

## MINUTES

### MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON FISH & GAME

Call to Order: By Bob Williams, on February 7, 1991, at 3:00 P.M.

#### ROLL CALL

##### Members Present:

Bob Williams, Chairman (D)  
Don Bianchi, Vice Chairman (D)  
John Jr. Anderson (R)  
Eve Franklin (D)  
Lorents Grosfield (R)  
Greg Jergeson (D)  
Dick Pinsoneault (D)  
David Rye (R)  
Paul Svrcek (D)  
Bernie Swift (R)

Members Excused: None

Staff Present: Andrea Merrill (Legislative Council).

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

##### Announcements/Discussion:

Since there were no announcements to be made, Chairman Williams called for the hearing of HB 33 and SB 186.

#### HEARING ON HB 33

##### Presentation and Opening Statement by Sponsor:

Representative O'Keefe, House Dist. No. 45, is presenting this bill because of the ever increasing incidence of unscrupulous sportsmen that post public land as private in order to gain an unfair hunting advantage. As the statutes are now written, it is not clearly against the law for a person to post public land as private.

##### Proponents' Testimony:

Robert Van DerVere, concerned citizen lobbyist, supported this bill in the House and will support the bill here.

Pat Graham, Deputy Director, Dept. of Fish, Wildlife and Parks.  
See Exhibit No. 1.

Stan Bradshaw, representing Montana Trout Unlimited, commented that this type of problem has plagued members for years. Since this will also affect fishermen, the membership supports HB 33.

Scott Snelson, representing Montana Wildlife Federation. See Exhibit 3.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Grosfield questioned Representative O'Keefe why the title of the bill did not include the word "UNAUTHORIZED PERSON" for clarification. Rep. O'Keefe stated he did not know but that was the way the bill drafters have written the bill.

Senator Grosfield questioned Ms. Merrill if that addition should not be made in the title. She stated she didn't think so as the title did have the words "WITHOUT AUTHORIZATION."

Senator Grosfield questioned the use of public lands and it was his understanding that we have State and public lands and shouldn't the bill state "State or public lands." John North, representing Dept. of State Lands, stated that the term "public land" is a very vague term; however, the text of the bill will state that public land is "land that is under ownership or control of the State or Federal Government." They consider this to be the operative language, therefore, did not ask for an amendment.

Senator Grosfield questioned if this bill is meant to apply to public roads with reference to SB 97 that this Committee had passed on 1/29/91. Representative O'Keefe stated that he did believe that this would apply to roads.

Chairman Williams questioned Ms. Merrill if she saw any problem and she stated she would like to look into it.

Senator Anderson questioned John North if the leaser of public lands is responsible for any damage done to that land. John North stated that that issue is separate from this bill. This bill makes it a crime to post land without authorization. The current policy of the Dept. of State Lands and Board of Land Commissioners is that "grazing lessees have the authority to post the land" therefore, they would not be subject to this statute.

**Closing by Sponsor:**

Representative O'Keefe gave an example of where there is federal land totally enclosed by private land within an agricultural operation, you have permission to post this. If you have federal land in your agricultural operation that has public frontage on it, for example a county road or a main highway, then you are prohibited from posting this land. There are similar incidents where landowners are posting public land as private without authorization.

The fiscal note is based on receiving 2,016 calls during a hunting season and this figure is more likely per week. The public policy statement we want to make is "we don't want people posting land if they don't have permission."

Representative O'Keefe recommended that the Committee pass this legislation and suggested that Senator Lynch carry it on the Senate Floor.

He has received several phone calls from landowners stating that this is as big a problem for the landowners as it is for recreationalists. Unauthorized sportsmen are posting private land as "no trespassing" without the landowners prior knowledge.

Executive action is postponed until Ms. Merrill can do further research on any conflicts with SB 97.

**HEARING ON SB 186****Presentation and Opening Statement by Sponsor:**

Senator Yellowtail, representing Dist. No. 50, is sponsoring this legislation at the request of the Fishing Outfitters Association of Montana (FOAM). This bill is designed to control unlicensed fishing outfitters on our more popular rivers. It allows outfitters to operate within a certain region of the State.

I recommend that this bill be tabled because of the apparent lack of support from FOAM.

**Proponents' Testimony:**

None

**Opponents' Testimony:**

Jack Hutchison, Executive Director of Fishing Outfitters of Montana, passed out a survey that was done as a result of similar action during the last session. See Exhibit No. 3. He proposed before the House at the last session to do a study of fishing in

Montana. They agreed to do everything and then refused to fund it. We then obtained the funds from the fishing outfitters and MOGA (Montana Outfitters and Guides Assoc.). What was discovered is that overall there is a 90% acceptance of the status quo on the rivers of Montana. The survey proved that we need to study the waters of Montana and adopt an overall long-range plan on how to handle various situations. A national article on the Big Horn River pointed out that there was approximately 40% illegal outfitting. It doesn't make sense to stand before you to regulate legal outfitting while a vast amount of the business is illegal. There needs to be a way to regulate and police this business. We believe there should be a study committee formed by this legislative session that allows us to do the study so that next year we can come before you, give you the results and make an educated decision on this type of bill. He agrees that the bill should be tabled.

Bob Jacklin of West Yellowstone has been in the elk outfitting business for 18 years in Montana. A few years ago it was decided to limit the fishing on the Madison River and it was learned that you had to "grandfather" everyone in that had fished this river. The present laws allow unlicensed outfitters to operate out of the back of their pickups. Please take a look at any bill that limits a person's freedom of movement. Legislation of this type will be needed in the future, however, SB 186 does not meet the requirements to regulate this industry.

Larry Michnevich of Gallatin County is aware of the problem and has an interest as a citizen and fisherman. Out-of-state people fly in to fish, eat in our restaurants, rent cars, and stay in motel rooms. Fishing brings a lot of money into the State. Any legislation that would interrupt this trail of green coming into the State is bad.

#### Questions From Committee Members:

Senator Pineseault presented a question of why out-of-state outfitters are allowed to come into the State. Jack Hutchinson responded that there is no law to limit anyone from coming into the State. There is no way in which to restrain this trade in any way.

Senator Pineseault questioned if other states allowed Montana outfitters to bring groups to hunt in their states. Bob Jacklin responded by saying that he had to buy an existing outfitters license for \$9,000 in order to bring people into the State of Idaho to hunt.

Senator Grosfield questioned if most of the out-of-state outfitters were licensed. Jack Hutchinson responded that there is no way of knowing the number of unlicensed outfitters as they only know of the licensed. The estimate on the Big Horn River is that the vast majority are unlicensed out-of-state outfitters.

It is a requirement of the State to be licensed but there is no way to monitor this.

Senator Grosfield questioned who should be enforcing the statutes. Hutchinson responded that when the Board of Outfitters was transferred from FWP to the Department of Commerce, the director of FWP at that time instructed his wardens not to enforce the outfitter law. There is no one at this time who is questioning whether an outfitter is licensed or unlicensed.

Senator Pinsoneault questioned the license fee for an out-of-state outfitter. Hutchinson stated that an out-of-state outfitter pays \$200, while an in-state outfitter pays \$100.

Chairman Williams questioned Mr. Jacklin what his \$9,000 bought in Idaho. He responded that there are areas in the State of Idaho and he is allowed to guide only in the Henry's Fork area. There are five licensed guides for this area.

Senator Pinsoneault asked how much income the out-of-state outfitters realize on a license that only costs \$200. Hutchinson stated that it was impossible to determine what the out-of-state outfitter was charging but estimates are between \$12,000-20,000.

Chairman Williams questioned Hutchinson as to the reason the outfitters requested this legislation. Hutchinson stated that after the last session there was a feeling by the members of the Board of Directors of FOAM that unless there was legislation passed that wasn't devastating to the industry, we would be hit by something worse.

Hutchinson further explained that other states, including Idaho, have regionalized their waters but do it by drainage. An outfitter buys into a drainage and there are so many outfitters allowed on a river and in order to get a license, you must buy someone out.

Senator Bianchi questioned Bob Jacklin if the legislature passed a quota system or put in a 100-mile radius, would that add value to his license? Bob stated "Yes" and once a ceiling was put on the number of outfitters allowed, the licenses become valuable and can be sold providing the buyer is qualified.

Senator Bianchi questioned Jack Hutchinson about the fact that the hunting outfitters actually supported the move from FWP into the Department of Commerce. Hutchinson replied that at that time FOAM was not as well organized as they are now. There was little or no testimony by FOAM members on that transfer. There are strong feelings both ways on where the fishing outfitters should be housed.

Senator Franklin presented the question as to the number of licenses issued by the State. Bob Jacklin responded by saying that in Montana, there is no limitation. However, there are

certain requirements in order to qualify. In the case of hunting, for example, you have to show you have a place to hunt but in the case of fishing that isn't true because of the amount of public waters available.

Closing by Sponsor:

Senator Yellowtail commented that the bill presented here was not on target, but it has shown that one facet of the fishing and hunting outfitters industry needs regulating. The bigger issue is that we have a finite resource in Montana fishing and, in the long run, the objective must be to maintain a quality experience or else we end up like everywhere else in the world--there is nothing special about us.

This bill does not solve the problem that exists and I recommend that SB 186 be tabled by the committee.

EXECUTIVE ACTION ON SB 186

Motion:

Senator Bianchi made the motion to table SB 186.

Discussion:

Chairman Williams stated that Ms. Merrill is aware of a study resolution that was put in before the session to study public access issues as they relate to hunting and fishing. The sponsor is Representative Harper but it is not drafted yet. Study resolutions are voted on after the session for the legislature to prioritize what they want to study.

Amendments, Discussion, and Votes:

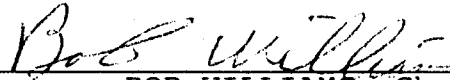
None presented

Recommendation and Vote:

Unanimous vote to table SB 186.

ADJOURNMENT

Adjournment At: 4:16 P.M.



BOB WILLIAMS, Chairman



JULIA LEVENS, Secretary

BW/jl

HB 33  
February 7, 1991

Testimony presented by Pat Graham, Dept. of Fish, Wildlife & Parks  
to Senate Fish and Game Committee

The department supports efforts to deter illegal posting of public land, just as we support enforcement of illegal trespass on private lands. Both the BLM and U.S. Forest Service have regulations prohibiting illegal posting of their lands; this bill would also make it a violation of state law to illegally post federal land. The bill prohibits unauthorized posting of state lands, as well.

Each year our department receives complaints from Montanans who suspect illegal posting. Those complaints are forwarded to the appropriate land management agency or local authority. It is, however, often difficult to identify a responsible party, particularly when orange paint is used.

This bill assigns enforcement responsibility to local governments. Our department will continue to cooperate with local enforcement authorities, should this bill become law.



Feb. 7, 1991

Testimony of Scott Snelson representing the Montana Wildlife Federation regarding HB33.

Mr. Chairman, members of the committee, my name is Scott Snelson and I am speaking this afternoon on behalf of the Montana Wildlife Federation.

The Montana Wildlife Federation stands in support of House Bill 33. As most of you around this table are aware, access to public lands in Montana is one of the most critical issues facing Montana sportspeople.

The practice of private individuals posting public lands as private is becoming more and more prevalent as more landowners begin to restrict public access to their own property because of outfitter leases.

One does not have to be a genius to figure what effect these postings have on the average sportsperson wanting to exercise his right to utilize public lands. Likely, none in this room are as poor and outdoorsman as myself where the greatest achievement of many hunting expeditions is finding my way back to my rig before my wife sends out the search and rescue team. but

Being able to determine legitimate boundary lines of private property from those of the greedy citizen setting up his own private hunting preserve on public lands is difficult for even the most seasoned outdoorsperson.

I congratulate Representative O'Keefe on this attempt to keep the greedy few from destroying the public's right to access it's land.

We thank you for this opportunity to speak to this issue and urge you to vote for the passage of HB33.

SENATE FISH AND GAME

EXHIBIT NO. 3

DATE 2/7/91

BILL NO. SB186

# Fishing Montana: A Study of Anglers, Outfitters and Guides

For the  
Montana Board of Outfitters

January 14, 1991

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