MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN RICK RIPLEY**, on February 16, 2005 at 8:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:
Rep. Rick Ripley, Chairman (R)
Sen. Ken (Kim) Hansen, Vice Chairman (D)
Sen. Gregory D. Barkus (R)
Sen. Bob Hawks (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)

Members Excused: Rep. Rosalie (Rosie) Buzzas (D)

Members Absent: None.

Staff Present: Britt Nelson, Committee Secretary
Shane Sierer, Legislative Branch
Barbara Smith, Legislative Branch
Doug Schmitz, OBPP Representative

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

Committee Business Summary:
Hearing & Date Posted:
Executive Action: HB 2

EXECUTIVE ACTION ON THE DEPARTMENT OF FISH, WILDLIFE AND PARKS: DEPARTMENT MANAGEMENT

Motion: SEN. HANSEN made a motion that DP 920 BE ADOPTED.

Discussion:

SEN. HANSEN introduced the revised DP 920.

EXHIBIT(jnh38a01)

SEN. BARKUS noted that the motion would not eliminate the Executive Director for the Foundation.

REP. MUSGROVE understood the new DP to effectively eliminate the Director's position.

Ms. Smith informed the Committee that the language would prevent the Department from using any identified funds to support the position but it would not remove the position because the FTE would still be on the books.

SEN. HAWKS clarified that SEN. BARKUS' motion would eliminate the position and the funding.

Ms. Smith affirmed this statement.

CHAIRMAN RIPLEY indicated that the intent of DP 920 was to remove the FTE and all funding to come into compliance with the audit. He requested the FTE also be removed because it had taken so long for the Department to comply with the audit.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5.9}

SEN. HAWKS inquired what the rational was behind the June 30, 2006 date.

Chris Smith, Chief of Staff for the Director's Office, replied that the date would provide a period of approximately 15 months until they would terminate any Fish, Wildlife and Parks (FWP) funding for the Foundation. This would allow them the time to transition into being completely independent. It would also allow time to put language into HB 2 which would be effective during this biennium, giving the Department funding through this biennium.

SEN. HAWKS challenged Mr. Smith to convince him that it was necessary to have 15 more months to accomplish the transition.

Mr. Smith responded that it was the prerogative of the Committee.

SEN. MUSGROVE was concerned with the 15 month time period as well. He wanted a reason as well for going beyond the effective date of 2005.

Mr. Hagener, Director of FWP, claimed that the audit had not said that the Department needed to eliminate the FTE and the funding. He insisted that the audit had only said it was inappropriate to continue funding the Foundation in that manner forever. He indicated that the 15 months would contain the changes they had planned to make in four years and leave in place the FTE and the funding which they could redirect and use for other sources as they had intended to.

{Tape: 1; Side: A; Approx. Time Counter: 5.9 - 10.7}

SEN. MUSGROVE followed up by asking what would happen if they left off the effective date language and how it would affect the Department if the substitute DP passed.

Mr. Hagener explained that it would take the funding and FTE from the Department immediately, making it impossible for the Department to fund the Foundation or the Director's position starting July 1, 2005. He noted that the Department would have the funding from the FTE for other important things for the Director's office if the substitute DP passed.

{Tape: 1; Side: A; Approx. Time Counter: 10.7 - 12.1}

SEN. BARKUS asked what the size of the Foundation was.

Mr. Hagener stated that the Board of the Foundation consisted of ten individuals. The assets were immediate grants or donations which totaled $11.5 million over the five years they have been open. He noted that they were not assets of the Foundation, the Foundation manages the Canyon Ferry Trust with D.A. Davidson from which they get a share of percentage points for managing the fund.

SEN. BARKUS wondered where the Foundation comes up with the funding for the Director.

Mr. Hagener noted that they get their funds through donations and management of the Trust funds.

The Subcommittee did not vote on the previous motion to adopt DP 920.

Motion: REP. MUSGROVE moved that DP 920 BE AMENDED TO REMOVE THE EFFECTIVE DATE.

{Tape: 1; Side: A; Approx. Time Counter: 12.1 - 16.3}

Discussion:

SEN. BARKUS spoke against the amended motion because he felt that the Department was requesting a 'floating FTE.'

SEN. MUSGROVE responded that the Department had informed the Committee that it was the last FTE in that particular category and it would be utilized.

CHAIRMAN RIPLEY interjected that the FTE was currently working for the Foundation, not the Department.

Ms. Smith clarified that REP. MUSGROVE wanted to only amend the language, not the FTE or the funding.

REP. MUSGROVE affirmed this statement. He asked if the language would restrict the FTE solely to the FWP Department.

Ms. Smith replied that the language told the Department that they could not use any State Special Revenue to support the Foundation and did not relate to any FTE.

REP. MUSGROVE followed up by clarifying that the FTE would be part of the FWP Department and they would be able to utilize it for anything but the Foundation.

Ms. Smith agreed with his interpretation. She continued that when she developed the original DP, the accounting description would have eliminated the FTE and all of the associated funding. She noted that the second part was added so that what had occurred would not occur again. She suggested that the Committee vote on the DP and the language separately. She also clarified that there were many different options for dealing with FTE: removing the FTE and leaving the funding or removing the funding and leaving the FTE.

{Tape: 1; Side: A; Approx. Time Counter: 16.3 - 23.4}

CHAIRMAN RIPLEY mentioned that the motion to amend the motion by removing the effective dates, had not amended DP 920 so they had the DP and the substitute motion that both needed to be voted on.

REP. MCNUTT requested that the last line of DP 920 be explained. **Ms. Smith** noted that the last line of the DP indicated that the FTE would be gone.

CHAIRMAN RIPLEY stated the motion that faced the Committee was the language and the amended substitute motion.

The Subcommittee did not vote on the previous motions to amend DP 920 by removing the effective dates.

Motion/Vote: REP. MUSGROVE moved that DP 920 BE ADOPTED AS AMENDED AS FOLLOWS: THE DEPARTMENT SHALL NOT UTILIZE ANY STATE SPECIAL REVENUE TO FUND OPERATION PERSONAL SERVICES OF THE FWP FOUNDATION. Motion carried 6-1 by voice vote with SEN. BARKUS voting no and REP. BUZZAS voting by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 23.4 - 26.6}

Motion/Vote: REP. RIPLEY MOVED THAT DP 920 BE ADOPTED AS AMENDED AS FOLLOWS: TO REMOVE THE 1 FTE AND THE $67,342 PER YEAR OF THE BIENNIUM. Motion failed 3-4 by voice vote with REP. BUZZAS, SEN. HANSEN, SEN. HAWKS, and REP. MUSGROVE voting no and REP. BUZZAS voting by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 26.6 - 29.5}

Ms. Smith added that the language which needed to be approved this session would put the Department in compliance with the federal audit. She read the language which the Committee needed to vote on.

{Tape: 1; Side: A; Approx. Time Counter: 29.5 - 31.6}

Motion/Vote: REP. MCNUTT moved that LANGUAGE BE ADOPTED. Motion carried unanimously by voice vote with REP. BUZZAS voting by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 31.6 - 32.5}

Motion/Vote: SEN. HANSEN moved that the Committee CLOSE FWP SECTION. Motion carried unanimously by voice vote with REP. BUZZAS voting by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 32.5 - 34.1}

EXECUTIVE ACTION ON DPs ASSOCIATED WITH THE COAL TAX SHARED ACCOUNT

Shane Sierer discussed the handouts he provided to the Committee. The first handout included all of the DPs associated with the Coal Tax Shared Account except DP 2 from the Education Subcommittee.

EXHIBIT(jnh38a02)

Ms. Smith added that Director Sexton had asked if she could make a suggestion concerning the balancing of the Coal Tax Shared Account.

Mary Sexton, Director of the Department of Natural Resources and Conservation, suggested that there were three programs within DNRC that had not historically been in the Coal Tax Shared Account and might be moved elsewhere: 1) Salinity Control, 2) Eastern Plains Resource Conservation and Development (RC&D), and 3) the rangeland position.

{Tape: 1; Side: A; Approx. Time Counter: 34.1 - 44}

Mr. Schmitz added that the Department of Commerce indicated that the Eastern Plains RC&D could fit within their Department and with HB 249 coming through, they would almost be able to ensure the Program $25,000 each year.

SEN. HAWKS wondered if there was a reason to assume the range position could be a shared position.

Ms. Sexton felt that it would be feasible to share the range position with the Conservation Districts.

SEN. HAWKS followed up by encouraging reorganization to maintain the position because it was an important position to many individuals.

SEN. BARKUS opposed the cutting of the Salinity Control Program. He felt that the Program had demonstrated a real result oriented process. He also noted the amount of support from the community and the fact that they had not received funding the last biennium.

{Tape: 1; Side: A; Approx. Time Counter: 44 - 49.1}

Sarah Carlson, Montana Association of Conservation Districts, urged the Committee to take an across the board reduction from each of the new items. She did not feel that Conservation Districts would be supportive of a shared position with the range position.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.4}

Mr. Schmitz added that the Pay Plan had not been added into the fund balances. He noted that there would have to be an extra $9,000 minimum for the range position as well as the rest of the personal service costs for the Department.

SEN. HAWKS commented that he did not know all of the implications of Growth Through Agriculture (GTA). He speculated that it had more soft funding as opposed to on the ground money. He was curious of the impact cutting Growth Through Agriculture would have.

Ms. Sexton replied that the GTA Program was a grant program and was mainly controlled by the Department of Agriculture. She understood that it was used for one-time projects and the one time DNRC received a GTA grant, it was for contracted services with the United States Department of Agriculture.

{Tape: 1; Side: B; Approx. Time Counter: 6.4 - 10.3}

SEN. BARKUS asked if REP. MCNUTT would be comfortable transferring the Eastern Plains RC&D to the Department of Commerce.

REP. MCNUTT responded that he would feel comfortable if he received some assurances that the Program would be funded.

Mr. Sierer commented that the Committee would not be able to obligate another Department to fund grants. He mentioned that they could include legislative intent but they could not obligate the Department of Commerce to fund a grant to the Easter Plains RC&D.

SEN. BARKUS wondered if the Committee would be able to do something to the Department of Commerce's budget to assure that the Program was funded.

Mr. Sierer agreed that it was a possibility for the Committee.

REP. MUSGROVE noted that Director Priete, of the Department of Commerce, had mentioned that it was a manageable transfer.

CHAIRMAN RIPLEY discussed a handout provided by Director Peterson of the Department of Agriculture which suggested the Department's stance on cutting the necessary funding. The Department's suggestion was to take a 3% cut out of DP 5020.

EXHIBIT(jnh38a03)

{Tape: 1; Side: B; Approx. Time Counter: 10.3 - 16.7}

Mr. Schmitz clarified that DP 5020 was a base adjustment.

Ms. Smith reminded the Committee that, historically, they have been appropriated by a percentage basis but statute would allow the Committee to appropriate as they saw fit.

CHAIRMAN RIPLEY and Mr. Sierer discussed the affect Director Peterson's suggestion would have on the Coal Tax Shared Account balance.

Mr. Sierer noted that it would still leave approximately $89,000 over-allocated. He also provided the Committee with a handout covering the Department of Commerce's proposed reductions.

EXHIBIT(jnh38a04)

REP. MUSGROVE agreed with SEN. BARKUS concerning the Salinity Control Program.

Ms. Smith reported that the Conservation District position was funded by the Reclamation and Development Account in the Resource Indemnity Trust Accounts and was also over-appropriated.

{Tape: 1; Side: B; Approx. Time Counter: 16.7 - 25.6}

Andy Poole, Division Administrator of the Business Resources Division of the Department of Commerce, commented that the Department had become aware of the request to include the Eastern Plains RC&D in their budget two days previously. He indicated that while the request had been sent out ten days previously, it had only been brought to his attention over the last two days.

Nancy Peterson, Director of the Department of Agriculture, informed the Committee that there was an economic return from the GTA Program of $11 to $1 of Coal Tax Fund spent. She noted that the 6% reduction would cause a cut of $57,000 from the GTA Program.

{Tape: 1; Side: B; Approx. Time Counter: 25.6 - 32.1}

Darlene Staffeldt, Director of the Statewide Library Resources Division, informed the Committee that the funds were used for three very important programs around the state. She briefly discussed the grants used for rural libraries.

SEN. HAWKS requested an overview of the weed control problem and how it was being addressed. He noted that there were many components but wanted to know how they used the funds through so many different budgets effectively.

Greg Ames, Administrator of the Agricultural Sciences Division, addressed the Committee. He provided an overview of the weed control programs throughout the state. He discussed different programs and the integration between State and federal agencies.

{Tape: 1; Side: B; Approx. Time Counter: 32.1 - 41.2}

Motion: SEN. BARKUS moved that tHE COMMITTEE DELETE THE FUNDING FOR THE EASTERN PLAINS RC&D, ADDING LEGISLATIVE INTENT THAT THE DEPARTMENT OF COMMERCE FUND THE PROGRAM WITH $25,000 PER YEAR OF THE BIENNIUM FROM NP 223 WHICH WOULD REVERT CONTINGENT ON THE PASSAGE OF HB 249; AS WELL AS REQUEST A 2% CUT ACROSS THE BOARD FROM THE OTHER DEPARTMENTS CONCERNED.

Discussion:

REP. MUSGROVE commented that SEN. BARKUS' proposal gave the Department of Commerce an undue situation where they were assuming responsibility for a new program as well as taking a 2% cut.

REP. MCNUTT indicated that he did not want to see the RC&D DP fall by the wayside on the chance that there would be no funding. He expressed that he would rather leave the DP as was and wait to see if HB 249 passed.

SEN. BARKUS noted that the Committee could reopen the Department of Commerce and place the RC&D DP within the Department.

{Tape: 1; Side: B; Approx. Time Counter: 41.2 - 50.2}

Mr. Poole requested that the motion include language making the DP contingent on HB 249 and that the Department apply for funding of the RC&D position.

REP. MCNUTT noted that the money for the RC&D was grant money.

Mr. Poole reiterated that 25% of HB 249 would be available for the Eastern Plains RC&D to apply for.

CHAIRMAN RIPLEY questioned if there was a way the Committee might be able to do a funding switch with the money in Commerce appropriated for economic development.

Mr. Sierer indicated that it was up to the Committee.

CHAIRMAN RIPLEY specified that he was considering New Proposal 223 which provided $500,000 for Indian Economic Development. He suggested adjusting the NP.

Mr. Poole requested that the Committee add coordinating language in the proposal saying that if HB 249 passed, the DP would not be affected.

Mr. Sierer clarified that CHAIRMAN RIPLEY was asking to reduce the Indian economic development DP by $50,000 and take that $50,000 and fund the RC&D Program for the biennium.

The Committee discussed the possibility of reopening the Department of Commerce and using the money from the Indian economic development DP. REP. MCNUTT agreed to the change in DP 223 and did not object to the language. Mr. Poole agreed to the DP if it included the contingency language with HB 249.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 8.7}

REP. MUSGROVE expressed concern at using money from the Indian economic development package. He felt that it was equally important and it was inappropriate to cut into its funding at this time.

CHAIRMAN RIPLEY agreed but felt that it was the Committee's duty to balance the account before sending it to the floor.

SEN. HAWKS commented that he felt it was also the Committee's responsibility to balance the budget.

Mr. Sierer clarified that if the Committee transferred the RC&D for $50,000, did not take a 2% cut from the GTA Program, and somehow enforced a 2% cut on the other subcommittee there would still be $25,000 over-appropriated. He expressed concern at trying to enforce a 2% cut on an outside subcommittee.

{Tape: 2; Side: A; Approx. Time Counter: 8.7 - 15.5}

CHAIRMAN RIPLEY wondered if the motion passed and the other subcommittee did not impose a 2% cut on the libraries, would all of the Departments be appropriated by the percentage amount.

Mr. Schmitz commented that this course of action would be recommended by the Governor.

SEN. HAWKS asked SEN. BARKUS what the rational was in taking out GTA from the 2% cut across the board.

SEN. BARKUS justified his motion because at the time, $50,000 was being taken out of the Department of Agriculture for the Eastern Plains RC&D. He indicated that it would be acceptable to amend his motion to include the Department of Agriculture.

Mr. Sierer noted that the Eastern Plains RC&D Program was never originally a part of the GTA Program.

CHAIRMAN RIPLEY requested Ms. Staffeldt comment on the 2% cut for the libraries.

Ms. Staffeldt responded that the Education Subcommittee had been supportive of the libraries. She mentioned that they had faced severe cuts the last biennium. She also mentioned that there had been unanimous approval of their budget.

{Tape: 2; Side: A; Approx. Time Counter: 15.5 - 24}

REP. MUSGROVE asked Director Sexton if the range position and the Salinity Control Program might be absorbed into DNRC's budget.

Ms. Sexton indicated that they would be willing to take the range position and have it be a shared position with the Conservation District position. She understood that these programs were very important and they would look into making the coordination work. She noted that they were already funded at $100,000. She agreed that they had additional needs and suggested that they could take advantage of grant opportunities through the Conservation and Resource Development Division. She reiterated that she would look at the next budget to try and get an increase into the Executive Budget.

{Tape: 2; Side: A; Approx. Time Counter: 24 - 28.1}

SEN. HAWKS felt that in order to be fair there should be across the board cuts for all Departments.

Mr. Sierer indicated that they would still be $5,000 short of balancing the account if the other subcommittee went along with the 2% cut; if they didn't, then the account would be approximately $21,000 short.

REP. MUSGROVE suggested Salinity Control receive $15,000 per year instead of the $25,000 currently appropriated.

Vote: Motion carried 5-2 by voice vote with REP. BUZZAS and REP. MUSGROVE voting no with REP. BUZZAS voting by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 28.1 - 36.3}

Motion/Vote: REP. MCNUTT moved TO OPEN THE DEPARTMENT OF COMMERCE, TO REDUCE NP 223 BY $25,000 PER YEAR, TO MOVE DP 109 INTO THE DEPARTMENT OF COMMERCE WITH ALL OF THE LANGUAGE FROM THE PREVIOUS MOTION. Motion carried unanimously by voice vote with REP. BUZZAS voting by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 36.3 - 39.2}

Motion/Vote: SEN. BARKUS moved to CLOSE THE SECTION OF DISCUSSION ON THE DEPARTMENT OF COMMERCE. Motion carried unanimously by voice vote with REP. BUZZAS voting by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 39.2 - 43.4}

EXECUTIVE ACTION ON THE DEPARTMENT OF LIVESTOCK

Mr. Sierer handed out the two new proposals from the Department of Livestock.

EXHIBIT(jnh38a05)

Mr. Schmitz provided an alternative proposal to DP 619 which was a language appropriation instead of a line item.

EXHIBIT(jnh38a06)

Mr. Sierer indicated that the Budget Office had originally submitted a language appropriation but the Legislative Fiscal Division preferred line items so he had brought it forward as a line item. He explained that the reason they prefer line items is that budget amendments can be difficult to track.

Mr. Schmitz insisted that while a budget appropriation and a line item effectively do the same thing, the fund balance is affected

by the line item. He insisted that the budget amendments could be tracked.

{Tape: 2; Side: A; Approx. Time Counter: 43.4 - 50.4}

SEN. BARKUS was concerned with the sentence in Mr. Schmitz alternative proposal. He was worried that the wording gave the power of appropriations to the Budget Office.

Mr. Schmitz explained that it would not give power to the Budget Office. He expressed that the request was that the Committee approve the language appropriation which would contain the authority. He stated that what the Budget Office was requesting, was that the Department come through the Budget Office and verify the need before the appropriation was established and they received the money.

CHAIRMAN RIPLEY asked what the difference was between the DP 619 and Mr. Schmitz' proposal that would allow for one or two full-time-equivalents (FTE) as opposed to the one in the DP.

Mr. Sierer replied that it was a difference in the author's writing. He confirmed that both DPs would do the same thing, neither appearing in the base and both one-time-only. The only difference he indicated is that a line item would show up as $50,000 from General Fund.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 3.4}

CHAIRMAN RIPLEY wondered why they normally had proposals versus language in all agencies.

Mr. Schmitz responded that a language appropriation assumed that there might be a need down the road while a line item assumed that there was the need.

CHAIRMAN RIPLEY commented that the Legislative Fiscal Division works for the legislature while the Budget Office works for the Governor, so he would feel more comfortable addressing a DP rather than language appropriations.

{Tape: 2; Side: B; Approx. Time Counter: 3.4 - 5.4}

Mr. Schmitz agreed but added that in the interim, it was the Budget Office's responsibility to maintain appropriation control.

REP. MCNUTT was unsure if the Department felt that they would need the FTE or if it was still a possible need.

Marc Bridges, Executive Officer of the Board of Livestock, remarked that since 1987, the Department has requested FTEs based on what was needed at that point in time. He explained that there have not been enough FTEs to cover the number of plants opening during the interim for the last two biennium. He expressed, however, that there have been plants closing as well; this makes it difficult to know how many inspectors will be needed.
{Tape: 2; Side: B; Approx. Time Counter: 5.4 - 9.2}

REP. MCNUTT inquired whether a language appropriation would cause the Department any problems; and if having to go to the Budget Director, should the need arose, would that cause issues.

Mr. Bridges conveyed that it would be fine with the Department to have a budget appropriation.

SEN. HAWKS saw no difference in the language of the two forms of DP 619.

SEN. BARKUS followed up by asking where, in the process of calculating the spending cap, a line item would be.

Mr. Schmitz indicated that he was unsure of the cap but a line item would affect the fund balance.

Mr. Sierer interjected that the spending cap limitation was going to be a major issue over the session. It was his understanding that the legislature was close to the spending cap limitation. However, he noted that neither the line item nor the language appropriation would count against the spending cap limitation.

REP. MUSGROVE commented that it was his opinion that the Committee should not allow the spending cap impact which had been done in the Committee.

{Tape: 2; Side: B; Approx. Time Counter: 9.2 - 15.2}

Motion: REP. MCNUTT moved that DP 619 -- PROVIDE MEAT INSPECTOR FOR PROCESSING PLANTS - OTO BE ADOPTED.

Discussion:

Mr. Sierer wondered if REP. MCNUTT wanted language associated with the package either HB 2 language or legislative intent. He noted that with HB 2 language the Department would not be able to use it for any other issue.

REP. MCNUTT asserted that he wanted it to be one-time-only with HB 2 language.

Mr. Bridges attested that the Department would rather have HB 2 language.

Vote: Motion carried unanimously by voice vote with REP. BUZZAS voting by proxy.
{Tape: 2; Side: B; Approx. Time Counter: 15.2 - 20.4}

Motion: REP. MUSGROVE moved that DP 620 -- Diagnostic Lab Cost Adjustment BE ADOPTED.

Discussion:

REP. MUSGROVE expressed that he felt this was a public health issue and he felt that to truly make it a public health issue, the Committee had to include some General Fund money so the Livestock Industry itself was not responsible for the full package. He indicated that it was effectively a neutral budget item.

{Tape: 2; Side: B; Approx. Time Counter: 20.4 - 22.1}

Mr. Schmitz related that the Executive could not endorse the DP at that point in time.

At 10:15 A.M. SEN. BARKUS left the room.

Vote: Motion carried 6-0 by voice vote with REP. BUZZAS voting by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 22.1 - 23.4}

Motion/Vote: REP. MCNUTT moved to CLOSE THE DEPARTMENT OF LIVESTOCK. Motion carried 6-0 by voice vote with REP. BUZZAS voting by proxy.

SEN. BARKUS returned at 10:25 A.M.

{Tape: 2; Side: B; Approx. Time Counter: 23.4 - 25.9}

EXECUTIVE ACTION ON THE DEPARTMENT OF AGRICULTURE

Motion: REP. MUSGROVE moved that DP 519 BE ADOPTED AS OTO.

Discussion:

Mr. Sierer informed the Committee on the topic of Polymerase Chain Reaction (PCR). He discussed the available methods and what they were used for, as well as what methods were approved by the Food and Drug Administration (FDA). He also addressed the Bovine Spongiform Encephalopathy (BSE) and the surrounding issues.

{Tape: 2; Side: B; Approx. Time Counter: 25.9 - 38.5}

SEN. HAWKS commented that he had discussed the issue with a scientist who informed him that there was an upcoming test which would be cheap and fast but it was still two years away. He felt that what it came down to was the risks that livestock producers and individuals would take and how much money should be spent until it is no longer worth it.

{Tape: 2; Side: B; Approx. Time Counter: 38.5 - 42}

Mr. Sierer informed the Committee on the proposed strip test which is currently being tested by the Food and Drug Administration.

{Tape: 2; Side: B; Approx. Time Counter: 42 - 45.7}

Nancy Peterson, Director of the Department of Agriculture, addressed the issue. She commented that Mr. Sierer had simplified the issue and that it was a much more complicated topic than it seemed. She discussed why the Department was concerned and what steps they wanted to take to make the border safe.

{Tape: 2; Side: B; Approx. Time Counter: 45.7 - 50.6}

Mr. Ames explained the difference between Conventional PCR and Real-time PCR.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.3}

SEN. HANSEN declared his understanding on her concern with the issue. He also expressed that the unknown variables present and the fact that the testing was so minuscule concerned him.

Ms. Peterson reported that she felt it would be helpful if they could be notified when feed with animal proteins was crossing the border, but they aren't. She indicated that there was less feed

crossing now than there used to be and that eight out of ten commercial feeds have been tested.

{Tape: 3; Side: A; Approx. Time Counter: 2.3 - 5.6}

REP. MUSGROVE wanted to know what Canada was doing to address the BSE issue.

Ms. Peterson related that Canada had similar testing and inspections of plants as the United States. However, she noted that the inspections did not always contain livestock feed samples themselves.

SEN. HAWKS asked what sort of mechanism it would take to have a certified feed program with Canada.

Ms. Peterson was unsure what it would take with North American Free Trade Agreement and the World Trade Organization's rules. She reiterated that the issue was the Canadian feed ban which has been in place since the BSE case in 1997.

{Tape: 3; Side: A; Approx. Time Counter: 5.6 - 9.7}

CHAIRMAN RIPLEY inquired whether the Department was looking at a Real-time PCR machine or a Conventional PCR machine.

Mr. Ames replied that the last time, with the information they had available, they were considering Conventional PCR. However, the FDA had told the Department that Real-time PCR would be approved within a few months and in that case they would go with a Real-time PCR machine.

CHAIRMAN RIPLEY followed up by asking if conversations with the Department of Livestock would change since they have a Real-Time PCR machine.

Mr. Ames indicated that it would not because of the possibility of cross contamination, availability, distance, and proximity. He expressed the difficulty of making sure the samples were not contaminated if the samples were taken to the lab.

He then discussed the FDA/USDA presence at the border. He discussed their regulations and sampling methods.

{Tape: 3; Side: A; Approx. Time Counter: 9.7 - 16.3}

CHAIRMAN RIPLEY inferred that 26,000 U.S. Department of Agriculture (USDA) inspections did not mean they took 26,000 samples.

Mr. Ames affirmed this statement. He elaborated that the 26,000 inspections had occurred across the United States over a seven-year period of time. He referenced Exhibit 3.

{Tape: 3; Side: A; Approx. Time Counter: 16.3 - 18.6}

SEN. BARKUS questioned how the United States was taking any feed from Canada that contained any animal parts from a province that is known to have had a case of BSE.

Ms. Peterson responded that the Department has no authority to stop livestock feed coming into the US from Canada.

SEN. BARKUS followed up by asking if they had any authority when there were animal parts even with the ban on livestock feed.

Ms. Peterson reiterated that they had no authority. She mentioned that the feed ban prohibits particular proteins, but in 1997 the industry supposedly stopped manufacturing this particular mix of livestock feed. She explained that the only way to find the feed with prohibited proteins is to test the feed.

{Tape: 3; Side: A; Approx. Time Counter: 18.6 - 23.9}

CHAIRMAN RIPLEY inquired who had the authority to stop feed coming into Montana. He asked if it was the USDA since they had the authority to close down the border to livestock.

Ms. Peterson agreed that USDA had the authority to close the border but she was not sure if they had the authority to stop all feed from entering Montana. She mentioned however, that it was USDA's proposal to allow livestock across the border even though they were aware that Montana does not want feed and livestock to cross the border.

{Tape: 3; Side: A; Approx. Time Counter: 23.9 - 28.5}

REP. MCNUTT wondered if any of the tests that were done in 2004-05 turned up positive.

Ms. Peterson reported that from June 2003 to December 2004, 9 out of 40 samples taken tested positive for animal proteins.

CHAIRMAN RIPLEY questioned this since during the 20 days the Department was on the border, 6 out of 32 samples tested positive.

Mr. Ames explained that Ms. Peterson was talking about samples throughout Montana and the numbers CHAIRMAN RIPLEY cited were only from the border. He discussed the number of samples and how many of them turned up positive.

{Tape: 3; Side: A; Approx. Time Counter: 28.5 - 36.9}

Mr. Sierer addressed the issue of BSE. He indicated that a cow with BSE is available to put in chicken feed, they would then allow the chicken to be turned into cow feed. He was concerned with the incubation period of BSE.

Mr. Ames placed the issue into context. He informed the Committee that affected bovine parts could not be shipped from Canada into America. He also clarified that it was chicken manure that was fed to livestock, not the actual chicken.

SEN. BARKUS wondered why it was an issue bringing feed with animal products across the border.

Mr. Ames mentioned inadvertent contamination or human error which would contaminate a batch of feed and endanger the livestock in America.

{Tape: 3; Side: A; Approx. Time Counter: 36.9 - 47.7}

SEN. HANSEN understood that the Department was unable to stop feed from entering Montana but wondered if there was a way to keep the dealers from selling feed from Canada.

{Tape: 3; Side: A; Approx. Time Counter: 47.7 - 48.3}

Ms. Peterson reiterated that the Department had no authority other than what had been allowed by the USDA. She thought that the industry was doing well policing itself. She indicated that many dealers were not buying livestock feed from Canada because of the issue.

SEN. HAWKS surmised that the issue caused a certain amount of hysteria dealing with the relative risk for humans linked with BSE. The most important issue being discussed, he concluded, was consumer confidence in the livestock market.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 5.2}

REP. MUSGROVE asked if the purchase of the PCR equipment for $100,000 should be designated as one-time-only.

CHAIRMAN RIPLEY affirmed that it should be. However, he was concerned with the fact that the Department was unsure of what equipment they were going to or should purchase. He asked if there was any other way of increasing sampling and inspections without having to purchase the PCR equipment.

Mr. Sierer clarified that the Department was looking to add one FTE for quality assurance in the lab and taking four staff members who were part-time and turning them into full-time staff. He elucidated that it would total 1.5 FTE.

Ms. Peterson addressed CHAIRMAN RIPLEY'S suggestion. She expressed concern at not having the equipment. She affirmed that the Department needs to address the issue and not push it back until it has become a major problem.

{Tape: 3; Side: B; Approx. Time Counter: 5.2 - 8.7}

REP MCNUTT inquired if there needed to be language restricting the equipment to Real-time PCR equipment.

Mr. Schmitz requested that the Committee leave it to the Department's discretion to choose the most effective piece of equipment available at the time of purchase.

CHAIRMAN RIPLEY was concerned that the Department might purchase a piece of equipment for $100,000 when in two years, testing might only require a strip test.

Mr. Sierer added that the FDA was pending approval of the strip test.

REP. MUSGROVE asserted that they still needed PCR even if the strip test became available.

SEN. BARKUS voiced that he was going to vote against the motion but wanted to explain why. He felt that this issue was huge and Montana needed to get serious about the issue. He felt that the testing was hit and miss and did not appear that it would make much of a difference.

REP. MUSGROVE rejoined that the Montana needs to do whatever it can to protect the livestock industry and this was one thing the State could do.

Vote: Motion carried 4-3 by voice vote with SEN. BARKUS, SEN. HANSEN, and REP. RIPLEY voting no with REP. BUZZAS voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 8.7 - 13.5}

Motion/Vote: SEN. HANSEN moved to CLOSE THE SECTION ON THE DEPARTMENT OF AGRICULTURE. Motion carried unanimously by voice vote with REP. BUZZAS voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 13.5 - 14.1}

ADJOURNMENT

Adjournment: 11:00 A.M.

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REP. RICK RIPLEY, Chairman

_____
BRITT NELSON, Secretary

RR/bn

Additional Exhibits:

EXHIBIT(jnh38aad0.PDF)