

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN EDWARD B. BUTCHER**, on February 1, 2005 at 3:05 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edward B. Butcher, 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. Llew Jones (R)
Rep. Bruce Malcolm (R)
Rep. Jim Peterson (R)
Rep. Diane Rice (R)
Rep. John (Jack) W. Ross (R)
Rep. Veronica Small-Eastman (D)
Rep. Karl Waitschies (R)
Rep. Jeanne Windham (D)
Rep. Brady Wiseman (D)

Members Excused: Rep. Carol Lambert, Vice Chairman (R)
Rep. Kevin T. Furey (D)
Rep. Jim Keane (D)
Rep. Dan Villa (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 399, HB 440, 1/27/2005
Executive Action: HB 350, HB 351, HB 352

HEARING ON HB 399

Sponsor: REP. DIANE RICE, HD 71, HARRISON

Opening Statement by Sponsor:

REP. DIANE RICE (R), HD 71, opened the hearing on HB 399, a bill that would revise weather modification laws and remove the restrictions on cloud-seeding. She also handed out the pamphlet, "Atmospheric Water."

EXHIBIT(agh25a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.2}

Proponents' Testimony:

Chris Christaens, Montana Farmers Union, presented written testimony, which he read to the committee. He said this is the seventh year of severe drought, and that current snow-pack levels in Montana are the lowest they have been since 1977. He noted that Pages 16-17 of "Atmospheric Water," contain a list of weather modification programs around the country.

EXHIBIT(agh25a02)

Calvin Rice, Broadus citizen, presented written testimony supporting HB 399, which was brought by Chris Christaens.

EXHIBIT(agh25a03)

{Tape: 1; Side: A; Approx. Time Counter: 2.2 - 7.8}

Ted Coffman, Madison County Commissioner, said that the Southwestern part of Montana is very dry. He stated that the Clark Canyon Reservoir goes to the East Bench Canal in Madison and irrigates Beaverhead and Madison Counties, but they were not able to turn it on last summer. He said that Madison County Commissioners support this bill and asked for a DO PASS.

REP. DEBBY BARRETT, HD 72, DILLON, noted that cloud-seeding has been going on just west of them, in Idaho. She made note of a paper by Arlen Huggins called, "Positive Evidence for Snowpack Enhancement," and said that two of the largest power companies in California have the longest running cloud-seeding operations in the United States. These programs have been monitored for decades. She said that a 1999 study in Southern California placed an economic value on the added water at \$10 million. She asked for the committee's support of HB 399.

EXHIBIT(agh25a04)

Lochiel Edwards, Big Sandy Farmer, representing Montana Grain Growers Association, said that they like the potential of weather

modification technology. They also like the idea of licensing, because it leaves written documentation of the activity.

Allen Martinell, Chairman, Red Rock Water and Sewer District, stated that Lima Dam is a private irrigation dam that is owned by the Red Rock Water and Sewer District. He said that they support HB 399, and read his written testimony.

EXHIBIT(agh25a05)

{Tape: 1; Side: A; Approx. Time Counter: 7.8 - 13.1}

Ross Hansen, Rancher, West of Dell, Montana, said that would be a tool to give some relief from the extreme drought. He said that he has seen a better response when seeding for snow in the winter, than for rain in the summer.

Opponents' Testimony:

Cody Ferguson, Northern Plains Resource Council, read his written testimony to the committee.

EXHIBIT(agh25a06)

Informational Testimony:

Jack Stults, Division Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), spoke about a 1998 study on weather modification. They said that aurographic cloud-seeding, i.e., cloud-seeding in the winter from high mountain areas, was likely to have beneficial results. This is consistent with information from REP. BARRETT and the California Power Industry. Cloud-seeding over the plains and in other seasons of the year had inconsistent results. Current requirements in Montana Law can be costly. Environmental Impact Statements can range from \$10,000-\$100,000. There have only been two applications in the last 15 years for weather modification in Montana; both came from North Dakota. Liability insurance amounting to \$1 million was going to be required. The current Statute has significant cost placed on the applicant for cloud-seeding in the permitting process. The current bill provides a definition that limits the operations to aurographic winter-time seeding, that has been shown to have positive impacts. It also requires the operation to have benefits in Montana. He said that he is available for questions.

Questions from Committee Members and Responses:

REP. WISEMAN said his constituents are concerned with the skiing drought and asked how much snow could be expected from seeding.

Mr. Stults said he would research that question. **REP. RICE** said

that there would be at least a 10% increase. She said that Moonlite Basin is very interested, as well as Bridger Bowl.

REP. PETERSON asked what risks are involved if cloud-seeding is limited to the winter months. **Mr. Stults** said that the risks are hail, floods and just taking water from one location and having it go to another location.

{Tape: 1; Side: A; Approx. Time Counter: 13.1 - 29.1}

REP. ANDERSON said Mr. Ferguson specifically mentioned rain when speaking in opposition to the bill, and asked him if seeding in the winter months would lessen the opposition. **Mr. Ferguson** said that the membership might not be so opposed if it were snow.

REP. WAITSCIHES asked about liability insurance of \$1 million.

REP. RICE stated that changes in the bill from last session are the addition of a \$100,000 liability insurance policy, the limitation to November 1, through March 15, and the restriction to mountain areas only. With these restrictions, summer cloud-seeding changing weather patterns is not an issue. If a ski area does cloud-seeding, the areas down below will benefit; it will also help with the fire season. There is no money involved from the state.

REP. WAITSCIHES asked what the cost of purchasing a \$1 million bond would be. **REP. RICE** said it would cost a lot. The licensee, or the person that owns the machine would pay or be required to have proof of an insurance policy.

REP. WAITSCIHES asked if \$100,000 is adequate for the area being covered. **REP. RICE** said that SEN. STEINBEISSER will support this. She felt that the timely moisture will benefit the fire season, and said that the \$100,000 is adequate.

Closing by Sponsor:

REP. RICE referred to Amendment HB039901.akl that was just handed out. She noted that the amendment covers the liability insurance policy for at least \$100,000, and explained the remainder of the amendment. She stated that cloud-seeding has been done extensively in the past and asked for a DO PASS.

EXHIBIT (agh25a07)

HEARING ON HB 440

Opening Statement by Sponsor:

REP. BRADY WISEMAN (D), HD 65, opened the hearing on **HB 440**, a bill that would require locks on anhydrous ammonia storage tanks.

Proponents' Testimony:

SEN. FRANK SMITH, SD 16, POPLAR, spoke in favor of HB 440 and said that sheriffs and police in North Dakota like the type of lock they got from the anhydrous ammonia dealer there. Using a lock will prevent theft of anhydrous ammonia to make methamphetamine. He said that the Sidney Chief of Police, the Wolf Point Sheriff's Department and the Big Muddy Drug Task Force asked him to support bills against drug abuse.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 14}

Jeff Jergens, Deputy Sheriff, representing the Montana Narcotic Officers Association, stated that a lock gives law enforcement another valuable tool to win the war against drug use.

Opponents' Testimony:

Pam Langley, Montana Agricultural Business Association, said the organization assists in "sting" operations and are reporting suspicious activity to local law enforcement. There are about 45 locations that sell anhydrous ammonia in Montana. One of the reasons for the drop from a high of about 80 in 1997 is because of a move to the no-till crop system. Many dealers have chosen not to sell anhydrous ammonia because of break-ins and liability. Some suggestions to deter theft would be to remove the supply hose from the tank, plug the valve, and keep tanks empty as much as possible. They do not support the use of locks on tanks because it would be costly. They feel it would create more of a hazard for employees and law enforcement if thieves break in and cause a leak.

Lockeil Edwards, Montana Graingrowers Association, said their opposition is because of an unfunded mandate, and funding for the expense of the locks would take away a lot of their concern.

EXHIBIT(agh25a08)

{Tape: 1; Side: B; Approx. Time Counter: 14 - 27.6}

Informational Testimony:

Mike Batista, Administrator, Division of Criminal Investigation, Department of Justice, noted that the cost of the locks is fairly inexpensive. He is concerned about the penalties, and doesn't wish to go after the people who are not using anhydrous ammonia locks. He said that he would rather go after thieves stealing the anhydrous ammonia.

Questions from Committee Members and Responses:

REP. HEINERT and **REP. PETERSON** discussed Anhydrous Ammonia tanks, transfer facilities, frequency and means of filling, removing hoses and valves.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 7}

CHAIRMAN BUTCHER asked what the cost of a lock would be. **SEN. SMITH** answered that the one he has cost \$69.50.

REP. WAITSCIHES asked how much of the methamphetamine production uses anhydrous ammonia in the recipe. **Mr. Batista** did not have a percentage, but indicated that it is the most popular ingredient. It is also easy to acquire, and makes a better product.

REP. WAITSCIHES asked why the Senate didn't want to spend the \$14,000 to purchase locks. He noted: "That isn't a lot, considering it is for the good of society." **SEN. SMITH** said it was too much money, and there were no other objections.

REP. ROSS asked if anhydrous ammonia is flammable. **REP. WISEMAN** answered that it is not flammable.

REP. ROSS asked how much pressure is in the tanks. **Mr. Edwards** said anhydrous ammonia acts like propane, and there is about 150-200 lbs. of pressure in the tank. It is a freezing agent because of its rapid evaporation rate.

REP. HEINERT asked **REP. WISEMAN** if he would be agreeable to amending the bill to fund purchase of locks for the tanks. **REP. WISEMAN** said he would be presenting the bill in Tax Committee, and they may be able to find funding there. He would also like to amend the bill to eliminate the Misdemeanor Penalty for failing to comply.

Closing by Sponsor:

REP. WISEMAN thanked the committee for a good hearing and asked for a DO PASS. He noted that they would not blink an eye at the Department of Corrections coming with a request for \$20 million to lock up 2,000 more prisoners, but seem to have a problem with paying \$14,000 for locks to keep people out of prison.

{Tape: 2; Side: A; Approx. Time Counter: 7 - 19}

EXECUTIVE ACTION ON HB 352

Motion: **REP. ANDERSEN** moved that HB 352 DO PASS AS AMENDED.

Motion: REP. ANDERSEN moved that AMENDMENT HB035202 DO PASS.

Discussion:

REP. ANDERSON addressed concern about the distance that livestock could be moved by adding Amendment HB035202, which limits the distance to 100 miles from the origination point. She also added a termination date.

EXHIBIT (agh25a09)

Ms. Evans explained that Amendment HB035201 was made a part of the bill earlier.

REP. PETERSON noted some reservations, and said that it is already permissible to cross one county line for pasture. He did not think it was unreasonable to require a brand inspection if they were crossing two county lines. He asked for comment from Jack Wiseman, Department of Livestock. CHAIRMAN BUTCHER said that without objections, Mr. Wiseman could address the committee. There were no objections from the committee.

Jack Wiseman, Brand Enforcement, Department of Livestock, said that the 100 mile limit is difficult to enforce. He noted that all of their statutes and rules are geared to county line limits. A 100 mile limit will cause problems determining how far it is from one point to another point, and said that it would be confusing and difficult to enforce. They have 18 district inspectors, and 500 local inspectors that are geared toward county line violations. With a permit from Lewis and Clark County to Broadwater County, once they get to Broadwater County, there is nothing in the regulations to prevent moving that group of livestock within that county. He said they are not in favor of this amendment.

Vote: Motion on AMENDMENT 35202 failed 7-13 by roll call vote with REPS. ANDERSEN, BERGREN, BUTCHER, FUREY, LAMBERT, WINDY BOY, and WISEMAN voting aye. REP. FUREY voted by proxy.
{Tape: 2; Side: A; Approx. Time Counter: 18.6 - 30}

Discussion:

REP. PETERSON said that he could not support the bill because of the reasons the Department discussed in testimony.

REP. VILLA agreed with REP. PETERSON and said that this bill is best left un-passed.

REP. WAITSCHIES asked REP. PETERSON if it would be acceptable for the Grazing Permit to allow movement across two county lines if

there is a way to trace the cows. **REP. PETERSON** said that the original bill was for two counties, but in some cases that allows travel halfway across the state. Cattle could be driven or chased, but it was not acceptable to trailer cattle across two counties. He felt that the current system was adequate.

Vote: Motion on HB 352 AS AMENDED failed 5-15 by roll call vote with REPS. ANDERSEN, BUTCHER, LAMBERT, WAITSCHIES, and WISEMAN voting aye. REP. FUREY voted by proxy.

Motion/Vote: REP. RICE moved to REVERSE THE VOTE AND TABLE THE BILL. Motion carried unanimously by voice vote. HB 352 AS AMENDED was tabled with a vote of 15-5 with REPS. ANDERSEN, BUTCHER, LAMBERT, WAITSCHIES and WISEMAN voting no. REP. FUREY voted by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 6}

Note: VICE CHAIRMAN WINDY BOY took charge of the meeting, as CHAIRMAN BUTCHER was the Sponsor of the next two bills.

EXECUTIVE ACTION ON HB 350

Motion: REP. PETERSON moved that HB 350 DO PASS.

Motion: REP. PETERSON moved that AMENDMENT 35003 DO PASS.

Discussion:

Ms. Evans explained that Amendment 35003 takes out the Performance Bond requirement.

EXHIBIT (agh25a10)

REP. PETERSON said that he discussed this with the sponsor and several other members of the committee, and stated that he had support for the bid deposit being 100% of the lease. He felt that since the state will have 100% of the first year's lease, that if the lessee were to walk away from the lease, the state has one year to re-lease the land. The state is protected without the five-ten year bond or letter of credit.

REP. GRINDE questioned the constitutionality of singling out the bond payers, and asked Ms. Evans for her opinion. **Ms. Evans** said that she pursued that question with Greg Petsch, Legal Counsel, and he believed that it was constitutional to treat these people differently, because there was a rational basis for doing that. She said that part is being removed, so it is moot, now.

{Tape: 2; Side: B; Approx. Time Counter: 6 - 10.9}

REP. VILLA said that he agreed with **REP. PETERSON**.

REP. KEANE stated that he would like to leave Section 2 in.

Vote: Motion on **AMENDMENT 35003** carried 19-1 by voice vote with **REP. HEINERT** voting no. **REP. FUREY** voted by proxy.

Vote: Motion on **HB 350 AS AMENDED** carried unanimously by roll call vote. **REP. FUREY** voted by proxy.

EXECUTIVE ACTION ON HB 351

Motion: **REP. BUTCHER** moved that **HB 351 DO PASS**.

Motion: **REP. BUTCHER** moved that **AMENDMENT 035101 DO PASS**.

Discussion:

Ms. Evans explained the amendment. **REP. BUTCHER** explained the rationale behind it.

Vote: Motion on **AMENDMENT 35101** carried unanimously by voice vote. **REP. FUREY** voted by proxy.

Motion: **REP. BUTCHER** moved that **HB 351 DO PASS AS AMENDED**.
{Tape: 2; Side: B; Approx. Time Counter: 10.9 - 22}

Discussion:

REP. FUREY asked why Lewis and Clark County was being struck from the statute. **REP. BUTCHER** said that it was traditional in many statutes, and came from territorial days, to have everything default to Lewis and Clark County.

REP. WINDHAM asked for further explanation from **Ms. Evans**. **Ms. Evans** explained that it was not necessarily related to state land, and may have been done because it is a state agency making the decision, and the agency is located here. She said that it is common in statute.

REP. WAITSCHIES noted that the issues are water wells, fences, and stock dams. He said that for those types of adjudication, local would be better than having to go to Helena for each issue.

REP. JONES commented that his state leases are not as well-developed as his private property, because someone may bid against him and take the lease away.

REP. KEANE stated that there is no fiscal note to pay for sending state personnel all around the state to defend these actions.

{Tape: 2; Side: B; Approx. Time Counter: 22 - 28.7}

Kevin Chappell, Agriculture and Grazing Management Bureau Chief, Department of Natural Resources and Conservation (DNRC), stated that they have very few cases that require litigation. He said that the DNRC does not anticipate any fiscal impact from moving Lewis and Clark County as a place of venue.

REP. KEANE asked why they have the bill. **Mr. Chappell** said that **REP. BUTCHER** wants to have the hearing take place in the county where the land is located. The county is more familiar with the property, and they are more likely to have a district judge who has some experience and exposure to agriculture leases and improvements, and what their value might be. He wants to have something in place to avoid problems down the line.

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

REP. SMALL-EASTMAN asked whether the deductions were taken into account when someone gets the bid. **Mr. Chappell** stated that this refers to the Land Board's decision on how they would set the minimum rate for a lease with no competitive bids. This is a bidding situation, and those reductions no longer apply.

REP. BRANAE voiced concern about the word "or" on Page 2, Line 16 of the bill. **REP. BUTCHER** discussed avoiding an urban court on an agriculture issue. **REP. WINDHAM** said that a motion for change-of-venue is not automatically approved.

REP. VILLA said that he can not support the bill as it is.

REP. MALCOLM stated that the last legislature allowed movement from Lewis and Clark County to where people were more familiar with the issue.

REP. WAITSCHIES said that it would be 550 miles for people in his jurisdiction to come to Helena. He felt that it would be better to have this handled in district court.

Vote: Motion on HB 351 AS AMENDED carried 12-8 by roll call vote. REPS. BERGREN, BRANAE, FUREY, KEANE, SMALL-EASTMAN, VILLA, WINDY BOY, and WINDHAM voted no. REP. FUREY voted by proxy.

{Tape: 3; Side: A; Approx. Time Counter: 3 - 13}

ADJOURNMENT

Adjournment: 5:07 P.M.

REP. EDWARD B. BUTCHER, Chairman

LINDA KEIM, Secretary

EB/lk

Additional Exhibits:

EXHIBIT ([agh25aad0.PDF](#))