

MINUTES

FISH AND GAME COMMITTEE

MONTANA STATE SENATE

February 16, 1977

The fifteenth meeting of the Fish and Game Committee was called to order by Chairman Frank Dunkle at 8:00 A.M., in Room 405 of the State Capitol Building.

ROLL CALL: All members were present, with the exception of Senator Lensink, who was excused, and Senator Warden, who had to attend another meeting and would join the committee as soon as possible.

DISPOSITION OF SB 342, an act to provide for a nonresident coyote-fox trapper's license.

Senator Lowe made a motion that SB 342 DO NOT PASS. The motion was seconded by Senator Galt and carried unanimously.

DISPOSITION OF SB 151, an act to revise fish and game statutes relating to hunting and fishing licenses by clarification of existing statutes, simplification of the license structure, inclusion and modification of certain definitions, and establishment of administrative fees, without modifying existing licenses or fees.

Senator Smith made a motion that SB 151 DO NOT PASS. The motion was seconded by Senator Bergren and carried unanimously.

Senator Dunkle announced that Senators Lensink and Warden had left instructions with him to cast their votes DO NOT PASS. This was on both SB 342 and SB 151.

CONSIDERATION OF SB 173, an act to require that at least one-half of the annual expenditures for fish and game acquisitions be used to purchase the development rights of productive agricultural lands acquired for game management areas.

Senator Jergeson, Chief Sponsor of the bill, went through the proposed amendments. (Attachment #1).

Senator Smith made a motion to adopt the proposed amendments. Senator Lowe seconded the motion and it carried unanimously.

DISPOSITION OF SB 173: Senator Lowe made a motion that SB 173, DO PASS, AS AMENDED. The motion was seconded by Senator Smith, and passed unanimously.

CONSIDERATION OF SB 177, an act for the general revision of laws relating to snowmobiles, adding authorization for nonresident temporary-use permits.

Senator Dunkle presented a proposed amendment to the bill. (See attached Standing Committee Report).

Senator Smith made a motion to adopt the amendment. Senator Galt seconded the motion, and it passed unanimously.

DISPOSITION OF SB 177: Senator Smith made a motion that SB 177 DO PASS, AS AMENDED. Senator Lowe seconded the motion, and it passed unanimously.

CONSIDERATION OF SB 203, an act to generally revise the penalties for fish and game violations and create a point system for license revocation.

Chairman Dunkle mentioned that Mr. William F. Thomas and his Great Falls High School Ecology Class put this bill together. He made a motion that the committee send them a letter of commendation, along with a copy of the bill, and its amendments. The motion was seconded by Senator Lensink, and carried unanimously.

CONSIDERATION OF SB 242, an act to establish guide requirements for nonresident big or trophy game hunters in the State of Montana.

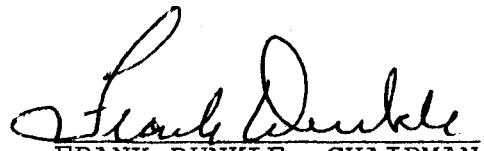
Mr. Ralph Holman, Legislative Chairman of the Montana Outfitters and Guides Association, testified. He said the bill, if passed, would only authorize the Fish and Game Commission to establish regulations which are just and which would require guide accompaniment under certain conditions and in certain hunting districts. He also felt the law is constitutional and not subject to challenge. (Attachment #2).

Senator Lowe made a motion to adopt the amendments and Senator Bergren seconded it. It pass unanimously.

DISPOSITION OF SB 242: Senator Bergren made a motion that SB 242 DO PASS, AS AMENDED. Senator Lowe seconded the motion, and it passed unanimously.

ANNOUNCEMENTS: Chairman Dunkle announced that all of the Senate bills are taken care of except SB 203, which will be considered at the committee's next meeting, when Debbie Schmidt has prepared the proposed amendments.

ADJOURNMENT: The meeting was adjourned by Chairman Dunkle at 9:20 A.M.



FRANK DUNKLE, CHAIRMAN

STANDING COMMITTEE REPORT

February 16, 1977

MR. **PRESIDENT**

We, your committee on **FISH AND GAME**

having had under consideration **SENATE** Bill No. **173**.

Respectfully report as follows: That **SENATE** Bill No. **173**,

1. Amend title, line 5.

Following: **"LEAST"**

Strike: **"ONE-HALF"**

Insert: **"10"**

Following: **"THE"**

Insert: **"ANTICIPATED"**

Following: **"FOR"**

Strike: **"FISH AND"**

Following: **"GAME"**

Insert: **"RANGE"**

2. Amend title, line 7.

Following: **line 6**

Strike: **"PRODUCTIVE AGRICULTURAL"**

XXXXXX
DO PASS

3. Amend page 3, section 2, lines 12 and 13.

Following: "of"

Strike: "productive agricultural"

4. Amend page 3, section 2, line 13.

Following: "land"

Strike: "as defined in 84-437.2"

Insert: "for game ranges"

5. Amend page 3, section 2, lines 14 and 15.

Following: "rights"

Strike: "only so that the land may remain in agricultural use"

6. Amend page 3, section 2, line 15.

Following: "least"

Strike: "one-half"

Insert: "10"

7. Amend page 3, section 2, line 16.

Following: "funds"

Insert: "for game range acquisitions"

8. Amend page 3, section 2, lines 21 through 25.

Following: line 20

Strike: subsection (c) in its entirety

Insert: "(c) Development rights are separable from one another."

9. Amend page 4, section 2, line 1.

Following: "the"

Insert: "land on which development rights have been"

Following: "acquired"

Strike: "agricultural land"

10. Amend page 4, section 2, line 2.

Following: "for"

Strike: "agricultural"

Insert: "current"

11. Amend page 4, section 2, lines 3 and 4.

Following: "addition,"

Strike: "conflicts between agricultural and nonagricultural uses shall be minimized"

Insert: "recreational access will be permitted, except at those seasons when agricultural uses would be harmed"

AND AS SO AMENDED, DO PASS

SENATOR FRANK DUNKLE, CHAIRMAN

STANDING COMMITTEE REPORT

February 16

77

19

MR. **PRESIDENT**

We, your committee on

FISH AND GAME

having had under consideration

SENATE

342

Bill No.

Respectfully report as follows: That

SENATE

342

Bill No.

~~DO NOT PASS~~

DO NOT PASS

DO NOT PASS

DO PASS

STANDING COMMITTEE REPORT

February 16, 1977

MR. PRESIDENT

We, your committee on FISH AND GAME

having had under consideration SENATE Bill No. 151

Respectfully report as follows: That SENATE Bill No. 151

DO NOT PASS

~~DO NOT PASS~~

STANDING COMMITTEE REPORT

FEBRUARY 16

19

77

MR. PRESIDENT

FISH AND GAME

We, your committee on

having had under consideration

SENATE

177

Bill No.

Respectfully report as follows: That..... SENATE Bill No. 177,

Second Reading Bill, Be amended as follows:

1. Amend page 4, section 2.

Following: Line 20.

Insert: "The certificate of ownership is not required to be renewed annually, and is valid as long as the person holding it owns the snowmobile."

AND AS SO AMENDED, DO PASS

DO PASS

STANDING COMMITTEE REPORT

February 16.....19.....77

MR. PRESIDENT.....

We, your committee on.....**FISH AND GAME**.....

having had under consideration**SENATE**..... Bill No.....**242**....

Respectfully report as follows: That.....**SENATE**..... Bill No.....**242**..

1. Amend title, line 4.

Following: "TO"

Insert: "AUTHORIZE THE FISH AND GAME COMMISSION TO"

2. Amend title, line 6.

Following: "MONTANA"

Insert: ", AND REPEALING SECTION 26-909, R.C.M. 1947"

3. Amend page 1, section 2, line 19.

Following: "required"

Insert: "for a nonresident"

4. Amend page 1, section 2, line 20.

Following: "unlawful,"

Strike: "subject to conditions and exceptions"

Insert: "in those areas"

5. Amend page 1, section 2, line 21.

Following: "commission,"

Insert: "for a nonresident"

DO PASS

Senate Bill 242, continued
Page 2

6. Amend page 1, section 2, lines 22 through 23 and 24.

Following: "animals"

Strike: "on any land within any national forest wilderness area, national game refuge, or state game range"

7. Amend page 2, section 2, line 2.

Following: "or"

Insert: "the conservation license of the"

8. Amend page 2, section 4, line 14.

Following: "outfitter"

Insert: ", professional guide,"

9. Amend page 2, section 4, following line 17.

Insert: "Section 5. Repealer. Section 26-909, R.C.M. 1947 is repealed."

AND AS SO AMENDED, DO PASS

SENATOR FRANK DUNKLE, CHAIRMAN

ROLL CALL

FISH AND GAME COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 12/1/67

PROPOSED AMENDMENTS TO SENATE BILL NO. 173

1. Amend page 1, title, line 5.

Following: "least"

Strike: "one-half"

Insert: "10%"

Following: "the"

Insert: "anticipated"

Following: "for"

Strike: "fish and"

Following: "game"

Insert: "range"

2. Amend page 1, title, line 7.

Following: line 6.

Strike: "productive agricultural"

3. Amend page 3, section 2, line 12.

Following: "of"

Strike: "productive agricultural"

4. Amend page 3, section 2, line 13.

Following: "land"

Strike: "as defined in 84-437.2"

Insert: "for game ranges"

5. Amend page 3, section 2, line 16.

Following: "funds"

Insert: "for game range acquisitions"

6. Amend page 3, section 2, line 14.

Following: "rights"

Strike: "only so that the land may remain in agricultural use"

7. Amend page 3, section 2, line 15.

Following: "least"

Strike: "one-half"

Insert: "10%"

8. Amend page 3, section 2, line 21.

Following: line 20

Strike: subsection (c), lines 21 through 25, in their entirety.

Insert: "(C) Development rights are separable from one another."

9. Amend page 4, section 2, line 1.

Following: "acquired"

Strike: "agricultural"

10. Amend page 4, section 2, line 2.

Following: "for"

Strike: "agricultural"

Insert: "current"

11. Amend page 4, section 2, line 3.

Following: "addition,"

Strike: "conflicts between agricultural and nonagricultural uses
shall be minimized"

Insert: "recreational access will be permitted, except at those seasons

RE: S.B. 242

Attachment #1

During the 1975 Legislative session, S. B. 236 was passed which increased the Non-Resident license fee to \$225.00 for a combination license. This law was challenged as unconstitutional by a small group from Harrison, Montana, including four Non-Residents who claimed discrimination, that they were denied equal protection, and that their rights were fundamental among other things. The Montana Outfitters and Guides Association joined the lawsuit in defense of the States right to set license fees and manage and control Montana's Game resource.

The suit was heard by a panel of three Federal Judges, the decision of the majority states as follows: (1) "The rights the plaintiff listed are not fundamental, "but" recreational in character, (2) "There is simply no connection between the right to hunt for sport and the right to speak, vote, travel or pursue a calling" (3) "Not everyone may hunt elk, there are too many people and too few elk." (4) "Preservation of elk depends on conservation, and the State has the right to protect and preserve elk." (5) "A regulatory scheme based upon a pure lottery in which a limited number of hunters were chosen would be discrimination-free, but a Legislature might rationally conclude that a pure lottery, open to all potential elk hunters in the U. S. might destroy the political motivation to Montana citizens to underwrite the elk management program, in the absence of which the species would disappear."

The Federal Judges found that the system did bear rational relationship to legitimate State purposes, that Montana does have the right to preserve and control and may propose rules and regulations to do this. This is contrary to the State Courts decision.

At the time the old (broad coverage) accompaniment law was found unconstitutional, the State Court did not find a reasonable relationship, and did not find a compelling Government interest. It would seem apparent that this decision was influenced by the fact that the old accompaniment law referred too strongly to Federal Public lands, and limiting public use of these lands, with little reference to Game management purposes. In view of the Federal decision, it is entirely possible that had we appealed the State decision to Federal Court it may have been reversed. It is also very possible that had we anticipated the State Courts attitude, and moved the case to Federal Court, the outcome may have been in our favor.

Based on the Federal decision, it is now considered that the State does have the right to establish regulations to control and regulate Game animals.

The Federal decision however has been appealed and although the general feeling is that the original decision will hold, there is no way to be sure. There is also the possibility that another Federal Court on another day could reach an opposite decision.

S.B. 242, if passed, will only authorize the Fish and Game Commission to establish regulations, which are just and well justified, that would require guide accompaniment, under certain conditions and in certain hunting districts; The law, in my opinion, is constitutional and not subject to challenge.

It is reasonable to assume that any regulation that would require a guide in a specific district would be well justified. Therefore although the regulation could possibly be challenged it is extremely doubtful that a challenge would be successful.

Montana Outfitters and Guides Association
By Ralph Holman
Ralph Holman

Attachment #2

PROPOSED AMENDMENTS TO SB 242

1. Amend page 1, title, line 4.

Following: "TO"

Insert: "AUTHORIZE THE FISH AND GAME COMMISSION TO"

2. Amend page 1, title, line 6.

Following: "MONTANA"

Insert: ";" AND REPEALING SECTION 26-909, R.C.M. 1947"

3. Amend page 1, section 2, line 20.

Following: "unlawful,"

Strike: "subject to conditions and exceptions"

Insert: "in those areas"

4. Amend page 1, section 2, line 21.

Following: "commission,"

Insert: "for a non-resident"

5. Amend page 1, section 2, line 22.

Following: "animals"

Strike: "on any land within any national forest wilderness area,
national game refuge, or state game range"

6. Amend page 2, section 2, line 2

Following: "or"

Insert: "the conservation license of the"

7. Amend page 2, section 4, line 14.

Following: "outfitter"

Insert: ", professional guides,"

8. Amend page 2, following line 17.

Insert: "Section 5. Repealer, Section 26-909, R.C.M. 1947 is
repealed."