

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION**

**Call to Order:** By **CHAIRMAN REINY JABS**, on January 18, 1999 at 3:05 P.M., in Room 413/415 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Reiny Jabs, Chairman (R)  
Sen. Walter McNutt, Vice Chairman (R)  
Sen. Gerry Devlin (R)  
Sen. Pete Ekegren (R)  
Sen. Ric Holden (R)  
Sen. Greg Jergeson (D)  
Sen. Ken Mesaros (R)  
Sen. Linda Nelson (D)  
Sen. Jon Tester (D)

**Members Excused:** Sen. Tom A. Beck (R)  
Sen. Mike Halligan (D)

**Members Absent:** None.

**Staff Present:** Carol Masolo, Committee Secretary  
Doug Sternberg, Legislative Branch

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 178-1//11/99, SB 196-1/14/99  
Executive Action: SB 196; SB 177

**HEARING ON SB 196**

**Sponsor:** SENATOR KEN MESAROS, SD 25

**Proponents:** Marc Bridges, Montana Dept. of Livestock  
John Bloomquist, Montana Stock Growers Assoc.  
Dick Raths, Montana Stock Growers Assoc.  
Lorna Karn, Montana Farm Bureau

**Brian Severin, Montana Stock Growers Assoc.**  
**Ron DeYong, Montana Farmers Union**  
**Candace Payne, Women Involved in Farm Economics**  
**Don Ross, Montana Stock Growers Assoc.**  
**Bill Garrison, Montana Stock Growers Assoc.**  
**Troy Blunt, Philips County Stockmen**  
**Dexter Buckley, Bearpaw Stock Growers**  
**Lynn Cornwell, Glasgow**

**Opponents:     None**

**Opening Statement by Sponsor:**

**SENATOR KEN MESAROS, SD 25, SB 196** is a repealer of some statutes relating to the requirements surrounding brucellosis vaccination. We had some legislation last session that addressed this and we delayed the effective date of that. We did that in response of the Northwest Pilot Project to increase and enhance the trade of livestock with our neighbors to the north. That program is well under way finally.

In the last few months there's been approximately 35,000 head of Montana feeder calves that went north. There are indications it's helped in creating another market and enhancing some of the markets of some of the auction yards in the area. This is a small number compared to what we see coming south but it's definitely a step in the right direction. This bill would simply repeal statute rule making authority of the Dept. of Livestock.

**{Tape : 1; Side : A; Approx. Time : 3:08}**

**Proponents' Testimony:**

**Mark Bridges, Acting Executive Officer for the Board of Livestock/Dept. of Livestock.** Read written testimony.  
SEE **EXHIBIT**(ags13a01)

**John Bloomquist, Montana Stock Growers Assoc.** SB 183, passed last session, changed this particular statute and put a delayed effective date of July 1, 1999 onto the statute to see whether this project would get developed or the rules promulgated just how it may work out. The Dept. of Livestock has gone through the rule making process. Implementation of the Pilot Project did take a little bit of time, but once everything did get ironed out some of the benefits of the Project are being felt. We would ask that the legislature repeal the requirement as requested and ask the Board of Livestock retain the authority and the flexibility to make these decisions via rule and administrative action.

**Dick Raths, Montana Stock Growers Assoc.** The bill is for the permanent repeal of the existing law, 81-2-801 which required all breeding females entering the State of Montana to be officially brucellosis vaccinated if over 4 months of age. There were no exceptions in this law.

In 1997 biennial session the law was removed for a two year period under **SB 183** by **SENATOR MESAROS** with a sunset review requested by **SENATOR DEVLIN**. During the two year time span the law was replaced by a rule authority of the Montana Dept. of Livestock. The rule authority was presented at five meetings around the state, Missoula, Bozeman, Great Falls, Miles City, and Glasgow.

The rule authority provided for reciprocal movement of nonelegible cattle between various states and Canadian provinces. The rule also allowed for importation of cattle to be held for vaccination or spaying, something that was technically illegal under the law. Board of Livestock has the same authorities and responsibilities for enforcement of the rule as they had under the law. The Board also has the authority and the ability to evaluate and revise the rule should situations change.

The decision making authority should belong to the Dept. and not be mandated by the legislature. I assume SB 81-2-801 was a reaction to an existing problem in 1981. The current law does not address the current level of brucellosis in the United States and instead penalizes livestock owners for animals that do not have a readable tattoo. Montana has been free of brucellosis since 1985, North Dakota since 1982, Wyoming since 1983. There are only 6 brucellosis infected herds in the United States, 4 in Texas, 1 in Florida and a buffalo herd in South Dakota. Brucellosis vaccination is 60% effective at best. Nationally, less than 40% of our animals are vaccinated for brucellosis. Vaccination is for disease control and is not required by USDA for movement of livestock.

The national and international trend of brucellosis legislation is to drop the requirement for vaccination once eradication has occurred. Vaccination is voluntary for disease control and marketing, not mandatory. Montana Dept. of Livestock has done an excellent job of protecting the health of Montana livestock and allowing us to maintain disease freedom for national and international markets. Take this law off the books and give the rule making authority to Dept. of Livestock. It has the expertise to deal with disease issues.

**Lorna Karn, Montana Farm Bureau,** For all the various reasons you have heard by the two previous speakers, we support this bill.

**Brian Severin, Rancher from Belt and member of the Board of Directors of the Montana Stock Growers Assoc.** As a direct result of the Pilot Project, we put about \$12/head more value on 300 calves we sold out of our feed lot. Nebraska met Canada's price on 200 head of heifers and we sold 100 head of steers direct to Canada. It's definitely to our benefit to have more markets open and this bill addresses bringing cattle in without the brucellosis but the quid pro quo is that the Canadians did remove some of trade barriers.

**Ron DeYong, Montana Farmers Union,** We support SB 196 and the additional flexibility it's going to give us.

**Candace Payne, Women Involved in Farm Economics,** certainly support this bill based on the economic advantages it gives to our farming community.

**Don Ross, Rancher so. of Chinook and Director of Montana Stock Growers Assoc.** I haven't sold any cattle directly into Canada under this program because it got running a little too late for my cattle to fit into it. I visited with several producers who have sold there and they've all been very satisfied with the experience. Most said that they were able to get 2 cents more per pound than the local buyers were offering. A couple of these individuals sold these calves to a feed lot that had an incentive program and they realized an increase after their cattle were sold at the packing plant.

Another interesting thing I learned was that in Canada when the cattle were sold with a weight break and a slide, if they came in under the preselected weight the slide went both directions. Our local auction market, BearPaw Livestock Commission, has had Canadian buyers sitting on their seats. In the country around Chinook it's felt having those people there put \$2 or \$3 more into our local market this fall.

Besides the economics, there is going to be an education benefit. In May of 1997 I toured in Canada. We went to a couple of big packing plants and several of the feed lots. It's really an eye opener if your knowledge of fat cattle is limited to the 4-H show at the county fair. Granted, producers can haul their cattle right now if they want to drive to Nebraska or Colorado or Kansas. It's sure a lot easier to drive 250 miles than 1200 or 1800 miles.

**Bill Garrison, Vice President of Montana Stock Growers** and a cow/calf rancher in southwestern Montana. We have more of a need now to have regulation over this in the Board of Livestock than in law than we did two years ago when it was passed. The

Canadian Pilot Project is off and running and we're moving cattle now. It's just been in the last year we got it running. We had a federal regionalization document that came into play before we got it going. There are trade negotiations going on with the federal government all the time and if we're going to participate to our advantage in our industry we need control over this in the Board of Livestock. There has been some talk that maybe it needs to be sunsetted again. If in 6, 8, 10 years something came up that needed to be changed, it would be easier to put it back into law then than to have to address it every session.

**{Tape : 1; Side : A; Approx. Time : 3.22}**

**Troy Blunt, Producer, President of Phillips County Livestock Association,** I have not sold cattle to go north. I have watched many of my neighbors market in Canada this year and it had been a \$3 to \$4 increase in their pockets. I also had the privilege of taking a tour and met with Ron Axelton from the Alberta Cattle Feeders Association and those people want our cattle, like our cattle and this bill would only enhance our opportunities to trade north.

**Dexter Buck with BearPaw Livestock Commission from Chinook.** The Board of Livestock has done a tremendous job for our livestock producers and markets. Giving them the power to negotiate with Canada and what the Canadian trade has done for our producers has definitely put a three cent market on our cows. The market in Chinook was very comparable to any of the markets to the south because of the trade factor alone. Canada can take another half million cattle without putting another post in the ground. It just opens the circle now we can go north under this Northwest Project. If the Board of Livestock can keep this power to negotiate with the Canadians and keep this market open, it's a great asset to all of our livestock producers.

**Lynn Cornwell, Rancher from Glasgow.** I was involved on the committee when we originally set up the Northwest Project and it's working well. We've seen a \$3 and \$4 premium on the feeder cattle on the high line in particular. My family runs a backgrounding lot in the Milk River Valley. We have two Canadian customers that have ranches and feed lots in Canada and keep cattle in our feedlot. So not only are they buying the cattle and exporting the cattle to Canada, they're also keeping them in Montana and buying Montana feed from Montana producers. I think it would do a real disservice to the livestock industry if this program didn't continue.

**Opponents' Testimony:**

*{Tape : 1; Side : A; Approx. Time : 3.26}*

**Questions from Committee Members and Responses:**

**SENATOR DEVLIN** On the rules meeting you had in Miles City, how did that go? Were you there or was someone else doing that?

**Mark Bridges** I was there, but the previous state veterinarian and executive officer were there.

**SENATOR DEVLIN** What kind of comments were there?

**Mark Bridges,** If I recall correctly, comments regarding the vaccination and trade and most importantly, that the Board and the Dept. protect our industry from disease. They also talked about some trade differences between maybe southeastern Montana with other states. This isn't really just an issue over trade with Canada. If other states would reciprocate with nonvaccination of livestock, then class free states would import and export those cattle back and forth. What we're all striving for is to have the disease totally eradicated and loosen up that trade even between our own states.

**SENATOR DEVLIN** Which are those other states and have they relaxed part of their restrictions now?

**Dr. Arnold Gertonson,** At this point in time, ND, SD, Wyo. and Ida. all require a vaccination prior to entry. Nebraska does not, so it's on a state by state basis. Montana requires vaccination on cattle coming in to protect Montana's livestock. In rule, if discretion is left within the rule, we can reciprocate with other states' desire to do so.

**SENATOR DEVLIN** To expedite things, is that what it is? When we get into rule making, what statement of intent do you follow?

**Mark Bridges** The rule echoed the present statute. If some economic or disease issue came forth, it could be changed within 45 days rule making period rather than the two year legislative process. The rule just echoed that statute and it required brucellosis vaccination except as required in subsections 2, 3, 4, 5. No female cattle over the age of 4 months may be imported into the State of Montana for any purposes other than immediate slaughter unless officially vaccinated by a licensed veterinarian in his state to administer the vaccination with approved vaccine.

The new portion goes into cattle being imported through Montana, same as the present statute was, and subsection 3, spayed female cattle are exempt from subsection 1, and the new subsections were

nonvaccinated female cattle may be imported under an old order for vaccination or spaying within 30 days of arrival as determined by the state veterinarian. Number 5 would have been nonvaccinated female cattle from those brucellosis class free states or provinces approved by the Board of Livestock.

**SENATOR DEVLIN** Do you think that needs a statement of intent if we turn it loose? Do you continue to follow the old law.

**Mark Bridges** Right now we are essentially following the old law.

**SENATOR DEVLIN** In most cases throughout state government we have a statement of intent. What restrictions has Canada done away with since we made some concessions here.

**Dr. Gertonson** When the Northwest Cattle Project first started, part of the regulation of the protocol was that cattle entering the feed lot were destined for slaughter, but the whole feedlot had to go to slaughter once Montana cattle entered the feedlot. They have done away with that last spring. They've also changed the requirement for the treatment of anaplasmosis to make it simpler and easier to use. Cattle can now go up with two injections of long acting tetracycline antibiotic which essentially means they become Canadian cattle after six days. The big thing was identification of cattle going into the feedlot and removing quarantine of the whole feedlot.

**SENATOR EKEGREN** Montana has relaxed our regulations and Canada has reciprocated. Is that why we're shipping our cattle to Canada for the additional 3 to 4 cents?

**Dr. Gertonson** That's correct. It's allowed movement to occur.

**CHAIRMAN JABS** We get more money for feeders going up there. Are there packing plants in Canada and will those cattle be slaughtered up there.

**Don Ross** I would say yes, those cattle will be slaughtered there.

**CHAIRMAN JABS** They're taking these cattle up there and feeding them. When they get fat they will come back to the United States as fat cattle and get more money down here because of the exchange rate.

**Don Ross** I would imagine that could happen depending on who owns the cattle. If the feedlot owner sells them to IBP or Exel they could be transported down to Ft. Morgan, Utah or Greeley, CO to fill the week's kill there. At Brooks they could be killing as many as 4500 head a day. They don't have the people to fully

staff their slaughter house facility. The High River Plant south of Calgary is also running well below capacity. The fat cattle market is probably set in the United States anyhow since the Canadian industry is about one tenth the size of the American cattle industry. The exchange rate is one of the other big stumbling blocks we have work through.

**Brian Severin** People have said those cattle are just going to come back. I wanted to feed custom feed cattle in Canada. It was going to cost twenty dollars a head because of all of the nontariff freight. We got that down and when we shipped our cattle it only cost us \$1.00/head. Most of that \$19.00 is just going in our pocket.

There's a good possibility a lot of those cattle are just going to come right back. But they're our cattle coming back. By not competing in that market we've basically given the cow/calf producer in Canada a \$20.00 head start on us. There's more feeding industry capacity in Canada than there are cattle. If we're not in that market, we're allowing the Canadian cow/calf sector to expand and then we have to compete with those cattle too.

**SENATOR MCNUTT** If I hear this correctly, if the cattle weren't going to Canada they would be sold in the U.S. market anyway, so is that a moot point?

**Lynn Cornwell**, Opening up the border gives the Montana producer an advantage where we can actually compete with the freight rates. By opening up a market in Canada, we're three hours away from a feed lot. Instead of our cattle having a two dollar freight cost, it's only a dollar.

Iowa Beef Packers have 90,000 cattle on feed at Brooks, Alberta; the plant at High River is owned by Cargill. The companies that have processing facilities, buy cattle under formula, and feed cattle are the same players in Canada and the U.S. This is an opportunity for those of us that produce feeder cattle in this state to fatten our cattle closer to a feed source where we can actually see more dollars in our pocket.

**{Tape : 1; Side : A; Approx. Time : 3.41}**

**Closing by Sponsor:**

**SENATOR MESAROS** I certainly believe we can maintain a high level of assurance that the Dept. of Livestock will make an authority when they are following historic statutory language in protecting the industry and yet opening up opportunities for

Montana producers to market their cattle. Regardless if it's 3 cents or 4 cents, that's more dollars in the pockets of Montana producers and opens up and expands some markets. I believe this program is working well.

**HEARING ON SB 178**

**Sponsor: SENATOR LINDA NELSON, SD 45, MEDICINE LAKE**

**Proponents:** Robin Klein, Friends of Echinacea  
Wayne Phillips, Montana Native Plant Society  
Susan P. Mavor, Friends of Echinacea  
Lexa W. Lee, Friends of Echinacea  
Janet Ellis, Montana Audubon Society  
Jeff Hagener, Department of Natural Resources

**Opponents: NONE**

**Opening Statement by Sponsor:**

**SENATOR LINDA NELSON, SD 45, MEDICINE LAKE, SB 178** is a bill that implements a three year moratorium on the harvest and removal of wild medicinal plants from state lands. It establishes a task force to acquire the necessary information to determine the rebounding effect of these plants and to recommend legislation if there is any need of it. It requires the Governor to notify federal agencies and tribal governments regarding the moratorium and allows the Governor to enter into a moratorium of understanding with the federal agency or tribal government to help ensure and sustain the ability of wild medicinal plants throughout Montana.

Echinacea is the current medicine that's really in vogue. It's something you take to help build your immune system. I'm very surprised at the number of people that have talked to me in the halls and tell me they take this and how successful it is. There's a lot of interest and a lot of use of this. While Echinacea in particular is in vogue, there are other endangered medicinal plants and these are listed in the bill.

The request for this bill was brought to me by one of my constituents, Mr. Curley Youpee. He's the cultural director at the Fort Peck Indian Reservation. Mr. Youpee was very concerned about the possible decimation, indeed the probable decimation of Echinacea, or the cone flower plant, which is very much part of the Native American cultural history.

The plant grows especially well in the dry prairies of eastern Montana, but is being harvested to death. Every hill sports a

pickup and people are scouring the hillsides for these plants whose roots sell for \$7.50/lb., good money. People have called me with tales of out-of-state entities, like people from Florida who bring migrant workers up here to gather the plants, paying the workers a pittance of what it's worth. A diligent worker has been able to gather up to 20 lbs. a day of this. There are some nasty holes left in the ground which cause erosion and danger to livestock and people.

This is a very difficult issue on the reservation. The tribal leaders don't want the plants that are a part of their cultural heritage to be wiped out. But, on the reservation that has an unemployment as high as 70%, this provides jobs and it puts food on the table. If we apply this on state lands, hopefully it will encourage entities like the BIA, Tribal leaders, BLM and others to at least look at this and go at this in a more orderly fashion.

The task force is a volunteer force, it has no compensation built in to the bill, so the intent is that it will not cost us anything and the bill will sunset in three years. There is to be this annual report to the Governor who is going to be asked to be in touch with federal agencies. You'll notice the other plants are listed in the bill.

***{Tape : 1; Side : A; Approx. Time Counter : 3.46}***

**Proponents' Testimony:**

**Robyn Klein, Friends of Echinacea,** Section 1 of the bill regulates the taking of wild medicinal plants from these state lands in order to protect and preserve them, with the intent to safeguard the safe commercial interest in the potentially sustainable enterprise. It is the duty of the Board of Land Commissioners to administer trust lands so as to secure the largest advantage to the state. The unregulated commercial harvest of these plants creates a threat to the sustainability of these plants. It deprives the school trust of potential income. This is an enabling act which talks about preserving the resources on the state trust land.

A moratorium would provide the time to acquire necessary information so that task force could recommend policy and also raise public awareness that there is an importance to these plants. It would prevent erosion and enhance conservation efforts. Wild medicinal plants means any indigenous plants species as they occur in the wild and include other plants such as bitterroot, Echinacea angustifolia which is the main plant of

concern, lady slipper, **(Turn Tape)** ..... and trillium. These other plants are also being mass harvested in other states..

Section 3, We figured there should be a penalty. We suggested a civil penalty of \$1000.00 per day for each day of violation. For a period of three years after the effective date of this act, any removal of wild medicinal plants from state land with the intent for human consumption is prohibited.

Section 4. A task force is very important to obtain information about how to sustainably harvest these plants. The Governor shall appoint a task force from interested members of both public and government agencies. The task force would study issues such as the effects of improper harvesting, the potential of noxious weed invasion, the potential income to the school trust, and educational efforts. This task force would report to the governor annually and to each legislative session.

Section 5 is a memorandum of understanding. If the state does have a law regarding these plants, it would be a good idea for federal and tribal agencies to know what the state has decided and to encourage them to follow suit.

Robyn Klein read written testimony, See **EXHIBIT (ags13a02)**, and passed copy of thesis by Monique Kolster, See **EXHIBIT (ags13a03)**.

**{Tape : 1; Side : B; Approx. Time Counter : 4:00}**

**Wayne Phillips, Montana Native Plant Society, Missouri Breaks Chapter of the Audubon Society,** In 1805 Lewis & Clark sent President Jefferson a root we now know was Echinacea. It was the most important medicinal plant of the plains people. It is now the number one herb in the four billion dollar herb industry. It's been collected and has become scarce in other parts of the great plains. Many Montanans are concerned about the harvesting in Montana. This beautiful and cultural native wildflower is threatened by over harvesting. Digging robs us of our natural heritage, the diverse wild flowers that Montana is famous for. A 1987 law in Missouri prohibits harvesting of Echinacea. Montana has no law to protect any of it's plants. Where mass harvesting has occurred, the bare soil is subject to erosion and invasion of noxious weeds. Echinacea and others can be grown as cash crops without destroying native populations. If we lose the wild plants to over harvesting, we also lose our special native seed source for Echinacea that is adapted for growing in Montana. The urgency of legislation cannot be over emphasized; the popularity of herbal remedies is skyrocketing around the world.

**Sunny Pendleton Mavor, President of Herbs for Kids,** 10% of my income is based on Echinacea. I have never purchased wild Echinacea and have no need to. This year I will purchase \$57,000.00 of Echinacea from organic growers. There are no growers that can supply it in Montana. Echinacea angustifolia is very difficult to grow, my growers have tried and failed. This puts a direct amount of pressure on the wild population. This is quite an agricultural economic issue. There is a 1.3 million dollar project going on in conjunction with several universities to research appropriate growing technologies for medicinal plants including Echinacea. The natural product industry has grown at 20% for last 7 years, a very healthy economy that shows no sign of stopping. The pressure upon the wild plants of Echinacea angustifolia will continue to grow. Another herb you may be familiar with, goldenseal, has an appendix listing by the Congress on International Trade of Endangered Species and I see fully that the plant populations in Montana may some day be listed on this international treaty that regulates the flow and trade of Echinacea angustifolia. Other states are unable to grow this species. I see this as a very important economy that will continue to grow in Montana.

**Dr. Lexa W. Lee,** Naturopathic physician, read written testimony. See **EXHIBIT (ags13a04)**. and read letter from Aldon Joyes See **EXHIBIT (ags13a05)**

**Janet Ellis, Montana Audubon Society,** Over harvesting of any of these plants could wipe them out and it's time now to stop and plan before we lose these important parts of Montana's heritage.

**Jeff Hagener, Trust Land Administrator for Montana Department of Natural Resources and Conservation,** At the current time the Dept. has a self-imposed moratorium on the harvest of Echinacea. We've had that for about a year for the very same concerns heard here. We're also looking at how that should be harvested in the future. It should be emphasized that state lands are less than 6% of the total land ownership. Bills that have passed in the past had the expectation we were to regulate on everyone's land. It's very necessary to work with other agencies to try to get a concerted plan. Otherwise, you're going to have a lot of things going on. Our moratorium has been effective when people come to us to apply for a license to harvest Echinacea, but also realize it's very difficult to enforce those who are out there doing unauthorized collection. Our field staff people have found areas where unauthorized digging has occurred, but again it's extremely difficult to find someone's who's actually been doing it. We would ask it be clarified the task force is voluntary as the Dept. has been required to fund prior required surveys.

*{Tape : 1; Side : B; Approx. Time Counter : 4.19}*

Opponents' Testimony: None

Questions from Committee Members and Responses:

**SENATOR DEVLIN** asked what does this stuff do for you?

**Dr. Lee** answered Echinacea is one of the most powerful herbal immunostimulants. It helps fight infection by boosting immunity, mostly through white cells. People take it to stave off infection.

**SENATOR DEVLIN** is that what the Native Americans used it for?

**Dr. Lee** They used it for everything from snake bite to headache to dog bites. It appeared to be used for just about everything they suffered from.

**SENATOR DEVLIN** There's quite a list of plants. Are most of these prevalent in eastern Montana, I know the bitterroot isn't.

**Dr. Lee** We don't really know and that's why we need a task force.

**SENATOR DEVLIN** If none in this room are buying the plants that are dug out in the prairies, who is buying it?

**Robin Klein?** Anyone who can get their hands on it. I talked to one well known herb buyer living in Oregon who said this year's crop of angustifolia is already sold out, it's all spoken for.

**SENATOR DEVLIN** What goes first, the wild or the tame?

**Robin Klein?** The wild at this point because it's not a very easily cultivated crop. There are very few cultivated crops of this species. So it will put more pressure on the wild plant pickers to bring it in because there's a huge market for it. and the price is going up.

**SENATOR DEVLIN** Do you have to have some sort of a permit to enter state lands?

**Jeff Hagener** You are required for recreational use to have a general recreational use permit. Technically anything you do on the state lands requires some sort of authorization.

**SENATOR DEVLIN** These people don't come to you for any sort of authorization?

**Jeff Hagener** We have had a few applications over the last year that did apply to dig it commercially and those were turned down because of our moratorium. But we have found there has been unauthorized digging in some of those areas.

**SENATOR DEVLIN** It looks like the lessee wouldn't want his land dug up or is he the one digging.

**Jeff Hagener** I guess it could be either way. A lot of times it's just a few plants dug up and it's not really noticeable unless someone is on that exact site.

**SENATOR MESAROS** Just to follow up on the enforcement aspect of it, it appears it's happening right now in violation of lack of a permit. You have a \$1,000 penalty. Who's actually going to enforce this.

**Jeff Hagener** The way I read the bill it would fall upon us because as state lands we would be the ones to pursue it. A civil violation so we would have to do it through local courts.

**SENATOR MESAROS** If you can't enforce it now, how are you going to enforce it in the future.

**Jeff Hagener** Enforcement is extremely difficult to do because of the millions of acres we have scattered across the state. Most of those tracts we only see about once in ten years.

**{Tape : 1; Side : B; Approx. Time Counter : 4.24}**

**SENATOR HOLDEN** I don't know if I've ever seen this plant around. How deep to dig this root up?

**Robin Klein** We have some information on that we were going to give to you all that has pictures, from the thesis. It's dug about a foot and a half down, but the root can go 2, 3, 4 feet down.

**SENATOR HOLDEN** People walk around and pluck the tops off for the seeds?

**Robin Klein** The plant turns brown in the fall and stands up through most of the winter, unless it's blown over. It's very easy to identify against the snow and very easy to collect the tops.

**SENATOR TESTER** Do you know of any commercially grown angustifolia?

**Robin Klein** One grower right now direct seeded five acres of angustifolia last spring just south of Livingston. He is a new grower.

**SENATOR TESTER** But there's no commercial production right now?

**Robin Klein** To the best of my knowledge, there might be a few people growing it in their gardens, but no, there's not much commercial cultivation of this species in Montana.

**SENATOR TESTER** I am not aware of anyone who has successfully grown this commercially in Montana. In fact, angustifolia, I don't know of anyone who's successfully grown this in the U.S.

**Robyn Klein** There are people who are growing angustifolia in the U.S. They have not had much success with it in areas which are very moist.

**SENATOR TESTER** Under section 2, you list seven plants. I'm familiar with some of them, are all of them native to Montana?

**Robyn Klein** They are all native to Montana.

**SENATOR TESTER** I agree with the legislation. I don't know if it's going to have any affect whatsoever because I don't see that there's any enforcement capabilities within this legislation. I don't think the penalty is near high enough.

**Robyn Klein** We leave it up to you, we tried to do our best to bring as much information as we can and we trust you will find the right wording for this bill.

**SENATOR MESAROS** You had a moratorium for three years. How did you arrive at three.

**SENATOR NELSON** This was recommended to me as it would give them time to do the necessary studies.

**SENATOR HOLDEN** You said you wanted this to be a cost free study and I see you didn't sign this fiscal note. Did you think the Dept. had misread your intention in the bill?

**SENATOR NELSON** I did think the Dept. has misunderstood and it's not clear in the bill. I'll look to Doug Sternberg to help us clarify that it was not intended to be a compensated study group.

**SENATOR MESAROS** How much actual degradation of the land is there if you dig a foot and a half? How much area is disturbed.

**Robyn Klein** It depends on the tool used. The tools developed for this would leave a hole about 6" diameter. A shovel would be about a foot diameter. We were going to give this material to you, will do it now, letters of support and also part of the thesis with some photographs and descriptions in depth on this. See **EXHIBIT(ags13a06)**, **EXHIBIT(ags13a07)**, **EXHIBIT(ags13a08)**, **EXHIBIT(ags13a09)**, **EXHIBIT(ags13a10)**, **EXHIBIT(ags13a11)**, **EXHIBIT(ags13a12)**, **EXHIBIT(ags13a13)**, **EXHIBIT(ags13a14)**, **EXHIBIT(ags13a15)**, **EXHIBIT(ags13a16)**, **EXHIBIT(ags13a17)**, **EXHIBIT(ags13a18)**, **EXHIBIT(ags13a19)**, **EXHIBIT(ags13a20)**, **EXHIBIT(ags13a21)**, **EXHIBIT(ags13a22)**, **EXHIBIT(ags13a23)**, **EXHIBIT(ags13a24)**, **EXHIBIT(ags13a25)**, **EXHIBIT(ags13a26)**, **EXHIBIT(ags13a27)**, **EXHIBIT(ags13a28)**, **EXHIBIT(ags13a29)**, **EXHIBIT(ags13a30)**.

**CHAIRMAN JABS** Is there a difference in quality in the wild or the cultivated?

**Robyn Klein** This has been a controversial question. **(Change Tape {Tape : 2; Side : A; Approx. Time Counter : 4.31}** mostly it is the purpurea which has been studied scientifically in Germany for many years and it is very effective and angustifolia seems also to be effective. It's the perception of the public that the wild is somehow better.

**SENATOR DEVLIN** Is this fiscal note per year?

**Jeff Hagener** I haven't seen the final one. Our fiscal note had \$7000 as being the cost of the task force itself and we put in a question mark as far as studies.

**SENATOR DEVLIN** \$7,000 per year or for three years?

**Jeff Hagener** \$7000 per year. That was in comparison with other advisory councils and task force that we've had to fund over the past years. There are some statutes that outline how members of task force be paid, that's what we did our basis of fiscal note on.

**SENATOR EKEGREN** You've mentioned earlier, you're not asking control of reservations, this is strictly state lands, 6% of Montana,

**Robyn Klein** Yes because we felt that was all we could ask for at this point. We can't affect federal legislation unless we go to federal folks.

**SENATOR EKEGREN** At the risk of sounding suspicious, where I come from it isn't so much the plants as that we're fighting endangered everything. We have bears that come into our main street, they can't get a count on them but they know they're endangered and yet we have them every year in our town. I believe in all the environmental stuff too, but I do think that we tend to go off the deep end on some of this. We're talking about state lands, no federal and no private.

**Robyn Klein** We would not be here if this were a simple issue. This has been growing for over ten or fifteen years. We have materials we have included here with lots of statistics so we can show you how serious this is. I was asked by an overseas company if I could find some *Echinacea angustifolia* from eastern Montana for them, wild. They want it so badly. They intend to take every little last plant unless someone somewhere says no. We are relying on you because this is the state of Montana and if you don't consider this an important resource, that message will go out.

**SENATOR JERGESON** Have you had reports for state land lessees that they've gone out onto a section and they've found an area where somebody has trespassed and dug a bunch of holes?

**Robyn Klein** Not from state lands but we've not asked and we've not had the time to survey lessees and the state lands folks. We do have report from the Ashland District of the Forest Service where some people from Texas were caught with 84 lbs. of the root which they had collected from the National Forest Service without a permit.

**SENATOR HOLDEN** You want to sell this but you don't want it dug.

**Robyn Klein** If it's not there, I won't have it. It is seriously being mass harvested to the sense that it is going to be gone. I do not want my students or my friends to be picking the last one, and I encourage all my students to only use the cultivated *Echinacea*.

**SENATOR HOLDEN** If this is such a problem around the reservation, as a sovereign nation why hasn't Curly Youpee gone to the Tribal Council for a moratorium on the reservation?

**SENATOR NELSON** For exactly what I said in my testimony, they are faced with unemployment. When this gives their people a chance to go out and dig this to make a living, put food on the table, they can hardly tell them no, you can't do it.

**{Tape : 2; Side : A; Approx. Time Counter : 4.38}**

**Closing by Sponsor:**

**SENATOR NELSON** I hope we can come up with an amendment to the bill to clarify the task force is voluntary. The reason I wanted that voluntary is I was afraid if we put any cost in this, it would kill the bill. If these people who are appointed to the task force are dedicated enough, they will be able to do this through their existing job and cover their expenses that way. I feel it is important to go ahead with this even though we are only addressing state lands.

We can't possibly address private lands, and I don't want to tell people what they can do on their own property, and we can't at this time address the federal land either. I've really learned a lot about this today and when Mr. Youpee brought this to me he convinced me it was an important thing and we need to address this now and move ahead. As a member of the 2005 Task Force on Agriculture it seems to me this is a heck of an alternative crop and I'm hoping someone tells me how to get this going. Although it sounds very expensive, it sounds like something we need to be looking into and would go in line with both the Jobs and Income Study we've got going and our 2005 Task Force.

It appears the digging is becoming very sophisticated and that makes it a very serious issue. It's time to do something and this isn't a total ban, it's just time to slow it and study it.

*{Tape : 2; Side : A; Approx. Time Counter : 4.40}*

**EXECUTIVE ACTION ON SB 196**

**Motion/Vote:** SEN. MESAROS moved that SB 196 DO PASS. Motion carried unanimously.

**EXECUTIVE ACTION ON SB 177**

**Motion/Vote:** SEN. DEVLIN moved that SB 177 BE TABLED. Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 4:42 P.M.

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SEN. REINY JABS, Chairman

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CAROL MASOLO, Secretary

RJ/CM

**EXHIBIT (ags13aad)**