

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

January 20, 1983

The meeting of the Fish and Game Committee was called to order by Chairman Ed B. Smith on January 20, 1983 at 1:10 p.m. in Room 402, State Capitol.

ROLL CALL: Roll was called with Senator Severson excused and Senator Tveit arriving late due to another committee meeting.

SENATE BILL NO. 126:

ALLOWING A PERSON WHO OWNS OR LEASES PROPERTY TO PROVIDE OUTFITTING SERVICES FOR CONSIDERATION ON THAT PROPERTY WITHOUT A LICENSE; AMENDING...

Chairman Smith turned the meeting over to Senator Lee as Acting Vice Chairman. The hearing commenced on Senate Bill No. 126. Senator Ed Smith, District #1, presented the bill as sponsor and stated it was the result of a request of the joint subcommittee on Fish and Game. The interim committee traveled around the state last summer and this bill was what we thought would be a solution to a problem in the eastern part of the state. Senator Smith presented to the committee amendments to the bill, which are attached as Exhibit 1.

Acting Chairman Lee asked for proponents.

Representative Les Nilson, District #37, co-sponsored this bill and approves of the amendments presented by Senator Smith. He stated the reason he co-sponsored this bill is because he feels that a landowner should have control of his land and do what he chooses without government regulations.

Robert VanDerVere spoke in favor of this bill. He feels that if a rancher or landowner takes care of wildlife throughout the year they should be compensated. This bill would give the ranchers an opportunity to be compensated for damage on their property.

Dean Harmon presented the committee with written testimony in favor of this bill. (Exhibit 2)

John R. Cook, a retired game warden, believes that when a man has a parcel of land and pays taxes year after year on that land, he should have the right to conduct activities on his property as he pleases.

Tom Ryan, Montana Senior Citizens Association, was not present at the meeting but submitted written testimony in support of this bill. (Exhibit 3)

There being no other proponents to the bill, Acting Chairman Lee asked for opponents.

Jim Flynn, Department of Fish, Wildlife and Parks, gave testimony in opposition to this bill. Written testimony is attached. (Exhibit 4)

Ralph M. Holman, Chairman, Montana Outfitters, passed out to committee members written testimony stating his reasons for opposition to Senate Bill No. 126. (Exhibit 5)

Tag Rittel, representing the Montana Outfitters and Guides Assn., stated that the way this bill is written no one would need a license to outfit in Montana. Just by owning or leasing land an individual would be allowed to take hunters or fishermen out. He is opposed to this bill. (Exhibit 6)

Smoke Elser, Missoula, Montana, is opposed to this bill and even with the amendments cannot accept the bill.

R. P. Myers opposes this bill. Outfitters have a responsibility, we have to have proof of insurance to get our license and we are responsible for our guides and hunters. If they get in trouble we are the responsible party.

Dave Kumlien, Bozeman, Montana, representing Fishing and Floating Outfitters Association of Montana, opposes SB 126 for the reasons that have already been presented. He questioned of the committee, does land ownership automatically indicate the knowledge, experience and equipment for outfitting. He owns land but can say for sure that he is not knowledgeable enough to take hunters out on his property.

Steve Copenhaver, Ovando, Montana, gave a brief statement in opposition to this bill, reiterating the previous statements made.

Howard Copenhaver, Ovando, Montana, stated that it took 53 years to get the outfitters in business today, running an honest business. This bill will undo the advancements made in the last years.

Written testimony was submitted by Ken Nerpel in opposition to this bill. Mr. Nerpel was not present at the hearing. (Exhibit 7)

In Senator Smith's closing comments he stated that he was a landowner and in prior years has taken out hunters and received remuneration in the form of a bushel of apples, fifth of bourbon, or whatever. Under the present law he feels that he could be fined and suggested that the licensing has gone to far.

Acting Chairman Lee asked for questions from the committee.

Senator Jacobson asked Mr. Flynn if the law requires a guide to have a license under state law and that the guide must work only under a licensed outfitter.

Mr. Flynn said the bill does not refer to outfitters hiring guides but a guide does have to have a license and he would be in violation if he was not with a licensed outfitter.

Senator Mohar asked Jim Flynn or Ralph Holman if a landowner can just charge a trespassing fee and have that included as being a guide. Dean Harmon charged a trespassing fee to hunters and then was arrested for running a guide service.

Ralph Holman said that there is no law at the present time that would preclude the landowner from charging a trespassing fee. The law pertains to advertising your services. The compensation referred to by Senator Smith would be considered gifts. They have no objections to hunting on the landowner's property as a friend as long as he isn't advertising his service and charging a fee for those services.

Mr. Flynn, referring to the question on trespassing fees, stated that charging trespassing fees is an accepted occurrence in the state of Montana. Landowners charge \$5.00 or \$10.00 for people to come on their property and conduct outdoor recreational activities. This law will not impact that. If a person is going to charge a fee for services rendered, meals and lodging, then he is crossing the line. That person is not just charging a trespassing fee.

Senator Smith said that he had taken friends out in his vehicle hunting and questioned whether that would be a violation.

Mr. Flynn said there is a difference between a friendly relationship and a business arrangement. If you take a friend out hunting in your vehicle and the friend gives you a fifth of bourbon for your trouble, that is more a friendly relationship as opposed to a business arrangement.

Senator Lane asked Mr. Flynn, if a rancher has a large tract of land and wants to earn some money on the deer and elk, what do they have to do? Be an outfitter?

Mr. Flynn said the landowners, who own large parcels of land, are doing the outfitting themselves. The licensing procedure they go through is not that difficult.

John Cook said he has been a guide for friends and he does not charge a fee. Is it necessary that he have a guide license?

Senator Smith asked the guides and outfitters and the Fish and Game Department if he would have to get a license to take friends out on his property.

Mr. Myers said not as long as he does not charge a fee.

Senator Smith said that he would be guiding him in his pick-up.

Mr. Myers stated that is not the issue. There is no way to up-grade our business if there are free licenses or no licenses. We will get more complaints.

Ralph Holman said the distinction is whether you advertise, charge for personal service, furnish equipment, food and lodging, or whether you are taking a friend and accompanying your friend on a trip.

Senator Tveit referred to the terms in the bill "outfitting services for consideration." That means charging some type of fee and that is what the outfitters are upset about. If the landowner does not charge them, then there is no concern.

Senator Smith referred to page 2, lines 9 and 10, "for consideration aids or assists any person in locating or pursuing any game animal." If you take consideration you are in violation of the law.

Senator Tveit said there would be a charge or a fee.

Senator Smith stated that if you took some friends hunting and they were to take you out to dinner, for instance, that would be a consideration.

Senator Lee asked Jim Flynn if the Fish and Game rule book specified what an outfitter is?

Mr. Flynn said that he did not have the specific definition with him but that he could get the information for the committee.

Senator Lee asked Mr. Harmon if he did advertise out of state for trespass fees.

Dean Harmon said that his problem came about because another outfitter became jealous of his operation.

Senator Lee asked Jim Flynn to shed some light on the story layed-out in Mr. Harmon's testimony.

Mr. Flynn said that this was first called to his attention at the interim sub-committee meeting. There are many situations in Montana where we are acting in the law enforcement area and undercover operations are part of the business. If there is a potential crime we do go undercover to address the problem.

Senator Jacobson read the definition for "consideration" as amended last session, which follows: "Determination of what constitutes consideration. The providing of the services, property, or equipment mentioned in 87-4-101(3) or the advertising of services to assist persons to hunt, pursue or take wildlife or to fish shall be presumed to have been for consideration for the purposes of this part."

Senator Mohar asked if their department had prosecuted or attempted to prosecute farmers or ranchers in the state of Montana for accepting a "box of apples".

Mr. Flynn said he anticipated that they never would.

Senator Lee suggested to Mr. Flynn that it is easy for him to make that decision, easy to say that would never happen, but would it?

Mr. Flynn said the correct answer would be he would anticipate that they would not issue a citation which would put the County Attorney in a position to make such a decision.

Acting Chairman Lee closed the meeting on SB 126 and advised that there would be no action taken at this time. He turned the meeting back over to Chairman Ed Smith.

SENATE BILL NO. 132:

REESTABLISHING THE MONTANA OUTFITTERS' COUNCIL UNDER EXISTING STATUTORY AUTHORITY AND RULES; PROVIDING A PROCEDURE FOR FILLING A VACANCY ON THE COUNCIL; PROVIDING FOR COUNCIL MEMBERS' COMPENSATION AND EXPENSES; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PRESCRIBE WRITTEN CONTRACT FORMS; ESTABLISHING FEES COMMENSURATE WITH COSTS; AMENDING ...; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

Senator Judy Jacobson, District #42, sponsored this bill as a result of a sunset performance audit and subsequent public hearing. (Exhibit 8)

Chairman Smith asked for proponents to this bill.

Senator Matt Himsl, District #9, was chairman of the Legislative Audit Committee which conducted this review. He advised that this was a unique council and that for over 80 years there has been an outfitters organization. This is the only trade association that is dignified by statute. He explained the bill would provide a method for naming a member to this council and also establish a reimbursement and compensation for the members of the advisory council. This bill also provides that a contract shall be required of the outfitters. This will eliminate a lot of difficulties that exist in the area of complaints.

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Jim Flynn, Department of Fish, Wildlife and Parks, spoke in favor of this bill. A copy of his written statement is attached. (Exhibit 9)

Tag Rittel, Black Tail Ranch, presented written testimony and spoke on behalf of this bill. (Exhibit 10)

Smoke Elser, Missoula, supports this bill with the exception of the contracts provision.

R. P. Myers supports this bill except for the contract provision.

Dave Kumlien, Bozeman, President of Fishing and Floating Outfitters Assn., does support SB 132. He feels the per diem compensation is long overdue.

Ralph Holman, Chairman, Montana Outfitters, gave testimony in support of this bill. (Exhibit 11)

Steve Copenhaver, Ovando, urges the passage of this bill with the exception of the contracts.

Chairman Smith asked for opponents.

Dave Kumlien, Bozeman, President of Fishing and Floating Outfitters Assn., opposes the process for the election of members. A large number of the members of his organization are out of state at the time of election and they cannot get a significant number of their members to the meeting. He suggested that a proxy ballot be allowed. Due to the small number of complaints, he feels that to request a contract would put an unnecessary burden on his business. He is totally unwilling to write as many contracts as would be required for his business.

Steve Copenhaver, Ovando, is against the contract requirement. There may come a time this might be necessary but he does not feel that it is justified now.

There being no further opponents, Chairman Smith asked Senator Jacobson if she had any closing statements.

Senator Jacobson passed around a copy of the audit report to the committee members requesting that they refer to page 17. She noted that it was felt by the committee that the contracts would alleviate many of the problems and urged that the committee leave the section on contracts in the bill. (Exhibit 12, pages 17 and 18 of the Sunset Audit on Montana Outfitters Council)

Chairman Smith asked for questions from the committee.

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Senator Smith asked Senator Himsl if the Outfitters Association would now be a part of the occupational board or remain with the Fish and Game Department.

Senator Himsl said that this is an advisory council to the Fish, Wildlife and Parks Division. It comes in under that section of the law that has the professional occupational organizations. He said it would be under the Department of Fish, Wildlife and Parks.

Senator Lee asked Mr. Flynn if the number of complaints against individuals really justified a contract on outfitters.

Mr. Flynn said we certainly do not wish to place an undue burden on the outfitters. A number of complaints are simply misunderstandings and this is what the problem is. If there was something in writing between the outfitter and customer maybe that would reduce the problem. Sometimes the outfitter gets stuck and this would also take care of that.

Senator Lee questioned Mr. Flynn as to why a disclaimer could not be put at the bottom of one of the forms to the effect that the individual operate with a licensed outfitter, etc. Wouldn't that more or less cover it and be more appropriate?

Mr. Flynn said that he had not given thought to a disclaimer. He does not want to overburden the outfitter and the contract would be very general.

Senator Jacobson asked Senator Himsl to present the thoughts of the audit committee.

Senator Himsl said the power of the state to license is to protect the public interest, not to protect the interest of the particular operator. He feels the outfitters should be more willing to cooperate. Where there is customers everything is done by contract. With a contract the service you provide is understood by the person receiving it. The outfitters can determine just what they want in that contract.

Senator Smith closed the meeting on SB 132. Due to the shortage of time SB 47 will be rescheduled for another time.

ADJOURNMENT: The meeting adjourned at 2:50 P.M.


ED B. SMITH, Chairman

DATE

1/20/83

COMMITTEE ON

Senate Fish and Game

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jim Flynn	DEPT FWP	47		X
"		132	X	
"		126		X
ERWIN J KENT	DEPT. FWP	132		
"	"	126		
Alan Harmon		126	X	
John R. Dault				
Smoke Elser		126		X
		132	X	
B. P. Meyer		126		X
		132	X	X
Tag Rittel M	MONT OUTFITTER + GUIDES	126		X
		132	X	
Les Nilson	HD #37	SR 126	X	
Dave Kumlien	F FOAM	SB 126 132		X
Kay Yezzer				
Steven D. Copenhaver	Self on Outfitter	SB ¹²⁶ 132		X
Edward M Copenhaver	"	132	X	X
"	"	126		X

(Please leave prepared statement with Secretary)

NAME: Smoke Elser DATE: 1/22/83

ADDRESS: 3800 Rattlesnake Dr. Missoula MT

PHONE: 549-2820

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: S 126 S 132

DO YOU: SUPPORT? S. 132 AMEND? _____ OPPOSE? S. 126

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: R.P. Meyer DATE: 1/20/83

ADDRESS: 5480 Soundough Rd Boyerstown Mont

PHONE: 9878513

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: 126 - 132

DO YOU: SUPPORT? ~~126~~ AMEND? 132 OPPOSE? 126

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dean Harmon DATE: 1-20-83

ADDRESS: Bainville, Montana 59212

PHONE: 769-2127

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SB 126

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert Vandenberg DATE: _____

ADDRESS: 2300 Wilder

PHONE: 442 - 3252 Senate Bill 47-126

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: STeven D Copenhaver DATE: 1/20/83

ADDRESS: Orlando MT 59854

PHONE: 793-5547

REPRESENTING WHOM? Copenhaver Outfitters Inc

APPEARING ON WHICH PROPOSAL: SB 126

DO YOU: SUPPORT? NO AMEND? _____ OPPOSE? Yes

COMMENTS: I completely oppose this bill as discriminatory

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dave Kumlien DATE: 1/20/83

ADDRESS: 415 W. Alderson Bremen

PHONE: 587-9553

REPRESENTING WHOM? Fishing & Floating Outfitters Assoc. of Montana

APPEARING ON WHICH PROPOSAL: SB 126 & 132

DO YOU: SUPPORT? _____ AMEND? 132 OPPOSE? 126

COMMENTS: _____

Drop the contract provision.

Allow absentee or proxy ballots for Council elections!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Steven D Copenhaver DATE: 1/20/83

ADDRESS: Orlando MT 59854

PHONE: 793-6547

REPRESENTING WHOM? Copenhaver Outfitters Inc

APPEARING ON WHICH PROPOSAL: SBB 132

DO YOU: SUPPORT? YES AMEND? NO OPPOSE? Sec 4 # 2

COMMENTS: We need the passage of the
bill with the exception of Sec 4 # 2 A-H
as it would impose ~~on~~ a burden
on the Dept of Fish Wildlife & Parks
& the outfitter industry due to a
wide variance of services.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

AMENDMENT TO SB 126

1. Title, line 7.
Following: "PROPERTY"
Insert: "FROM A PRIVATE LANDOWNER"
2. Page 1, line 22.
Following: "leases"
Insert: "from a private landowner"

Testimony - January 20, 1983

I am here today to speak in favor of Senate Bill 126. My name is Dean Harmon. I live south of Bainville, Montana, near the Missouri River. Both sides of my family were introduced to the area in the Homestead days. I was raised on the ranch where my immediate family have lived and worked since 1962.

Our ranch has always been a paradise for wildlife. The care, protection and management of all wildlife on our land has been impressed upon me at an early age. These include whitetail deer, mule deer, fox, coyote, porcupine, skunk, bobcat, lynx, pheasant, grouse, Hungarian partridge, bald eagles and numerous other birds and water fowl.

Several years ago I realized a choice would have to be made of drastically reducing the numbers of existing whitetail deer because of their food consumption or manage the deer by charging a trespass fee to hunters so the deer in essence would not drain me financially in the form of crop damage.

I made the latter choice for these reasons. I like wildlife. I enjoy seeing others partake of it in the form of viewing, hunting and photographing. An orderly managed harvest of game is the only manner in which hunter safety is maximized.

In every instance I have, to the best of my knowledge and belief, adhered to law.

With this background I was justifiably dumbfounded when at 12:30 P.M. February 11, 1982, two Roosevelt County Deputy Sheriffs arrived at my home and informed me that I was under arrest for outfitting without a license. I was given the choice of paying \$500 bond or going to jail. Had I not had the cat running and snow to plow I would have chosen jail.

Examination of the papers given to me by the deputies indicated the basis of the arrest was the reports of two hunters who had hunted on our ranch in November of 1981.

These two men, one Jeff Norris of 1312 - 22nd Avenue, Rockford, Illinois and Jim Stone, also known as Special Agent James V. Klett, P. O. Box 1536, 411 S. Lake Drive, Watertown, South Dakota. Klett is apparently an employee of the U. S. Fish and Wildlife on temporary relocation by the Montana Fish and Wildlife for this investigation. The Montana Department of Fish Wildlife and Parks had extraordinary expenses of \$2,511.14 for their spies. A reasonable allowance for in house personnel time spent would bring the total cost to the taxpayers of Montana to well over \$4,000. Klett and Norris were accepted at our table and extended our hospitality as friends. This insult, this invasion, this lying, this use of Gestapo tactics by one of our bureaucracy could have been avoided by a simple straight forward visit by the local game warden.

Testimony - Dean Harmon

Page Two

The current Montana law regulating licensing of outfitters was designed for the protection of out of state hunters who hunt in the mountainous areas of our state on public lands. There is no reasonable reason for this law to apply to landowners who operate only on land controlled by themselves.

I urge a DO PASS on Senate Bill 126.

From Tom Ryan - Mont. Senior Citizens Assn

Regarding SB 477

The Mont. Senior Citizens Assn

supports the concept.

MANY of us CAN AND DO HUNT AND

FISH LONG AFTER REACHING THE AGE OF

62. Those participating in the benefits

of this rapidly decrease in numbers

usually because of the inability

to spread major retirement benefits

beyond absolute necessities. Of course

infirmities take their toll.

SB 126

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

January 20, 1983

I appear here today in opposition to SB 126. While the Department acknowledges the intent of this bill to allow the landowner certain authorities, the overall effects of this bill are of concern to the Department.

The State of Montana has for some time now regulated the Outfitting and Guide Industry. This regulation has occurred for two basic reasons. One has been to upgrade and professionalize those participating in the profession. This has been accomplished through a process of screening applicants for license in addition to a testing procedure for those applicants who wish to participate in outfitting and guiding.

The second reason for regulation is to provide a source of appeal should the consumer of these services feel that he has a complaint which requires resolution. In these cases the Department of Fish, Wildlife & Parks, as the State's agent, investigates these complaints to determine their value and what steps, if any, should be taken for corrective action.

Both of these reasons and their value are embodied in state law and have proven their worth. It is generally acknowledged at this time that the Outfitting and Guide Industry in Montana has grown in competency and service in recent years. The number of consumer complaints we see today are less than they have been in the past.

The concern we have for SB 126 is that it will put a certain segment beyond the intent of the Outfitting and Guide Laws. No license will be required and no screening will take place and no testing will occur. If a consumer feels aggrieved there will be no administrative recourse to handle his complaint. State government will have to respond with no action.

As I have mentioned, the Department is sympathetic to the intent of SB 126, however, we request that the total result of the bill be weighed and that it not be adopted.

Senate Fish and Game Committee
of the Montana State Legislature
State Capital
Helena, Montana

Re: S.B. 126

Attention: Chairman and members

Dear Mr. Chairman:

My name is Ralph Holman, McLeod, Montana. I am a Landowner-Outfitter and Chairman of the Montana Outfitters Council. I have been involved in working with the Legislature and Government Officials, Forest Service, Bureau of Land Management, Department of Fish, Wildlife and Parks, etc. seeking means to solve Landowner-Outfitter issues, as have many others, during the past sixteen years.

Most Outfitters are either Landowners or are closely associated and it is not without some reluctance that I rise to oppose S.B. 126. Outfitters of Montana have struggled for many years to professionalize the Outfitting industry, through the Council, our Association and the Department, and with the invaluable assistance of our many friends in the Legislature we have brought the industry from the level where anyone with a ten dollar bill could obtain an Outfitters license, by merely giving little more than his name and address, to our present level where reasonable qualifications, proven by tests, are required. We believe that our current Outfitter law and the regulations we adhere to reflect the will of the Legislature in full support of the will of the people.

I am a strong supporter of private property rights, however to consider licensing versus non-licensing we must look beyond and consider: (1) Regulations and protection of our wildlife resource, (2) personal service to the general public, (3) consumer protection, (4) health and welfare of clients, (5) fraud, (6) misleading advertising, (7) Outfitter qualifications, (8) safety of equipment, (9) food care, (10) care of game meat and trophies, (11) practical first aid, (12) knowledge of Fish and Game laws, firearms, etc.

An applicant for an Outfitters license is first given copies of pamphlets, laws, regulations and other information he will need to pass the test. If the applicant does not have the needed knowledge, study is recommended as the test is there to determine qualifications, to determine that said Outfitter will be an asset to the industry. It is extremely important that the wildlife resources of Montana are protected, that laws are not violated, that a prudent business will be conducted, that an Outfitter has knowledge of first aid in the event of injury, that the applicant has the ability to provide personal services to the general public and to protect the consumer. This is but a small fraction of what is required of a Doctor, Dentist, Lawyer and many others who are licensed to serve the public.

An Outfitter serves food, would you permit a Restaurant to open without being licensed? A Motel? Bar, etc.? As a Landowner-Outfitter I want my C.P.A., my Attorney, etc. to be qualified and licensed. This provides a means of recourse if needed. Most licensed Outfitters make it their business to be cognizant of laws, operate ethically and do

their best to provide good service, to do otherwise invites complaints, hearings, and the possibility of suspension or revocation of license. In other words an extremely valuable license could be lost. What would an unlicensed Landowner or Lessee, possibly leasing thousands of acres, have to lose? Nothing. What recourse would a client have other than possible costly civil action? None. What assurance would there be of ethical conduct? How many black eyes would our extremely important Tourism industry suffer?

A large number of Outfitters have worked hard to assure that the Outfitting industry was upgraded to play a major role in Montana Tourism. To permit unlicensed Outfitting will open another door to the applicant who fails the test and rather than study sufficiently to retake and pass, leases land and operates unlicensed. "Enforcement will be impossible." Please remember that our laws and regulations are designed to assure licensed, knowledgeable, qualified and prudent Outfitting businesses, laws and regulations are established to assure compliance. We strongly believe that it would be seriously detrimental to our industry and to the reputation of Montana Tourism to sanction unlicensed business operators. Remember that said operator has not proven qualifications. Will we also overlook the client who violates the law because the unlicensed Outfitter was not cognizant of law and regulations? The licensed Outfitter is held equally responsible by law to report violations.

A rush by some Landowners to operate unlicensed and a rush by persons without land to lease ranch land for unlicensed and uncontrolled Outfitting purposes will drastically reduce our industry to licensed Outfitters who operate on public lands. It could well result in the closing of all private land to resident sportsmen unless they book with an unlicensed Outfitter. How many of Montana's average sportsmen could take the time away from jobs or have the stock and equipment to pack into the back country on their own or with a licensed Outfitter? Very few.

In 1979 the Outfitting industry, consisting of 430 Outfitters and 720 Guides, was largely responsible for generating approximately \$30 million new dollars into the economy of Montana. In 1982 over 600 Outfitters and over 1,000 Guides were licensed considerably increasing this contribution, especially important during our depressed economy.

The industry needs and welcomes the assistance and participation of the Landowner, the sportsman and the non-resident who provides the majority of license revenue. We strongly support the right of any resident to take a friend hunting where fees are not charged. We need the assistance and cooperation of all to stop the unethical, imprudent non-resident unlicensed Outfitter who for personal greed capitalizes on Montana's wildlife resource and at times victimizes and exploits an unsuspecting Landowner into being an accomplice to his violations and unethical conduct.

We ask for your assistance and the cooperation of all to assure that the wildlife resource of Montana is properly managed and that said management is guided by well intended laws and regulations that will assure the perpetuation of Montana's resource. The Landowner, well aware of the need for strong management, can continue to be a strong leader generating a strong and prudent economy. We strongly support the requirement that Outfitters prove their qualifications by test and inspection, some of us have to study longer than others, however as you are well aware, in all of life, accomplishment is well worth the effort. We urge you not to pass S.B. 126. Thank you for this opportunity to testify.

S.B. 126

EXHIBIT 6

Submitted by Tag Rittel
January 20, 1983



BLACK TAIL RANCH

TAG & LYLA RITTEL
Wolf Creek, Montana 59648
Phone: 406-235-4330

RANCH VACATIONS . MUSEUM . CAVERN . PACK TRIPS . HUNTING

SEN. SMITH

JAN 20, 1983

COMMITTEE MEMBERS.

I REPRESENT THE MONTANA OUTFITTERS AND GUIDES ASSOCIATION - WE ARE AGAINST S.B. 126. THE WAY THIS BILL IS WRITTEN NO ONE WOULD NEED A LICENSE TO OUTFIT FOR GUEST IN MONTANA. EVERY BODY COULD TAKE HUNTERS OR FISHERMEN JUST BY OWNING OR LEASING LAND. THE LIVESTOCK OWNER, FARMER, RANCHER CAN TAKE GUESTS NOW WITHOUT THIS TYPE OF LAW. FOR THE ABOVE REASONS THE OUTFITTERS & GUIDES ARE AGAINST THIS BILL

Sincerely
Tag Rittel



LICENSED OUTFITTER & GUIDE
MONTANA OUTFITTERS AND DUDE RANCHERS

EXHIBIT 7

Submitted by Ken Nerpel
January 20, 1983

SENATE FISH & GAME COMMITTEE

HEARING: 1:00 - 3:00, Room 402

January 20, 1983

TO ALL COMMITTEE MEMBERS:

I am opposed to the passage of SB 126 allowing the establishment of private guide services outside of the present established guide regulations. I feel it is unjust to allow private enterprise to be funded by public monies at the expense of public recreationists.

Thank you.

Ken Nerpel
5380 Jim Town Rd
Helena, Mt 59601

EXPLANATION OF HOUSE BILL 132
REESTABLISHING THE MONTANA OUTFITTERS COUNCIL
AND AMENDING SEVERAL SECTIONS OF THE STATUTES
(SPONSORED BY REPRESENTATIVE ~~XXXXXX~~)

JACOBSON

As a result of a sunset performance audit and subsequent public hearing, the Legislative Audit Committee recommends that the Montana Outfitters Council be reestablished as an advisory board attached to the Department of Fish, Wildlife, and Parks. Sections 1 and 2 of this bill merely reestablish the council.

Section 3 allows the members of the council to be reimbursed and compensated for their council meeting activities. Currently the members serve without compensation or reimbursement. The members must pay all of the expenses they incur while traveling to and from and attending council meetings. As provided by law, members of other advisory councils in Montana receive per diem, normally \$25 per day, and actual travel expenses while performing council duties. Section 3 also establishes a procedure for filling vacancies on the council. If a vacancy arises due to resignation, death, or failure to elect, the council can recommend a replacement to be selected by the director of the department.

Section 4 requires that written contracts be used by all outfitters. The Department of Fish, Wildlife, and Parks shall specify which general provisions are required to be included in the contracts. These provisions include, but are not limited to, starting and completion dates of the outfitted trip; price for the entire trip; method and time of payment; method of hunting and/or fishing; number of guides to be used for the entire trip; camps to be used; area to be hunted and/or fished; and food, lodging, equipment, and stock provided during the outfitted trip.

The Legislative Audit Committee recommended use of a service contract because of a review of the council complaint files. The complaints indicated that there is a significant amount of misunderstanding between outfitters and their clients on the types of service outfitters are required to provide. A statewide requirement for the use of contract forms by all licensees could help increase public awareness and protection and reduce the number of complaints. Specifically, complaints concerning misrepresentation of services, false advertising, and failure to give service could be substantially reduced. The use of contracts or disclosure forms could also help define for the client the scope of outfitter and guide liability and the responsibility and risk borne by the outfitter's client.

Section 5 allows the department to establish fees commensurate with costs of administering and operating the programs. By specifying fee amounts in the administrative rules, fees can be changed through the administrative hearing process rather than requiring legislative action.

SB 132

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

January 20, 1983

I appear here today in support of SB 132. The Department has participated in the Legislative Audit recently conducted and from which this bill emanates.

The matters of reimbursement for Council members for attendance at meetings and for replacement of Council members should a vacancy occur are positive steps which generally make good sense from a management standpoint.

The matter of contracts is one which is more complicated, but nevertheless makes sense. The complexity of this matter will require a good amount of discussion before a final form is adopted. However, I am confident that a final form which is acceptable and beneficial to both the outfitter and the client can be arrived at.

We urge your adoption of this measure.



BLACK TAIL RANCH

TAG & LYLA RITTEL
Wolf Creek, Montana 59648
Phone: 406-235-4330

RANCH VACATIONS . MUSEUM . CAVERN . PACK TRIPS . HUNTING

SEN. SMITH

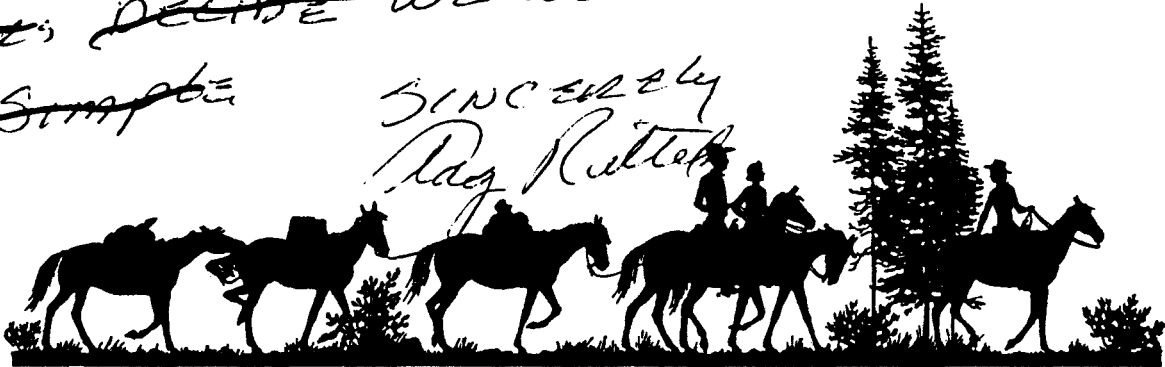
JAN 20TH, 1983

COMMITTEE MEMBERS, S.B. 132

THE MONTANA OUTFITTERS AND GUIDES ARE FOR THIS BILL - BUT QUESTION THE WRITTEN CONTRACT ON PAGE 8 - LINE 1 TO 24. BEING BUSINESS MEN WE FEEL ^(A) THERE IS NO NEED TO HAVE A LAW HOLDING US TO A TYPE OF CONTRACT WE MUST USE. ^(B) NO OTHER BUSINESS HAS A AGENCY OR GOVERNMENT WRITING CONTRACTS FOR PRIVATE BUSINESS MEN. ^(C) OUTFITTERS ARE NOT FROM ONE MODEL BUT INDIVIDUALS ^{FRONT} OFFER DIFFERENT TRIPS, HUNTS, VACATIONS, AND ETC. THERE FOR A CONTRACT MADE BY A GOVERNMENT AGENCY WOULD NOT WORK. WE SUGGEST ^{YOU DELETE THE CONTRACT} IF YOU ~~WANT TO~~ DECIDE WE NEED ONE - MAKE IT

~~Very Simple~~

Sincerely
Tag Rittel



Senate Fish and Game Committee
of the Montana State Legislature
State Capital
Helena, Montana

Re: S.B. 132

Attention: Chairman and members

Dear Mr. Chairman:

Generally speaking, Outfitters and Guides are just naturally independent and determined, they are a breed by themselves who are at their best pitted against the elements. Born with the spirit of adventure, they love the outdoors and the independence it represents, for this reason they are Outfitters and Guides.

BACK GROUND:

For several years before the Council was established a large number of well meaning Outfitters, including myself, being fully aware that upgrading our profession was necessary, tried different ways to accomplish the necessary. At the time there was very little, if any, effective law and just about anyone with a \$10.00 bill could start a business and operate with little concern for business ethics. A small bond was required by the Department, however this did not provide protection to the client and was therefore ineffective.

The Montana Outfitters Council was established by the 1971 Legislature following near unanimous support for an advisory Council, elected by Outfitters, to represent all the Outfitters of Montana.

During the mid sixties a small group of Montana Outfitters decided to follow the example set by a group of Idaho Outfitters to establish an Outfitter Governing Board. *This resulted in a ground swell of opposition due to the many derogatory rumors circulating regarding the Idaho Board's activities. When physical investigation of Idaho's State documents existing at the Idaho Capitol revealed that the majority of said rumors were factual, Montana Outfitters stated loud and clear "We do not want that in Montana." In order to ascertain that Outfitters were given the opportunity to vote their preference, a letter was mailed to all Montana Outfitters describing the ramifications of a Council versus a Board and asking for their vote by return mail addressed to Orvil Lewis, Department of Fish and Game. Approximately ninety (90) per cent of written responses and dozens of telephone calls strongly favored a Council elected by Outfitters and responsible to the Outfitters with licensing to remain with the Department. Upon receipt of this decisive information serious negotiations were conducted, Legislation was drafted, passed by the Legislature and we had the basis for today's fair, just and equitable Outfitter law and Outfitter Council.

*Reference to Idaho Outfitter Board is not intended to reflect in any way against Idaho's current Outfitter Board.

DUTIES OF COUNCIL:

It is the duty of the Council to act in an advisory capacity to the Department while representing the Outfitting industry. In addition to being advisory to the Department, Council members participate in Legislative hearings, ammendment of Outfitter law,

Department Commission meeting, Administrative appeals, arm rule amendments designed to improve experience and other standards, testing procedures, advertising guidelines, review and recommend action on complaints, advise Department of effect of proposed regulations upon industry, meetings with Department representatives, assure that Outfitters are apprised of proposals and circumstances effecting the profession, etc. The Council participate annually in meetings and Task Force activities in conjunction with Montana Outfitters and Guides Association and Government agencies to resolve Outfitter problems.

INDUSTRY BENEFITS:

The following questions were asked by the Legislative Audit Committee, our answers are as outlined.

Question: Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?

Reply: Definitely yes! The Council recommended establishment of and currently participate in the "Illegal Outfitter Task Force" consisting of Representatives of the U.S. Forest Service, Bureau of Land Management, State Forester, Department of Livestock, Fish and Wildlife, Burlington Northern, Fish Wildlife and Parks and Montana Outfitters and Guides Association, designed to reduce unlicensed, uninsured and unregulated illegal Outfitting activities. When first activated the Forest Service estimated that 47% of the outfitting was being performed illegally. Several illegal operators are now cited annually and illegal outfitting has been significantly reduced. Legitimate Outfitters currently carry violation report books for reporting suspected illegal operations. Prior to current regulations and Council creation a large number of persons operated without a license, permit, insurance or regard for public health, safety and welfare, the Department and other Government agencies working with legitimate Outfitters have largely reduced the unscrupulous operator and their illegal operations.

Question: Is there a reasonable relationship between the exercise of the State's police power and the protection of the public's health, safety, or welfare?

Reply: Definitely yes! The state does have the authority to protect State resources. Prior to Legislation establishing the Outfitter Council and amending the Outfitter law, advertising by unethical operators was quite often misleading, some bordered on fraud and some was intended to set the stage for embezzlement. The Department and The Council working together to formulate and establish advertising guidelines have largely reduced or eliminated this problem. In addition the "Sportsmen Alert" and several articles were composed for printing in National magazines and Newspapers and were printed, pointing out the pitfalls of not contacting State agencies for Outfitter and Fish and Game information. We established complaint investigation procedures designed to provide fair, just and impartial investigation to determine liability and expedite follow-up procedures. Procedures whereby complaints are acted upon by the Council by recommendation, with final action being the responsibility of the Director, (a double check) precludes the possibility of a biased decision.

Many field trips in conjunction with agency enforcement personnel have been conducted resulting in reaching solutions to existing field problems involving Outfitters. Active participation in several Task Force operations. The Council have continually analyzed the need and recommended action, to upgrade the industry, all designed to coordinate State Police authority and assure public health, safety and welfare.

Question: Is there another less restrictive method of regulation available which could adequately protect the public?

Reply: No! Our existing Council and current laws and regulations are the result of approximately seventeen years of extensive study and the efforts of a large number of well intentioned Outfitters and Department personnel who are well aware of the circumstances that existed prior to the Council. The very fact that Council Delegates have attended numerous meetings, since inception, without compensation, speaks for their outstanding interest in the success of the Council. Only one meeting was called at which a quorum was not present and this due to extremely inclement weather.

Question: Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

Reply: No and Yes: (NO) A prudent operator prior to 1972, who conducted his business on the basis of providing for the protection and safety of clients, would only be slightly effected, if at all.

(YES) Under the circumstances that existed prior to establishment of our current law and creation of the Council a number of unlicensed, illegal and unethical Outfitters existed who did not provide for the health, safety and welfare of the public. The regulations definitely increased the cost of operation for these Outfitters by either forcing them to go legal or exert more effort and cost attempting to find ways to avoid citation and prosecution. Consequently fees charged by these operators would increase to absorb the cost of operating legally or going underground. However benefits accrued, from legitimate operations, to the public and the resources of Montana outweigh cost.

Question: Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

Reply: Definitely not: Without regulations we would be back with the same problems, increased threefold, that we faced seventeen years ago to the severe detriment of the invaluable resources of Montana and the public that we serve. During the past seventeen years extensive consideration and evaluation was given towards minimizing cost, including consideration for an independent Board, or licensing under the Department of Commerce; Professional and occupational licensing, and other factors such as protection of our resource, (a common goal of Outfitters and the Department) our effective and favorable relationship with the Department; Department Wardens implementing the Outfitter law being experienced in law enforcement. Wardens being in the fields, concurrently with Outfitters, while implementing Fish and Game laws. Outfitters in most States favor Fish and Game Department licensing. On the other hand, a Board of Outfitters, who could be extremely biased, and the Department of Professional licensing, do not have representatives or enforcement personnel in the field. Department Wardens would have to involve a second agency for information on Outfitters encountered in the field. Department of licensing or a Board would have to employ qualified outdoorsmen (probably Outfitters or ex-Wardens) experienced in Outfitting and with the ability to conduct tests, field investigations and enforcement in order to license Outfitters and implement regulations. The entire process would result in a duplication of efforts and added costs by involving a second Department. The Department of Fish, Wildlife and Parks employ such qualified personnel who pack their own outfits for enforcement excursions into National Forests, Wilderness or back country. Another major factor favoring the Department of Fish, Wildlife and Parks is the fact that one agency has sole responsibility eliminating "passing the buck."

Question: Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Reply: The regulatory process is designed to protect the public and in addition the resources of Montana. Outfitters are engaged in the business of providing a service to clients to pursue, hunt, kill or take fish, game birds or game animals and must comply with State and Federal laws, rules and regulations. Outfitters have an obligation and responsibility to advise clients of laws and regulations and are responsible for violations of clients or guides.

Outfitters are responsible to provide food, shelter and transportation to protect the client and to provide guide service for the welfare and safety of the client in the field or afloat.

The Outfitter Council in Legislative and rule proposals and recommendations has strived to protect the client and to protect the wildlife resource to perpetuate a legitimate Outfitting industry.

I was active in negotiations leading to Outfitter law amendments and creation of the Council, in the consolidation of several Outfitter organizations into the "Montana Outfitters and Guides Association" and a strong supporter. However, it is to be remembered that only 30 to 35 per cent of Montana's Outfitters are members of Montana Outfitters and Guides Association and the Council are required by law to represent all Outfitters.

I am firmly convinced that the Council are acting as required by law and doing a good job in representing the Outfitting industry.

With special reference to "Areas for Legislative Consideration," consideration should be given to the following factors:

1- PROFESSIONAL GUIDE QUALIFICATIONS:

Under current circumstances this would be extremely costly to implement; The turnover in guides is approximately 60 per cent, there is a shortage of potential guide employees. The Department by recommendation of the Council have recently adopted procedures for issuing and revoking guide licenses which should greatly improve guide qualifications.

2- CONTRACT DISCLOSURE FORMS:

Department responsibility should be limited to supplying basic form for voluntary use. Outfitters should be encouraged to use basic contract form. It would be next to impossible to have a form that would cover even most circumstances.

3- PROFESSIONAL STANDARDS:

These were addressed at the last Legislature and also improved by recent arm rule amendment proposals including liability insurance provisions.

5- COUNCIL MEMBERSHIP:

Outfitter law does need amending to provide for the appointment of Delegate and Alternate to represent any District, that has lost representation for any reason, as proposed in S.B. 132.

We strongly urge a Do pass for S.B. 132. I thank you for this opportunity to submit testimony.

Ralph M. Holman, Chairman
Montana Outfitters Council
Department Fish, Wildlife and Parks

SUMMARY OF COMPLAINTS
Fiscal Year 1975-76 Through 1980-81

<u>Nature of Complaint</u>	<u>Total Number</u>	<u>How Resolved</u>
Misrepresentation	40*	1 - Exonerated 1 - Civil action pending 1 - Investigation, insufficient evidence 2 - Denial of license 32 - No action taken
False Advertising	38*	1 - Civil suit 1 - Hearing in process 1 - Denial of license 4 - Investigation, insufficient evidence 24 - No action taken
Failure to Give Service	22	1 - Civil action pending 1 - Denial of license 1 - Investigation - insufficient evidence 19 - No action taken
Negligence or Misconduct	21	1 - Exonerated 2 - Investigation - insufficient evidence 18 - No action taken
Non-compliance with Fish and Game Laws	12	2 - Action pending 2 - Denial of license 1 - Investigation, insufficient evidence 7 - No action taken
Outfitting Without a License	6	1 - Investigation - no charges filed 5 - No action taken
Convicted of Fish and Game Law Violation	5	1 - Denial or revocation pending 1 - Revocation 3 - Denial of license
Lack of Federal Government Permit	5	1 - Exonerated 1 - Investigation - no charges filed 1 - Denial of license 1 - Fine and probation 1 - No action taken

(Continued)

<u>Nature of Complaint</u>	<u>Total Number</u>	<u>How Resolved</u>
Employment of Unlicensed Guide	5	2 - Investigation - insufficient evidence 1 - Denial or revocation pending 1 - Hearing in process 1 - No action taken
Unqualified to Hold a License	3	1 - Denial or revocation pending 2 - Denial of license
Failure to Keep Records	2	2 - Hearing in process
Breach of Contract	2	2 - No action taken
Equal Responsibility Clause	1	1 - Hearing in process
Fraud in Procuring a License	1	1 - Denial of license
Outfitter Competition with Client	1	1 - Investigation - no charges filed

Total	164**	14 - Investigation: no charges filed, insufficient evidence 13 - Evidence used to deny license 5 - Hearing in process 3 - Exonerated 3 - Denial or revocation pending 2 - Civil action pending 2 - Department action pending 1 - Civil suit 1 - Fine and probation 1 - Revocation 109 - No action taken

*Multiple complaints against an outfitter

**Totals are not equal because of multiple charges.

Source: Compiled by the Office of the Legislative Auditor from Department of Fish, Wildlife, and Parks' records.

Illustration 5