

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION**

Call to Order: By **CHAIRMAN RIC HOLDEN**, on February 12, 2001 at 3:15 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Chairman (R)
Sen. Pete Ekegren, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Walter McNutt (R)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Laramie Cumley, Committee Secretary
Doug Sternberg, Legislative Services

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 326, SB 345 1/29/01 1/30/01
Executive Action: SB 259, SB 326, SB 345

HEARING ON SB 326

Sponsor: SEN. MIKE TAYLOR, SD 37, Proctor

Proponents: Ralph Peck, Director, Montana Department of Agriculture

REP. JOHN ESP, HD 25, Big Timber
John Moodry, Butte Silverbow Weed Supervisor

Steve Johns, Self

Ed Grady, Self

Bob Gilbert, Rosebud County

Dave Schulz, Madison County Commissioner

Jim Ghekiere, Liberty County Weed Supervisor

Travis Chivallier, Park County Weed Board

Marty Malone, Self

Wayne Pearson, Stillwater County

Scott Bockness, Yellowstone and Bighorn County Weed

Boards

Doug Johnson, Cascade County Weed District

Paul Wick, Teton County

Jim Larson, Stillwater County

Jerry Weber, Carbon County

Jed Fisher, Flathead County

Kelly Leo, Madison County

Stacy Barta, Sweetgrass County

Rosemary Koch, Fergus County

Opponents: Patrick Montalban, Northern Montana Oil and Gas Association

Stan Lund, Self

Sarah Carlson, Montana Association of Conservation

Districts

Bill Icenoggle, Glacier County Commissioner

Ed Maronick, Montana Contractor Association

Page Dringman, Montana Association of Realtors

Gail Abercrombie, Montana Petroleum Association

Anmarie Robinson, Bear Paw Development

Gary Feland, J & G Operating

George Friez, Gilman Construction

Opening Statement by Sponsor:

SEN. MIKE TAYLOR, SD 37, Proctor, said this is an economic bill for the state of Montana. Weeds are the most single detrimental environmental problem that they have today. He said if they could go back 30 years ago there was grass blowing in the wind on the hills in his district now they are black with the invasion of knapweed. He said they are losing native plants, wildlife, water quality, and scenic beauty at an alarming rate. He said the weed problem is costing over 100 million annually. He said there has been over 8 months of work put into this bill with information coming from weed boards, ranchers, farmers, urban people, legislators, and concerned citizens. In this bill, weed districts are encouraged to work directly with private industries to tackle these problems. He explained the amendments to the bill

SB032603.ak1.**EXHIBIT** (ags35a01) He also passed out amendment
SB032604.ak1

EXHIBIT (ags35a02) He had testimony on the explanation of the bill,
which he read for the committee. **EXHIBIT** (ags35a03)

{Tape : 1; Side : B ; Approx. Time Counter : 6.7 }

Proponents' Testimony:

Ralph Peck, Director, Montana Department of Agriculture, said they support this bill and realize that the funding still has to come from HB 2.

REP. JOHN ESP, HD 25, Big Timber, rose in support of this bill.

John Moodry, Butte Silverbow Weed Supervisor, discussed some information out of The Montana Weed Management plan book.

EXHIBIT (ags35a04) He said if they put forth a 300% increase in the fight of noxious weeds they would be able to keep the infestation of noxious weeds at their current point and perhaps reduce them. He said this bill is the first step in starting to fight these weeds.

Steve Johns presented testimony in favor of SB 326.

EXHIBIT (ags35a05)

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Ed Grady said he is in favor of the amendment that allows 60 percent of the money to go back to the county of origin. He said he doesn't agree with the tax incentive part of the bill. He said most people take care of their land because they want to keep the value of their property up. He said landowners control their weeds even though they don't get any tax incentives or paid for spraying weeds.

Bob Gilbert, Rosebud County, said regardless of how many people or vehicles there are, all counties have weeds. He said weed distribution works that same way as education funds do, they are sent to each county in an equal distribution to fight these weeds. He said weeds need to be fought where the weeds are and not where the population is.

Dave Schulz, Madison County Commissioner, said this bill is the product of many hours of noxious weed management meetings. Some of the questions that came up during these meetings was how big of a problem is it in the state of Montana, how many dollars is it going to cost and who should be doing what. He said in the last two years private interest in the weed management problem is

much higher. In Madison County they passed a Three Mill Levy three years ago and did the same thing last year. Because of that they have the dollars and the people to fight noxious weeds.

Jim Ghekierre, Liberty County Weed Supervisor said he supports this bill and presented letters of support from five other counties. **EXHIBIT (ags35a06)** He said the funding of this bill is very important as he has to work very hard just to get enough funding to keep a summer crew hired. He said two-thirds of his crew is funded through federal and state grants and this would help many of the smaller counties.

{Tape : 1; Side : B ; Approx. Time Counter : 21.5 }

Travis Chivallier, Park County Weed Board, rose in support of SB 326. **EXHIBIT (ags35a07)**

Marty Malone said this bill helps counties and landowners.

Wayne Pearson, Stillwater County, said he supports this bill as the money will be distributed evenly among all of the counties. He said there are a lot of counties in eastern Montana that have a low tax base and even if they have mill levies they can't raise much money because they don't have the tax base. This will help those smaller counties.

Scott Bockness, Yellowstone and Bighorn County Weed Boards, presented letters of support from both counties.
EXHIBIT (ags35a08) EXHIBIT (ags35a09)

Doug Johnson, Cascade County Weed District, rose in support of SB 326.

Paul Wick, Teton County, said this bill addresses critical funding for weed districts and is an important step in the control of noxious weeds in the state of Montana.

Jim Larson, Stillwater County, said subdivisions across the state are creating more problems for weed districts. He said they need this support and money to continue these programs to deal with growth.

Jerry Weber, Carbon County, said in their district they have quit growing grass and are growing houses. He said the mill levy has dropped by \$1500 and they would appreciate any support that they can get.

Jed Fisher, Flathead County presented letters of support for SB 326. **EXHIBIT (ags35a10)**

Kelly Leo, Madison County, rose in support of SB 326.

EXHIBIT (ags35a11)

Stacy Barta, Sweetgrass County, said their county has a small population but is large on weed problems.

Rosemary Koch, Fergus County, rose in support of SB 326. She said they have a lot of weed problems in their district. It is expensive to spray these weeds and many landowners cannot afford it.

A letter of support from **Beaverhead County Commissioners** was also submitted. **EXHIBIT (ags35a12)**

{Tape : 2; Side : A ; Approx. Time Counter : 4.8 }

Opponents' Testimony:

Patrick Montalban, Northern Montana Oil and Gas Association said this a good idea but they are going into the RIT fund that has been around for over 27 years. He said this fund was started in 1973 and was started for reclamation of oil and gas wells and mining sites. He said 70 percent of the money that was raised to go into this fund came from the oil and gas companies in the state and 30 percent from mining. He said this fund was not set up to fight noxious weeds but for oil and gas wells that were drilled, mines that were developed and to reclaim these sites. He said about 10 years ago the fund was reaching around \$100 Million and instead of just using the interest off of this fund they used some of the principal. They began using 50 to 60 percent of the principal dollars in the \$100 million fund thus slowing the amount of money going into the RIT fund. He said if this bill passes, \$500,000 will be taken out of the RIT fund for noxious weeds. He said there are over 3,000 wells in Montana that need to be plugged and taken care of and this is a concern for the state also. He said it costs approximately \$100,000 per well to get them plugged but a private entity can come in and do it for 10 percent of that cost if the money is available through grants. He said the oil and gas industry has not caused the weed problem in this state and this money in the RIT fund needs to stay there for the plugging of abandoned oil and gas wells. He said there is a fund for noxious weeds and money should be raised to help solve these problems and the RIT fund should not be involved.

{Tape : 2; Side : A ; Approx. Time Counter : 11.7 }

Stan Lund said if \$500,000 is taken out of the RIT fund for noxious weeds, someone else in the oil and gas community is going to be hurt. He said there is \$600,000 allotted to the oil and gas

industry to go and plug wells that have been abandoned. This money may be cut if it has to be used for noxious weeds. He said the other area that will be cut is some of the counties in the north central area of the state have grants and they plug wells where there is a bonded operator. These operators plug wells and try to keep the costs down. He said this program is the most effective, cheapest well plugging program in Montana and should not be cut. He said noxious weeds are important, but this source of funding should not be used for this project.

Sarah Carlson, Montana Association of Conservation Districts, presented testimony in opposition to SB 326. **EXHIBIT (ags35a13)**

Bill Icenoggle, Glacier County Commissioner, stated they have a huge problem with noxious weeds, but don't feel this is the way to fund this project. The RIT funds were intended to mitigate environmental damage from non-renewable resource extraction, which came from oil and gas and hard rock mining. He said the industry that is paying into the fund should be the first in line to extract money from that fund. Glacier County was rewarded \$100,000 to plug abandoned oil wells. He stated if this funding mechanism goes for noxious weeds they will lose that funding. Operators can plug these wells for 1/10th of the cost, but if they are abandoned then the state oil and gas industry has to go in and plug them.

Ed Maronick, Montana Contractors Association , stated on page 14 of the bill they oppose this provision as it would stop all construction or mining that disturbs the ground until there is approval from the respective weed board. There are a lot of counties that don't have weed boards or don't meet regularly. This type of delay could be devastating to the construction community.

Page Dringman, Montana Association of Realtors, stated page 24, section 26 of the bill is a problem for realtors. She said two years ago the Association of Realtors agreed to put in language in the buy-sell agreement of property to include a noxious weeds disclosure. She read this disclosure. This was done voluntarily and they worked with the Montana Weed Control Association. A member from the Montana Association of Realtors sits on the Weed Board of Directors and they also partake in weed related education for realtor awareness. This bill mandated disclosure on property being sold. The problem is many realtors are not experts on noxious weeds and depending on what time of year the property is sold they don't know what kind of noxious weeds there are. She also explained there is a lot of turn around of property in the state and many owners don't know if they have noxious weeds on the property or not. One option that could be looked at is an

inspection contingency where buyers can check for noxious weeds. The current language could be a liability issue, plus there are real estate actions that take place without a real estate agent being involved.

{Tape : 2; Side : A ; Approx. Time Counter : 28.1 }

Gail Abercrombie, Montana Petroleum Association, stated they oppose the funding for this program. The funds that are in the RIT fund are from the oil and gas, mining and mineral industry. Funding for the coal bed methane environmental impact statement could bring \$441 Million to the state. Funding for this impact statement could be jeopardized by this piece of legislation.

Anmarie Robinson, Bear Paw Development, said the Treasure State Endowment fund was established in 1992 for infrastructure and improvement for water, sewer, storm drains, and bridges. She said their district utilizes this funding source to keep their infrastructure rates affordable to their members. This would hurt their city if this bill is passed.

Gary Feland, J & G Operating, said RIT funds have been used to plug wells. He said weeds need to be controlled, but the funding needs to come from somewhere else.

George Friez, Gilman Construction, stated they support a weed program but oppose section 22 which sets no time limitation for the weed board to approve a weed plan for construction pits.

City of Richey was also in opposition to SB 326.

{Tape : 2; Side : B ; Approx. Time Counter : 6.0 }

Questions from Committee Members and Responses:

SEN. COREY STAPLETON asked if tax credits and deductions were covered in this bill.

SEN. TAYLOR said this was covered in amendment #9.

SEN. STAPLETON asked if by going into the RIT fund are they violating what that money was originally to be used for.

SEN. TAYLOR said he is looking at a problem that the state needs to address and a probable funding source. He said he would like a source of funding without raising taxes.

SEN. STAPLETON stated the Department of Transportation is a good source of funding and a portion of noxious weeds are funded by

their Department. He asked if there is money in the Department of Transportation to fund this project.

John Black, Montana Department of Transportation stated their department budgeted \$1.2 Million that is allocated to individual counties for the control of noxious weeds. The additional \$400,000 that is being proposed in this bill cannot come from their Department.

SEN. JON TESTER asked if the Department of Transportation has taken over all of the secondary roads and weed control on those roads.

John Black said that is correct.

SEN. TESTER asked what kind of cost increase was there for secondary roads.

John Black stated before they took over secondary roads their budget was \$842,000. He said they did not take over weed control on those roads until January 1, 2001 because they were not budgeted for it. They put in a proposal for the program of 28 percent, which is \$1.2 Million.

SEN. TESTER asked if funds from the RIT fund had ever been taken out and used for other projects besides what they are set aside for.

John Tubbs, DNRC, said there has been times when the funding has been looked at, but in the last ten years it has not been used for anything extra.

SEN. LINDA NELSON asked where the status for the funding of this bill is right now and would Finance and Claims deal with it or another committee.

SEN. TAYLOR said it depends on how and where they are going to get the funding. He said he felt the House would take care of the appropriations and the funding mechanism in the bill would be changed or reduced. The **Governor** is very concerned with weeds and made it part of her campaign to do something about these problems. He said he would like to get funding without raising taxes.

SEN. ARNIE MOHL asked how much money or effort is going to come from the railroad association.

SEN. TAYLOR said he did not know the number for sure.

Barbara Mullen, Department of Agriculture, said when they developed the Montana Weed Management Plan, they researched how much everyone was spending and they did not get a good answer from the railroads because they are a private industry.

SEN. MOHL said if a highway construction crew had to wait to get approval from the weed board to start a project it will only delay more jobs and there needs to be a time limit.

SEN. TAYLOR said he has no problem with that and it could be put in as a sunset. He stated this bill won't affect any projects for two years as it is.

SEN. MOHL said he is concerned more about delaying jobs because there is another department involved to get through all the hoops.

{Tape : 2; Side : B ; Approx. Time Counter : 20.9 }

SEN. MIKE HALLIGAN asked where the money was coming from specifically in this fund whether it was from gasoline tax, etc.

SEN. HOLDEN said they didn't know that specifically.

SEN. HALLIGAN asked why don't they raise the motor vehicle tax for noxious weeds as a way to solve this funding problem.

SEN. TAYLOR stated this would have to be done by a vote of the people and will probably be done in the future. This won't solve the problem that they have for this biennium though.

SEN. GREG JERGESON explained one of the reasons that there is a fee on vehicles is because of their mobility. There are other mobile entities that raise money for the weed program such as combines and cattle. However, they are on a scheduled reduction and each year less goes into the weed fund. He asked if there would be a way to adjust these fees on mobile units to help backfill this fund.

SEN. TAYLOR said he didn't think so.

Closing by Sponsor:

SEN. TAYLOR stated he understands that the money from the RIT fund is used to plug wells. But there are roads built to these wells that people drive on thus creating weeds. He asked if weeds are a priority for this state? He stated if they don't fund this they will lose more jobs than they would gain. Weeds take wildlife, water, native grasses, and the environment. He said he

does not have all the answers for the funding right now, but this bill is very important and is the right step for the state. Not everyone is going to get what they want but this bill is too important to throw away. It is the obligation of the realtors to educate the buyers on what they are purchasing.

{Tape : 3; Side : A ; Approx. Time Counter : 5.9 }

HEARING ON SB 345

Sponsor: SEN. JOHN COBB, SD 25, Augusta

Proponents: None

**Opponents: Holly Franz, Tee Bar Ranch Company
Mike Murphy, Montana Water Resource Association**

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, Augusta, read the title of the bill. He said right now you can use, lose, sell or lease water. He said why can't water be shared also. He used the example of a rancher that has 40 inches of water and another rancher who has 40 inches and they could put them together and irrigate one place in less time and then go to the next place. There would be more in-stream flow and is set up like an irrigation district where people use the water more efficiently. However, this concept is illegal because it is not actual law. He read page 1, line 15-18. He stated in section 2 of the bill if a person has adjudicated water rights only those neighbors that are contiguous to each other can share water. He explained more of section 2 on page 2. He stated there is also an objection section on line 24, page 2 of the bill. He stated there are people already doing this and this would make it legal. Plus there are many others who would like to do this, but don't have any guidelines to follow and this gives them another option.

{Tape : 3; Side : A ; Approx. Time Counter : 10.3 }

Proponents' Testimony: none

Opponents' Testimony:

Holly Franz, Tee Bar Ranch Company, rose in opposition to SB 345.
EXHIBIT (ags35a14)

Mike Murphy, Montana Water Resource Association also opposed SB 345.

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

Questions from Committee Members and Responses:

SEN. HOLDEN asked if the sponsor had any rebuttal for the opposition to his bill. He stated he would like some explanation on the area of the DNRC verses the district court.

SEN. COBB stated he would like to help some people who are not big water right holders to give them an option. He stated right now the district court appoints the water commissioner and if there is a dispute they go to the district court. He stated if someone objects to this they have a 30-day period to object.

SEN. HALLIGAN asked about the example of sharing 40 inches of water.

SEN. COBB stated two people could share their inches by having all the water go to one neighbor first and then it all goes to the second neighbor. He said they could irrigate faster because they have more water.

SEN. HALLIGAN asked if they are expanding the acreage.

SEN. COBB said no, they are only irrigating the acreage that they had before.

SEN. HALLIGAN asked why not use the DNRC for this procedure rather than having to go to district court.

SEN. COBB said he felt it would be faster and the district judge deals with water issues anyway.

SEN. TOM ZOOK asked if two people have 40 inches and they combine their inches to make 80, how long can the first person have the water and are they actually doubling their water.

SEN. COBB stated they both have 40 inches of water and they can use that allotted water and not affect anyone down or above the stream.

SEN. ZOOK stated it sounds like they are allowing 160 inches of water at one time.

SEN. COBB stated no it is only 80 inches of water.

SEN. HOLDEN stated the idea is to get the water over a field faster because they have more water.

SEN. COBB said there are people doing this right now. He said the problem is that if someone like DNRC challenged them there are no laws governing this.

SEN. JERGESON asked if they would be sharing water but still only getting the inches that they are allotted.

SEN. COBB said yes, the concern is that someone may believe that they are affecting their downstream use under someone else's water right and this is not so.

SEN. STAPLETON asked if they were familiar with a database that they are putting in on all water right users.

Holly Franz said yes.

SEN. STAPLETON stated if people wanted to share water wouldn't it be easier if they went to the district judge and they could look in the database to see how the water has been used, etc.

Holly Franz said their concern is there is the water court, DNRC, and district courts that all have different functions dealing with water rights. What they are concerned about in the change process is adverse affects on other water rights both junior and senior. They are not concerned about the workload, but who is going to make these decision and does that decision-maker have the protections for the water right holders. She said right now the way it is done is through the Department of Natural Resources. The water court tells the district court what the water right does and the DNRC tells them the district court if there are any changes that can be made to those water rights. This bill takes in another layer, with certain circumstances and less expertise in the area and provides less protections for those people on the stream. She said their concern is there are no protections for other water users.

SEN. STAPLETON asked if it would be too much trouble for a rancher or others to go look up water rights and other information on the database.

Holly Franz stated there is no such database. She said she can go on the Internet and look up the central records through the DNRC. She said if they want to change their water rights the burden is on the water right owner. She said it costs \$125 to file a change application with DNRC and that includes all of the notices and everything. It costs about the same to file a petition with the district court so cost is really not a factor.

Closing by Sponsor:

SEN. COBB said this is just a simple way for water users to share water. The district courts appoint the water commissioner, and are usually involved in water right fights and the judge is familiar with water right laws. If water is sold or leased it is the same issue as sharing water.

{Tape : 3; Side : B ; Approx. Time Counter : 4.2 }

EXECUTIVE ACTION ON SB 259

Motion: **SEN. TESTER** moved that **SB 259 DO PASS.**

Discussion:

Doug Sternberg discussed amendment **SB025901.ads.**

EXHIBIT (ags35a15)

Motion/Vote: **SEN. TESTER** moved that **AMENDMENT SB025901.ADDS BE ADOPTED. Motion carried unanimously.**

Motion/Vote: **SEN. TESTER** moved that **SB 259 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 326

SEN. HOLDEN said a lot of work has gone into this bill and he wondered what kind of support there was from the committee.

SEN. HALLIGAN said for years they have tried to raise the oil and gas tax and it has failed. He said the funding for this bill needs to go to some type of referendum whether it is raising the gas tax or raising the motor vehicle fee to \$3.00.

SEN. NELSON said she likes the bill but does not like the funding.

SEN. ZOOK said this bill is important, but it has quite an economic shift on the state. He said he feels that a lot of weed problems come from hunters and perhaps something could be done with the Fish and Game. He stated they have lowered the license fees on a lot of vehicles and these vehicles spread weeds and perhaps they need to raise the weed fees.

SEN. JERGESON stated weeds that are found in weed infested hay had to start with the machinery that cut it down, etc. He stated \$.35 on each cow raised in Montana would raise approximately \$750,000 and maybe they need to look at something like that.

SEN. MOHL stated the funding in this bill is not right, but it shouldn't come from cattle. The funding should come from people like the tourists and hunters that spread weeds. If they increased the fuel tax this would help solve some of their problems rather than going to the rancher, etc. He stated the reason that he mentioned the railroad is because he doesn't think they pay and yet they go down a railroad track and they are weed infested and no one is maintaining them.

{Tape : 3; Side : B ; Approx. Time Counter : 13.7 }

SEN. HOLDEN stated he has a big problem with the bill and feels that it needs to be tabled.

Motion: **SEN. HOLDEN** moved that **SB 326 BE TABLED.**

Discussion:

SEN. TESTER said he did not hear a lot of opposition to the bill except for the funding mechanism. He said if they find the right funding mechanism then he supports the bill.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 345

Motion: **SEN. HALLIGAN** moved that **SB 345 BE TABLED.**

Discussion:

SEN. STAPLETON said he would like to look at this bill.

SEN. ZOOK said **SEN. COBB** has tried this bill for the past two sessions.

Vote: Motion **carried unanimously.**

ADJOURNMENT

Adjournment: 5:45 P.M.

SEN. RIC HOLDEN, Chairman

LARAMIE CUMLEY, Secretary

RH/LC

EXHIBIT (ags35aad)