



## Economic Affairs Interim Committee

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### 62nd Montana Legislature

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as of May 27, 2011

## Senate Joint Resolution No. 15 Study Plan

### **\* \* Agricultural Commodity Bonding Study \* \***

Prepared by Pat Murdo, Research Analyst,  
with information from Cort Jensen at the Department of Agriculture  
for the Economic Affairs Interim Committee

#### ***Introduction***

Senate Joint Resolution No. 15 references through its whereas clauses an increase in global marketing for a broad range of commodities and concerns about insurance or bonding for risks not keeping pace with the times or expanded markets. As seen by the Department of Agriculture, the study would involve looking at what other states do to protect growers and dealers in commodities from the potential for buyer defaults and volatile markets and what changes may be needed in Montana law to keep pace with other states or more adequately address, if necessary, the impact of global marketing on Montana growers and commodity dealers.

#### ***Information from Department of Agriculture***

This study plan includes attachments provided by the Department of Agriculture from a June 2008 grain insurance fund study, a chart comparing four states' indemnity funds (updated in September 2009 from the 2008 Ag study), and a list of stakeholders potentially interested in issues raised below.

The 2008 study reviewed 15 states' use of an indemnity fund, including whether the fund could be used to pay administrative costs, how claims are established, time limits for filing claims and paying claims, who participates in the fund, methods of funding, penalties, types of claims and maximum claims allowed, covered entities, whether the fund is backed by the state, and licensing requirements, among other topics. The chart selects four of the states and summarizes key information from the 9-page 2008 table.

Although Senate Bill No. 74, enacted this year, tackled some issues related to bonding against commodity losses, specifically by letting those companies that purchase small quantities bond for 110% of what they buy rather than posting a greater bond, several issues remain unsettling for producers, dealers, and warehouses. Among considerations in this study are whether to:

- update the description of a commodity warehouse in 80-4-402, MCA;
- prevent efforts by elevators or roving dealers to corner a market through Ponzi-type high-paying contracts for grain or grain futures without assurances of payment and determining what role to assign the state, if any, in these assurances;
- increase the maximum bond amounts for warehouse operators (in 80-4-405 and 80-4-505, MCA) or add language providing for routine inflationary adjustments;
- consider creation of an indemnity fund as used in other states and whether separate indemnity funds are needed for different commodities; or
- consider requiring other types of insurance rather than an indemnity fund and determine who should regulate that insurance. (For example, there is a hail insurance mechanism in the Department of Agriculture but in general the State Auditor's Office regulates insurance.)

The committee may want to give direction on these issues to stakeholders, narrow the list, or let the stakeholders choose for themselves what issues they want to cover. Under the proposed options (below), the committee would be less involved than on its other two studies in part because the study was ranked low in the end-of-session poll and Legislative Council's decision to assign the study anyway included a recommendation for a white paper and perhaps one or two panel discussions or presentations.

#### ***Options for Economic Affairs Committee Consideration***

The committee's draft work plan presents three options, from the most involvement to minimal involvement:

- Most involvement would entail:
  - presentations at two meetings both with public comment: one meeting for an overview and panel presentation and one for a final report, with most of the work done in stakeholder meetings; and
  - possibly briefing papers or a white paper.
- Moderate involvement would mean:
  - staff working with the Department of Agriculture to provide a white paper;
  - staff or the Department of Agriculture presenting the white paper to the committee at one meeting with an opportunity for public comment; and
  - a panel presentation at one meeting.
- Minimal involvement would feature:
  - staff working with Department of Agriculture to provide a white paper and
  - staff presenting a white paper to the committee, with public comment, but no other panel presentations.