, the rules  
16 shall control the dockage insofar as dockage affects the purchase price ~~to be paid~~. The department shall  
17 also provide for sample inspection of grain agricultural commodities, adopt rules governing sample  
18 inspection, and provide that the sample inspection, when made, is final."

19  
20           **Section 14.** Section 80-4-706, MCA, is amended to read:

21           **"80-4-706. Special inspection of grain agricultural commodities.** (1) If ~~grain is~~ agricultural  
22 commodities are sold based on Montana grade and ~~is~~ are to be shipped from places not provided with state  
23 inspection, the buyer, seller, or person making the delivery may have ~~it~~ the agricultural commodities  
24 inspected by notifying an inspector, who shall have ~~the grain~~ them inspected. After inspection, the  
25 inspector shall issue, on request of the buyer, seller, or person delivering the grain agricultural commodity,  
26 an inspector's certificate showing the grade of the grain agricultural commodity. The person calling for the  
27 inspection shall pay a reasonable fee fixed by department rule.

28           (2) Grain An agricultural commodity that is shipped to points in this state where no inspection is  
29 maintained may be inspected on request of either the buyer or seller, and a certificate may be issued  
30 showing the grade of the grain agricultural commodity. The charge for the service shall ~~shall~~ must at least equal

1 the entire cost of providing it and ~~shall~~ must be paid by the party calling for the inspection."

2

3 **Section 15.** Section 80-4-708, MCA, is amended to read:

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

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

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

20

21 **Section 16.** Section 80-4-721, MCA, is amended to read:

22 **"80-4-721. Fees for inspection, testing, and weighing grain agricultural commodities -- disposition**  
23 **-- investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of grain  
24 agricultural commodities.

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

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

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

1           ~~(5)~~(3) All those fees and charges must be paid to the department and deposited with the state  
2 treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the  
3 state special revenue fund ~~may~~ must be used to pay approved claims for expenses incurred in inspecting,  
4 grading, weighing, and protein testing of ~~grain~~ agricultural commodities.

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

8  
9           **Section 17.** Section 80-4-722, MCA, is amended to read:

10           "**80-4-722. Records of inspection.** (1) The official ~~grain~~ agricultural commodity inspectors,  
11 samplers, and weighers have exclusive control at places provided for state inspection of the weighing and  
12 grading of ~~grain~~ agricultural commodities to be inspected. Suitable books and records must be kept in which  
13 must be entered an accurate record of every carload or truckload of ~~grain~~ agricultural commodities  
14 inspected or weighed by them. The records must show for each car or truck:

15           (a) the number or other designation of the car or truck;

16           (b) the net weight of the ~~grain~~ agricultural commodity;

17           (c) the kind of ~~grain~~ agricultural commodity and its grade and, if graded below standard No. 1  
18 grade, the reason for ~~such~~ the grade.

19           (2) For each carload or truckload of ~~grain~~ agricultural commodities, the official ~~grain~~ agricultural  
20 commodity inspector shall give a certificate of inspection, showing the kind and grade of the ~~grain~~  
21 agricultural commodity, the reason for all grades below No. 1, and the amount to be allowed for dockage,  
22 if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true  
23 weight ~~thereof~~ and containing a statement on the condition of the car or truck and evidences of leakage  
24 or damage, if any.

25           (3) The inspection and weight certificates must be made available to the warehouse loading or  
26 unloading the ~~grain~~ agricultural commodity, the shipper or ~~his~~ the shipper's agent, and the railroad company  
27 or other carrier by which the ~~grain~~ agricultural commodity was shipped or carried.

28           (4) Official ~~grain~~ agricultural commodity inspectors and weighers shall also keep an accurate record  
29 of all appeals and decisions and a complete record of every official act, which books and records must be  
30 open to inspection by any party of interest."

1           **Section 18.** Section 80-4-724, MCA, is amended to read:

2           **"80-4-724. Coloration of grain agricultural commodities treated with injurious or toxic substances**  
 3 **-- exception.** (1) Any grain agricultural commodity treated with any injurious or toxic substance or chemical  
 4 must at the same time be colored or dyed a color contrasting with the natural color of the grain agricultural  
 5 commodity so that the treated grain agricultural commodity is readily identifiable as having been treated  
 6 with an injurious or toxic substance or chemical. This subsection does not apply to the application of  
 7 pesticides to agricultural commodities according to label directions for the treatment of pests that might  
 8 be present in the agricultural commodity.

9           (2) A person who fails to comply with the requirements of this section is subject to the penalty  
 10 provisions of 80-4-429."

11

12           **Section 19.** Section 80-4-725, MCA, is amended to read:

13           **"80-4-725. Sale or offering for sale of treated product prohibited.** ~~No~~ A person may not sell or  
 14 offer for sale grain an agricultural commodity that has been treated with any injurious or toxic substance  
 15 or chemical unless the grain agricultural commodity has been colored or dyed a color contrasting with the  
 16 natural color of the grain agricultural commodity. Section 80-4-724 and this section do not apply to the  
 17 treatment of grain an agricultural commodity solely for the killing of insects ~~which~~ that might be present  
 18 ~~therein~~. A person violating this section is guilty of a misdemeanor."

19

20           **NEW SECTION. Section 20. Agricultural commodity sampling -- appeal procedure.** (1) At the time  
 21 of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale,  
 22 each warehouse operator or commodity dealer shall take a representative sample from each load of  
 23 agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's  
 24 name marked on the container. A composite sample consisting of a minimum of 1 1/2 quarts or 1,050  
 25 grams of the representative sample must, upon written request of the depositor, be submitted directly to  
 26 the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory  
 27 is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain  
 28 a minimum of 1 1/2 quarts or 1,050 grams of the remaining sample for 60 days.

29           (2) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the  
 30 depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis,

1 the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When  
2 an appeal is made, the warehouse operator or commodity dealer shall submit 1 1/2 quarts or 1,050 grams  
3 of the representative sample to the state grain laboratory for appeal analysis.

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

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

14 (5) All samples submitted for analysis are the property of the state grain laboratory and subject to  
15 its disposition.

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

18  
19 **NEW SECTION. Section 21. Repealer.** Sections 80-4-301, 80-4-302, 80-4-303, 80-4-304,  
20 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707, 80-4-710, 80-4-723, and  
21 80-4-727, MCA, are repealed.

22  
23 **NEW SECTION. Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are  
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
25 applications, the part remains in effect in all valid applications that are severable from the invalid  
26 applications.

27  
28 **NEW SECTION. Section 23. Codification instruction.** [Section 20] is intended to be codified as  
29 an integral part of Title 80, chapter 4, part 7, and the provisions of Title 80, chapter 4, part 7, apply to  
30 [section 20].





STATE OF MONTANA - FISCAL NOTE

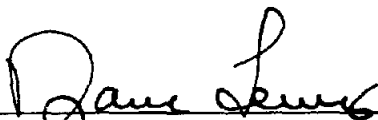
Fiscal Note for SB0107, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising certain provisions regarding agricultural commodity standards, storage, and merchandising; exempting revenue collected from the administration 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.

FISCAL IMPACT:

There is no fiscal impact to the Department of Agriculture or the state.

 1-18-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1/14/97  
TOM BECK, PRIMARY SPONSOR      DATE

Fiscal Note for SB0107, as introduced

**SB 107**

APPROVED BY COM ON AGRICULTURE,  
LIVESTOCK & IRRIGATION

1 SENATE BILL NO. 107

2 INTRODUCED BY BECK

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS REGARDING AGRICULTURAL  
6 COMMODITY STANDARDS, STORAGE, AND MERCHANDISING; EXEMPTING REVENUE COLLECTED FROM  
7 THE ADMINISTRATION OF THE STATE GRAIN LABORATORY FROM BUDGET AMENDMENT  
8 REQUIREMENTS; REVISING APPLICABLE PENALTIES; CLARIFYING THAT THE ANNUAL COMMODITY  
9 DEALER LICENSE FEE IS COLLECTIBLE FOR EACH FACILITY COVERED UNDER THE LICENSE; REVISING  
10 PROCEDURES FOR SUBMITTING SAMPLES TO THE STATE GRAIN LABORATORY AND FOR APPEALING  
11 ANALYSIS RESULTS; AMENDING SECTIONS 17-7-402, 80-4-402, 80-4-405, 80-4-409, 80-4-421,  
12 80-4-429, 80-4-501, 80-4-536, 80-4-602, 80-4-701, 80-4-702, 80-4-703, 80-4-704, 80-4-705, 80-4-706,  
13 80-4-708, 80-4-721, 80-4-722, 80-4-724, AND 80-4-725, MCA; REPEALING SECTIONS 80-4-301,  
14 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707,  
15 80-4-710, 80-4-723, AND 80-4-727, MCA; AND PROVIDING AN EFFECTIVE DATE."

16

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

18

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

20 "17-7-402. **Budget amendment requirements.** (1) Except as provided in subsection (6), a budget  
21 amendment may not be approved:

22 (a) by the approving authority, except a budget amendment to spend:

23 (i) additional federal revenue;

24 (ii) additional tuition collected by the Montana university system;

25 (iii) additional revenue deposited in the internal service funds within the department or the office  
26 of the commissioner of higher education as a result of increased service demands by state agencies;

27 (iv) Montana historical society enterprise revenue resulting from sales to the public;

28 (v) additional revenue that is deposited in funds other than the general fund and that is from the  
29 sale of fuel for those agencies participating in the Montana public vehicle fueling program established by  
30 Executive Order 22-91; or

1 (vi) revenue resulting from the sale of goods produced or manufactured by the industries program  
2 of an institution within the department of corrections; or

3 (vii) revenue collected for the administration of the state grain laboratory under the provisions of  
4 Title 80, chapter 4, part 7;

5 (b) by the approving authority if the budget amendment contains any significant ascertainable  
6 commitment for any present or future increased general fund support;

7 (c) by the approving authority for the expenditure of money in the state special revenue fund unless  
8 an emergency justifies the expenditure;

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

10 (e) by the approving authority for any matter of which the requesting agency had knowledge at  
11 a time when the proposal could have been presented to an appropriation subcommittee, the house  
12 appropriations committee, or the senate finance and claims committee of the most recent legislative session  
13 open to that matter, except when the legislative finance committee is given specific notice by the approving  
14 authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements  
15 of Montana state law, have occurred since the matter was raised with or presented for consideration by  
16 the legislature; or

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

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

19 (3) Each budget amendment must be submitted by the approving authority to the budget director  
20 and the legislative fiscal analyst.

21 (4) Money from nonstate or nonfederal sources that would be deposited in the state special  
22 revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust  
23 agreement, or donation, is exempt from the requirements of this part.

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

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

29  
30 **Section 2.** Section 80-4-402, MCA, is amended to read:

1           **"80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions  
2 apply:

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

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

9           (3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any  
10 equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

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

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

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

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

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

21           (e) a person whose trading in agricultural commodities is limited to trading in commodity futures  
22 on a recognized futures exchange; or

23           (f) a person who buys agricultural commodities used exclusively for the feeding of livestock and  
24 not for resale.

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

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

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

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

7 (9) "FGIS" means the federal grain inspection service, a program administered by the federal grain  
8 inspection, packers, and stockyards administration (GIPSA).

9 ~~(9)(10)~~ "Grain" means all grains for which standards have been established under the ~~United States~~  
10 ~~Grain Standards Act, 7 U.S.C. 71 through 87,~~ and all other agricultural commodities, such as mustard, oil  
11 seed crops, or other crops, ~~which~~ that may be designated by rule of the department.

12 (11) "Grain standards" means the official standards of quality and condition of grain that establish  
13 the grades defined by the Grain Standards Act or those standards adopted by department rule.

14 ~~(10)(12)~~ "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through  
15 87.

16 ~~(11)(13)~~ "Inspector" means ~~any~~ a person designated by the director to assist in the administration  
17 of parts 4 through ~~6~~ 7 of this chapter. The term includes warehouse auditors or examiners.

18 ~~(12)(14)~~ "Official ~~grain~~ agricultural commodity inspectors" means ~~any~~ official personnel who  
19 perform or supervise the performance of official inspection services and certify the results of inspections,  
20 including the grade of ~~the grain~~ agricultural commodities.

21 ~~(13)(15)~~ "Official ~~grain~~ agricultural commodity samplers" or "samplers" means ~~any~~ official  
22 personnel who perform or supervise the performance of official sampling services and certify the results  
23 of the sampling.

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

26 ~~(15)(16)~~ "Official ~~grain~~ agricultural commodity weighers" means ~~any~~ official personnel who perform  
27 or supervise the performance of class X or class Y weighing services and certify the results ~~thereof~~ of the  
28 services, including the weight of the ~~grain~~ agricultural commodity.

29 ~~(16)(17)~~ "Person" means ~~any~~ an individual, firm, association, corporation, partnership, or any other  
30 form of business enterprise.

1           ~~(17)~~(18) "Producer" means the owner, tenant, or operator of land in this state who has an interest  
2 in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

3           ~~(18)~~(19) "Public warehouse" or "warehouse" means ~~any~~ an elevator, mill, warehouse, subterminal  
4 grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural  
5 commodities are received for storage, handling, processing, or shipment. The term includes facilities ~~which~~  
6 that commingle commodities belonging to different lots of agricultural commodities.

7           ~~(19)~~(20) "Purchase contract" means a delayed payment contract or other written contract for the  
8 purchase of agricultural commodities by a commodity dealer.

9           ~~(20)~~(21) "Purchase price" means the final price after premiums and discounts are assessed.

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

11          ~~(21)~~(23) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt,  
12 given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon  
13 initial delivery of the agricultural commodity to the warehouse.

14          ~~(22)~~(24) "Station" means a warehouse located more than 3 miles from the central office of the  
15 warehouse.

16          ~~(23)~~(25) "Subterminal warehouse" means ~~any~~ a warehouse ~~at which~~ where an intermediate  
17 function is performed in which agricultural commodities are customarily received from dealers or producers  
18 and where the commodities are accumulated prior to shipment.

19          ~~(24)~~(26) "Terminal grain warehouse" means ~~any~~ a warehouse authorized by a grain exchange to  
20 receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

21          ~~(25)~~(27) "Warehouse operator" means a person operating or controlling a public warehouse.

22          ~~(26)~~(28) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued  
23 under part 5 of this chapter by a warehouse operator, except scale weight tickets."

24

25          **Section 3.** Section 80-4-405, MCA, is amended to read:

26          "**80-4-405. Maximum bond amount.** The maximum amount of any public warehouse operator bond  
27 may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1  
28 million, except:

29               (1) any bonds compensating for net asset deficiencies prescribed in parts 5 and 6 of this chapter  
30 must be added to the maximum bond amount. In the event that the public warehouse operator is also

1 licensed as a commodity dealer, only one net asset deficiency amount is required; and,

2 (2) the maximum bond amount must be adjusted each year based upon the percentage increase  
3 or decrease in the annual average index of prices received by Montana farmers for food and feed grains as  
4 computed by the Montana crop and livestock reporting service."

5

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

7 **"80-4-409. Confidentiality of records.** All financial statements of warehouse operators and  
8 commodity dealers required under the provisions of parts 5 and 6 of this chapter ~~shall~~ must be kept  
9 confidential by the department and are not subject to disclosure except:

10 (1) upon written permission of the licensee;

11 (2) in actions or administrative proceedings commenced under the provisions of parts 4 through  
12 ~~6~~ 7 of this chapter;

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

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

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

17

18 **Section 5.** Section 80-4-421, MCA, is amended to read:

19 **"80-4-421. License suspension and revocation -- renewal.** (1) The department may revoke,  
20 suspend, or modify a license when it has reasonable cause to believe that the licensee has committed any  
21 of the following acts, each of which is a violation of parts ~~5 and 6~~ 4 through 7 of this chapter:

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

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

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

30 (d) failure or refusal to allow inspection or maintain and provide records, reports, and other

1 information required by the department;

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

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

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

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

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

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

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

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

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

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

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

19 (c) has been convicted of a criminal offense and the denial or refusal is made after considering Title  
20 37, chapter 1, part 2.

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

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

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

28

29 **Section 6.** Section 80-4-429, MCA, is amended to read:

30 **"80-4-429. Penalty.** (1) Except as otherwise provided, ~~any~~ a person who violates any provision



1 of parts 4 through ~~6~~ 7 of this chapter or rules promulgated under parts 4 through ~~6~~ 7 or who impedes,  
 2 obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative  
 3 in the performance of a duty under parts 4 through ~~6~~ 7 of this chapter is guilty of a misdemeanor ~~and is~~  
 4 ~~punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than \$1,000,~~  
 5 ~~or both.~~

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

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

13 (4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(4)(f)  
 14 who fails to pay in full all amounts due to a ~~commodity dealer~~ producer for the sale of agricultural  
 15 commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by  
 16 this chapter.

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

20 (a) a nitrogen fertilizer added to harvested grain;

21 (b) a poisonous, deleterious, or other substance not registered or approved by federal or state  
 22 statutes, regulations, or rules; or

23 (c) a registered or approved substance that has not been used or applied according to label  
 24 directions or other government standards."

25  
 26 **Section 7.** Section 80-4-501, MCA, is amended to read:

27 **"80-4-501. License necessary to operate public warehouse.** (1) ~~No~~ A person may not act as a  
 28 warehouse operator without first having obtained an annual license from the department. This requirement  
 29 ~~does~~ and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do  
 30 not apply to operators of warehouses that are federally licensed under the United States Warehouse Act.

1 However, if a federally licensed warehouse operator engages in business as a commodity dealer, the  
 2 provisions of parts 4 through 7 apply to the commodity dealer activity.

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

9

10 **Section 8.** Section 80-4-536, MCA, is amended to read:

11 **"80-4-536. Termination of storage contract -- sale of agricultural commodities for charges -- notice**  
 12 **required.** (1) Storage of agricultural commodities may be terminated by the depositor at any time by the  
 13 payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand  
 14 for delivery of the agricultural commodities or a notice to the warehouse operator to sell the commodities.

15 (2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of  
 16 the storage contract entered into prior to the expiration of the storage contract, the warehouse operator  
 17 ~~shall~~ may, upon the expiration of the storage contract, sell so much of the stored agricultural commodities  
 18 at the local market price at the close of business on that day as is sufficient to pay the accrued storage  
 19 charges. ~~He~~ The warehouse operator shall then issue new warehouse receipts for the balance of the  
 20 agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts.  
 21 If the warehouse receipt is not returned, the warehouse operator may apply for an encumbrance to the  
 22 grain settlement records for outstanding storage in lieu of reissuance of the warehouse receipt subject to  
 23 the provisions of subsection (3). The warehouse operator shall notify all warehouse receipt holders who  
 24 are subject to the provisions of subsection (3) of the provisions of this section 30 days prior to the end of  
 25 the ~~storage period~~ license year.

26 (3) All storage contracts on agricultural commodities evidenced by a warehouse receipt must be  
 27 terminated within 3 license years. The termination date for those storage contracts must be calculated by  
 28 considering the license year during which the contract was issued as the first license year, plus 2 additional  
 29 license years, for a total of 3 license years."

30

1           **SECTION 9. SECTION 80-4-602, MCA, IS AMENDED TO READ:**

2           **"80-4-602. License fees.** (1) Except as provided in subsection (3), the department shall collect an  
3 annual fee of \$232 per facility for each commodity dealer license.

4           (2) If, after evaluation of the commodity dealer/public warehouse operator program, the department  
5 determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the  
6 department may by rule increase the license fees, but the fee may not exceed \$500 for a facility.

7           (3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-202(4) is  
8 \$100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for  
9 agricultural seed intended for resale as agricultural seed.

10          (4) All fees collected under this section must be placed in the commodity dealer/public warehouse  
11 operators account."

12

13           **Section 10.** Section 80-4-701, MCA, is amended to read:

14           **"80-4-701. Official grain agricultural commodity inspectors, samplers, and weighers -- designation**  
15 **of seasonal inspection points -- assignment of inspectors.** (1) The department shall provide inspectors,  
16 samplers, and weighers to enforce this part. At all inspection points designated by the department, the  
17 department shall provide sufficient official grain agricultural commodity inspectors, samplers, and weighers  
18 to inspect and weigh all grain agricultural commodities subject to state inspection.

19           (2) The department may, during the grain-marketing season, appoint inspectors to visit the  
20 grain-growing districts to investigate the grading, dockage, and weighing of grain and to enforce the rules  
21 of the department.

22           (3) Expenditures for the inspection and weighing at the points designated by the department may  
23 not exceed total fee receipts at those points."

24

25           **Section 11.** Section 80-4-702, MCA, is amended to read:

26           **"80-4-702. Qualifications of official grain agricultural commodity inspectors, samplers, and**  
27 **weighers.** Official grain agricultural commodity inspectors, samplers, and weighers must be qualified in  
28 accordance with the Grain Standards Act. Official grain agricultural commodity inspectors, samplers, and  
29 weighers may not be directly or indirectly interested in the handling, sorting, shipping, purchasing, or selling  
30 of agricultural commodities, grain, or grain commodities."

1           **Section 12.** Section 80-4-703, MCA, is amended to read:

2           "**80-4-703. Penalty for misconduct.** (1) ~~Any~~ An official grain agricultural commodity inspector,  
3 sampler, or weigher who is guilty of neglect of duty, ~~or~~ who knowingly or carelessly inspects, samples, or  
4 weighs grain agricultural commodities improperly, ~~or~~ who directly or indirectly accepts any money or other  
5 consideration for neglect of duty or improper performance of duty is guilty of official misconduct and is  
6 punishable as provided in 45-7-401.

7           (2) ~~Any~~ A person who improperly influences or attempts to improperly influence ~~any~~ an official  
8 grain agricultural commodity inspector, sampler, or weigher in the performance of ~~his~~ the inspector's,  
9 sampler's, or weigher's duties is guilty of bribery and is punishable as provided in 45-7-101.

10           (3) Upon conviction of an offense described in subsection (1), an ~~officer~~ official agricultural  
11 commodity inspector, sampler, or weigher must be removed by the department pursuant to procedures  
12 established by department rule."

13

14           **Section 13.** Section 80-4-704, MCA, is amended to read:

15           "**80-4-704. Establishment of standard grain agricultural commodity grades.** (1) The department  
16 ~~shall~~ may by rule establish standard grades to apply to all grain agricultural commodities for which a United  
17 States department of agriculture grade has not been established and that are bought by commodity dealers  
18 and stored or handled by warehouses in this state. The department shall adopt as state grade and dockage  
19 standards all grades for grain agricultural commodities established by the United States department of  
20 agriculture. For purposes of this chapter, any reference to a grade also includes a reference to a protein  
21 analysis or any other factor provided by department rule if the analysis affects the purchase price.

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

24

25           **Section 14.** Section 80-4-705, MCA, is amended to read:

26           "**80-4-705. Rules governing dockage -- sample inspection.** The department shall adopt rules  
27 governing the dockage on inferior grades, which shall apply in all executory contracts entered into after  
28 their adoption. If the purchase price ~~or amount to be paid~~ depends on terminal weight or grade, the rules  
29 ~~shall~~ control the dockage insofar as dockage affects the purchase price ~~to be paid~~. The department shall  
30 also provide for sample inspection of grain agricultural commodities, adopt rules governing sample

1 inspection, and provide that the sample inspection, when made, is final."

2

3 **Section 15.** Section 80-4-706, MCA, is amended to read:

4 **"80-4-706. Special inspection of grain agricultural commodities.** (1) If ~~grain is~~ agricultural  
5 commodities are sold based on Montana grade and ~~is~~ are to be shipped from places not provided with state  
6 inspection, the buyer, seller, or person making the delivery may have ~~it~~ the agricultural commodities  
7 inspected by notifying an inspector, who shall have ~~the grain~~ them inspected. After inspection, the  
8 inspector shall issue, on request of the buyer, seller, or person delivering the ~~grain~~ agricultural commodity,  
9 an inspector's certificate showing the grade of the ~~grain~~ agricultural commodity. The person calling for the  
10 inspection shall pay a reasonable fee fixed by department rule.

11 (2) ~~Grain~~ An agricultural commodity that is shipped to points in this state where no inspection is  
12 maintained may be inspected on request of either the buyer or seller, and a certificate may be issued  
13 showing the grade of the ~~grain~~ agricultural commodity. The charge for the service ~~shall~~ must at least equal  
14 the entire cost of providing it and ~~shall~~ must be paid by the party calling for the inspection."

15

16 **Section 16.** Section 80-4-708, MCA, is amended to read:

17 **"80-4-708. Examination of grain agricultural commodity cars or trucks at destination.** (1) An  
18 official ~~grain~~ agricultural commodity inspector, sampler, or weigher, before opening the doors or lids of a  
19 car or truck containing ~~grain~~ agricultural commodities upon its arrival at any of the places designated by  
20 the department for inspection, shall first ascertain the condition of the car or truck and determine whether  
21 any leakages have occurred while the car or truck was in transit, determine whether the doors or lids were  
22 properly secured and sealed at the point of shipment, and make a record of those facts in all cases, giving  
23 seal numbers.

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

27 (3) A record must be kept by the official ~~grain~~ agricultural commodity inspectors, samplers, or  
28 weighers of all original seals broken, the number of seals, and the date when broken. An official ~~grain~~ agricultural commodity inspector, sampler, or weigher shall break the seal, weigh, and superintend the  
29 loading of all cars or trucks of ~~grain~~ agricultural commodities subject to inspection. Any other person who  
30

1 breaks the seal or officially weighs the cars or trucks of ~~grain~~ agricultural commodities is guilty of a  
2 misdemeanor."

3

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

5 **"80-4-721. Fees for inspection, testing, and weighing grain agricultural commodities -- disposition**  
6 **-- investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of grain  
7 agricultural commodities.

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

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

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

14 ~~(5)(3)~~ All those fees and charges must be paid to the department and deposited with the state  
15 treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the  
16 state special revenue fund ~~may~~ must be used to pay approved claims for expenses incurred in inspecting,  
17 grading, weighing, and protein testing of grain agricultural commodities.

18 ~~(6)(4)~~ The department may direct the board of investments to invest funds from the state special  
19 revenue fund pursuant to the provisions of the unified investment program for state funds. The income from  
20 ~~such~~ the investments must be credited to the proper department account in the state special revenue fund."

21

22 **Section 18.** Section 80-4-722, MCA, is amended to read:

23 **"80-4-722. Records of inspection.** (1) The official grain agricultural commodity inspectors,  
24 samplers, and weighers have exclusive control at places provided for state inspection of the weighing and  
25 grading of grain agricultural commodities to be inspected. Suitable books and records must be kept in which  
26 must be entered an accurate record of every carload or truckload of grain agricultural commodities  
27 inspected or weighed by them. The records must show for each car or truck:

28 (a) the number or other designation of the car or truck;

29 (b) the net weight of the grain agricultural commodity;

30 (c) the kind of grain agricultural commodity and its grade and, if graded below standard No. 1

1 grade, the reason for ~~such~~ the grade.

2 (2) For each carload or truckload of ~~grain~~ agricultural commodities, the official ~~grain~~ agricultural  
3 commodity inspector shall give a certificate of inspection, showing the kind and grade of the ~~grain~~  
4 agricultural commodity, the reason for all grades below No. 1, and the amount to be allowed for dockage,  
5 if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true  
6 weight ~~thereof~~ and containing a statement on the condition of the car or truck and evidences of leakage  
7 or damage, if any.

8 (3) The inspection and weight certificates must be made available to the warehouse loading or  
9 unloading the ~~grain~~ agricultural commodity, the shipper or ~~his~~ the shipper's agent, and the railroad company  
10 or other carrier by which the ~~grain~~ agricultural commodity was shipped or carried.

11 (4) Official ~~grain~~ agricultural commodity inspectors and weighers shall also keep an accurate record  
12 of all appeals and decisions and a complete record of every official act, which books and records must be  
13 open to inspection by any party of interest."  
14

15 **Section 19.** Section 80-4-724, MCA, is amended to read:

16 **"80-4-724. Coloration of ~~grain~~ agricultural commodities treated with injurious or toxic substances**  
17 **-- exception. (1) Any ~~grain~~ agricultural commodity treated with any injurious or toxic substance or chemical**  
18 **must at the same time be colored or dyed a color contrasting with the natural color of the ~~grain~~ agricultural**  
19 **commodity so that the treated ~~grain~~ agricultural commodity is readily identifiable as having been treated**  
20 **with an injurious or toxic substance or chemical. This subsection does not apply to the application of**  
21 **pesticides to agricultural commodities according to label directions for the treatment of pests that might**  
22 **be present in the agricultural commodity.**

23 **(2) A person who fails to comply with the requirements of this section is subject to the penalty**  
24 **provisions of 80-4-429.**"

25

26 **Section 20.** Section 80-4-725, MCA, is amended to read:

27 **"80-4-725. Sale or offering for sale of treated product prohibited. ~~No~~ A person may not sell or**  
28 **offer for sale ~~grain~~ an agricultural commodity that has been treated with any injurious or toxic substance**  
29 **or chemical unless the ~~grain~~ agricultural commodity has been colored or dyed a color contrasting with the**  
30 **natural color of the ~~grain~~ agricultural commodity. Section 80-4-724 and this section do not apply to the**

1 treatment of ~~grain~~ an agricultural commodity solely for the killing of insects ~~which~~ that might be present  
2 ~~therein~~. A person violating this section is guilty of a misdemeanor."

3

4 **NEW SECTION. Section 21. Agricultural commodity sampling -- appeal procedure.** (1) At the time  
5 of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale,  
6 each warehouse operator or commodity dealer shall take a representative sample from each load of  
7 agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's  
8 name marked on the container. A composite sample consisting of a minimum of 1 1/2 quarts or 1,050  
9 grams of the representative sample must, upon written request of the depositor, be submitted directly to  
10 the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory  
11 is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain  
12 a minimum of 1 1/2 quarts or 1,050 grams of the remaining sample for 60 days.

13 (2) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the  
14 depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis,  
15 the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When  
16 an appeal is made, the warehouse operator or commodity dealer shall submit 1 1/2 quarts or 1,050 grams  
17 of the representative sample to the state grain laboratory for appeal analysis.

18 (3) If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a  
19 state grain laboratory analysis, as provided in subsection (1) or (2), the depositor, warehouse operator, or  
20 commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must  
21 be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must  
22 be a portion of that agricultural commodity retained by the state grain laboratory when it conducted its  
23 analysis. The results on the state grain laboratory appeal sample are final and binding. In the absence of  
24 an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the  
25 state grain laboratory's analysis is final and binding.

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

28 (5) All samples submitted for analysis are the property of the state grain laboratory and subject to  
29 its disposition.

30 (6) An agricultural commodity purchased for resale as seed is exempt from the requirements of this



1 section.

2 (7) A PRODUCER OF MALTING BARLEY MAY BY CONTRACT WAIVE THE RIGHT TO SUBMIT A  
3 SAMPLE TO THE STATE GRAIN LABORATORY PROVIDED IN THIS SECTION.

4

5 NEW SECTION. Section 22. Repealer. Sections 80-4-301, 80-4-302, 80-4-303, 80-4-304,  
6 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707, 80-4-710, 80-4-723, and  
7 80-4-727, MCA, are repealed.

8

9 NEW SECTION. Section 23. Severability. If a part of [this act] is invalid, all valid parts that are  
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
11 applications, the part remains in effect in all valid applications that are severable from the invalid  
12 applications.

13

14 NEW SECTION. Section 24. Codification instruction. [Section ~~20~~ 21] is intended to be codified  
15 as an integral part of Title 80, chapter 4, part 7, and the provisions of Title 80, chapter 4, part 7, apply to  
16 [section ~~20~~ 21].

17

18 NEW SECTION. Section 25. Effective date. [This act] is effective July 1, 1997.

19

-END-

1 SENATE BILL NO. 107

2 INTRODUCED BY BECK

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS REGARDING AGRICULTURAL  
6 COMMODITY STANDARDS, STORAGE, AND MERCHANDISING; EXEMPTING REVENUE COLLECTED FROM  
7 THE ADMINISTRATION OF THE STATE GRAIN LABORATORY FROM BUDGET AMENDMENT  
8 REQUIREMENTS; REVISING APPLICABLE PENALTIES; CLARIFYING THAT THE ANNUAL COMMODITY  
9 DEALER LICENSE FEE IS COLLECTIBLE FOR EACH FACILITY COVERED UNDER THE LICENSE; REVISING  
10 PROCEDURES FOR SUBMITTING SAMPLES TO THE STATE GRAIN LABORATORY AND FOR APPEALING  
11 ANALYSIS RESULTS; AMENDING SECTIONS 17-7-402, 80-4-402, 80-4-405, 80-4-409, 80-4-421,  
12 80-4-429, 80-4-501, 80-4-536, 80-4-602, 80-4-701, 80-4-702, 80-4-703, 80-4-704, 80-4-705, 80-4-706,  
13 80-4-708, 80-4-721, 80-4-722, 80-4-724, AND 80-4-725, MCA; REPEALING SECTIONS 80-4-301,  
14 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707,  
15 80-4-710, 80-4-723, AND 80-4-727, MCA; AND PROVIDING AN EFFECTIVE DATE."

16

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
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14 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707,  
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14 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707,  
15 80-4-710, 80-4-723, AND 80-4-727, MCA; AND PROVIDING AN EFFECTIVE DATE."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
1819 **Section 1.** Section 17-7-402, MCA, is amended to read:20 **"17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (6), a budget  
21 amendment may not be approved:

22 (a) by the approving authority, except a budget amendment to spend:

23 (i) additional federal revenue;

24 (ii) additional tuition collected by the Montana university system;

25 (iii) additional revenue deposited in the internal service funds within the department or the office  
26 of the commissioner of higher education as a result of increased service demands by state agencies;

27 (iv) Montana historical society enterprise revenue resulting from sales to the public;

28 (v) additional revenue that is deposited in funds other than the general fund and that is from the  
29 sale of fuel for those agencies participating in the Montana public vehicle fueling program established by  
30 Executive Order 22-91; or

1 (vi) revenue resulting from the sale of goods produced or manufactured by the industries program  
2 of an institution within the department of corrections; or

3 (vii) revenue collected for the administration of the state grain laboratory under the provisions of  
4 Title 80, chapter 4, part 7;

5 (b) by the approving authority if the budget amendment contains any significant ascertainable  
6 commitment for any present or future increased general fund support;

7 (c) by the approving authority for the expenditure of money in the state special revenue fund unless  
8 an emergency justifies the expenditure;

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

10 (e) by the approving authority for any matter of which the requesting agency had knowledge at  
11 a time when the proposal could have been presented to an appropriation subcommittee, the house  
12 appropriations committee, or the senate finance and claims committee of the most recent legislative session  
13 open to that matter, except when the legislative finance committee is given specific notice by the approving  
14 authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements  
15 of Montana state law, have occurred since the matter was raised with or presented for consideration by  
16 the legislature; or

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

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

19 (3) Each budget amendment must be submitted by the approving authority to the budget director  
20 and the legislative fiscal analyst.

21 (4) Money from nonstate or nonfederal sources that would be deposited in the state special  
22 revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust  
23 agreement, or donation, is exempt from the requirements of this part.

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

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

29  
30 **Section 2.** Section 80-4-402, MCA, is amended to read:

1           **"80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions  
2 apply:

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

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

9           (3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any  
10 equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

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

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

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

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

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

21           (e) a person whose trading in agricultural commodities is limited to trading in commodity futures  
22 on a recognized futures exchange; or

23           (f) a person who buys agricultural commodities used exclusively for the feeding of livestock and  
24 not for resale.

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

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

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

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

7 (9) "FGIS" means the federal grain inspection service, a program administered by the federal grain  
8 inspection, packers, and stockyards administration (GIPSA).

9 ~~(9)(10)~~ "Grain" means all grains for which standards have been established under the ~~United States~~  
10 ~~Grain Standards Act, 7 U.S.C. 71 through 87,~~ and all other agricultural commodities, such as mustard, oil  
11 seed crops, or other crops, ~~which that~~ may be designated by rule of the department.

12 (11) "Grain standards" means the official standards of quality and condition of grain that establish  
13 the grades defined by the Grain Standards Act or those standards adopted by department rule.

14 ~~(10)(12)~~ "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through  
15 87.

16 ~~(11)(13)~~ "Inspector" means ~~any~~ a person designated by the director to assist in the administration  
17 of parts 4 through ~~6~~ 7 of this chapter. The term includes warehouse auditors or examiners.

18 ~~(12)(14)~~ "Official ~~grain~~ agricultural commodity inspectors" means ~~any~~ official personnel who  
19 perform or supervise the performance of official inspection services and certify the results of inspections,  
20 including the grade of ~~the grain~~ agricultural commodities.

21 ~~(13)(15)~~ "Official ~~grain~~ agricultural commodity samplers" or "samplers" means ~~any~~ official  
22 personnel who perform or supervise the performance of official sampling services and certify the results  
23 of the sampling.

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

26 ~~(15)(16)~~ "Official ~~grain~~ agricultural commodity weighers" means ~~any~~ official personnel who perform  
27 or supervise the performance of class X or class Y weighing services and certify the results ~~thereof~~ of the  
28 services, including the weight of the ~~grain~~ agricultural commodity.

29 ~~(16)(17)~~ "Person" means ~~any~~ an individual, firm, association, corporation, partnership, or any other  
30 form of business enterprise.

1           ~~(17)~~(18) "Producer" means the owner, tenant, or operator of land in this state who has an interest  
2 in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

3           ~~(18)~~(19) "Public warehouse" or "warehouse" means ~~any an~~ elevator, mill, warehouse, subterminal  
4 grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural  
5 commodities are received for storage, handling, processing, or shipment. The term includes facilities ~~which~~  
6 that commingle commodities belonging to different lots of agricultural commodities.

7           ~~(19)~~(20) "Purchase contract" means a delayed payment contract or other written contract for the  
8 purchase of agricultural commodities by a commodity dealer.

9           ~~(20)~~(21) "Purchase price" means the final price after premiums and discounts are assessed.

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

11          ~~(21)~~(23) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt,  
12 given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon  
13 initial delivery of the agricultural commodity to the warehouse.

14          ~~(22)~~(24) "Station" means a warehouse located ~~more than 3 miles from the central office of the~~  
15 warehouse.

16          ~~(23)~~(25) "Subterminal warehouse" means ~~any a~~ warehouse ~~at which~~ where an intermediate  
17 function is performed in which agricultural commodities are customarily received from dealers or producers  
18 and where the commodities are accumulated prior to shipment.

19          ~~(24)~~(26) "Terminal grain warehouse" means ~~any a~~ warehouse authorized by a grain exchange to  
20 receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

21          ~~(25)~~(27) "Warehouse operator" means a person operating or controlling a public warehouse.

22          ~~(26)~~(28) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued  
23 under part 5 of this chapter by a warehouse operator, except scale weight tickets."  
24

25          **Section 3.** Section 80-4-405, MCA, is amended to read:

26          "**80-4-405. Maximum bond amount.** The maximum amount of any public warehouse operator bond  
27 may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1  
28 million, except:

29           (1) any bonds compensating for net asset deficiencies prescribed in parts 5 and 6 of this chapter  
30 must be added to the maximum bond amount. In the event that the public warehouse operator is also



1 licensed as a commodity dealer, only one net asset deficiency amount is required; and,

2 (2) the maximum bond amount must be adjusted each year based upon the percentage increase  
3 or decrease in the annual average index of prices received by Montana farmers for food and feed grains as  
4 computed by the Montana crop and livestock reporting service."

5

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

7 **"80-4-409. Confidentiality of records.** All financial statements of warehouse operators and  
8 commodity dealers required under the provisions of parts 5 and 6 of this chapter ~~shall~~ must be kept  
9 confidential by the department and are not subject to disclosure except:

10 (1) upon written permission of the licensee;

11 (2) in actions or administrative proceedings commenced under the provisions of parts 4 through  
12 ~~6~~ 7 of this chapter;

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

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

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

17

18 **Section 5.** Section 80-4-421, MCA, is amended to read:

19 **"80-4-421. License suspension and revocation -- renewal.** (1) The department may revoke,  
20 suspend, or modify a license when it has reasonable cause to believe that the licensee has committed any  
21 of the following acts, each of which is a violation of parts ~~5 and 6~~ 4 through 7 of this chapter:

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

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

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

30 (d) failure or refusal to allow inspection or maintain and provide records, reports, and other

1 information required by the department;

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

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

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

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

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

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

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

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

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

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

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

19 (c) has been convicted of a criminal offense and the denial or refusal is made after considering Title  
20 37, chapter 1, part 2.

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

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

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

28

29 **Section 6.** Section 80-4-429, MCA, is amended to read:

30 **"80-4-429. Penalty.** (1) Except as otherwise provided, ~~any~~ a person who violates any provision

1 of parts 4 through ~~6~~ 7 of this chapter or rules promulgated under parts 4 through ~~6~~ 7 or who impedes,  
 2 obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative  
 3 in the performance of a duty under parts 4 through ~~6~~ 7 of this chapter is guilty of a misdemeanor ~~and is~~  
 4 ~~punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than \$1,000,~~  
 5 ~~or both.~~

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

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

13 (4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(4)(f)  
 14 who fails to pay in full all amounts due to a ~~commodity dealer~~ producer for the sale of agricultural  
 15 commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by  
 16 this chapter.

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

20 (a) a nitrogen fertilizer added to harvested grain;

21 (b) a poisonous, deleterious, or other substance not registered or approved by federal or state  
 22 statutes, regulations, or rules; or

23 (c) a registered or approved substance that has not been used or applied according to label  
 24 directions or other government standards."

25

26 **Section 7.** Section 80-4-501, MCA, is amended to read:

27 **"80-4-501. License necessary to operate public warehouse.** (1) ~~Ne~~ A person may not act as a  
 28 warehouse operator without first having obtained an annual license from the department. This requirement  
 29 ~~does~~ and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do  
 30 not apply to operators of warehouses that are federally licensed under the United States Warehouse Act.

1 However, if a federally licensed warehouse operator engages in business as a commodity dealer, the  
 2 provisions of parts 4 through 7 apply to the commodity dealer activity.

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

9

10 **Section 8.** Section 80-4-536, MCA, is amended to read:

11 **"80-4-536. Termination of storage contract -- sale of agricultural commodities for charges -- notice**  
 12 **required.** (1) Storage of agricultural commodities may be terminated by the depositor at any time by the  
 13 payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand  
 14 for delivery of the agricultural commodities or a notice to the warehouse operator to sell the commodities.

15 (2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of  
 16 the storage contract entered into prior to the expiration of the storage contract, the warehouse operator  
 17 ~~shall~~ may, upon the expiration of the storage contract, sell so much of the stored agricultural commodities  
 18 at the local market price at the close of business on that day as is sufficient to pay the accrued storage  
 19 charges. ~~He~~ The warehouse operator shall then issue new warehouse receipts for the balance of the  
 20 agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts.  
 21 If the warehouse receipt is not returned, the warehouse operator may apply for an encumbrance to the  
 22 grain settlement records for outstanding storage in lieu of reissuance of the warehouse receipt subject to  
 23 the provisions of subsection (3). The warehouse operator shall notify all warehouse receipt holders who  
 24 are subject to the provisions of subsection (3) of the provisions of this section 30 days prior to the end of  
 25 the ~~storage period~~ license year.

26 (3) All storage contracts on agricultural (3) commodities evidenced by a warehouse receipt must be  
 27 terminated within 3 license years. The termination date for those storage contracts must be calculated by  
 28 considering the license year during which the contract was issued as the first license year, plus 2 additional  
 29 license years, for a total of 3 license years."

30

1           **SECTION 9. SECTION 80-4-602, MCA, IS AMENDED TO READ:**

2           **"80-4-602. License fees.** (1) Except as provided in subsection (3), the department shall collect an  
3 annual fee of \$232 per facility for each commodity dealer license.

4           (2) If, after evaluation of the commodity dealer/public warehouse operator program, the department  
5 determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the  
6 department may by rule increase the license fees, but the fee may not exceed \$500 for a facility.

7           (3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-202(4) is  
8 \$100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for  
9 agricultural seed intended for resale as agricultural seed.

10           (4) All fees collected under this section must be placed in the commodity dealer/public warehouse  
11 operators account."

12

13           **Section 10.** Section 80-4-701, MCA, is amended to read:

14           **"80-4-701. Official ~~grain~~ agricultural commodity inspectors, samplers, and weighers -- designation**  
15 **of seasonal inspection points -- assignment of inspectors.** (1) The department shall provide inspectors,  
16 samplers, and weighers to enforce this part. At all inspection points designated by the department, the  
17 department shall provide sufficient official ~~grain~~ agricultural commodity inspectors, samplers, and weighers  
18 to inspect and weigh all ~~grain~~ agricultural commodities subject to state inspection.

19           (2) The department may, during the grain-marketing season, appoint inspectors to visit the  
20 grain-growing districts to investigate the grading, dockage, and weighing of grain and to enforce the rules  
21 of the department.

22           (3) Expenditures for the inspection and weighing at the points designated by the department may  
23 not exceed total fee receipts at those points."

24

25           **Section 11.** Section 80-4-702, MCA, is amended to read:

26           **"80-4-702. Qualifications of official ~~grain~~ agricultural commodity inspectors, samplers, and**  
27 **weighers.** Official ~~grain~~ agricultural commodity inspectors, samplers, and weighers must be qualified in  
28 accordance with the Grain Standards Act. Official ~~grain~~ agricultural commodity inspectors, samplers, and  
29 weighers may not be directly or indirectly interested in the handling, sorting, shipping, purchasing, or selling  
30 of agricultural commodities, grain, or grain commodities."

1           **Section 12.** Section 80-4-703, MCA, is amended to read:

2           "**80-4-703. Penalty for misconduct.** (1) ~~Any~~ An official ~~grain~~ agricultural commodity inspector,  
3 sampler, or weigher who is guilty of neglect of duty, ~~or~~ who knowingly or carelessly inspects, samples, or  
4 weighs ~~grain~~ agricultural commodities improperly, or who directly or indirectly accepts any money or other  
5 consideration for neglect of duty or improper performance of duty is guilty of official misconduct and is  
6 punishable as provided in 45-7-401.

7           (2) ~~Any~~ A person who improperly influences or attempts to improperly influence any an official  
8 ~~grain~~ agricultural commodity inspector, sampler, or weigher in the performance of ~~his~~ the inspector's,  
9 sampler's, or weigher's duties is guilty of bribery and is punishable as provided in 45-7-101.

10           (3) Upon conviction of an offense described in subsection (1), an ~~officer~~ official agricultural  
11 commodity inspector, sampler, or weigher must be removed by the department pursuant to procedures  
12 established by department rule."

13  
14           **Section 13.** Section 80-4-704, MCA, is amended to read:

15           "**80-4-704. Establishment of standard ~~grain~~ agricultural commodity grades.** (1) The department  
16 ~~shall~~ may by rule establish standard grades to apply to all ~~grain~~ agricultural commodities for which a United  
17 States department of agriculture grade has not been established and that are bought by commodity dealers  
18 and stored or handled by warehouses in this state. The department shall adopt as state grade and dockage  
19 standards all grades for ~~grain~~ agricultural commodities established by the United States department of  
20 agriculture. For purposes of this chapter, any reference to a grade also includes a reference to a protein  
21 analysis or any other factor provided by department rule if the analysis affects the purchase price.

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

24  
25           **Section 14.** Section 80-4-705, MCA, is amended to read:

26           "**80-4-705. Rules governing dockage -- sample inspection.** The department shall adopt rules  
27 governing the dockage on inferior grades, which shall apply in all executory contracts entered into after  
28 their adoption. If the purchase price ~~or amount to be paid~~ depends on terminal weight or grade, the rules  
29 ~~shall~~ control the dockage insofar as dockage affects the purchase price ~~to be paid~~. The department shall  
30 also provide for sample inspection of ~~grain~~ agricultural commodities, adopt rules governing sample

1 inspection, and provide that the sample inspection, when made, is final."

2

3 **Section 15.** Section 80-4-706, MCA, is amended to read:

4 **"80-4-706. Special inspection of grain agricultural commodities.** (1) If ~~grain is~~ agricultural  
5 commodities are sold based on Montana grade and ~~is~~ are to be shipped from places not provided with state  
6 inspection, the buyer, seller, or person making the delivery may have ~~it~~ the agricultural commodities  
7 inspected by notifying an inspector, who shall have ~~the grain~~ them inspected. After inspection, the  
8 inspector shall issue, on request of the buyer, seller, or person delivering the grain agricultural commodity,  
9 an inspector's certificate showing the grade of the grain agricultural commodity. The person calling for the  
10 inspection shall pay a reasonable fee fixed by department rule.

11 (2) ~~Grain~~ An agricultural commodity that is shipped to points in this state where no inspection is  
12 maintained may be inspected on request of either the buyer or seller, and a certificate may be issued  
13 showing the grade of the grain agricultural commodity. The charge for the service ~~shall~~ must at least equal  
14 the entire cost of providing it and ~~shall~~ must be paid by the party calling for the inspection."

15

16 **Section 16.** Section 80-4-708, MCA, is amended to read:

17 **"80-4-708. Examination of grain agricultural commodity cars or trucks at destination.** (1) An  
18 official grain agricultural commodity inspector, sampler, or weigher, before opening the doors or lids of a  
19 car or truck containing grain agricultural commodities upon its arrival at any of the places designated by  
20 the department for inspection, shall first ascertain the condition of the car or truck and determine whether  
21 any leakages have occurred while the car or truck was in transit, determine whether the doors or lids were  
22 properly secured and sealed at the point of shipment, and make a record of those facts in all cases, giving  
23 seal numbers.

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

27 (3) A record must be kept by the official grain agricultural commodity inspectors, samplers, or  
28 weighers of all original seals broken, the number of seals, and the date when broken. An official grain  
29 agricultural commodity inspector, sampler, or weigher shall break the seal, weigh, and superintend the  
30 loading of all cars or trucks of grain agricultural commodities subject to inspection. Any other person who

1 breaks the seal or officially weighs the cars or trucks of ~~grain~~ agricultural commodities is guilty of a  
2 misdemeanor."

3

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

5 **"80-4-721. Fees for inspection, testing, and weighing grain agricultural commodities -- disposition**  
6 **-- investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of grain  
7 agricultural commodities.

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

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

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

14 ~~(5)(3)~~ All those fees and charges must be paid to the department and deposited with the state  
15 treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the  
16 state special revenue fund ~~may~~ **must** be used to pay approved claims for expenses incurred in inspecting,  
17 grading, weighing, and protein testing of grain agricultural commodities.

18 ~~(6)(4)~~ The department may direct the board of investments to invest funds from the state special  
19 revenue fund pursuant to the provisions of the unified investment program for state funds. The income from  
20 ~~such~~ the investments must be credited to the proper department account in the state special revenue fund."

21

22 **Section 18.** Section 80-4-722, MCA, is amended to read:

23 **"80-4-722. Records of inspection.** (1) The official grain agricultural commodity inspectors,  
24 samplers, and weighers have exclusive control at places provided for state inspection of the weighing and  
25 grading of grain agricultural commodities to be inspected. Suitable books and records must be kept in which  
26 must be entered an accurate record of every carload or truckload of grain agricultural commodities  
27 inspected or weighed by them. The records must show for each car or truck:

28 (a) the number or other designation of the car or truck;

29 (b) the net weight of the grain agricultural commodity;

30 (c) the kind of grain agricultural commodity and its grade and, if graded below standard No. 1



1 grade, the reason for ~~such~~ the grade.

2 (2) For each carload or truckload of ~~grain~~ grain agricultural commodities, the official ~~grain~~ grain agricultural  
3 commodity inspector shall give a certificate of inspection, showing the kind and grade of the ~~grain~~ grain  
4 agricultural commodity, the reason for all grades below No. 1, and the amount to be allowed for dockage,  
5 if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true  
6 weight ~~thereof~~ and containing a statement on the condition of the car or truck and evidences of leakage  
7 or damage, if any.

8 (3) The inspection and weight certificates must be made available to the warehouse loading or  
9 unloading the ~~grain~~ grain agricultural commodity, the shipper or ~~his~~ the shipper's agent, and the railroad company  
10 or other carrier by which the ~~grain~~ grain agricultural commodity was shipped or carried.

11 (4) Official ~~grain~~ grain agricultural commodity inspectors and weighers shall also keep an accurate record  
12 of all appeals and decisions and a complete record of every official act, which books and records must be  
13 open to inspection by any party of interest."  
14

15 **Section 19.** Section 80-4-724, MCA, is amended to read:

16 "**80-4-724. Coloration of ~~grain~~ grain agricultural commodities treated with injurious or toxic substances**  
17 **-- exception. (1) Any ~~grain~~ grain agricultural commodity treated with any injurious or toxic substance or chemical**  
18 **must at the same time be colored or dyed a color contrasting with the natural color of the ~~grain~~ grain agricultural**  
19 **commodity so that the treated ~~grain~~ grain agricultural commodity is readily identifiable as having been treated**  
20 **with an injurious or toxic substance or chemical. This subsection does not apply to the application of**  
21 **pesticides to agricultural commodities according to label directions for the treatment of pests that might**  
22 **be present in the agricultural commodity.**

23 **(2) A person who fails to comply with the requirements of this section is subject to the penalty**  
24 **provisions of 80-4-429.**"

25  
26 **Section 20.** Section 80-4-725, MCA, is amended to read:

27 "**80-4-725. Sale or offering for sale of treated product prohibited. ~~Ne~~ A person may not sell or**  
28 **offer for sale ~~grain~~ an agricultural commodity that has been treated with any injurious or toxic substance**  
29 **or chemical unless the ~~grain~~ grain agricultural commodity has been colored or dyed a color contrasting with the**  
30 **natural color of the ~~grain~~ grain agricultural commodity. Section 80-4-724 and this section do not apply to the**

1 treatment of ~~grain~~ an agricultural commodity solely for the killing of insects ~~which~~ that might be present  
2 ~~therein~~. A person violating this section is guilty of a misdemeanor."

3  
4 **NEW SECTION. Section 21. Agricultural commodity sampling -- appeal procedure.** (1) At the time  
5 of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale,  
6 each warehouse operator or commodity dealer shall take a representative sample from each load of  
7 agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's  
8 name marked on the container. A composite sample consisting of a minimum of 1 1/2 quarts or 1,050  
9 grams of the representative sample must, upon written request of the depositor, be submitted directly to  
10 the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory  
11 is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain  
12 a minimum of 1 1/2 quarts or 1,050 grams of the remaining sample for 60 days.

13 (2) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the  
14 depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis,  
15 the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When  
16 an appeal is made, the warehouse operator or commodity dealer shall submit 1 1/2 quarts or 1,050 grams  
17 of the representative sample to the state grain laboratory for appeal analysis.

18 (3) If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a  
19 state grain laboratory analysis, as provided in subsection (1) or (2), the depositor, warehouse operator, or  
20 commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must  
21 be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must  
22 be a portion of that agricultural commodity retained by the state grain laboratory when it conducted its  
23 analysis. The results on the state grain laboratory appeal sample are final and binding. In the absence of  
24 an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the  
25 state grain laboratory's analysis is final and binding.

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

28 (5) All samples submitted for analysis are the property of the state grain laboratory and subject to  
29 its disposition.

30 (6) An agricultural commodity purchased for resale as seed is exempt from the requirements of this

1 section.

2 (7) A PRODUCER OF MALTING BARLEY MAY BY CONTRACT WAIVE THE RIGHT TO SUBMIT A  
3 SAMPLE TO THE STATE GRAIN LABORATORY PROVIDED IN THIS SECTION.

4

5 NEW SECTION. Section 22. Repealer. Sections 80-4-301, 80-4-302, 80-4-303, 80-4-304,  
6 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707, 80-4-710, 80-4-723, and  
7 80-4-727, MCA, are repealed.

8

9 NEW SECTION. Section 23. Severability. If a part of [this act] is invalid, all valid parts that are  
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
11 applications, the part remains in effect in all valid applications that are severable from the invalid  
12 applications.

13

14 NEW SECTION. Section 24. Codification instruction. [Section ~~20~~ 21] is intended to be codified  
15 as an integral part of Title 80, chapter 4, part 7, and the provisions of Title 80, chapter 4, part 7, apply to  
16 [section ~~20~~ 21].

17

18 NEW SECTION. Section 25. Effective date. [This act] is effective July 1, 1997.

19

-END-