

## HOUSE FISH AND GAME COMMITTEE

MARCH 8, 1983

The meeting was called to order by Chairman Les Nilson in room 420 of the Capitol Building at 12:30 p.m., with all members present.

Chairman Nilson opened the meeting to a hearing on Senate Bills: 126 and 336.

### SENATE BILL 126

SENATOR ED SMITH, District 1, Dagmar, opened by stating one of the things our interim committee in the last biennium took a look at is this problem. This is a bill allowing a person who owns or leases private property for the primary pursuit of bona fide agricultural interests to provide outfitting services for consideration on that property without a license. In my own farming and ranching operation, I have not refused or charged a person for hunting on my land. This is your private property, and you should have the right to take them out on your own property. I don't think I should be forced to be in violation of this state law. There is a group of ranchers in my area that provide 100,000 acres of open hunting area, hundreds of deer are killed every year. If the Fish and Game Department would post this land, we would leave it as a free hunting area. We are providing the game, the land, and we are also policing the area. I don't think it is asking too much to not be in violation of a state law, as long as we are not charging for the services and the game is being harvested.

### PROPONENTS

ROBERT VAN DER VERE, Helena, said I leave the rancher a case of oil each year. That is only in appreciation for letting me hunt on his land.

JOHN R. COOK, Plentywood, said Senate Bill 126 has been long over due. I feel the hunter should reimburse the rancher something for taking the game, and for the damage that game has caused. The deer not only cause damage to hay in the winter, they are in the first shoots of oats, wheat, barley, and alfalfa in the spring. Out of every ten deer that feed on a pasture, there could be room for two cows. The Fish and Game Department gets the biggest piece of the pie from the hunters. I want to be able to say what I want done on my property, and I don't want anybody else to interfere.

DEAN HARMON, Bainville, submitted written copies of his testimony to committee members. (see exhibit 1)

HOUSE FISH AND GAME COMMITTEE MINUTES  
March 8, 1983, page 2

REPRESENTATIVE GLENN SAUNDERS, District 72, Columbus, rose in support of Senate Bill 126.

REPRESENTATIVE BERNIE SWIFT, District 91, Hamilton, stated his support for Senate Bill 126.

OPPONENTS

JIM FLYNN, Department of Fish, Wildlife, and Parks, submitted written copies of his testimony to committee members. (see exhibit 2)

KEN NERPEL, Helena, submitted a prepared statement. (see exhibit 3)

RALPH HOLMAN, McLeod, distributed copies of his testimony to committee members. (see exhibit 4)

Senator Smith closed by stating in regard to Director Flynn's testimony against the bill, many of the private land owners do not consider themselves a guide or an outfitter. In the Senate, Mr. Flynn admitted that when you take something for consideration, you are in violation of state law. If this is a violation, I think they should go ahead and prosecute. We are asking to have the law changed so that we can help the people that want to come out and hunt. It was testified to that the price charged for trespass fees is completely out of line. To hunters, the price charged by guides and outfitters is completely out of line. The conduct of some of the guides and outfitters is considerably worse than the people who allow hunting on their property. We are not charging for this service, we are asking to let the people harvest this game. We are feeding these animals the year around. We have hundreds of thousands of acres of private land that is open for public use. The Fish and Game Department could lose hundreds of thousands of dollars because these lands are closed. I would like a chance to take a look at the amendments before the committee takes action. I would hope they do not tell the private land owner who they can and cannot let on their land.

Questions from committee. Rep. Devlin asked Mr. Flynn what kind of a test is required for an outfitter. The response was I am not familiar with the test in detail. I know that it is a very comprehensive and detailed test, which deals with fish and game laws in the State of Montana, and questions pertaining to the fish and wildlife resources in Montana. There are also first aid and hunter safety items.

The question was directed to Mr. Holman, the response was the test is broken down into three segments. If you want a license for floating or fishing, you are given one segment of the test.

HOUSE FISH AND GAME COMMITTEE MINUTES  
March 8, 1983, page 3

For a general outfitters license, you have to take the whole test. The intent is that the outfitter is responsible to maintain knowledge of those laws, and have the ability to advise his clients accordingly.

Rep. Devlin said I recently learned that there were some people who took a test in the western part of the state, and they had some problems because some of the study material was not provided. Mr. Holman replied the council took this under consideration. We have not actually found out what the total contents of the test is. The portion of the test they said they did not receive, dealt with 8 questions out of a total of 420. The persons taking the test were still far from the 45% ratio needed to pass the test.

Rep. Devlin asked Mr. Holman if there is any difference between the tests given in the east, as compared to the west. The reply was it would depend on the category of the license. If it were for hunting, the test would be exactly the same. The council reviewed the test, and it was the unanimous consent of the council that the test is appropriate.

Rep. Daily asked Mr. Harmon what the trespass fee is that he charges for white tail deer. The response was the amount of the fee is equivalent to the amount of damage sustained by the deer in a 12 month period. It is in excess of \$200.

Rep. Daily asked Mr. Harmon how many people he allows to trespass on his property and pay this fee. The response was we never harvest more than 25 deer per year. The management system I am currently operating has been successful, and if I am allowed to continue to operate, it will continue to be successful.

Rep. Daily asked Mr. Harmon if the people he allows to trespass on his property, whom he charges this fee in excess of \$200., are Montana residents. The answer was all of our people have been non-residents buying the combination license from the Fish and Game Department.

Rep. Daily asked Mr. Harmon if he allows Montana residents to come and hunt on his property free of charge. The response was last year, the largest buck on my place was taken with no fee. It depends on the circumstances and the location of the hunt.

Rep. Daily addressed Senator Smith by saying I believe I know what you want to do in this bill. I believe that, judging from some of the testimony given, the bill goes way beyond that. Senator Smith responded there is a difference between charging a large fee and providing a guides and outfitters service, and trying to prevent a problem with accepting compensation for assistance to the hunter.

HOUSE FISH AND GAME COMMITTEE MINUTES  
March 8, 1983, page 4

Rep. Daily asked Senator Smith how he would feel about an amendment separating those two areas. The response was if this is a person's private property, I think we should take into consideration of the rights of those private property owners, and the management of game on that property.

Rep. Spaeth asked Senator Smith what the problem is with complying with the present federal law. The response was the nuisance of it is the main problem. The other problem is the fact that it is my property, and I feed the game. The outfitters and guides are getting a monopoly in this area, and they want to maintain it. If it wasn't for that, I don't think we would have a problem at all.

Rep. Ellison stated maybe we should treat these two areas separately.

Rep. Jensen asked Mr. Harmon if he now or every has advertised. The response was the first hunters came to my place by word of mouth.

Chairman Nilson closed the hearing on Senate Bill 126, at 1:35 p.m.

SENATE BILL 336

SENATOR M.K. DANIELS, District 14, Deer Lodge, opened by stating this bill relates to aerial hunting. Senator Daniels proposed an amendment on page 3, line 24, to strike the words "is guilty of a misdemeanor", and inserting the language, "will have such permit revoked". This is to make sure the permit is revoked, and to eliminate the language referring to it as a misdemeanor. The bill follows the Federal Aerial Hunting Act, and is felt necessary because of the fact that the feds only have two people in the state to enforce this law, whereas the Department of Livestock has indicated their willingness and interest in enforcing the law. The language stricken, was amended in the Senate by reason that the Department of Livestock indicated they already took those things into consideration in making their decisions. Basically, the bill requires some penalty increases in order to conform with the federal law.

PROPOSERS

JANET MOORE, Montana Trappers Association, said we are pleased with the way Senate Bill 336 has come through as amended. We have tried to get this law patterned more and more after the federal law. Ms. Moore distributed copies of the federal law for the information of the committee. (see exhibit 5) If we don't have our state law as strong as the federal law, it would weaken the federal law. Why are we so concerned about making it easy for the criminal? Two men have been killed in a heli-

HOUSE FISH AND GAME COMMITTEE MINUTES  
March 8, 1983, page 5

copter accident. They were illegal aerial hunters. Six cases have been prosecuted in the last five years.

ROBERT HOWARD, Montana Trappers Association, said some of these aerial hunters are bringing in between \$100,000., and \$500,000. a year. We feel the penalty for this crime should fit the crime. It is a very difficult law to enforce, let alone get convictions on.

WILL BROOKE, Montana Woolgrowers, said we don't support illegal aerial hunting, but we do see aerial hunting by permit as a way of controlling game. I oppose the amendment because I feel it is already addressed on page 4, line 12.

LES GRAHAM, Montana Department of Livestock, said lines 3 to 9, page 4, show the suggested penalties that the department submitted in the Senate. This is one of the most difficult laws to enforce. You are not going to get them by working on the ground, and it is too costly to patrol the air. I am not sure if the law would allow a mandatory revocation of a permit or license, under the administrative codes. If the permit is to be revoked, something is going to have to be inserted in terms of length of time. Just because somebody is caught and suspended, doesn't necessarily mean it should be a lifetime suspension.

There were no opponents to Senate Bill 336.

Senator Smith closed by saying if the government confiscates a plane, they are responsible for that plane. If something happens to the plane, they would be liable. This is one reason the bill was changed.

Questions from committee. Chairman Nilson said if we change the word may to shall, on page 4, line 12, we could eliminate paragraph 3 in its entirety. Senator Smith replied that would be an appropriate amendment.

Rep. Swift asked Senator Daniels if he would be averse to raising the amount of the fine. The answer was as long as it is not less than \$500., I would agree to whatever the committee feels is appropriate.

Chairman Nilson said is there any set amount where it changes from a misdemeanor to a felony? Dave Cogley, legal council, replied generally the cut off is \$500.

Rep. Mueller said what will happen is that if it reaches the cut off, and comes under the jurisdiction of the district courts, it becomes more difficult because counties do not want to call district courts in to try these violations.

HOUSE FISH AND GAME COMMITTEE MINUTES  
March 8, 1983, page 6

Rep. Ryan asked Ms. Moore if this bill will interfere in any way with the federal law. The response was it will weaken the federal law if we keep the present state law.

Rep. Jensen asked Mr. Howard if he would have any objection to confiscation as a minimum penalty. Mr. Howard said that he would rather see the penalty up high enough so it would be a deterrent to these people.

Chairman Nilson closed the hearing at 2:05 p.m.

Chairman Nilson adjourned the meeting at 2:05 P.m.



---

LES NILSON, Chairman



---

Cheryl Fredrickson, secretary

## VISITOR'S REGISTER

HOUSE Fish and Game COMMITTEE

BILL SB #~~10~~ 126

DATE 3/8

SPONSOR Smith

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE *Fish and Game* COMMITTEE

DATE 3/8

SPONSOR *Danels*

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

My name is Dean Harmon. I am here to testify in support of Senate Bill 126. I farm and ranch south of Bainville, Montana, along the Missouri River.

As a third generation caretaker of a small portion of this state, I take a certain amount of pride in protecting our environment and preserving our natural resources for future generations. Although sacrifices of some principles are necessary for financial survival in agriculture, most of us are in farming or ranching because we like this way of life. It certainly is not to make a fortune. Important aspects of that way of life include: Independence, individualism, and the freedom to conduct your operation as you see fit. These ingredients are necessary for the farmers and ranchers to survive.

One of the adjustments that has been made in my operation is the changing of a trespass fee for hunting white tail deer. The Montana Department of Fish, Wildlife, and Parks, tells me that I am breaking the law. I do not wish to break the law, so I am asking you to change the law so I may exercise the freedom necessary for survival.

On January 20 of this year, I had occasion to meet and talk to a few outfitters and members of the outfitters council. These people appear to have high ethical standards in their profession, and wish to continue and improve upon those standards. I commend them for their efforts.

In most instances, licensed outfitters in this state have their own areas to hunt, on public lands. These lands are predominantly mountainous and rugged. Hunting would require a certain expertise from the outfitter.

There is little correlation between this type of hunting and taking white tail on a river bottom on a rancher's own land.

I am a humble but proud Montanan, here to ask for a deserved freedom of operation on private land. You know I do not stand alone.

I urge a DO PASS on Senate Bill 126.

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 extra ordinary 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.

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.

## SB 126

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

March 8, 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.

March 8, 1983

House Fish & Game Committee  
House of Representatives  
State Capitol  
Helena, MT 59620

RE: SB 126

Chairman: Representative Les Nilson

Mr. Chairman and Members:

My name is Ralph Holman, McLeod, Montana. I am a landowner-outfitter and chairman of the Montana Outfitters Council.

The outfitting industry, a part of Montana's tourism industry is largely responsible for generating approximately thirty (30) million new dollars into the economy of Montana. Outfitters have worked hard to assure that the outfitting industry was upgraded to play a major role in Montana tourism. They have struggled for many years to professionalize the outfitting industry, through the Council, our Association, and the Department.

In 1971, the outfitters, working with the Department of Fish, Wildlife and Parks, and with the invaluable assistance of our many friends in the Legislature, introduced the legislative proposal for the present outfitter law. In 1981, realizing there was a necessity to improve this law, the "housekeeping bill" was introduced in the Senate and was supported by outfitters and the Department of Fish, Wildlife and Parks. It passed without question.

We as outfitters have strived to upgrade and professionalize our industry. We have come a long way from the level where anyone with a ten dollar bill could obtain an outfitter's license.

Glen Childers, council member, rancher-landowner-outfitter, and past president of the Montana Outfitters and Dude Ranchers, has been a landowner-outfitter in Garfield County for 27 years. Glen would be here today except for recent surgery and hospitalization. Glen's comment was "this would put the industry back 20 years. When in the hay day of nonresident deer and antelope hunting we had 27 outfitters in Garfield County. We had some that were unethical and hunted illegally. We have improved and have several good established landowner-outfitters, and some new younger landowners that have come into the business. Let's maintain standards and qualifications and provide a service to our guests."

There are unlicensed outfitters, also nonresident, who book their clients on the basis of hunting private ranches. The unlicensed outfitter has of course previously arranged with the landowner for a 'split the fee' setup. Montana gets very little benefit from these deals as the unlicensed outfitter doesn't dare to report the income, and he is utilizing the resources of Montana for free.

Representative Les Nilson

Page 2

March 8, 1983

The industry needs and welcomes the assistance and participation of the landowner. 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 nonresident, 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.

To regress and allow landowners to provide outfitter services without a license is difficult to comprehend. It will create chaos in the outfitting industry, insurmountable problems for the Department of Fish, Wildlife and Parks and land management agencies, and will provide no protection for the client. Outfitters and outfitter-ranchers have recommended a compromise. We are recommending a landowner outfitter's license for antelope, deer, and upland game bird hunting.

Wildlife on private land is under the control of the state, and the state has the authority to control the harvest of wildlife by hunting or other controls. The landowner is required to obtain a hunting license to hunt big game animals on his own or other property or to fish on his own or other property. 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. What would an unlicensed landowner or lessee, possibly leasing thousands of acres, have to lose? Nothing. What recourse would a client have other than the possible costly civil action? None. What assurance would there be of ethical conduct?

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.

We offer a negotiated compromise supported by the Montana Outfitter Council, Montana Outfitters and Guides Association, and the Department of Fish, Wildlife and Parks. Amending Senate Bill 126 to provide for a landowner outfitter license to owners of three hundred and twenty (320) acres of deeded land to provide outfitting services to hunt antelope, deer and upland game birds. The fee for a special landowner license shall be one-half ( $\frac{1}{2}$ ) the fee for an outfitter's license.

This special license would provide landowners the opportunity to provide outfitting services on their deeded lands. It would provide for hunting on some lands now closed and would assist in a regulated harvest of wildlife. It may curtail the leasing of private lands by nonresident hunting clubs, excluding all but their members.

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 in generating a strong and prudent economy.