

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN EDWARD B. BUTCHER**, on February 10, 2005 at 3:22 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Edward B. Butcher, Chairman (R)
Rep. Carol Lambert, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Bob Bergren (D)
Rep. Gary Branae (D)
Rep. Kevin T. Furey (D)
Rep. Wanda Grinde (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (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. Brady Wiseman (D)

Members Excused: Rep. Jonathan Windy Boy, Vice Chairman (D)
Rep. Jeanne Windham (D)

Members Absent: None.

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

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

Committee Business Summary:

Hearing & Date Posted: HB 547, HB 464, HB 489, 2/4/2005
Executive Action: None.

HEARING ON HB 547**REP. RALPH LENHART, HD 38, GLENDIVE****Opening Statement by Sponsor:**

REP. RALPH LENHART opened the hearing on **HB 547**, a bill to require that all genetically engineered wheat seed sold or distributed within the state be accompanied by instructions regarding planting, growing, and harvesting; and otherwise revise agricultural seed laws. This bill puts a lot of responsibility on the United States Department of Agriculture, and would provide that a grower following all instructions is not liable for damages such as cross-contamination.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.8}

Proponents' Testimony:

Chris Christaens, Montana Farmers Union, said that they want to have rules in place before genetically modified wheat is introduced into the state. He stated that the issues are: wind blowing pollen, birds transferring pollen, and big game or livestock walking through fields. He said that buffer strips may be necessary around fields of genetically modified wheat. It may not be in the best interest of the farmer to have that much land out of production.

{Tape: 1; Side: A; Approx. Time Counter: 4.8 - 10.1}

Cody Ferguson, Northern Plains Resource Council, passed around "2005 Monsanto Technology/Stewardship Agreement," which is the current technology-use agreement that farmers sign. He also gave testimony in favor of having the owner of the technology be liable for damages resulting from contamination, and presented a copy of his testimony for the record.

[EXHIBIT \(agh33a01\)](#)

[EXHIBIT \(agh33a02\)](#)

Opponents' Testimony:

Dr. Dan Biggerstaff, Vice President Research, West Bred LLC, said that they are a private plant breeding company in Bozeman which is now nationwide. He addressed genetically modified organisms and said that people should get the facts and see what the Center for Food Safety is really saying about all the lawsuits that Monsanto has going. Monsanto has publically waived their right to claim patent infringement on small amounts of non-genetically modified wheat seed found in their genetically modified crop. He stated that genetically modified wheat is not currently available, but when it is, it will be a safe product. He passed

out "Strict Liability Concept Not Appropriate for Biotechnology-derived Crops," and "Agricultural Biotechnology."

[EXHIBIT \(agh33a03\)](#)

[EXHIBIT \(agh33a04\)](#)

John Stoner, Vice President, Montana Grain Growers Association, said that restrictions on crops must be addressed through nationwide rules and oversight, rather than at the state level. He said that this bill may be a barrier to new technologies.

{Tape: 1; Side: A; Approx. Time Counter: 10.1 - 22}

Mike Waters, farmer, Homestead, said that regulation at the Federal level is keeping these products at a safe level. The future of raising wheat relies on bio-technology. He said that the cost to raise wheat is increasing, but it is decreasing for other commodities. He felt that HB 547 will kill research in the state, and it is an anti-agricultural move. He said that the chances of wheat becoming a more viable business will put Montana in the back seat if this kind of advancement in the industry is opposed.

Kim Murray, Froid, Director Montana Grain Growers Association, said that he agreed with previous testimony. He felt that HB 547 would put Montana at a competitive disadvantage. He said that Montana needs this technology; farmers need all the tools they can get. He said that Monsanto had already pulled out of wheat research in Montana.

Mark Peterson, Farmer, Havre, addressed several questions that he had about the bill: Page 2, Line 8; Page 2, Line 10; Page 2, Line 17; and Page 1, Line 10. He expressed opposition to HB 547.

{Tape: 1; Side: A; Approx. Time Counter: 10.1 - 29.7}

Mike DeVrees, Barber Seed Service, Denton, felt that this bill does not do anything to protect Montana's wheat industry. It only adds more liability to the seed industry. He said that offering instructions does not protect the seed industry, and there is no penalty for not following the instructions.

Curtis Hershberger, Independent Agricultural Businessman and Farmer, Denton, said that he has a Certified Crop Advisors license. He stated that seed companies will educate their growers; this doesn't need to be legislated. He said that he views bio-technology as an important part of the future, and felt that this bill would keep companies from coming forward with bio-technology crops that are badly needed. He said that the passage of this bill would be hard on Montana State University. He passed around "Saving the Family Farm with Biotechnology."

[EXHIBIT \(agh33a05\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.4}

Pam Langley, Executive Director, Montana Agricultural Business Association, said that this bill is a barrier to progress. It will stop new opportunities that are necessary to economic development for Montana growers. She addressed the definition of cross-contamination in the bill, beginning on Line 19, and said that it is very restrictive. The issue is that there are many more possibilities for cross-contamination than from genetically engineered wheat to conventional, or organic wheat. She said that Page 1, Line 22 of the bill defines dealers, and noted that there are a lot of grower-to-grower sales. If they were under contract, it would be illegal to sell grower-to-grower. She said that Page 2, Line 8 covers patented varieties, and stated that there is no way to assure compliance by this definition. She discussed Page 2, Line 21; Page 2, Line 24; Page 3, Line 2; and Page 3, Line 11. She voiced opposition to the bill and passed around a signed petition opposing the bill, which was known as HB 405 in the last session.

EXHIBIT(agh33a06)

{Tape: 1; Side: B; Approx. Time Counter: 3.4 - 10.8}

John Youngberg, Montana Farm Bureau Federation, said that the effect of genetically modified wheat is uncertain. He stated that three governmental agencies currently test to see if a product is safe to grow, safe for the environment, and safe to eat. He spoke against HB 547 because it will handcuff research, while other states and countries move into the future.

Jeff Jacobson, Dean and Director, Montana State University College of Agriculture, submitted written testimony to be entered into the record.

EXHIBIT(agh33a07)

Everett Snortland, Retired Farmer, Conrad, and former Director, Department of Agriculture, said that passing this bill would be a negative situation for Montana agriculture. He said that he is opposed to HB 547.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. FUREY asked Dr. Biggerstaff how this bill will halt bio-technology in the state. **Dr. Biggerstaff** said that it would not absolutely stop research, but it would "put a cloud" over research, and companies would direct their dollars elsewhere.

{Tape: 1; Side: B; Approx. Time Counter: 10.8 - 19.5}

Closing by Sponsor:

REP. LENHART closed by asking for support for HB 547. He expressed regret that the Department of Agriculture (DOA) chose to remain neutral on this issue. He stated that he did not want to stop genetically engineered wheat experimentation and development. This bill gives the DOA some needed direction when dealing with genetically engineered wheat. **REP. LENHART** stated that he would be receptive to amendments.

HEARING ON HB 464

REP. BOB BERGREN, HD 33, HAVRE

Opening Statement by Sponsor:

REP. BOB BERGREN opened the hearing on **HB 464**, a bill that would expand production and use of ethanol. He said that this bill will add value to agriculture. He noted that the byproduct of ethanol is a high-quality, high-protein food supplement for cattle. Costs for farmers and suppliers of ethanol feed stocks will be reduced, because they won't have to deal with transportation. HB 464 tweaks the current incentive program; it has a funding component added, but it does not have a trigger mechanism. **REP. BERGREN** said that he proposes exempting the 91 octane rating from the mandate. Amendments were passed around.

EXHIBIT(agh33a08)

{Tape: 1; Side: B; Approx. Time Counter: 19.5 - 29}

Proponents' Testimony:

Dick Vincent, President, Rocky Mountain Ethanol, said that he partners with the DeBruycker family and together they have spent over \$1 million in Hardin on this project. They have been counting on the incentive. The Delta T Company is an equity partner with them. Currently, they are working on getting the permitting for this plant. They will need 22 million bushels of grain. They estimate the price of grain will go up about \$.30. This is a 60 million gallon a year plant that will cost \$85 million to \$95 million to build. They are putting in a loop system that will allow them to bring outside grain in, but that will cost \$.35 a bushel. They estimate yearly revenue at \$100 million from the distillers grain and the ethanol.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 5}

Lloyd DeBruycker, Cattle Rancher, Grain Farmer, Feed Lot Operator, and partner in Rocky Mountain Ethanol said that ethanol will help keep the air and the groundwater cleaner, and will give

grain farmers another outlet for their grain. A byproduct of the distiller's grain is excellent cattle feed for young calves.

Mike Volesky, Governor's Office, said that this is an economic development bill that creates a market for sustainable, renewable fuel. He said that this bill would add value to Montana grain, by producing ethanol in plants that employ people from all over the state. It will also add value to other industries; i.e., potential feeding and meat-packing industries, and specialty Montana-labeled beef products. The bill addresses Montana being a land-locked grain shipper with prices at the mercy of the transportation. Ethanol helps reduce dependency on foreign oil.
{Tape: 2; Side: A; Approx. Time Counter: 5 - 8.7}

Clinton Cain, Gallatin County, presented written testimony for the record. He said that another byproduct of ethanol is methane. Montana State University Professor of Agriculture, Blair Stringman is building a digester at Amsterdam that will produce methane fuel from cow manure. This digester will create electricity for the farm, plus enough left over to sell back to Northwestern Energy. He said that the same thing could be done with the byproducts from a hog farm. He said that it takes one bushel of cereal grains to make 2.5 gallons of 190-proof ethanol.
[EXHIBIT \(agh33a09\)](#)

Ms. Pat Joyce, Project Coordinator, Rocky Mountain Ethanol, Hardin said that they are a 60-million-gallon plant that will use corn and barley. They have developed good relationships with the City of Hardin and with Bighorn County. They have created a port authority in Hardin, and have created a tax increment finance district to collect money to help keep the roads in good shape. They are purchasing a rail spur that will go into the plant that will deliver their distiller grain out and some grains in. She said that this bill would affect their financing, and they are prepared to go forward with the requirements in the bill. She asked for some consideration on a long-term commitment, once the plant is in operation. Reference notebooks were passed around for the committee.
[EXHIBIT \(agh33a10\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 8.7 - 21.7}

Dan Simon, Rocky Mountain Ethanol, said that he is an investment professional, and has been in the project development business for 15 years. He said that he has seen the results of an effective incentive plan within a state. He felt that the state will see many benefits from the \$90 million in investment and the \$100 million in revenue that the project will bring. Items critical to prospective investors, and to Montana are:

- 1) Recognizing that competition is with the 48 other states, not including Alaska;
- 2) Backing the project with guaranteed funds are the only real bankable incentives;
- 3) Financing the project will be more difficult when the original investment incentives are reduced;
- 4) Setting a mandate for ethanol without a date certain is not enough; and
- 5) Diminishing uncertainty and rule changes is necessary because prospective debt and equity investors don't like that.

Mr. Simon noted that there is a lot of risk involved in financing an ethanol deal, and asked the State to provide an incentive that supports their efforts. He asked that the committee approve a minimum of \$.15 per gallon producer payment, through a legally binding agreement with the state, for at least eight years; and a 10% ethanol mandate, with a date certain.

{Tape: 2; Side: A; Approx. Time Counter: 21.7 - 26.1}

Larry Johnson, Minnesota, Business Development Manager, DELTA T, said that this is the company that is going to design and build the Rocky Mountain Ethanol project. An ethanol blend of 10% is in every gas station and on every farm in Minnesota, with an exemption for marinas, airports, or a pump that is labeled for non-road use only. He said that 99% of their gasoline has been blended with ethanol since about 1997. He directed the committee to Section 8 of the notebook, (exhibit 10), which lists the producer incentives for several states. Also included in this section is the language of the Nebraska contract with producers, a letter to Pat Joyce on the producer payment in Montana, and an explanation of the current program. He discussed Section 8, especially the information entitled, "State Producer Payment, the Rationale and Effects."

{Tape: 2; Side: A; Approx. Time Counter: 26.1 - 30}

Mr. Johnson pointed out several reasons why state production has not begun in Montana:

- 1) The California ethanol market did not exist before 2002;
- 2) The Montana feedstock requirement meant that small grains rather than corn must be utilized;
- 3) Much of the early investment capital has been drawn to the Midwest,
- 4) Low natural gas prices did not provide an incentive for coal-fired plants; and
- 5) Montana's diverse economy and large geographic area has not been conducive to the pooling of capital and the development of a focused project.

He noted that this industry is only 12 years old. The next decade will see new high value products from the ethanol project. New technology is ready to come out that will divide the kernels of grain even more, which will make more product. This can't be done unless there is an existing facility on hand. In the next few years, they will be making a higher value product out of the grain. If Montana is successful in building the first plant or two, it will be well positioned to take advantage of the new product, and the technology that is just around the corner. He asked the committee to focus on that, as well as specific incentives. The last page in Section 8 is the Minnesota economic analysis showing \$17 return to the state for the money they put into the ethanol program.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.5}

Keith Kelly, Commissioner, Department of Labor and Industry, said that this is a value-added bill. He said that they have requested to delegate the authority for testing for Methyl Tertiary Butyl Ether (MTBE) to the Department of Environmental Quality (DEQ). This considerably reduces the fiscal impact, because that department already has the testing mechanism.

Art Compton, DEQ, said that the DEQ supports the bill.

Nancy K. Peterson, Director, Montana Department of Agriculture, said that grain and cattle are the state's top agricultural products. Most of the grain is shipped to the west coast, and 1/3 of the value is lost to rail transportation costs. She said that the assurance that Montana is committed to growing this industry has been lacking in the past. Other benefits of ethanol include cleaner air, synergies with cattle feeding operations near an ethanol plant, and possible new markets for grain, straw and wood waste that currently have limited value because of the shipping costs to potential markets.

{Tape: 2; Side: B; Approx. Time Counter: 4.5 - 7.7}

SEN. JERRY BLACK, SD 14, SHELBY, said that this is a true economic development bill. He said that the first priority in Montana is to grow our economy and create jobs to expand our tax base. He asked for support.

Brett DeBruycker, Vice President, Montana Cattlemen's Association, said that he is speaking on behalf of their 1200 members. They are in favor of HB 464 because of:

1) job creation (United States Department of Agriculture (USDA) estimates that production of 100 million gallons of ethanol results in 2,250 local jobs in a community);

- 2) environmental concerns (ethanol will not contaminate the groundwater); and
- 3) distillers grains (this byproduct is a good source of protein, energy, and minerals for cattle feed).

John Stoner, Farmer, Havre, Vice President Montana Grain Growers, said that HB 464 will stimulate the economy by adding value to crops already grown in the state. Developing a strong ethanol industry will benefit all of Montana, not just agriculture.

Chris Christaens, Montana Farmers Union, said that they strongly endorse the passage of this bill.

Mike Allen, Ethanol Producers And Consumers (EPAC), said that EPAC is an international non-profit association that promotes and encourages the use and production of ethanol. He said that Allen Oil Company in Helena has been selling ethanol for over 24 years, and it does work. He presented written testimony for the record. [EXHIBIT](#)(agh33a11)

Tim Babcock, past Governor of Montana, said that he is developing an ethanol plant in Great Falls and their financing is almost completed. He asked that the bill be amended; citing the reduction in payments that may be made in one year from \$3 million to \$1 million. He stated that would make their financing more difficult.

Monte Ruud, Chief Financial Officer, Great Falls Ethanol, expressed support of the bill, saying that it will establish Montana as a player in the future of ethanol, enhance the market for Montana farmer's grains, and help drive economic development. He offered an amendment to the bill that will open the incentive to all participants and preserve the existing \$3 million per plant maximum. The proposed amendment calculates the maximum per plant to be the total allocation of \$6 million divided by the number of plants producing, still subject to a \$3 million cap. For example, the first two plants could earn up to \$3 million each; at three plants it would go to \$2 million each, etc. rather than capping it at \$1 million as the proposed legislation states. This would maintain the high incentive to get the first plants up and running.

{Tape: 2; Side: B; Approx. Time Counter: 7.7 - 20.3}

Butch Krutzfeldt, Miles City, said that he has a small 12-million-gallon plant in progress at Miles City. It is sized to what they think they can get in that area. He said that he supported the pro rata concept to participate in the incentive. He passed around "Ethanol Plants in the U.S." and "Gallons of Ethanol-Blended Fuel Used by State." He stressed that the thing

to do to give a competitive advantage to prospective plants in Montana is to help pay for the plant, and not be stingy. He stated that in 2003, 17,472,142 gallons of ethanol-blend fuel were used in Montana. He noted, "That fuel might as well be coming from Montana plants; that is what the mandate does." He said that over 500 million gallons of gasoline are sold in one year in Montana. With a 10% mandate, that would be a 50-million-gallon ethanol market a year.

[EXHIBIT](#)(agh33a12)

[EXHIBIT](#)(agh33a13)

Nancy Schlepp, Montana Farm Bureau, said that they support the bill.

Betty Biggs, Grain Farmer, Gallatin County, said that her son is a third-generation producer of grains and cattle in Montana and she supports this legislation. She pointed out that Sections 10 and 11 were good, and would tie in well with the Senate bill.

{Tape: 2; Side: B; Approx. Time Counter: 20.3 - 25.8}

Dan Huestis, Director, Agri-Technology, Great Falls Ethanol, said that he raises wheat and barley. He supported this legislation and urged passage of the bill.

Rich Clough, Choteau, said that he supports having fuels for the future and urged support of HB 464.

REP. SMALL-EASTMAN spoke as a proponent and thanked Mr. DeBruycker and Mr. Vincent for coming up with these ideas. She said that Montana depends on coal, and Westmoreland Resources is bringing coal to the Rocky Mountain Corporation Power Plant at Hardin. Their power will be used to heat up the ethanol plant to make gas, and that adds about 150 jobs to the Rocky Mountain Power Plant itself. She said "Our economy depends on coal, gas, and the power these people are bringing forth."

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.7}

(Note: the committee took a ten minute break)

Opponents' Testimony:

Gail Abercrombie, Executive Director, Montana Petroleum Association, passed around "Petroleum Refining in Montana," and "Montana Petroleum Association State Level Ethanol Mandate White Paper."

[EXHIBIT](#)(agh33a14)

[EXHIBIT](#)(agh33a15)

Ms. Abercrombie said that the first handout gives information such as number of employees, wages, and refinery production. She said that the mandate in this bill takes away 10% of the Montana market share from these people. The Montana Petroleum Association represents the refineries listed in the handout. She supports keeping the current market share and opposes taking 10% away to give to another "fledgling" industry. The refineries have been producing and supplying fuel in this area since the 1940's. They do not oppose the use of ethanol, but they have not seen consumer demand for ethanol. The mandate is not good policy and it will affect all Montana drivers.

Ms. Abercrombie referred to the third page of the second handout, (Exhibit 15), and said that Allen Oil has that fuel available. She asked if the requirement for State vehicles to use ethanol-blended fuel is being enforced, and whether Montana is living up to that level of its responsibility before legislation imposes this requirement on all drivers in the state. She stated that the refining industry will be required to enhance terminals to be able to distribute ethanol, as it has to be splash-blended at the terminal. She asked if refiners and terminal owners are entitled to a credit for their investment should this bill pass, since 10% of their market is going to be taken away.

She noted the 30 million gallon figure on Page 11, Line 27 of the bill. The issue is that to produce 30 million gallons, that could be 10 million gallons each year for three years. She said that she thought it would be 30 million gallons per year capacity, as that is what SEN. BLACK put in his bill. She stated that should be changed to at least 55 million gallons per year capacity, so that it is available for the 10% blending.

Another issue is the summer blending requirements. Missoula uses ethanol in the winter for the Cleaner Air Act requirements. Refineries will have to blend a lower volatile (base) fuel to put the ethanol on top. She said that ethanol is very volatile, and fires well in the winter. In the summer, the volatility issue is a problem because of the heat. A lower volatility of gas is required on which to blend the ethanol in order to accommodate that volatility and the problem of the ethanol evaporating. That becomes a "boutique" fuel; i.e., it is only for that fuel sold in Montana, and will increase costs. She stated that 60% of the refinery fuel goes out of state.

She added that MTBE has not been used in the state since 1999. They found that it was not being added, that traces of MTBE can be picked up in shipment from other sources. She said that their issue is in having a mandate and they haven't seen a demand for ethanol.

{Tape: 3; Side: A; Approx. Time Counter: 2.7 - 13.1}

Dexter Busby, Montana Refining Company, Great Falls, said that they only produce 50 million gallons of fuel a year and their market area is in North-central Montana. Their primary competitors in the Billings area each produce seven to eight times as much product and they only sell about 40% of their product in-state. He passed around "Top Seven Reasons Ethanol Is Not Good for Montana," and "Wishful Thinking Fuels Ethanol Dreams." He said that they don't oppose the use of ethanol, but do oppose having a mandate. He said that this mandate will raise the cost of gasoline in Montana by \$.05 to \$.08 a gallon, and would take 10% of their market. He asked for consideration of all the impacts of this unfunded mandate portion, and the economic consequences of having such a large sum taken out of the economy. This will jeopardize the over 90 jobs in Great Falls that earn an average of over \$23/hour.

EXHIBIT(agh33a16)

EXHIBIT(agh33a17)

{Tape: 3; Side: A; Approx. Time Counter: 13.1 - 16.5}

Mike Robbin, Conoco Phillips Company, Billings, said that he is in the pipelines and terminals segment of Conoco Phillips. He said the ethanol blended gasoline will be handled at the terminals that he manages. He passed around "Top Ten Ethanol Myths." He said that wheat is not an economical feedstock to use in ethanol production, and a 2004 study from the USDA showed only one operating wheat ethanol plant in the U.S. He said that Montana will have to increase its production of corn by 1000% to meet the demand, as it would take 130,000 acres of corn to meet the demand; or, they could import corn and support the corn business in neighboring states. He said that the total cost of retrofitting each terminal would be \$1.6 million; i.e., the blending equipment, the off-loading equipment, and the tankage required to off-load. In many areas, such as Bozeman, there isn't room to build another tank, so nearby property will have to be purchased and the product will have to be pumped to the terminal.

Mr. Robbin said that petroleum produces a 400% net energy yield, as opposed to ethanol's 34%. He said that there are more efficient ways to reduce our dependence on foreign energy, and noted that it is 15-25 times cheaper to support wind energy as a renewable energy source. The cost of creating jobs in ethanol plants will be about \$1 million per job/per year even if the Federal subsidy is ignored. Montanans will be picking up the cost of creating those jobs at about \$500,000 per job/per year.

EXHIBIT(agh33a18)

{Tape: 3; Side: A; Approx. Time Counter: 16.5 - 22.6}

Ronna Alexander, Montana Petroleum Marketers and Convenience

Store Association, said that she represents wholesalers, distributors, and retailers of petroleum products in Montana. Their membership represents 90% of the distributor base and 80% of the retail stations in the state. She said that they do not oppose ethanol, but they do oppose a mandate that makes Montana a selective fuel state. She made the following points:

- 1) They feel that ethanol supporters need to do a better job of educating consumers on the benefits of this product. Winter sales are up in areas adjacent to Missoula because people are driving there to purchase unblended fuel due to the oxygenated winter fuel requirement in Missoula.
- 2) The general consumer is not being represented at the hearing.
- 3) The distribution process would cause stress to their membership. Fuel is imported from out-of-state and from Canada because they can get a ready supply at the best price.
- 4) There will be significant price disparities in outlying areas of the state. Montana is surrounded by states and countries that don't have ethanol, and Canadian gas does not meet the same specifications that American gas does.
- 6) Distributors can't just bring the ethanol in on their own and splash-blend it at their bulk plants, because of environmental requirements.
- 7) HB 464 does not ensure a reasonable supply for all consumers, and will cause an economic hardship that will ultimately affect the consumer.

Ms. Alexander referred to Section 11 of the bill, the exemption for engines that can't burn ethanol and small engines, and said that unblended fuel will not be available at retail because it would take a dedicated tank. Leaving 91 octane unblended doesn't work because members have only two tanks at their stations; one for regular and one for 91 octane. They blend the two to get the mid-grade at the pump. A tank with 91 octane and another tank with blended ethanol results in something less than a 10% blend.

{Tape: 3; Side: A; Approx. Time Counter: 22.6 - 30.4}

She said that congressional offices and industry representatives in Washington, D.C. are convinced that an energy policy bill will pass before the end of the year. It will contain a renewable energy policy mandate using ethanol. She stated that if the committee wants to pass this bill, they would like to offer the amendment that when the national energy bill passes, it takes precedence over anything that Montana does in the legislature. This would put every state in the country on a level playing field. They won't have the issues with imports, but Canada would still be an issue. Every state would be implementing it at the same time on a national level and there would not be any selective fuel states.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 2.2}

Roy Morris, Morris Marketing, President, Montana Petroleum Marketers and Convenience Store Association, passed around "Boutique Fuel Requirements Across the U.S." He said that he was not against ethanol, but he was against a mandate. He said that it was possible they were creating a boutique fuel state, and Montana imports more than 15 million gallons of gasoline annually. He noted that imports are critical to the competitive nature of gasoline pricing, and any disruption to the refiner's supply chain creates a spike in price. He explained that the gasoline price spiking in California is largely a consequence of not being able to import gasoline that fits the California mandate requiring specific gas formulas, or boutique fuels. This is the same thing that will occur in Montana if only ethanol can be used. He stated that because of cheaper transportation costs, most of the gas on the Hi-Line comes out of Canada, so the grain growers will be affected the most.

EXHIBIT(agh33a19)

Chuck Flynn, Montana Pilots Association, said that there were 700 members statewide, and many of them are associated with the agricultural community. He said that he also represents the thousands of owners of motorcycles, snowmobiles, collector cars, and boats. He handed out his written testimony which included an amendment mandating that 91 octane gasoline would be exempted from ethanol blending. He stated that the Federal Aviation Association (FAA) prohibits using ethanol blended gas in airplanes. He noted that they would support the bill if this amendment is added.

EXHIBIT(agh33a20)

Linda Marshall, President, Aviation Organizations of Montana, said that they are opposed to the bill as written. There are about 600 aircraft in Montana that are certified to burn regular gas. She stated that ethanol blend gasoline is not compatible with aircraft engines.

{Tape: 3; Side: B; Approx. Time Counter: 2.2 - 9.2}

Tom Wrobel, Experimental Aircraft Association (EAA), said that he represents 1,098 members in Montana. He noted that using adulterated fuel is a safety issue and they can't use an ethanol blend. He pointed out that if 91 octane gasoline is exempted, it is very important that any fuel moved or sold within the state is labeled as containing ethanol. The co-mingling of adulterated fuel with 91 octane will put aviation people and owners of older snowmobiles at risk. He said that the EAA will support this bill with the addition of a mandate exempting 91 octane gasoline.

John Maxness, Montana Aviation Trades Association (MATA), said that their biggest interest is to protect the aviation groups and to have the unblended fuel available. He noted that the impact of the cost increase to the consumer is troubling, as well as the decrease in mileage that a vehicle will get. He handed out his written testimony and a binder of articles relating to ethanol.
EXHIBIT(agh33a21)

{Tape: 3; Side: B; Approx. Time Counter: 12.6 - 19.3}

Bob Gilbert, Lobbyist, Montana Aviation Trades Association, said that they are opposed to the bill. He asked the committee to carefully consider the testimony given by Ms. Alexander and the amendment proposed by REP. BERGREN. He noted that in order to solve the problems of one group, a problem will be created for others. He stated that a mandate is not the answer, people don't want to be told what to do, and he is not sure that the distributors and the service stations can make it work.

He said that there have been four ethanol plants in Montana, and they are all now closed. There was one at Terry that did not produce any ethanol and cost the bank in Terry \$250,000, and a state agency another \$250,000. There was one at Dillon that couldn't make it financially and closed. He said that the one at Manhattan did not produce very much ethanol. The one at Ringling lasted the longest, but there were so many environmental problems with the plant that it closed. He felt that the reason there are no producers in the state is because there is no market.

{Tape: 3; Side: B; Approx. Time Counter: 9.2 - 19.3}

Barbara Ranf, Montana Chamber of Commerce, said that they oppose the bill in its current form. She said that this bill does not have consumer protection measures and it does not have a mechanism to establish those. The bill needs to ensure that:

- 1) Production of ethanol continues to be met, and will grow as demand grows;
- 2) Consumers are informed of the pluses and minuses of the product;
- 3) Consumers understand they cannot expect a retailer to sell them non-blended gasoline, except for authorized exemptions, even if they want to purchase non-blended gasoline for other uses;
- 4) Enough crops are produced, and if crops fail, alternatives are in place;
- 5) If consumer demand for gasoline can't be met, a legal alternative is available for Montana consumers, and
- 6) That retailers are policed to ensure that everyone complies.

She asked the committee to continue to pursue ways to encourage the production and delivery of ethanol blended gasoline as a

viable choice for Montana consumers. She said that this is critical for the development of Montana's economy, and they recognize the importance of adding value to Montana agricultural products. She asked that careful consideration be given to having a government mandate. They support offering ethanol to consumers as a choice.

Mike Ferguson, Northwest Regional Representative, Aircraft Owners and Pilots Association (AOPA), said that AOPA has over 4,000 members, and 2,280 are in Montana. He supports REP. BERGREN's proposed amendment, and said that certain aircraft engines can safely use 91 octane automobile fuel. In November 2004, the FAA approved a new category called "Sport Aircraft" that has to use non-alcohol blended fuel. One new factory has just been built at Townsend, and four aircraft have already been completed. He said that they withdraw their opposition to this bill, as long as REP. BERGREN'S amendment is passed.

Tina Pomeroy, White Sulphur Springs, said that she is Civil Air Patrol's Representative to Aviation Organizations of Montana. She expressed support of the bill as long as statewide exemption for 91 octane fuel is implemented.

Todd Petersen, President, Petersen Aviation, Inc. submitted written testimony to be entered into the record.

EXHIBIT(agh33a22)

{Tape: 3; Side: B; Approx. Time Counter: 19.3 - 25.6}

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. KEANE asked **Ms. Alexander** how they can deliver 85 octane gasoline blended with ethanol and 91 octane gasoline that is ethanol free. **Ms. Alexander** said that they are delivered separately into different tanks, then they mix the two to get the mid-grade 89 octane.

REP. KEANE asked **Mr. Morris** how the two products will be kept separate and uncontaminated in the trucks. **Mr. Morris** said that in his experience there will be a small amount of contamination.

REP. KEANE said that the aviation people will have contaminated fuel to some extent. **Mr. Morris** affirmed that was true, but did not know how much contamination there would be.

REP. FUREY asked **Ms. Alexander** if there was a way to purchase ethanol blended fuel in Helena. **Ms. Alexander** said that Allen Oil is the only station with ethanol blended fuel in Helena.

{Tape: 3; Side: B; Approx. Time Counter: 25.6 - 30}

REP. FUREY asked Mr. Allen to expand on the question. **Mr. Allen** said that Allen Oil Company has a card lock location (credit cards only) and those pumps sell E-10 grades, all three grades, and an E-85 grade which the Federal Government has determined to be an alternate fuel.

REP. FUREY asked Mr. Allen what innovations are available from other companies that offer cleaner burning fuels. **Mr. Allen** said that he did not know of any others. He said that E-85 is the most innovative fuel on the market, and that card companies are supporting ethanol and E-85 blends primarily.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 3.6}

REP. RICE asked Ms. Joyce what change in policy she referred to in earlier testimony. **Ms. Joyce** said that she was referring to the proposed change in the bill regarding the incentive producer payment. Currently, the statute pays \$.30/gallon with a maximum of \$3 million per year to any one plant. The statute limits those payments to only two producers, with a maximum of \$6 million per year which is coming out of the Department of Transportation (DOT) budget. The proposal in this bill is \$.10/gallon with a maximum of six years at \$1 million per year per plant. This makes a difference to their investors.

REP. RICE asked if there was a contact in the Governor's office who would be available for questions. **Ms. Joyce** said that they had spoken with Director Lynch, DOT and Walter Schweitzer.

{Tape: 4; Side: A; Approx. Time Counter: 3.6 - 5.9}

REP. WINDY BOY asked Ms. Joyce if alterations were necessary for vehicles to use the 10% blend or the 85% blend. **Ms. Joyce** said that the notebook that was passed out earlier contains the technical information. She said that cars built before 1985 would require changes, but more recent cars are already able to handle the 10% blend. She deferred to Mr. Johnson for more information.

REP. WINDY BOY redirected the question. **Mr. Johnson** said that they did not find any vehicles that had a problem with a 10% blend of ethanol. He noted that Minnesota may require a 20% blend of ethanol soon.

Closing by Sponsor:

REP. BERGREN closed the hearing. He noted that the petroleum industry receives subsidies and reimbursements. In Montana, the explorers receive a "tax holiday" on the first year of production

for gas and oil wells. Those things give them a market advantage. The plant in Billings exports most of their fuel out of state and will have a net effect of a 3% loss of business. The Great Falls plant does all of their business in the state, and this will affect them by 10%. They also get a "blender's credit" which is about \$.05/gallon.

He said that Minnesota has been able to deliver fuels without comingling them since 1997. He listed major companies whose owner manuals approve the use of 10% ethanol blended fuel, and said that the last section of the bill exempts them, because there is a lack of education on this issue. He said that he wants to make 91 octane fuel available for them.

He stated that he would be willing to offer \$.15/gallon with a \$1.5 million cap, or up to eight years in duration. He challenged the industry to set the date certain. "Show us your production, show us your commitment to Montana ethanol, and we will give you the market. We will ban the MTBE's, but we are not going to do it before we see serious commitments from these companies," he said.

{Tape: 4; Side: A; Approx. Time Counter: 5.9 - 16.5}

HEARING ON HB 489

REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK opened the hearing on **HB 489**, a bill to enhance ethanol education and establish a bio-fuel education board. He noted several amendments that will be added to the bill.

{Tape: 4; Side: A; Approx. Time Counter: 16.5 - 25.3}

Proponents' Testimony:

Nancy K. Peterson, Director, Montana Department of Agriculture, said that it is evident from hearings on several bills related to alternative forms of energy that there is a lack of understanding about the technology and how these industries relate to economic development, our agricultural crops in the state, and environmental issues such as clean air. One of the provisions of the bill is to hold an annual conference to notify, explain, and educate Montanans concerning these issues, the opportunities, and progress being made in developing alternative energy.

Art Compton, Department of Environmental Quality, said that all the references to education and familiarity and being used to the application of ethanol are critical. Nationwide, 30% of the

gasoline is blended with ethanol. North Dakota ethanol use increased by 150% between 2001 and 2003, a change in total market share of 12% to 29%. In 2003, ethanol blended gasoline had a 49% market share in South Dakota. In Montana, 4% of our gasoline is blended with ethanol. We are behind the program, and it is due to education and lack of familiarity. He stressed that the product has a lot of benefits.

Mike Allen, Ethanol Producers And Consumers (EPAC), spoke in favor of HB 489 and presented written testimony for the record.

EXHIBIT(agh33a23)

{Tape: 4; Side: A; Approx. Time Counter: 25.3 - 28.8}

Nancy Schlepp, Montana Farm Bureau Federation, said they would like to see the title in new Section 1 changed to read "Bio-based Renewal Fuels," so that bio-diesel could be included. They would also like to make sure that agriculture producers represent certain groups on the board, and use the word "shall" instead of "may" on the second line of that section. She said that her family supports ethanol and has bought 10% ethanol in bulk for the last 20 years. They use it in all of their vehicles, their snowmobiles and four wheeler, and have not had any problems. She noted that they are breaking into a gasoline monopoly, and said that they need the marketing power that education will provide.

Barbara Broberg, Montana Women in Farm Economics (WIFE), said that they have a long history with ethanol and education on alternative fuels. She said that they support HB 464 and HB 489.

Pat Joyce, Rocky Mountain Ethanol, said that they will support this bill with REP. GALLIK's amendment to change Section 2B.

Ronna Alexander, Petroleum Marketers Association, said that they also support this bill.

John Stoner, Havre, Vice President Montana Grain Growers, said they support this bill. They feel that the educational effort will lead to a successful ethanol industry.

Monte Ruud, Agri-Technology, said they support the bill.

Brett DeBruycker, Montana Cattlemen's Association, said they support the bill.

Shirley Ball, Executive Director, EPAC, urged support of the bill because education is needed.

SEN. JERRY BLACK, SD 14, said he supports HB 489 because he feels that an educational program is essential in the state. He noted that when people understand the issues, it turns on a light.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. LAMBERT asked **REP. GALLIK** about the \$6 million figure. **REP. GALLIK** said that they planned to provide \$250,000 in both Fiscal Year 2006 and Fiscal Year 2007 for ethanol education. It will come out of the \$6 million DOT fund, a special highway fund that has been set aside for ethanol.

Closing by Sponsor:

REP. GALLIK said that the amendments have been worked out so that there would be no opponents. The amendments will include bio-based fuel, a sunset, and the stipulation that education will be provided by those who have had success in educating others through-out the country through a citizen board made up of Montana citizens.

Chairman Butcher adjourned the meeting.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 9.7}

ADJOURNMENT

Adjournment: 7:10 P.M.

REP. EDWARD B. BUTCHER, Chairman

LINDA KEIM, Secretary

EB/lk

Additional Exhibits:

EXHIBIT ([agh33aad0.PDF](#))