

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN KEITH BALES**, on March 19, 2003 at 3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Keith Bales, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Walter McNutt (R)
Sen. Linda Nelson (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Jennifer Stephens, Committee Secretary
Doug Sternberg, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: HB 388, HB 644, 2/24/2003
Executive Action:

HEARING ON HB 388

Sponsor: REP. BOB LAKE, HD 60, HAMILTON

Proponents: REP. DICK HAINES, HD 63, MISSOULA
Thomas Brader, Hamilton
Steve Hinton, Hamilton
John Youngberg, MT Farm Bureau

Opponents: Ren Cleveland, Hamilton

Opening Statement by Sponsor:

REP. BOB LAKE, HD 60, HAMILTON, explained that HB 388 would provide for small tract landowners, specifically landowners who own 3 acres or less, who reside in the boundaries of an irrigation district who, at no fault of their own, receive no water to be relieved of financial and legal obligations to the district. He added that small tract landowners are willing to pay for this relief. First, they will pay the district their share of the existing debt. Second, even though in many cases these landowners have not received water that they have been paying for, they said they would help pay for some of the operational costs for a period in the future. REP. LAKE explained that the concept of this bill was tested in the Missoula area with legislation passed by Sen. Mike Halligan in 1997. The legislation was specific to Missoula County and accomplished what was needed. He said that HB 388 would make the program state-wide. He said the bill is fair, equitable, and does not require the district to redesign its boundaries. He ended by saying no one should be liable for what they do not receive and on the other hand, no one should expect someone else to pay for something that helps them received personal gain.

Proponents' Testimony:

REP. DICK HAINES, HD 63, MISSOULA, said a number of his constituents are trapped in a situation where they are paying taxes to a water district and yet are receiving no water. He thinks HB 388 would remedy the problem. He again urged that the bill concerns the fundamental issue of what's fair. He ended by saying you shouldn't have to pay for something you don't receive.

Thomas Brader, Hamilton, said he came to the hearing to represent small tract landowners. He explained that he is caught in a situation where there is no way for him to receive water, yet he is still burdened to pay water district taxes. In 1997, he said some help came along when a bill was passed that changed the

taxes. He disagrees with the statute that states once an area is made a water district, it cannot be changed back. He thinks this statute should be changed because it is very clear that the use of land often changes, very often due to drought and other climate factors. **Mr. Brader** disagreed with the section of the bill that called for water proportions to be based on an average of 40 years. He finds the figure to be too large and suggested the committee change it to 10 years.

Steve Hinton, Hamilton, said it is wrong for him to have to pay taxes to a water district when he is not able to receive water. He added that he is not angered by not being able to receive water; matter of fact, he is pleased that it goes to other farmers who need it. He is, however, upset that he has to pay for something he doesn't use, especially since he doesn't have any water rights. **Mr. Hinton** gave a brief overview of the hassles he has gone through because of the current water district statutes.

John Youngberg, MT Farm Bureau, said in the past, his organization usually opposed bills similar to HB 388, but the bureau realizes there is a problem with current water district statutes. He agrees that it is not fair for individuals to pay taxes to a water district when they are unable to receive any water.

Opponents' Testimony:

Ren Cleveland, Hamilton, submitted written testimony, **EXHIBIT**(ags58a01). He also submitted the written testimony of **Sharmae Erikson, Hamilton**, **EXHIBIT**(ags58a02).

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Informational Witnesses:

Jim Foster, MT Water Resources Association, submitted the written testimony of **Mike Murphy, Executive Director, MT Water Resources Association**, **EXHIBIT**(ags58a03).

Tracey Turek, independent water consultant, Missoula, said she came as an informational witness because she worked with former senator, **Mike Halligan**, on the Missoula irrigation district bill. She said that particular bill identified the problem of having individuals who live in water districts who receive no water pay water district taxes. She said that the bill passed by Sen. Halligan in 1991 helped many people in Missoula. Unfortunately, the bill had a sunset and was taken off of the books. She said the problems still continue. **Ms. Turek** explained that more

problems are arising because land is becoming subdivided. This means people are paying more fees for the same amount of land due to the fact that the taxes are based on each land division. She said that HB 388 is very similar to the bill that **Sen. Halligan** sponsored in 1991. There are a few differences. **Ms. Turek** explained that in HB 388, a person can go through the county commissioners to negotiate agreements and settlements. The other difference in this legislation is the buy-out provision where a person can petition district court. The difference, she explained, is, in past legislation, there was a \$20 filing fee for the district court and the individual could then process the petition under the law. Also, HB 388 has a buy-out provision where if a negotiation cannot be reached with the county commissioners, an individual can proceed to district court. They would, however, have to pay for the buy-out. She said she would be happy to answer any questions.

Questions from Committee Members and Responses:

SEN. LINDA NELSON asked **Ms. Turek** what has become of the people who wanted help through Sen. Halligan's bill. **Ms. Turek** explained that there were approximately 550 people who did send their petitions to district court. The Irrigation District Board in Missoula filed suit and the cases went all the way up to the state Supreme Court. The Supreme Court found the bill to be unconstitutional. She added that the Supreme Court changed their decision last fall and so the petitions that were filed in district court have been on hold. The district court is just now beginning to act on the suits. **SEN. NELSON** further asked **Ms. Turek** if she thinks the bill would be caught up in lawsuits again. **Ms. Turek** said she did not know.

SEN. DALE MAHLUM asked **Ms. Turek** how many people are not receiving water yet are still paying water district taxes. **Ms. Turek** said that in the Missoula irrigation district, there was a study that was done by the Missoula water quality district that indicated that there are 2,200 individuals who are paying for water they do not receive.

Closing by Sponsor:

REP. BOB LAKE, HD 60, HAMILTON, summarized the bill and ended by saying that HB 388 would grant a fair, equitable settlement that would not hurt the water districts and will relieve the landowners. He closed on HB 388.

HEARING ON HB 644

Sponsor: REP. DIANE RICE, HD 33, HARRISON

Proponents: Chris Christiaens, MT Farmer's Union
Barry Rice, Rice Ranches, Harrison
John Semple, Association of MT Aerial Applicators
Mike Barrett, Helena

Opponents: Larry Tveit, Sidney
Layne Forsness, Northeast MT
Bernard Pease, Pease Ranch, Northeast MT
Helen Waller, Farmer, Circle
REP. DON STEINBEISSER, HD 100, SIDNEY

Opening Statement by Sponsor:

REP. DIANE RICE, HD 33, HARRISON, said HB 644 would revise the weather modification laws. It makes weather modification, i.e. cloud seeding, easier in that it eliminates the EIS requirement and the million dollar bond. However, it makes the weather modification more difficult because it narrowly closes the scope of when the cloud seeding could be done. She explained that the start date for the bill would be November 1 and the ending date would be March 15. The dates were intentionally structured in order to help develop snowpack in Montana's mountains. **REP. RICE** emphasized that the bill is important because of the state's drought conditions. She also added that the lack of water is especially bad in her district. There is one subsection in the bill that she noted had raised some issues in the House. Because of these issues, she said she would be open to any amendments. The portion that has caused some concern is the section where she included that the governor could extend cloud seeding outside of the time parameters if the state was in a drought emergency. **REP. RICE** also added that the bill is only intended to help Montanans. She wanted to make sure that North Dakota would not be able to seed clouds in Montana that would travel out of the state. She ended with a brief description of cloud seeding and summarized other sections of the bill.

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Proponents' Testimony:

Chris Christiaens, MT Farmer's Union, submitted written testimony, **EXHIBIT (ags58a04)**. He also passed out an informational booklet, **EXHIBIT (ags58a05)** and the written testimony of Darin Langerud, Director, North Dakota Atmospheric Resource Board, **EXHIBIT (ags58a06)**.

Barry Rice, Rice Ranches, Harrison, explained that it has never been more dry in the Jefferson drainage. He said it is critical for that area to get water. He feels that HB 644 would give his county a shot at trying to establish a snowpack.

John Semple, Association of MT Aerial Applicators, concurred with previous testimony and urged the committee's support.

Mike Barrett, Helena, submitted written testimony, **EXHIBIT (ags58a07)**.

Opponents' Testimony:

Larry Tveit, Sidney, submitted written testimony, **EXHIBIT (ags58a08)**.

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Layne Forsness, Northeast MT, explained how cloud seeding would affect his organic crops. He also submitted a petition signed by many other Montanans who are opposed to HB 644, **EXHIBIT (ags58a09)**.

Bernard Pease, Pease Ranch, Northeast MT, submitted written testimony, **EXHIBIT (ags58a10)**.

Helen Waller, Farmer, Circle, said she has done research regarding the rainfall in her hometown. The figures show that there was more rainfall in the years that cloud seeding was prohibited. She thinks there are too many unanswered questions about cloud seeding so she urged the committee to drop the bill.

REP. DON STEINBEISSER, HD 100, SIDNEY, said he opposed the bill. He also said that he agreed with the other opponents testimony. He emphasized that cloud seeding needed to be more regulated.

Informational Witnesses:

Jack Stults, Division Administrator, Water Resources Division, said that there is statistical evidence that precipitation from super-cooled orographic clouds (clouds that develop over mountains) has been seasonally increased by about 10%. He explained that the physical cause and effect relationship, however, has not been fully documented. Nevertheless, the potential for such increases is supported by field measurements and simulations. Some experiments with warm-based convective clouds involving heavier silver iodide seeding had suggested a positive effect on individual convective cells, but conclusive

evidence that such seeding can increase rainfall from the multi-cell storms has yet to be established. **Mr. Stults** concluded by saying many steps in the chain of physical events are not well understood at this time. He also indicated that cloud seeding should not be viewed as a drought relief measure.

Questions from Committee Members and Responses:

SEN. KEN HANSEN asked **REP. RICE** who gives the permits that allows cloud seeding. **REP. RICE** said the DNRC would be responsible for administering the program. They will issue the licenses to the individuals who will be responsible for administering the cloud seeding. **SEN. HANSEN** further asked if there was a criteria for who could get licenses. **REP. RICE** said the DNRC would formulate the rules.

SEN. COREY STAPLETON asked **Mr. Stults** if the Governor asked him if cloud seeding should be allowed, what his response would be. **Mr. Stults** said he would explain to the Governor that statistically, cloud seeding tends to bring more water when the rain cloud is located over a mountain.

SEN. KEITH BALES asked **Mr. Stults** if there is any information about cloud seeding that might be more current. He asked because the information provided was 11 years old. **Mr. Stults** said there was a misunderstanding because his information was from 1998.

SEN. DALE MAHLUM asked **Mr. Pease** if the amendments **REP. RICE** mentioned in her introduction would change the bill enough for him to be content with it. **Mr. Pease** said, no ,because he thinks that any amount of cloud seeding would adversely affect rainfall. He also mentioned that he would still be dissatisfied with the bill because there are too many loopholes and not enough restrictions.

SEN. KEN HANSEN asked **Mr. Stults** if he foresees any problems with water rights if the bill passes. **Mr. Stults** said he didn't foresee any immediate problems but the added rainfall could potentially affect the amount of snowpack.

SEN. MAHLUM asked **Mr. Stults** if it might be a good idea to restrict cloud seeding to mountainous areas since many of the opponents were only concerned about weather modification in Montana's eastern counties. **Mr. Stults** said it would be a good idea to restrict cloud seeding to include only orographic clouds, clouds that typically only form over mountain ranges.

Closing by Sponsor:

REP. DIANE RICE, HD 63, HARRISON, reviewed the bill and once again emphasized she would be opened to any amendments. She also mentioned that Montana's cloud seeding schedule would not coincide with North Dakota's schedule, making it easier to keep track of each state's rainfall. Lastly, she didn't think there would be a problem with organic products coming in contact with the silver iodide used to seed the clouds because California, one of the US's biggest organic food producers, seeds clouds frequently and has never had problems certifying their products as organic. She closed on HB 644.

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. KEITH BALES, Chairman

JENNIFER STEPHENS, Secretary

KB/JS

EXHIBIT (ags58aad)