MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN EDWARD B. BUTCHER**, on February 15, 2005 at 3:15 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Edward B. Butcher, Chairman (R)
Rep. Carol Lambert, Vice Chairman (R)
Rep. Jonathan Windy Boy, Vice Chairman (D)
Rep. Bob Bergren (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. Karl Waitschies (R)
Rep. Jeanne Windham (D)
Rep. Brady Wiseman (D)

Members Excused: Rep. Joan Andersen (R)
Rep. Gary Branae (D)
Rep. Kevin T. Furey (D)
Rep. John (Jack) W. Ross (R)
Rep. Veronica Small-Eastman (D)
Rep. Dan Villa (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 406, HJ 22, HB 573, HB 674, 2/10/2005
Executive Action: None.

HEARING ON HB 406

Sponsor: REP. BOB BERGREN, HD 33, HAVRE

Opening Statement by Sponsor:

REP. BOB BERGREN opened the hearing on **HB 406**, the country of origin placarding act that will protect Montana consumers. He said that North Dakota, Wyoming and Florida have passed similar legislation with different enforcement tools. Amendment HB040601.akl was passed out.
EXHIBIT(agh37a01)
{Tape: 1; Side: A; Approx. Time Counter: 0 - 5}

Proponents' Testimony:

Keith Kelly, Commissioner of Labor and Industry, expressed support for the bill and the amendments submitted.
{Tape: 1; Side: A; Approx. Time Counter: 5 - 12}

Brett DeBruycker, Vice President, Montana Cattlemen's Association, and Trade Committee Co-Chairman for Our Calf USA, noted that they have not seen the amendments, but they support the bill as it was originally. He stated that in order for businesses to succeed, they must be able to differentiate their product. He said that another common theme is that if you want your business to succeed you must find a niche market. He noted that mandatory Country of Origin Labeling (COOL) is now known as Country of Origin Placarding (COOP). COOP will add value to Montana products and will give consumers the necessary information to make informed decisions. He said that an economist from Florida, Dr. John Van Sickle, did research and found that the national labeling bill would only add $.02/pound if the consumer were to bear the entire cost. That would be approximately $1.40/year if the consumer bore all of the cost.

He questioned whether consumers are aware that the United States Department of Agriculture (USDA) stamp only implies that it was inspected, not the origin. He said that this fact is alarming, and consumers are being misled. Labeling is a food safety issue. He said, "When the day comes that we need to be able to differentiate our product from imported product, because it has been deemed unsafe or tainted, we need to have the groundwork already in place." He stated that producers need those tools to defend themselves and consumers from cheap imported product that is produced under lesser guidelines.
{Tape: 1; Side: A; Approx. Time Counter: 12 - 18}

Richard Gosman, Lima, said that this law is essential because of Bovine Spongiform Encephalopathy (BSE) in 1997. Recent events in Canada place a serious question on Canada's compliance with this ban. He said that the United States placed an embargo on beef imports and cattle from Canada when a BSE infected cow was discovered in May 2003. The USDA amended this embargo to accept beef from animals under 30 months of age. They are now proposing relaxation of import standards to admit beef from animals of any age. This action opens up an opportunity for profit in the packing industry if the border opens to this class of meat. He said that over 160 people have died in Europe in the last 15 years from human BSE.

He stated that many of the older Canadian cattle were born and raised before the ruminant feed ban went into effect and they represent the highest risk product. Those cattle must be considered to be of significant risk until eight years after the Canadian government can offer assurance of proper implementation and compliance with the ruminant feed ban. He said that imported and domestic meat products are co-mingled on the meat counter.
{Tape: 1; Side: A; Approx. Time Counter: 18 - 22.9}

Del Straub, Meat and Seafood Manager, Real Food Market, Helena said that he answers the consumer's question of where their meat came from, and always tries to buy Montana products to assure quality and freshness. He said that he could get less expensive meat from other countries but has chosen not to. He attended a conference recently where research indicated that issues considered to be of importance to consumers are taste, quality and the desire to know where the meat came from and who grew it. He stated that consumers have no way of knowing where any of their meat comes from. He said that he can differentiate his product from the foreign competition by purchasing grown in Montana labels at $10/roll. He stated that the foreign competition gets a free ride, the meat market has to pay extra, and the consumers take some of the cost.

He said that COOP for seafood becomes a national requirement on April 1, 2005. He felt that labeling will affect consumer decision making, and emphasized that Montana does not have to wait on the Federal program for beef, pork and lamb labeling. If this bill is passed, Montana will lead the way. He said, "If COOP goes into effect, and if the border is opened, there will be a lesser significant impact if the beef has a label saying it is a product of Canada."
{Tape: 1; Side: A; Approx. Time Counter: 22.9 - 28.5}

Dan Teigen, farmer, Chairman, Northern Plains Resource Agricultural Task Force, said they have 3,000 members in Montana.

He said that this is a time to take care of Montana and put an end to voluntary labeling. He noted that they tried to solve this problem about four years ago and got nowhere. This is a chance to give Montana producers credit for raising a high quality product and to give consumers a choice at the grocery store. He noted that the real question is how much more not labeling will continue to harm producers and consumers.
{Tape: 1; Side: A; Approx. Time Counter: 28.5 - 30.5}

Jackie Parring, Hot Springs, said that she supported the bill. She would like to be reassured by labeling of the origin of the products purchased in the future. This would benefit both the consumers and the beef industry.

Bruce Lee, Choteau, Montana Cattlemen's Association, encouraged support of HB 406. He said that the grassroots agricultural producers addressed in this bill are the original value-added entrepreneurs. He said, "If we can't squeeze a premium out of the market for our extra-sweet, extra-fresh, extra-tender, extra-safe, unique products, it becomes simply more added expense." Labels that say USDA raised, slaughtered, and graded makes the distinction between Montana made and the competition, he noted.
{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.5}

Steve Pilcher, Executive Vice President, Montana Stockgrowers Association, said that this is an idea that came from a group of ranchers in western Montana in 1997. They support COOP and require the following: 1) Choice, 2) Added value, 3) Cost effectiveness, and 3) Workable. He said that North Dakota adopted this program four years ago, and it is not being enforced. He offered some proposed amendments, distributed them to the Committee and explained the amendments. He suggested that a placarding program at the state level will be limited in effectiveness and asked that a task force be put together to pursue adoption of Federal legislation and regulation on a country of origin labeling program.
EXHIBIT(agh37a02)

Paul Ringling, rancher, Carter County, and representing Montana Cattlemen's Association, said that they support HB 406 as written. He submitted written testimony.
EXHIBIT(agh37a03)
{Tape: 1; Side: B; Approx. Time Counter: 6.5 - 11.4}

John Locke, Executive Director, Montana Cattlemen's Association, voiced his support for HB 406 and REP. BERGREN'S amendments. He noted that foreign meat is often stamped USDA and is not even seen by a USDA inspector because of the equivalency agreements with countries around the world.

Diane Kamp Clayton, citizen, Big Timber, said that she was testifying as a consumer and emphasized that labels are very important. She presented written testimony for the record.
EXHIBIT(agh37a04)
{Tape: 1; Side: B; Approx. Time Counter: 11.4 - 16.5}

Jeanne Charter, Community Food Campaign, Billings, said that 85% of Montana's food dollars go out of state or out of the country. She said, "Keeping more of our food dollars in our home communities is a form of economic development, an opportunity to pull ourselves up by our own bootstraps." In Billings, if 130,000 residents in the county bought just $10 more locally grown food per week, it would add $67 million to the Billings economy. She said that the same statistics apply statewide. Her written testimony was passed around for the record.
EXHIBIT(agh37a05)

Katy Goldberg, White Sulphur Springs, said that she supported adding value to products and HB 406 does that through labeling.

John Youngberg, Montana Farm Bureau, said that they support HB 406. He suggested a tax incentive for Montana products. He passed out "Montana Meats Marketing Act Proposal."
EXHIBIT(agh37a06)
{Tape: 1; Side: B; Approx. Time Counter: 16.5 - 21.9}

James Rainey, President, Montana State Bee Keepers Association, said that they believe that the Montana consumer will choose a Montana product when they are given a choice. If this were adopted on a national level, they believe that the U.S. consumer would choose a U.S. product over a foreign product. Their industry has seen damage from foreign honey bee products coming to the U.S. The U.S. produces 200 million pounds of honey a year, and consumes 350 million pounds of honey a year. Last year they imported 200 million pounds of honey, which left a 50 million pound surplus and drove the price down. If consumers were given a choice, they believe that the surplus would be the foreign honey. This would apply to beef, grain, lamb, poultry and pork. This will help both the U.S. and the Montana producer.

Kim Baker, Rancher, said that she supports the bill as written. She feels it will give a boost to the market because people know that the meat raised in Montana is safe. She stated, "There are many other safeguards; clean air, water, and environmental safety, but we don't always know where our food comes from."

Cathy Wylie, Mussellshell Cattlewomen and Montana Cattlewomer, said that she supports country of origin labeling. She said that the amendment gives the bill more credibility to accomplish the

objectives of COOL. She feels that COOL can only be accomplished at the Federal level, and this is a step in the right direction. ***{Tape: 1; Side: B; Approx. Time Counter: 21.9 - 25}***

Joel A. Clairmont, Deputy Director, Montana Department of Agriculture, representing Nancy K. Peterson and the Governor, said that they are in favor of HB 406. He stated that Montana is the nation's fourth largest producer of lamb, and the sixth largest producer of honey, but it is often difficult to identify Montana produced products in the grocery store. Supermarket chains frequently buy lamb produced in New Zealand, and honey blended with imported honey from China. He stated that chains do that because the imports are less expensive. In 1993, Montana produced 41 million pounds of lamb, ten years later Montana produced 24.6 million pounds of the same product. Lamb imports were about 40 million pounds in 1993. Placarding of grocery shelf and freezer space is the least expensive way to advise consumers where they can find US food products. He said that products of unknown or blended origin can be marked as such, and consumers will have a choice.

Shari Lee Kroon, Agricultural Producer, member of Gallatin Valley Cattlewomens Association, said that she supports HB 406. ***{Tape: 1; Side: B; Approx. Time Counter: 25 - 28.1}***

Tamara Fetty, Montana Woolgrowers Association, said that they support HB 406 and presented written testimony. **EXHIBIT(agh37a07)**

Jody Kemp, Livestock Producer, member of Gallatin County and Montana State Cattlewomens Association, said that she supports HB 406 and the amendments proposed by Steve Pilcher. She said that 90% of Montana calves are shipped out of Montana and fed in another state. If those calves can't be traced back to their operation, she doesn't want their product to show up in a supermarket with a placard reading "country of origin unknown."

CHAIRMAN BUTCHER said that he would rate Ms. Kemp's testimony as an Opponent.

Mary Kay Perrin, Hot Springs, asked to simplify this for the consumers and let Montana beef be recognized for the high standards that Montana has.

Dave Reeder, Rancher, Boulder, said that all legitimate cattle ranchers would be in favor of this bill. ***{Tape: 1; Side: B; Approx. Time Counter: 28.1 - 30}***

Andy Pool, Department of Commerce, expressed support of the bill and suggested removing Section 6, a coordination clause making the Department of Commerce (DOC) responsible for administration. He said that the DOC has no enforcement personnel in the field, and it would be more expensive than if the Department of Labor and Industry carried out the enforcement function.

Barbara Broberg, Montana Women In Farm Economics (WIFE), said that their policy strongly supports COOL. She said that she is 60% in favor of the bill.
{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.1}

Chris Christaens, Montana Farmers Union, said that their 2,600 members strongly support HB 406. The only amendment they support would be adding "whole" grain.

Leo Perrin, Director Montana Cattlemen's Association, Region One, stated their support for HB 406.

Note: Written testimony was also received from each of the following to be entered into the record as proponents: **Christiane Sikora, Sandy Weiss, Lawrence Heppner, Tom Breitbach, John and Catherine Michunovich, Lila Green, Phyllis and Dale Hubing, Adolf Zerbe, Jeff Brown, and Elaine Clark.**
EXHIBIT(agh37a08)
{Tape: 2; Side: A; Approx. Time Counter: 2.1 - 3.1}

Opponents' Testimony:

Brad Griffin, Montana Retail Association, explained their concerns on Page 2 of the bill. He suggested that the word "permitted" should be changed, and that requiring a label that says "Made in Montana" for a country of origin bill is a misnomer. They also object to the placards and agree with Mr. Pilcher that "origin unknown" is not reassuring to consumers. He said that the penalties are high, and the bill does not specifically stipulate who pays the fine. He stated that they do support a "Made in Montana" program and would like to have a seat on the task force that Mr. Pilcher is proposing.

Lynn Stowers, Chalet Market in Belgrade, said that she is representing Montana Meat Processors. They do not oppose COOL, but they do not think this bill is workable. She noted that it will be difficult for a state with a small population to dictate to large companies the necessity of putting country of origin labeling on before the U.S. government regulations go into effect. She said that a local program like "Made in Montana" is needed. She encouraged the Committee to look at the practicality of what is being done in HB 406.

{Tape: 2; Side: A; Approx. Time Counter: 3.1 - 10.6}

Informational Testimony:

Jack Kane, Bureau Chief, Bureau of Weights and Measures, Department of Labor and Industry, said he will be the one to implement and enforce this bill if the amendment passes. He said that he was available for questions.

Joan Forcella, Forcella Meats, Whitehall, said that a Federal bill will be implemented in 2006 according to the 2002 Farm Bill, and Senator Burns has introduced legislation to accelerate that requirement to 2005. She read her written testimony that included many questions, and presented it for the record. **EXHIBIT(agh37a09)**
{Tape: 2; Side: A; Approx. Time Counter: 10.6 - 14}

Questions from Committee Members and Responses:

REP. JONES asked if this is workable and how they will deal with the fact that 90% of the processing occurs out of state. **Brett DeBruycker** said that packers have the ability to segregate product. He said that they don't want people to know that. It is simpler and more profitable to blend the cheaper product as it comes in, and pawn it off as USDA product to mislead consumers. He noted that the school lunch program and the Department of Defense vendor program currently use separated product.

REP. JONES asked if Montana is a big enough market that they would go to the extra effort. **Brett DeBruycker** said that implied the packers would not send beef into the state. He then said that he did not believe it was that much extra effort.

REP. RICE said that a 2001 country of origin bill failed, but South Dakota passed a similar bill. South Dakota's bill has since been ruled unconstitutional because it violated the Interstate Commerce Act. She asked if it was necessary to tweak this bill to get around that. **Mr. Ringling** said that this act is not in violation or conflict because the U.S. has never implemented a country of origin law except for shellfish and fish. He felt that the State can implement this bill before the Federal Government does.

REP. LAMBERT asked if the school lunch program requires that American made products are used. **Brett DeBruycker** said that schools require certification of U.S. origin. He will get more information and give it to REP. LAMBERT.

REP. WAITSCHIES said that they send their calves into Canada to feedlots and asked if the meat would be labeled as American beef or Canadian beef. **Mr. Youngberg** said that it would be labeled "country of origin unknown or foreign."

REP. WAITSCHIES referred to Page 2, Section 2, Lines 4-6. He asked if that section would require any package offered for retail to be labeled with a placard. **REP. BERGREN** agreed.

REP. WAITSCHIES noted that would include the hamburger purchased at a local restaurant, and asked where the label would be placed. **REP. BERGREN** said they put rule making authority into the bill and referred to Line 27. He said that the Department has the ability to take things like the hamburger purchased at a drive-in out of the bill.
{Tape: 2; Side: A; Approx. Time Counter: 14 - 22}

REP. WAITSCHIES asked if the intent was to take prepared foods out. **REP. BERGREN** said, "Yes."

REP. PETERSON asked about verifying the source in the industry that would allow compliance. **Mr. Griffin** said that he had not. He will check with the national groups and report back.

REP. PETERSON asked if most retailers would have to use placards that say "country of origin unknown." **Mr. Griffin** said "Yes, since most of the product is coming from major meat packers that would not be under enforcement."

CHAIRMAN BUTCHER said that nearly all the placards would say "origin unknown," and asked if this would be a niche market for smaller processors. **Ms. Stowers** said that many smaller retailers have already started doing that. She thought that as soon as marketing is legislated it will be an unenforceable situation. She said it would be better to take the positive side and say, "This is Montana meat and this is better."

CHAIRMAN BUTCHER said that retailers are being faced with "origin unknown" placards or the option of seeking out processors who can kill Montana beef, and asked if this would be seen as a niche market to expand kill facilities. **Ms. Forcella** said they are a State inspected plant, they are not USDA inspected. They do a lot of slaughter for retail sale, but doubt it would be a niche market. She noted that they could not handle any more at her plant, but more facilities may crop up if they can get an inspector. She said that it would not be cost-effective to build a larger facility, but they can kill as many animals as people want to bring, as long as the state allows them to have an inspector there. They have an inspector two days a week now.

CHAIRMAN BUTCHER asked if the State would provide inspectors if people demanded inspection. **Ms. Forcella** said that the State does everything it can to help and would provide an inspector if it were possible.
{Tape: 2; Side: A; Approx. Time Counter: 22 - 30}

REP. HEINERT asked about looking at the amended bill submitted by Mr. Pilcher. **REP. BERGREN** said that the true sponsor is the Governor, and he would have to be consulted. He noted that a Federal bill would trump this bill, but it would leave the ability for permitting on the Montana portions that are not mandated. He said that he would like to keep the bill as much like the original as possible.

Closing by Sponsor:

REP. BERGREN said he felt that more information is better for the consumer, rather than less. Currently the consumer is being duped into thinking that USDA means U.S. grown, when it just means that it has been inspected. He felt this would produce a cottage industry for the portable kill units that will be going around. He said, "If this can be done, Montana Made products can be shipped out of state, and those bring a premium price."
{Tape: 2; Side: B; Approx. Time Counter: 0 - 6.4}

HEARING ON HJ 22

Sponsor: **REP. JIM PETERSON, HD 30, BUFFALO**

Opening Statement by Sponsor:

REP. JIM PETERSON opened the hearing on **HJ 22**, a resolution on bison management to help eliminate brucellosis in the Yellowstone Park bison herd.
{Tape: 2; Side: B; Approx. Time Counter: 6.4 - 13}

Proponents' Testimony:

Tom Linfield, State Veterinarian, Montana Department of Livestock, handed out and read his written testimony.
EXHIBIT(agh37a10)

Chris Christaens, Montana Farmers Union, said that the livestock industry is dependent upon the Federal Government making sure that brucellosis is eliminated from elk and bison. He asked for support on HJ 22.
{Tape: 2; Side: B; Approx. Time Counter: 13 - 19}

Chris Smith, Chief of Staff, Montana Fish, Wildlife and Parks, said that the elimination of brucellosis in Yellowstone bison and elk would greatly simplify wildlife management and eliminate many of the problems they and other agencies face in that area.

Steve Pilcher, Montana Stockgrowers Association, voiced his support for the resolution. He said that the livestock industry has spent over $35 million to eradicate brucellosis among domestic herds. They are frustrated with the lack of progress in eradicating the disease in the Yellowstone area. He said that Wyoming had documented cases of transmission from wildlife to domestic cattle and lost their brucellosis-free status in 2004.

Nancy Schlepp, Montana Farm Bureau Association, said that it is very important for Montana to retain brucellosis-free status. She asked for support of HJ 22.

Kathy Wylie, President, Montana Cattlewomen, expressed their support and noted that brucellosis produces undulant fever in humans and is incurable.
{Tape: 2; Side: B; Approx. Time Counter: 19 - 23}

Opponents' Testimony:

Josh Osher, citizen, said there are several factual inaccuracies in the WHEREAS clauses in HJ 22. The current population estimate of bison in Yellowstone Park is 4,250 which is less than stated. The late winter count last year brought the number to 3,600. He said that the 2010 date is not achievable based on current tools and social conditions related to wildlife and brucellosis management. He stated there have not been any statements saying that Yellowstone elk have had an effect on brucellosis infected cattle. He named several other inaccuracies.
{Tape: 2; Side: B; Approx. Time Counter: 23 - 28}

Mr. Osher noted that even if eradication is achieved, there is a high likelihood of reinfection in the future. He said that nearly half of the income for Park and Gallatin Counties comes from visitors who would be deterred by the scope of an eradication program. He noted that even a population of 300 bison in Yellowstone National Park would still see nomadic movements.
{Tape: 3; Side: A; Approx. Time Counter: 0 - 3.4}

George Knoell, Naturalist, Yellowstone Park Service, Gardiner, said it would have a large impact on the tourism industry if they were to kill down to 10 buffalo. He said that to get brucellosis from an infected animal would require ingestion of infected milk and eating the entrails. He also stated that it can be rarely

contracted from undercooked meat. He said that brucellosis in humans is treatable with antibiotics with some side effects. He said that it is not currently possible to eradicate this disease by killing large numbers of animals.
{Tape: 3; Side: A; Approx. Time Counter: 3.4 - 7.7}

Stephanie Seay, resident of Arlee, read her written testimony.
EXHIBIT(agh37a11)
{Tape: 3; Side: A; Approx. Time Counter: 7.7 - 13.8}

Informational Testimony:

Darrell Geist brought "Efficacy of Single Calfhood Vaccination of Elk With Brucella Abortus Strain 19" for the record.
EXHIBIT(agh37a12)
{Tape: 3; Side: A; Approx. Time Counter: 13.8 - 16}

Questions from Committee Members and Responses:

REP. WINDHAM asked what the most effective brucellosis elimination program would be. **Dr. Linfield** said that historically it has been a combination of tools: test and slaughter, and the use of vaccination for several years.

REP. WINDHAM asked if test and slaughter is what is currently being proposed. **Dr. Linfield** said that there is no overall elimination plan to date, but that test and slaughter, vaccination, and potential quarantine and continued testing of the animals for eventual release would be part of the plan. They would look at the habitat too.

REP. WINDHAM asked about testimony indicating that current vaccinations are defective and asked if vaccination of bison works. **Dr. Linfield** said that the proposed vaccine for bison is Brucella Abortus Strain RB 51. One study of the vaccine efficacy indicated no statistical difference. He said that the other study indicated that it protects against infection and abortion. He stated that the protection against abortion is important because it reduces the potential for further transmission. He felt they would not be able to eliminate the disease in either livestock or wildlife with vaccine alone.
{Tape: 3; Side: A; Approx. Time Counter: 17 - 21}

REP. WINDHAM asked if reinfection would occur if eradication were accomplished. **Dr. Linfield** said that if it were eliminated from the wildlife population and the ecosystem, the sources would be eliminated and there is no indication that it would come back unless it was reintroduced by another means.

REP. WINDHAM asked if elk could pick up the disease during migration and bring it back in the ecosystem if it was eliminated in the greater Yellowstone area. **Dr. Linfield** said that the next closest reservoir would be one of the Class A states in livestock. He said that Wyoming is a Class A state and there are no infected herds alive there. The next closest Class A state is Texas, and migration of that distance is unlikely, he stated.

REP. HEINERT asked why the Department of Agriculture would be the agency to do this as opposed to the Department of Fish, Wildlife and Parks. **Mr. Smith** said that the resolution asks the DOA to be named as the lead Federal agency. He said that they expected that would include all of the State Fish, Wildlife and Parks agencies and the Federal agencies working in partnership.

REP. HEINERT asked Mr. Smith if he was saying that a Federal agency needs to take control of this and coordinate it. **Mr. Smith** said that they would like to see progress toward elimination of brucellosis in the greater Yellowstone area. ***{Tape: 3; Side: A; Approx. Time Counter: 21 - 23.9}***

REP. LAMBERT said that there are several bison operations in her district and asked how they are controlling brucellosis. **Dr. Linfield** said that bison on privately owned operations are tested if they come into the state from another state. He stated that they do not know of any infected domestic bison herds in this country. There is nothing that mandates the vaccination of domestic bison, but some producers vaccinate voluntarily.

REP. WINDY BOY asked where brucellosis comes from. **Dr. Linfield** said there are two potential sources: an infected milk cow in the early 1900's in Yellowstone Park, the other possibility is bison calves that were introduced into the Park.

REP. WINDY BOY asked why the blame is put on the buffalo if the disease came from a cow. **Dr. Linfield** said they are not blaming the elk or the buffalo for the disease. Their concern is the disease, and the buffalo are the reservoir for the disease. There has been an intensive program, and there are very few remaining reservoirs of this disease.

Note: After the Hearing, additional information about bison vaccination was submitted for the record.
EXHIBIT(agh37a13)

Closing by Sponsor:

REP. PETERSON closed by saying that the issue is that the brucellosis exists. He said that the objective is to eliminate

the brucellosis. The bison that have come out of the park have tested 40%-50% positive. Once the serum is cultured, 46% of that tests positive. He stated that the intention is to control and eradicate brucellosis, not to decimate the park. He stated that through vaccination, testing and slaughter since 1934 they got brucellosis down to one state last year, and Wyoming tested positive after that. He said that eliminating brucellosis in bison solves lots of problems. This bill asks for support in continuing to address this problem. He noted that a count last week indicated 4,139 bison in the park based on an aerial survey. ***{Tape: 3; Side: A; Approx. Time Counter: 23.9 - 28}***

(Note: The Committee took a five minute break)

HEARING ON HB 573

Sponsor: REP. TIM DOWELL, HD 8, KALISPELL

Opening Statement by Sponsor:

REP. TIM DOWELL opened the hearing on **HB 573,** revision of fencing and recapture requirements for alternative livestock ranches requiring that all costs and expenses incurred by the State must be paid by the ranch licensee unless the property is double fenced. This would be done to keep the genetic pool safe and prevent the herd from having any contact with wild animals.

Proponents' Testimony:

Robert Throssell, Montana Wildlife Federation, spoke in favor of HB 573. He said that double fencing would not be mandatory, and the ranch would make the decision whether or not to install it. ***{Tape: 3; Side: B; Approx. Time Counter: 0 - 6.4}***

McGregor Rhodes, Kalispell, said that the bill is necessary to take a financial burden away from the State and place it on the game farm industry. HB 573 is a logical step toward protecting the economy and preventing chronic wasting disease (CWD).

Fred Upchurch, Board of Directors, Ravalli County Fish and Wildlife, said that they feel this is a commonsense bill that will keep game farm animals safely contained in an area where they do not pose a threat to neighboring wildlife. He stated that this is a good neighbor issue. He said that they feel it is irresponsible of the game farm operators not to implement this safeguard on their own.
{Tape: 3; Side: B; Approx. Time Counter: 6.4 - 10.3}

Opponents' Testimony:

Bruce Barrett, Biologist, submitted and read written testimony listing the issues and possible solutions.
EXHIBIT(agh37a14)

Ken Mesaros, Rancher, Cascade, said that nearly all of the reports of game farm livestock escaping were caused by a gate being left open and had nothing to do with the quality of the fence. He noted that the debate centers around CWD, and none of the elk ranches in Montana are infected with disease of any kind. He stated that Fish, Wildlife and Parks employees are required to inspect game farm fencing annually. If an elk escapes it is the responsibility of the owner to recapture it if possible, and if it is not captured, ownership goes to the State.
{Tape: 3; Side: B; Approx. Time Counter: 11.5 - 17.1}

Kim Kafka, farmer, Havre, said that he was a member of the negotiated rule-making committee that spent almost a year discussing fencing. There was no set fencing standard previously. He stated that there was no incentive for the operations that were grandfathered in to upgrade their fencing. If they took down the fence between just two posts, they would lose their grandfathering. The committee put an incentive in that the grandfathered operations could enhance the fence between two points but if they did they had to go to the new standard. He said that this is the best fence that has ever been in the state and it has never failed.
{Tape: 3; Side: B; Approx. Time Counter: 17.1 - 19.5}

Bob Spoklie, Elk Rancher, Plentywood and Kalispell, said that the license fees bring in between $12,000 and $15,000 and presented "History & Facts - Elk Ranching In Montana" for the record. He stated that Fish, Wildlife and Parks spends less than $2,000 a year on regulation. He said that the days of escapes are long gone, and that new fencing rules are in effect. He stated that game farm animals would not pollute the gene pool, as those animals are superior to those in the wild.

He noted that there have been elk ranches in Montana since 1898 and that a brucellosis elk has never been tested on a private ranch in Montana. He said that tuberculosis was found in the Phillipsburg herd 8-10 years ago and the herd was dispatched. Every other animal in the state since then has tested clean. They monitor their herds for CWD and every head that dies on their place is tested. He said that FWP should have stopped the movement of wild dead animals out of Wyoming about five years ago. He stated that they do their share already.
EXHIBIT(agh37a15)

{Tape: 3; Side: B; Approx. Time Counter: 20.3 - 25.7}

Charles Taylor, Elk Rancher, Fergus County presented and read his written testimony. He said that 1) Good producers will be penalized because they already have a good fence in place, 2) Changing the rules and requiring double fencing breaks the agreement that was negotiated, 3) There are no liability caps in HB 573, and 4) There is no protection against vandalism.
EXHIBIT(agh37a16)

Jack Schubarth, Vaughn, representing alternative livestock, presented written testimony which he read. He pointed out that double fencing would take 15 feet around the perimeter of their property out of production.
EXHIBIT(agh37a17)
{Tape: 3; Side: B; Approx. Time Counter: 25.7 - 31}

Informational Testimony:

Jim Kropp, Law Enforcement Chief, Fish, Wildlife and Parks, said that there are currently 66 licensed alternative game farms that hold 2,600 animals, mostly elk. There are three types of fencing allowed by law; two have been grandfathered in. Fences that were constructed prior to 1992 are required to be 7 1/2 feet tall and constructed of woven wire. Fences constructed between 1992 and 1999 are required to be 8 feet tall, with the first 6 feet constructed of woven mesh wire, and supplemental strands of either barbed wire or smooth wire spaced at six-inch intervals. Fences constructed since 1999 are required to be a minimum of 8 feet tall and constructed entirely of high tensile woven wire. All new fences constructed under HB 573 would be utilizing the 1999 standard, and the estimated cost of construction is at least $10,000 per linear mile.

He stated that the fees generate between $11,000 and $13,000 annually and that amount is split with the Department of Livestock. He said that recent actions in 1999 and 2003 resulted in expenditures of about $10,000. In addition to escapes, there have been 22 separate incidences of deer or other wild animals entering alternative livestock facilities. FWP personnel has dispatched those animals within the ranch fences, resulting in additional cost to FWP. He said that he was there with Tim Feldner, FWP Commercial Wildlife Program Administrator, and they are available for questions. He presented written testimony.
EXHIBIT(agh37a18)
{Tape: 4; Side: A; Approx. Time Counter: 0 - 5.3}

Dr. Tom Linfield, State Veterinarian, said that he would answer any questions about disease concerns.

Questions from Committee Members and Responses:

REP. MALCOLM asked if any animals with CWD have been found on game farms. **Dr. Linfield** said that in Montana there was one facility that had nine infected animals and they were depopulated in 1999. They traced animals to one other facility and those animals were also depopulated. The results at the second facility were all negative.

REP. ROSS asked if there was a unique identification method for game farm animals if they escaped. **REP. DOWELL** said that it becomes extremely difficult.

REP. ROSS redirected the question.
{Tape: 4; Side: A; Approx. Time Counter: 5.3 - 7.2}

Tim Feldner, Manager Commercial Wildlife Permitting, FWP, said that game farm animals have an ear tag, and in many cases will have a tag in each ear. The alternative livestock ear tag is required to be applied in January following the year of the animal's birth. Many facilities place a farm tag in one of the ears; they are also tattooed.

REP. RICE asked if there was concern about the backlash from this bill and similar bills, from people who allow hunting on their property. **Mr. Throssell** said that by their support of this bill, they understand there may be a consequence. He stated that the containment of these alternative livestock animals is important.

REP. PETERSON wondered how broad the definition of alternative livestock was and asked if double fencing is required for game farmers, would they be willing to amend the bill to require double fencing for the bison herd in Yellowstone Park because they are 50% infected with brucellosis. **REP. DOWELL** noted that once this bill is in Committee, it can be amended however they want, as it is out of his control.
{Tape: 4; Side: A; Approx. Time Counter: 7.2 - 11}

REP. BERGREN asked for an estimate of the cost of fencing around Mr. Kofka's property. **Mr. Kofka** answered that he has two operations and about 14 miles of perimeter fence. The cost of the fence with labor is about $15,000-$17,000 per mile. Double fencing would cost over $200,000.

REP. BERGREN asked Mr. Kofka if he still allowed sportsmen on his property after his private property rights were taken away for the elk farm. **Mr. Kofka** said that he had been a sportsman all his life and doesn't have any problem allowing public hunting on

his property to people that are friends year round, even if this bill passes.
{Tape: 4; Side: A; Approx. Time Counter: 11 - 13.6}

REP. BERGREN asked about the incidence of the 1999 game farm CWD and asked if CWD was found in wild herds. **Dr. Linfield** said that there was no evidence to date of any CWD in free-ranging deer or elk in Montana, but that there is in several neighboring states.

REP. BERGREN asked about brucellosis and tuberculosis. **Dr. Linfield** said there has never been a case of brucellosis in captive elk in this state, or any other states in the U.S. He stated that there were cases of tuberculosis detected at five or six facilities in the early 1990s. Since then, all the animals were depopulated. There is a low level of brucellosis in the wild elk population around Yellowstone National Park, but there is no evidence of tuberculosis in any of the free-ranging wildlife in Montana.
{Tape: 4; Side: A; Approx. Time Counter: 13.6 - 16}

Closing by Sponsor:

REP. DOWELL closed by noting that some of the fences were put up back in 1992 and commented that recovery costs were mentioned at being around $2,000. He noted that infected elk were brought into Colorado in the 1990s from Alberta, and the cost to Alberta to destroy any brucellosis in their elk herd ran around $25 million. He said that this bill doesn't make anyone do anything. Those who have good operations can continue to run them, as there is no double fencing requirement. The difference between this and current law is that if an animal gets out, it has to be found. If the animal isn't found and FWP does a search, the licensee has to pay them.
{Tape: 4; Side: A; Approx. Time Counter: 16 - 19.5}

(Note: the Committee took a 10 minute break.)

HEARING ON HB 674

SPONSOR: REP. KARL WAITSCHIES, HD 36, PEERLESS

Opening Statement by Sponsor:

REP. KARL WAITSCHIES opened the hearing on **HB 674**, the Ethanol production and use act, an incentive for Ethanol. He stated that he would like the lowest grade of fuel to be 10% Ethanol and he would ban three chemicals that are added as oxygenators. The bill provides for an oversight council to administer the

incentives and give a $300 incentive for stations that put in another tank for Ethanol.
{Tape: 4; Side: A; Approx. Time Counter: 19.5 - 23.8}

Proponents' Testimony:

Bob Gilbert, representing Montana Aviation Trades Association, said that he has been a licensed pilot since 1968. He noted that the bill takes a common sense approach that provides an incentive for the retailer, maintains the incentive for the producer, and allows for current access statewide to 91 octane for aircraft.

Mike Allen, Ethanol Producers and Consumers (EPAC), stated that they support this bill and the one by REP. BERGREN and would like to work toward making a good bill come out of the Committee. They support having a council and would call it a rule making committee.
{Tape: 4; Side: A; Approx. Time Counter: 24.8 - 26}

Ms. Pat Joyce, Rocky Mountain Ethanol, Hardin, said that the proposed oversight council would assist the State in defining a business model to give guidance to the State Department of Transportation (DOT) program manager for the distributor's license program. She suggested that the council be a short term rule-making committee made up of industry agricultural people. She said they want to get help in writing rules for DOT to manage the incentive program, which could be sunsetted in six months.

She stated that this industry can be a money maker for the state if positive guidelines are written. Montana needs to develop a business plan with the Ethanol industry to capture the same type of revenue stream that Minnesota has. She presented an amendment that would help the state fulfill its incentive payment obligation.
EXHIBIT(agh37a19)
{Tape: 4; Side: A; Approx. Time Counter: 26 - 32.4}

Gayle Abercrombie, Executive Director, Montana Petroleum Association, said that they appreciate this alternative to a mandate bill and support the bill in principle. She said that refiners are concerned about the jump in the minimum octane level to 87.5 and would like to work with the sponsor on that.

Keith Schott, Agricultural Producer, Broadview, and President, Montana Graingrowers Association, stated support of HB 674. They feel that it is time to research and apply renewable energy resources that benefit both Montana and the industry as a whole. He stated that Ethanol production will reduce dependence on foreign oil and open different markets for their products.

Jack Maxness, President, Montana Aviation Trades Association, said they support the bill and noted that their biggest concern has been the availability of 91 octane unblended fuel. He thanked the Committee for keeping the concerns of the aviation community in mind as the bill is being amended.

Barbara Broberg, Montana Women In Farm Economics (WIFE), stated her support for HB 674.
{Tape: 4; Side: B; Approx. Time Counter: 0 - 4}

Opponents' Testimony: None.

Informational Testimony:

Jack Kane, Bureau Chief, Bureau of Weights and Measures, said that bureau statutes are impacted in this bill and that he would answer any questions.

Questions from Committee Members and Responses:

REP. PETERSON asked if the industry would support a blend of 87 octane that would be 5% Ethanol. **Ms. Abercrombie** stated that if he meant the regular grade would be 85.5 octane blended with Ethanol, and the mid-grade would be 87 octane at 5%, that would not be a problem. She asked if there would be an Ethanol mandate on the 85.5 octane. **REP. PETERSON** said only if it was marketed as an Ethanol product. **Ms. Abercrombie** said that if the mid-grade is what was set in regulations, it is okay. She explained that if everything has to be 10%, that would not be achieved by blending an unblended and a 10% blended fuel, so they were concerned about being in violation in order to have a blended mid-grade. Having the mid-grade lower than the 10% would be fine, because it would get around the violation issue.

REP. PETERSON asked the same question that he asked Ms. Abercrombie. **Ms. Joyce** said they would be okay with the 85.5 octane at 10% Ethanol.
{Tape: 4; Side: B; Approx. Time Counter: 4 - 10}

REP. PETERSON questioned banning the three oxygenators that are in REP. WAITSCHIES bill. He asked whether that creates more of an incentive or a de facto mandate for Ethanol if an oxygenator is required or needed; i.e., in Missoula. **Ms. Joyce** said that Ethanol would be the oxygenator of choice if the other three oxygenators were banned.

REP. PETERSON asked REP. WAITSCHIES if he would accept amendments

to his bill and include some of REP. BERGREN's concerns. **REP. WAITSCHIES** said that he would be willing to work toward that.

CHAIRMAN BUTCHER asked about the 87.5 minimum level octane. He noted that the 85.5 octane is just used in eastern Montana, and said that western Montana, Wyoming and the Dakotas are 87.5. **Ms. Abercrombie** said that the 85.5 octane is in rule at this time and is a product of altitude and vapor pressures that are calculated. She said that is why the 85.5 octane at the altitudes in Helena are equal to the 87 octane at a lower altitude. In Colorado, they have 85.0 octane only.

CHAIRMAN BUTCHER asked if it was all the same gas in different areas, and whether it just had different octanes because of the barometric pressure. **Ms. Abercrombie** said it is manufactured so it won't ignite too quickly, and that is why the 85.5 octane is comparable to 87 octane. Its performance is the same at this level as 87 octane is at lower altitudes.
{Tape: 4; Side: B; Approx. Time Counter: 10 - 16.4}

CHAIRMAN BUTCHER asked if the blending issue would be eliminated if everything across the state was a minimum of 87.5 octane, and the 85.5 octane level was eliminated. **Ms. Abercrombie** stated that is why her testimony reflected a concern about the jump because of the manufacturing cost involved in going up to that octane level. She said that to go to 87 octane from the current 85.5 octane would cause some refineries to re-engineer.

CHAIRMAN BUTCHER asked if the only refinery that was affected was in Great Falls, as he thought the other big ones were already set up to do that. **Ms. Abercrombie** said that the other refineries; Exxon, Mobil, and Conoco-Phillips would have to re-tool also.

CHAIRMAN BUTCHER asked if adding Ethanol would raise the octane of the fuel. **Ms. Abercrombie** confirmed that it would raise the octane level as it has an octane enhancement.

CHAIRMAN BUTCHER asked if more Ethanol could be added to get the octane level up, or whether this 10% would kick the base fuel up to 87 octane. **Ms. Abercrombie** said that the octane enhancement is about 1% with the 10% blended Ethanol. If the Ethanol is mixed, the refiners would try to reduce costs by having a blended fuel that meets the Ethanol requirements. She said, "If the octane were raised and the Ethanol was added, it would hit the refiners with a double whammy."
{Tape: 4; Side: B; Approx. Time Counter: 16.4 - 20.9}

CHAIRMAN BUTCHER asked Mr. Kane for his comments. **Mr. Kane** said that he disagreed with comments about octane requirements. He

said that the American Society of Testing Materials (ASTM) is the standard reference for this type of product and D4814 is the standard specification for gasoline. Products are added to gasoline in varying amounts to bring this octane up. Prior to 1984, altitude was the main factor in lowering the octane for various states, primarily the central and western U.S.

He stated that with the invention of electronic ignition systems, that owner manuals now state they need to be run on the octane level listed in the manual regardless of altitude. He passed around information about the effects of altitude on the anti-knock requirement. He noted that Ethanol is an octane booster, and passed around information about Ethanol blending.
EXHIBIT(agh37a20)
EXHIBIT(agh37a21)

REP. BERGREN asked REP. WAITSCHIES about a change in the bill. **REP. WAITSCHIES** said that he would take it out because the current requirement is 85.5.

REP. BERGREN asked about Page 1, Line 24. **REP. WAITSCHIES** said that he would have to check and see what the carcinogen properties are.
{Tape: 4; Side: B; Approx. Time Counter: 20.9 - 25.4}

REP. BERGREN discussed potential changes in REP. WAITSCHIES' bill. **REP. WAITSCHIES** noted that the incentives in current law are for Montana plants that use Montana products.
{Tape: 4; Side: B; Approx. Time Counter: 25.4 - 27.4}

REP. BERGREN asked if anything in the bill would prevent importation to meet the requirement. **Ms. Joyce** said that she did not think that the refiners could be told where to buy their Ethanol from.

REP. BERGREN asked Ms. Joyce if her company would come to Montana if the bill was passed without any changes. **Ms. Joyce** said that they are about 60 days from finishing up and she has been asked to make sure that this contract is made with the State of Montana once they are producing. This bill would be healthy for any Ethanol plant. She said that she thought more Ethanol plants will be built in Montana once they get a few of them financed. She stated that their plant will cost over $85 million.

REP. PETERSON asked Ms. Joyce if the current incentive program for an Ethanol company requires the use of Montana products. **Ms. Joyce** said, "Yes, it does."

REP. PETERSON said that is the incentive for production. Incentives are only available to a company in Montana that uses Montana products to produce Ethanol in Montana. **Ms. Joyce** said that is what the current statute says. To earn the incentive payment, they must use all Montana grain.
{Tape: 4; Side: B; Approx. Time Counter: 27.4 - 30.8}

REP. PETERSON asked if carcinogens, or the oxygenators, would create more of a market for an Ethanol blended product. **Ms. Joyce** said that she thought it would. She stated that in regard to asking refiners to buy Montana made Ethanol, that the market will take care of itself. In their case, they are 50 miles from three of the four Montana refiners. Transportation costs will make in-state Ethanol more affordable.

Closing by Sponsor:

REP. WAITSCHIES said that he brought an incentive bill because he believes in Ethanol. He wants this bill to create a product that would be useful for the state and would be a boon to the economy. He stated that he also wants to preserve the free market system. He said, "Don't tell the consumer what he has to buy."
{Tape: 5; Side: A; Approx. Time Counter: 0 - 2.8}

CHAIRMAN BUTCHER closed the meeting.

ADJOURNMENT

Adjournment: 7:35 P.M.

_____
REP. EDWARD B. BUTCHER, Chairman

_____
LINDA KEIM, Secretary

EB/lk

Additional Exhibits:

EXHIBIT(agh37aad0.PDF)