

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN EDWARD B. BUTCHER**, on January 27, 2005 at 3:15 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edward B. Butcher, Chairman (R)
Rep. Carol Lambert, Vice Chairman (R)
Rep. Jonathan Windy Boy, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Bob Bergren (D)
Rep. Gary Branae (D)
Rep. Wanda Grinde (D)
Rep. Ralph Heinert (R)
Rep. Jim Keane (D)
Rep. Bruce Malcolm (R)
Rep. Jim Peterson (R)
Rep. Diane Rice (R)
Rep. John (Jack) W. Ross (R)
Rep. Veronica Small-Eastman (D)
Rep. Dan Villa (D)
Rep. Karl Waitschies (R)
Rep. Jeanne Windham (D)

Members Excused: Rep. Kevin T. Furey (D)
Rep. Llew Jones (R)
Rep. Brady Wiseman (D)

Members Absent: None.

Staff Present: Linda Keim, Committee Secretary
Krista Lee Evans, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 350, HB 351, 1/19/2005
Executive Action: HB 266, HB 274, HB 352

CHAIRMAN BUTCHER opened the meeting.

Motion/Vote: REP. MALCOLM moved that COMMITTEE BILL on Bovine Spongiform Encephalopathy (BSE) BE CANCELLED. Motion carried unanimously by Voice Vote. REPS. FUREY and WISEMAN voted by proxy.

VICE CHAIRMAN LAMBERT took over for CHAIRMAN BUTCHER, as he was the sponsor for the next two bills.

HEARING ON HB 351

SPONSOR: REP. EDWARD BUTCHER, HD 29, WINIFRED
{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.2}

Opening Statement by Sponsor:

REP. EDWARD BUTCHER (R), HD 29, opened the hearing on **HB 351**, which would require the Department of Natural Resources and Conservation (DNRC) to explain the requirements for fixing the values of improvement arbitration and give stability to current requirements. He explained that the primary role of school trust lands is to provide revenue for Montana schools. There are 5,500 lessees of state land and most are ten year leases. In the past, preference has been given to current lessees, they could also go before the State Land Board after a year and appeal, if the bid they had to match for that property was excessive. The State Land Board would review and make a ruling. The issue is that many of these lessees have made improvements on the land they are leasing. He noted that this bill requires that the DNRC must notify and explain the requirements to receive compensation from the new lessee if the prior lessee loses his bid. If the former lessee is unable to produce records establishing the value of the improvements, current rules require initiation of the process within 60 days of losing the lease, or the improvements become the property of the state. He urged DO PASS on HB 351.

Proponents' Testimony:

Patrick McNulty, Rancher and President, Judith Basin County Farm Bureau, said that only a small minority of ranchers in their county do not have a state lease. He noted a recent challenge to current rule, the Broadbent challenge. He would like the language, "...for judicial review of the decision" on Page 2, Line 16 left in the original language. He felt that with judicial review, they cannot substitute the court's judgement for the agency's or the landlord's judgement.

Dave McClure, President Montana Farm Bureau, said he supports Mr. McNulty's testimony and gives full support to the bill.

Dean Newman, Rancher, Fergus County, expressed support for the bill and asked for an amendment. The current bill does not allow the lessee to know the name of the person bidding against him, and can only find out who it is by paying 100 percent of the lease. The challenger is required to pay only 20 percent. He also stated that he felt that a convicted felon should not be able to bid on state land leases.

Jay Bodner, Montana Stockgrowers Association and the Montana Association of State Grazing Districts, said they got input from many of their members. The preference right was reinstated through administrative rules. Other concerns involved what to do about improvements if the state lease is lost. He said that many people were not aware of what was available to them, and HB 351 would provide some education on what they could do. He advocated having the court decision be made in the county where the majority of the lands is located.

Trevis Butcher, Rancher from Winifred, voiced his support. The question over improvements needs to be addressed, because currently the lack of stability on leases provides no incentive to make improvements on the land.

Margaret Cummings, Rancher from Lewistown, stated her support and said this problem needs to be addressed.

Bill Routh, Rancher from Coffee Creek, noted his support and said every building he owns is on state land. If they were to lose their lease, they would lose their house and barns.

VICE CHAIRMAN LAMBERT voiced her support of HB 351.

Opponents' Testimony: None

Informational Testimony:

REP. SMALL-EASTMAN said that when a person bids on state land, there are numerous deductions: \$2.92 for weed control, \$1.85 for fencing, \$1.00 water development, \$.56 for non-use, \$1.57 for access and \$.06 for fire suppression. A total of \$7.96. The bidder on land at \$11.40 would have a deduction of \$7.96. The length of lease adds \$.56, preference rights adds \$1.14; a total of \$1.70 added. What they are actually paying to the state is \$5.14 for state land. There is a multiplier with the \$5.14, which is based on 1993 beef price. Taking that, times the deductions and additions, comes to \$7.54. She stated that if

anyone is going to bid on state land, they should bid at fair market value.

VICE CHAIRMAN LAMBERT noted that this testimony should probably have been given as an opponent, but **REP. SMALL-EASTMAN** stated that she felt it was informational.

{Tape: 1; Side: A; Approx. Time Counter: 4.2 - 28}

Questions from Committee Members and Responses:

REP. VILLA referred to Page two, Line 16 and noted they were talking about amending back into the bill, "for judicial review of the decision," and had discussed eliminating the part about the District Court of Lewis and Clark County. He asked why this would be amended out, based only on location; since the State Land Board is centered out of that district. **REP. BUTCHER** said that this section is dealing with an arbitration situation, and the dispute is between the current lessee and the prior lessee over improvements. It makes more sense to have this in a court where both individuals reside.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.5}

REP. PETERSON asked for consideration to change the sentence to read: "... to petition the district court in the county in which the majority of the state land is located for judicial review of the decision." He said that using that wording would clarify the intent of the law. **REP. BUTCHER** said that language is going back into the bill.

REP. BRANAE asked if a lot of cases had been tried in Lewis and Clark County that should not have been. **REP. BUTCHER** said that the Broadbent case was a good example. It is better to have decisions made within areas where the court knows what is going on. He said that other courts are just as qualified as those in Lewis and Clark County.

Closing by Sponsor:

REP. BUTCHER thanked the committee for a good Hearing.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 8.5}

HEARING ON HB 350

SPONSOR: **REP. EDWARD BUTCHER, HD 29, WINIFRED**

Opening Statement by Sponsor:

REP. EDWARD BUTCHER (R), HD 29, opened the hearing on **HB 350**, a bill to increase bond and deposit amounts for State Land Leases

for the purpose of getting serious bidders and providing more stability. He also handed out Amendment HB035001.

[EXHIBIT](#) (agh21a01)

Proponents' Testimony:

Dave McClure, Lewistown Rancher and President Montana Farm Bureau Association, expressed his support for HB 350. He noted that the State Land Board now has the obligation to pick the lessee that would take the best care of the land. He felt that the past and present lessee should each put up the same amount of money for the performance bond.

{Tape: 1; Side: B; Approx. Time Counter: 2.5 - 20}

Jay Bodner, Montana Stockgrowers and the Montana Association of Grazing Districts, agreed with the increase to 100 percent, and said that would eliminate any non-serious bidders.

Travis Butcher, Winifred Rancher, noted that this would give stabilization to school trust funds.

VICE CHAIRMAN LAMBERT stated her support of HB 350.

Opponents' Testimony: None.

Informational Testimony:

Kevin Chappell, Agricultural and Grazing Management Bureau Chief, Department of Natural Resources and Conservation, stated that he would be available for questions.

{Tape: 1; Side: B; Approx. Time Counter: 20 - 27.2}

Questions from Committee Members and Responses:

REP. HEINERT asked about re-bidding and whether consideration is given to the land use, as well as the bidding price of the lease.

REP. BUTCHER said that it is, because the economics in the community can take a serious hit if the land is taken out of agricultural production. The taxing base of schools and county services depends on the land usage.

{Tape: 1; Side: B; Approx. Time Counter: 27.2 - 28.7}

REP. HEINERT asked whether consideration is given to the original land use. **REP. BUTCHER** said that under a new court decision, it will be up to the State Land Board. They are statutorily obligated to provide revenue for State Land.

REP. PETERSON asked for clarification of Page 2, Line 5 of the bill. **REP. BUTCHER** stated that the intent is for the bond to cover the entire term of the lease if a bidder has not executed a lease of state land previously. Once they have a track record, the length of time is reduced to one year.

REP. KEANE asked the legislative staffer for her comments on whether this was constitutional. **Krista Lee Evans, Legislative Branch**, said that she did not draft the bill and was not sure whether Greg Petesch was asked for his opinion. She said there must be a legal basis for discriminating against any part of a group. **REP. KEANE** asked for further information from Mr. Petesch about when a group discriminates against the person having the lease.

REP. BUTCHER said that it is not discriminating against any segment of the population. It is just a regulation, for anyone who has not previously had a state land lease, to provide a level playing field for the state.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.6}

REP. SMALL-EASTMAN commented that it is up to the lessee to take care of their own stock. The cost of a bond for a ten-year lease is high, and may eliminate our own children or new agricultural producers. She noted that the tribe can get more money from leasing to celebrities than they can on their own land. **REP. BUTCHER** referred to the bill and said there are two ways for a new bidder to execute a deposit. One is the bond, which is targeted at out-of-state individuals; the other is a bank letter of credit.

REP. SMALL-EASTMAN referred to Page 2, Lines 5-6 and Page 3 of the Fiscal Note. **REP. BUTCHER** noted that he does not agree with the Fiscal Note and did not sign it. He said that only agricultural land is being addressed in the amendment.

REP. SMALL-EASTMAN asked about the last paragraph on Page 3 of the Fiscal Note. **REP. BUTCHER** said that this is to bring the new lessee into a comparative relationship with the old lessee, who has a demonstrated track record. This is just treating everyone the same.

REP. SMALL-EASTMAN asked for further clarification. **REP. BUTCHER** said that in the initial up-front amount, the bidder has to put up 100% of the annual rental bid, or \$20 an acre for each acre of agricultural land. Then, on Page 1, Line 16, it says that the Department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance. That is the down payment for both parties in

the lease. After the first year, any remaining balance of the deposit will be returned.

{Tape: 2; Side: A; Approx. Time Counter: 6.6 - 17.7}

REP. WINDHAM asked for the name of the district court decision, so she could get a copy. **REP. BUTCHER** said it was the Broadbent Decision, Lewis and Clark County, Case # BDV 2003-361; Broadbent vs Harlows.

REP. WINDHAM asked how many successful bidders have walked away from their lease, leaving the state holding the bag. **REP. BUTCHER** said that it would be very few, because in the past they could match the bid and hold onto the lease.

REP. WINDHAM asked for statistics of this occurring in other states. **REP. BUTCHER** noted that this is a new situation; we are putting preventive measures into this bill.

REP. WISEMAN asked how leases are rebid. **Mr. Chappell** stated the two situations where the state receives bids. When the lease comes to the end of its term, it is open to competitive bidding, and the current lessee can apply to renew the lease. Under the new rules that the Board has adopted, prior lessees can match a bid and retain the lease. About 1,000 leases come up for bid each year, and competitive bids are received on 6-8% of those.

The second situation is when leases have been terminated for various reasons, or cancelled for non-payment of the lease. In that case, the lease is opened for non-competitive bidding, and it simply goes to the highest bidder.

He explained that the bid deposit is what the competitive bidder has to put up just to have his bid submitted. If the bidder is not successful in the open bidding process, or if the lessee matches the bid and retains the bid in the renewal process, the bid deposit is refunded. If the bidder is successful and has never held a lease before, he would be required to come up with the bond, or a letter of credit to cover his bid deposit.

REP. WISEMAN asked how many leases are cancelled each year. **Mr. Chappell** said about 12 leases are cancelled for non-rental. Cancellations for violation of lease terms or other cause amount to only one or two a year.

REP. WISEMAN asked if there is any risk that must be managed that would require the bonding that this bill puts in place. **Mr. Chappell** said that the issue is whether the bidder is serious about maintaining the land for the term of the lease. With the preference right in place, they have not seen new bidders come in

and take away leases very often. The lessee usually matches the bid, and if the bid is excessive, they have always had the opportunity to request a hearing before the Department. The Department considers the testimony and makes a recommendation to the Board. If someone bid on a lease, acquired it, and was a poor operator, then dropped the lease because it was no longer profitable, the bonding would ensure that the revenue level was maintained until that tract was leased again. To date, that has not been a problem.

REP. FUREY referred to Page 2, Line 6 and asked who determines whether to use a letter of credit or a bond. **REP. BUTCHER** said that the bidder would determine that, as either one would be satisfactory to the trustees of the school land.

{Tape: 2; Side: A; Approx. Time Counter: 17.7 - 30}

VICE CHAIRMAN LAMBERT stated that the legislative staffer will provide a copy of the court decision for the Committee.

Closing by Sponsor:

REP. BUTCHER closed by asking for a DO PASS.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 3}

CHAIRMAN BUTCHER opened the meeting to Executive Action.

REP. SMALL-EASTMAN asked if Kevin Chappell could be available when Executive Action is held on HB 351 and HB 350. **CHAIRMAN BUTCHER** said that he will be notified when Executive Action is planned.

EXECUTIVE ACTION ON HB 274

Motion/Vote: **REP. PETERSON** moved that HB 274 DO PASS. Motion carried unanimously by voice vote. **REPS. MALCOLM, VILLA, BERGREN** and **JONES** voted by proxy.

REP. WAITSCHIES moved that HB 274 be put on the CONSENT CALENDAR. **REP. KEANE** objected. HB 274 will NOT be put on the CONSENT CALENDAR.

{Tape: 2; Side: B; Approx. Time Counter: 3 - 6.5}

EXECUTIVE ACTION ON HB 266

Motion/Vote: **REP. RICE** moved that HB 266 DO PASS. Motion carried unanimously by voice vote. **REPS. MALCOLM, VILLA, BERGREN** and **JONES** voted by proxy.

REP. BUTCHER moved that HB 266 be put on the CONSENT CALENDAR.
REP. PETERSON objected. HB 266 will NOT be put on the CONSENT CALENDAR.

EXECUTIVE ACTION ON HB 352

Motion: REP. ANDERSEN moved that HB 352 DO PASS.

Motion: REP. ANDERSEN moved that AMENDMENT NO. 035201 DO PASS.

Discussion:

Ms. Evans explained the amendment takes out the entire 87-4-415 section, because that subsection does not need to be changed.

[EXHIBIT](#)(agh21a02)

REP. HEINERT noted a typo on the amendment: "81-2-203" on Page 1, Line 7, should say "81-3-203."

Motion/Vote: REP. PETERSON moved that AMENDMENT 035201 as changed DO PASS. Motion carried unanimously by voice vote. REPS. MALCOLM, VILLA, BERGREN and JONES voted by proxy.

Motion/Vote: REP. ANDERSEN moved that HB 352 DO PASS AS AMENDED. Motion carried unanimously by voice vote. REPS. MALCOLM, VILLA, BERGREN and JONES voted by proxy.

Motion: REP. ANDERSEN moved that HB 352 BE FURTHER AMENDED, and moved DO PASS ON AMENDMENT 035202.

[EXHIBIT](#)(agh21a03)

Discussion:

REP. ANDERSON said that the way the bill was written would allow someone to move livestock from almost the Wyoming border to Canada; through Rosebud, Garfield and Valley County. She said that was not her intention, so she added language limiting the distance that the livestock could be moved to 100 miles from the origination point. She noted that she wanted to put a "Sunset" on the amendment for June 30, 2007, and it is not there.

REP. PETERSON asked that action be deferred to allow more time for discussion. He requested that the sponsor withdraw her DO PASS on the Amendment.

REP. ANDERSON withdrew her Motion for DO PASS on Amendment 035202.

{Tape: 2; Side: B; Approx. Time Counter: 6.5 - 17}

ADJOURNMENT

Adjournment: 5 P.M.

REP. EDWARD B. BUTCHER, Chairman

LINDA KEIM, Secretary

EB/lk

Additional Exhibits:

EXHIBIT ([agh21aad0.PDF](#))