

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

January 29, 1987

The fourth meeting of the Senate Fish and Game committee was called to order at 1:00 P.M. on January 29, 1987 by Chairman Ed Smith in Room 402 of the Capitol Building.

ROLL CALL: All members were present for roll call.

CONSIDERATION OF SENATE BILL 109: Senator Al Bishop, Senate District No. 46, sponsor of the bill, stated that the bill is to authorize the Fish and Game Commission to auction one male Shiras Moose license each year. The money generated by the auction shall be used to benefit moose in Montana. Ten percent of the proceeds would go to the entity that conducts the auction. The remaining ninety percent would go back to the state to benefit the moose in such ways as the purchase of habitat and research. Based on figures of auctions held in Wyoming and Utah, a moose license could be auctioned for approximately \$4,000. The expenses of the auction would be included in the 10% proceeds of the sale. The auction will be held by a wildlife conservation organization and would require no additional funding. The amount of money that would be brought to the state through this auction would depend on the organization, the promotion, and the size of the organization. Bishop stated that the first wild sheep license auction brought \$79,000, while the second auction held in Nashville, Tennessee, January, 1987, brought \$109,000.

PROPOSERS

Ron Marcoux, Fish, Wildlife and Parks, stated the department stands in favor of SB 109. Marcoux offered written testimony. (Exhibit 1)

OPPOSERS

There were no opposers to SB 109.

QUESTIONS FROM THE COMMITTEE

Senator Jergeson asked what the reason was why an auction had been chosen over a raffle. Marcoux explained that there are high administrative costs associated with a raffle.

Senator Severson asked if the ten percent amount included the promotion costs used by the entity conducting the auction. Yes, the promotional costs would come out of the 10 percent.

Senator Smith queried Marcoux concerning mountain sheep problems: liver flukes. Smith asked if an investigation had taken place to take care of the liver fluke problem. Marcoux reported that the liver fluke is a viral problem and treatment of the sheep is being conducted by the department through a special disease center. Blood testing procedures are being implemented.

DISPOSITION OF SENATE BILL 109:

Senator Severson moved that the committee recommend a DO PASS on SB 109. The motion passed unanimously.

Senator Yellowtail replaced Senator Smith as chairman of the committee at this time.

CONSIDERATION OF SENATE BILL 139: Senator Ed Smith, Senate District No. 10, sponsor of the bill, stated that snowmobilers and private property issues must be addressed with this legislation. Tourism is an important industry in Montana. The bill was introduced because of the liability suit against the Fish, Wildlife and Parks Department. After the bill was introduced, Smith stated he had been contacted by snowmobilers and private landowners who then stated unless the same protection is given to the private landowner as is given to the Fish, Wildlife and Parks Department, a lot of private property will be closed to snowmobiling. Snowmobilers come from all over Montana, the United States and Canada to take advantage of the snowmobiling offered in Montana. Many times the snowmobilers must cross private property in order to reach the public access areas groomed by the Fish, Wildlife and Parks Department. If recreational snowmobiling is to continue, both issues must be addressed with this bill.

PROPOSERS

Ken Hoovestol, chairman of the legislative committee for the Montana Snowmobile Association, stated that the bill is designed and drafted after the Skiers Responsibility Act of 1979. The bill basically exempts the people involved in maintaining trails from liability except for willful or wanton acts. Hoovestol stated that major changes have been made in grooming programs and in signing programs which have been exhilarated. Berms are no longer placed on the end of the trails. Hoovestol gave an overview of the amendments. (Exhibit 2)

Bob Nelson, Chairman of the Board of Directors of the Great Falls Snowmobilers Incorporated, stated that the organization has had difficulty obtaining liability insurance coverage. Their committee had been semisuccessful in obtaining the needed coverage

SENATE FISH AND GAME COMMITTEE

January 29, 1987

Page 3

which was to include any incidents on the groomed trail. After paying \$500, the organization realized that the policy covered only the groomer himself who was already insured by the state of Montana. The policy also included special events. The policy did not insure anything such as incidents or liability on the trail, and the organization was able to get the money back. The Great Falls Snowmobilers Incorporated made a concentrated effort to obtain liability insurance for the trails and have been unsuccessful. Twenty-four insurance inquiries were sent to underwriters, fourteen responses were received with negative information, and the remaining responses were thought to be negative also. Nelson stands in favor of Senate Bill 139.

Dick Johnson, Deputy Director of the Fish, Wildlife and Parks, presented written testimony in support. (Exhibit 3)

Dr. George Eusterman, district representative for the Montana Snowmobile Association, member and safety instructor for the Great Falls Snowmobilers Incorporated, and medical director of Mountain Patrol Search and Rescue stated that he would like to feel that he represents the largest special interest group in the state of Montana. Eusterman stated the biggest problem regarding income from Montana tourism is the liability problem. The exaggerated settlements, liability insurance fees and/or no liability policies available at all are the cause of the problems. People must be responsible for their own actions. Montana cannot afford to have more businesses fail because of liability problems and still expect new businesses to come into the state. Montana cannot allow volunteer clubs, groups, and associations to dissolve by the threats of unreasonable law suits.

Dennis Ogl, Montana Snowmobile Association, Helena's district director representing two clubs that maintain private trails stated that there are approximately thirty grooming projects that are administered by the Fish, Wildlife and Parks Department. There are over two thousand miles of snowmobile trails being maintained in Montana. The major concern of liability coverage has been emphasized by the ruling in Flathead County liability case. Landowners who have given previous permission to groom trails and establish certain private property areas for snowmobiling are concerned about liability. Operators should be held accountable for their own actions when operating the snowmobiles in the natural environment. (Exhibit 3-A)

Clyde Sealy, West Yellowstone, Montana Rental Operator, stated that he and a partner own and operate five motels, two restaurants a guest ranch, a Minimart and a gas station. They also operate over one hundred eighty snowmobile rentals. Sealy stated the winter economy of West Yellowstone is anchored to the snowmobile industry. Without insurance, Sealy stated, liability risk is

equivalent to \$4 million. Liability insurance could not be obtained in 1986. Currently, they are operating with insurance that covers only professional guided snowmobile tours. Ten thousand people will enjoy Yellowstone Park on snowmobiles this season. These people are offered individual operating instructions, maps, and safety hints. Sealy stated that he believes the snowmobiler needs to be made responsible for his own acts when one accepts the responsibility of driving a snowmobile.

Marvin Hammer, district representative for the Montana Snowmobile Association, Missoula, presented the committee written testimony in favor of SB 139. (Exhibit 4)

Dave Seyfert, Flathead Valley Sno Club, Montana Snowmobile Association, Kalispell, stated that they have had a major grooming area behind Big Mountain for many years. This area included three major trail heads. Since the lawsuit decision last fall, only one trail head is currently being groomed because some of the property is on Stoltz' land. Seyfert supports action on SB 139 so all the trails can be maintained.

Bob Didrikson, Lincoln, MT., representing the Ponderosa Snowmobile Club, stated that the club has not been able to obtain liability insurance except on the clubhouse. Didrikson stated that the club has approximately two hundred miles of trails that can be groomed for snowmobiling. Didrikson stands in favor of SB 139.

Bob Bushnell, Montana Snowmobile Association president, Helena, stated the Montana snowmobile clubs need this bill with the amendments.

Everett E. Wooderd, representing the Missoula Snogoers, presented written testimony in favor of SB 139. (Exhibit 5)

Doug Abelins, Cut Bank Sno Goers, Cut Bank, Montana, presented written testimony in favor of SB 139. (Exhibit 6)

Bill Howell, West Yellowstone, MT., businessman, stated that liability insurance coverage was obtained three years ago for \$500,000 per year at the rate of \$35 per machine. Two years ago the rates went to \$500 per machine, but only on machines that were rented for guided tours. Last year there was no insurance available whatsoever. The businesses were operated in the hope that there would be no liability suits against our businesses. Liability insurance was obtained this year at a much higher cost: \$200 per machine. Howell stated that he is in charge of the West Yellowstone grooming program, and cannot get liability insurance at this time. Howell stands in favor of SB 139.

OPPONENTS

There were no opponents to SB 139.

QUESTIONS FROM THE COMMITTEE:

Senator Severson asked Howell how SB 139 affects snowmobiles operating in Yellowstone Park. Howell replied that liability insurance is needed. During the period of time that the insurance could not be obtained, Senator Melcher and Representative Williams obtained exemptions from the U.S. Forest Service since permits were required to operate the snowmobiles in national forests and these permits required liability insurance. Mr. Howell stated that the bill will make people responsible for their actions. The businesses are located in West Yellowstone, and Howell thought that the Montana law would set precedent for the surrounding states.

Senator Yellowtail asked John Maynard about comparative negligence of tort claim situations in regard to coordination with Senate Bill 51. Maynard stated the Tort Claim Division of the Department of Administration stands in favor of the bill to limit liability. Maynard offered to compare SB 139 and SB 51.

Senator Smith said the bill came to the committee because it addressed a fish and game issue. Should the bill receive a DO PASS, Smith stated that bill may be transferred to another committee. Senator Al Bishop stated that the bill should be sent to the Judiciary committee so that the bills could be coordinated.

In closing, Senator Smith explained that President Norman was aware of the fact that, if private landowners were to be included in SB 130, the committee would direct the bill to the Senate Judiciary committee. Judging from the testimony, Senator Smith stated that the inability to obtain liability insurance has caused serious problems to Montana tourism. Unless something positive is done this session, vast amounts of private land will be closed to snowmobiling because of the high liability costs, and businesses and private individuals will lose what they have worked their lives to obtain. These issues must be addressed.

Senator Yellowtail returned the gavel to Senator Smith.

DISPOSITION OF SENATE BILL 139:

Senator Jergeson addressed the need for an amendment that would insert "landowners or their tenants." The amendment would also include punctuation corrections.

There was no objection from the committee concerning the amendment. Senator Jergeson moved that the committee recommend a DO PASS on the amendment to SB 139. The motion passed unanimously.

Senator Jergeson moved that the committee recommend a DO PASS AS AMENDED on SB 139. The motion passed unanimously.

DISPOSITION ON SENATE BILL 109:

Senator Jergeson moved the Statement of Intent be included with SB 109. The DO PASS motion passed unanimously.

CONSIDERATION OF SENATE BILL 107:

Senator William Farrell, Senate District No. 31, sponsor of the bill stated the bill's intent is to clarify the law and propose adoption of rules. Line thirteen of the amendment strikes the work "may" and inserts "shall." In adopting the rules on restriction of firearms, consideration of population density, type of terrain, nature and extent of the use of the area will be taken into consideration, as well as the interest of public health, safety, and the protection of private property. If the judgment call revealed a need, the people living in the area could establish their needs according to the developed criteria.

PROPOSERS

Alice Austin, 4741 Sundown Road, Missoula, MT., representing a citizen petition group, stated that the group seeks to close a section of the Bitterroot River bottom to hunting and discharge of firearms. The group includes residents of the area and people who use the area for recreation. The effort is supported by the University of Montana, the Missoula High School district, the Missoula Country Club, and the Larchmont Municipal Golf Course. Ms. Austin presented written testimony. (Exhibit 7)

David Lackman, Montana Public Health Association, Helena, testified in support of SB 107 as amended. Public safety is of great concern and the association has been concerned at the failure of the Fish, Wildlife and Parks Dept. to act in a decisive manner.

Dick Johnson, Deputy Director of the Fish, Wildlife and Parks Department, gave written testimony in support of SB 107. (Exhibit 8)

OPPOSERS

There were no opponents to SB 107.

QUESTIONS FROM THE COMMITTEE

Senator Jergeson asked Senator Farrell if the change from "may" to "shall" would constitute a significant departure from the purpose of the bill according to title. The change would constitute changes to adopt new rules to cover all sorts of circumstances on department land control whether they were needed or not. "May" or "shall, when necessary" would be language that would be satisfactory to the commission and to the department according to Bob Lane, attorney for the Fish, Wildlife and Parks.

Senator Yellowtail was excused from the committee hearing.

Senator Severson asked the location of the problem area. The area runs from the Buckhouse Bridge to the McClay Bridge.

Senator Severson asked if the county commissioners could issue a no shooting regulation in the area. County Commissioners have no authority to make regulations concerning no-shooting areas.

Senator Smith asked how much of the proposed area is private property. Ms. Austin stated that the area is an "island within the city." Senator Smith replied that it is very difficult for the Fish, Wildlife and Parks Department to implement any rules concerning property that is privately owned. On August 6, 1987, the Fish and Game Commission declared 809 feet downstream from the McClay Bridge should be a no-shooting area. Almost all the landowners with property on the river bank signed the petition for the bill to be drawn.

The hearing on SB 107 was closed.

DISPOSITION ON SENATE BILL 107:

Senator Smith requested the committee to take executive action at a later date due to the absence of committee members.

ADJOURNMENT:

There being no further business before the committee, Senator Smith adjourned the meeting at 2:48 p.m.

Ed Smith

SENATOR ED SMITH, Chairman

ROLL CALL

SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

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Date: January 29, 1987

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith, Chairman	X		
Senator John Anderson	X		
Senator Judy Jacobson	X		
Senator Elmer Severson	X		
Senator Greg Jergeson	X		
Senator Al Bishop	X		
Senator Esther Bengtson	X		
Senator Wm. Yellowtail Vice-Chair	X		

SENATE Fish & Game COMMITTEE

BILL SB 107 SB 109

VISITORS' REGISTER

DATE JAN 27

SB 139

NAME	REPRESENTING AND Complete Address	BILL #	(check one)	
			SUPPORT	OPPOSE
Alice H. Austin	4741 Soudown Rd. Citizen Petition - Missoula	SB 107		
Bonnie M. Austin	" " "	"		
Scott Ross	Montana Bowhunters Assn. Box 5221; Helena 59604	SB 109	✓	
Bob Lane	Dept. Fish, Wildlife & Parks	SB 107 SB 139		
Dick Johnson	Dept. Fish, Wildlife & Parks	SB 107 SB 139		
MARTIN SPETHMAN	Montana Trial Lawyers Assn.	SB 139		
RON MARCOUX	Dept. Fish Wildlife PARK	SB 109	✓	
DAVID LACKMAN	Montana Public Health Assn 1400 Helena Ave	SB 107	✓	
Richard Williams	Senator Williams	SB 107 SB 139		
Charles Lutz	Snowmobile Club	SB 139	✓	
Robert Throssell	STATE AUDITOR	SB 139	✓	
Tim Pool	Self	SB 139		
Bob Bushnell	Mt Snowmobile Assn	SB 139	✓	
Gene Seyfert	Flatthead Valley Snow Club	SB 139	✓	
Kenneth Ogle	Mt Snowmobile Assn	SB 139	✓	
Diane Drupp	Mt Snowmobile Area News	SB 139	✓	
Bill Howell	West Yellowstone	SB 139	✓	
Ken Hoovestol	Mt. Snowmobile Assn.	SB 139	✓	
Bud F. Laten	Missoula Mont Club Pres.	SB 139	✓	
Everett Woodgerd	Missoula Mt Snowmobile Assn	SB 139	✓	
Marvin Hammer	Montana Snowmobile Assn Missoula	SB 139	✓	
John Gillispie	Lincoln, Mt.	SB 139	✓	
Bob Hansen	Lincoln, Mt.	SB 139	✓	
Gil Schmaus	Gr. Falls Snowmobilers	SB 139	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE

Fish & Game

COMMITTEE

BILL SB 107 SB 109
SB 139

VISITORS' REGISTER

DATE JAN. 29

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOS

Geo. B. Eusterman Jr. M.D.

Montana Snowmobile Assoc.
Great Falls Snowmobilers Inc.

139

✓

George A. Noble

Great Falls Snowmobilers

139

✓

ESTHER STENBERG

MT Wildlife Federation

VISITOR

Doug Ahearn

GUT BANK SWO CO. ERS

139

✓

DANA FIELD

MT Audubon Legis Fund

visitor

Bob Nelson

Great Falls

139

✓

Michael S.

Missouri MTS

106

✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SB 109
January 29, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

During the 1985 legislative session, a bill was introduced and subsequently enacted into law, to allow for the auctioning of one bighorn sheep license to generate funds for the benefit of sheep herds in Montana.

This program has been very successful thus far. The 1986 permit sold for \$79,000 and the 1987 permit sold for \$109,000 just this last week. The success of this program has led to consideration of SB 109 which proposes a similar program for Shiras moose in Montana. While it cannot be anticipated that a moose permit would equal the sheep permit level, additional funds could be generated for our moose management program.

Current revenues from the sale of 672 moose licenses in 1986 were \$38,600. The expenditures of the Wildlife Division alone range from \$20,000 to \$35,000 per year for this species, which does not include the enforcement or drawing costs for the species. Private donors interested in helping with the moose program donated \$6,500.

Other states such as Wyoming and Utah conduct similar auctions which have generated between \$4,000 and \$16,000. As you can see, these amounts would have a measurable impact upon our moose management program.

We would envision utilizing these funds by providing matching funding for projects with the U.S. Forest Service for riparian moose habitat enhancement projects, more intensive management surveys on populations (particularly in areas with limited visibility from the air) and to provide for moose habitat preservation through easements, leases or purchase.

We believe the benefits associated with the revenues received would provide for additional enhancement of Montana's moose populations and therefore urge your favorable consideration of SB 109.

Amendments to S.B. 107 (Introduced bill)

1. Page 1, line 13.

Strike: "may"

Insert: "shall, when necessary,"

2. Page 1, line 21.

Strike: "may"

Insert: "shall, when necessary,"

SENATE FISH AND GAME

EXHIBIT NO. 2

DATE 1-29-87

BILL NO. SB 139

AMENDMENTS TO SB 139

Houderstal Amendment

1. Page 2, line 10.

Following: "clubs,"

Insert: "landowners,"

2. Page 4, line 6.

Following: "condition;"

Insert: "and"

3. Page 4, line 7.

Following: " in the"

Insert: "mechanical"

4. Page 4, lines 8 through line 10.

Following: "snowmobile"

Strike: remainder of line 8 through "area" on line 10

5. Page 5, line 19.

Following: "department"

Insert: " or the landowner"

112
DATE January 29, 1987
BILL NO. SB 139

SB 139
January 29, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife and Parks

The Department supports this bill including the amendments offered by the sponsor and the State Snowmobile Association. As the state agency responsible for the management of snowmobile recreation in Montana, we applaud the initiative of the Association in its efforts to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling.

SB 139 is similar in concept and patterned after Section 23-2-736, MCA, the "Skiers Responsibility Law," which was passed in 1979. The bill recognizes the risks inherent in the sport of snowmobiling and requires that participants be responsible for their own acts. The allocation of a greater share of the risks involved in an inherently dangerous sport to the willing participants is sound public policy and is consistent with accepted restraint on tort liability in similar circumstances.

It does not absolve the Department, other agencies, landowners, or providers from responsibility for their acts, but does protect them from unreasonable liability. The standard of liability, willful or wanton misconduct, is the standard applied to landowners under the stream access statutes, Section 23-2-321, MCA, and to landowners who permit recreation on their property without consideration, Section 70-16-302, MCA.

Passage of SB 139 will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport.

Mr. Chairman - Honorable
My name is Dennis Cyle from Blaine
Represent M.S.D.

SENATE FISH AND GAME

EXHIBIT NO. 3-A

DATE January 29, 1987

BILL NO. SB 139

Currently there are APPX 30 grooming projects
administered thru W.P. in Montana. ~~over~~ over 2000 miles
of ~~groomed~~ snowmobile trails are being maintained by
F.W.P. or local snowmobile clubs. The concern of
liability has been questionable, however ~~with~~ the
recent ruling in that county has brought new
emphasis to the liability issue. Land owners
who have given permission to groom trails and
established parking areas on their property are concerned
about being held liable. Local clubs that are
maintaining these trail systems are concerned.

When operating a snowmobile in a natural environment
the operator should be accountable for their actions.

The snowmobile responsibility law would put some
of the responsibility on the operator of a snowmobile.

SENATE FISH AND GAME

EXHIBIT NO. 3-A

DATE 1-29-87

BILL NO. SB 139

SENATE FISH AND GAME

EXHIBIT NO. 4

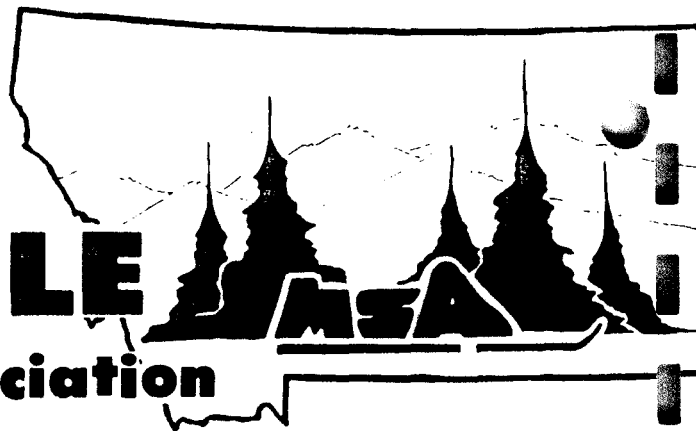
DATE Jan 27 1987

BILL NO. # 139

Montana

SNOWMOBILE

Association



Mr. Chairman and members of the Fish & Game Committee:

My name is Marvin Hammer from Missoula. I am a District Representative for the Montana Snowmobile Association. My District includes the snowmobile clubs in Ronan, Deborgia, Hamilton, Ovando, Seeley Lake and Missoula. The clubs are made up of approximately 400 family members.

Snowmobile clubs help generate the local economy in these areas by holding poker runs, guided trail rides, picnics and winterfests. Snowmobile clubs depend on groomed trails for all of their outings. We now have 27 different communities that have grooming projects in operation.

Snowmobilers bring life and money into these communities that would otherwise have their doors closed during the winter months. Snowmobile clubs and officers are now very concerned about their sponsoring of events in fear of being sued. Some clubs have discontinued their activities because they have tried to get insurance and found it to be expensive.

Everything we do has an inherent risk. As concerned recreational snowmobilers we need to be responsible for actions as we enjoy our sport of snowmobiling.

Senate Bill 139 "Snowmobilers Liability and Responsibility Bill" is needed to help the Fish Wildlife and Parks, Forest Service, private land owners, snowmobile clubs and grooming operators to continue to maintain the quality snowmobiling and snowmobile trails that we have in our state.

Thank you.

Missoula

SENATE FISH AND GAME

EXHIBIT NO. 5

DATE Jan. 22, 1987

BILL NO. SB 139

Snowgoers

611 Livingston Ave.
Missoula, Montana 59801



TESTIMONY BEFORE FISH & GAME COMMITTEE----JANUARY 29, 1987---SB-139

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE---MY NAME IS EVERETT E. WOODGERD---I REPRESENT OVER 200 FAMILY MEMBERS OF THE MISSOULA SNOWGOERS.

AS WINTER RECREATIONISTS, WE ARE VERY DEPENDENT UPON LARGE PRIVATE LANDOWNERS. WE USE THEIR LOGGING ROADS AND CLEARCUTS EXTENSIVELY, AS DO OTHER RECREATIONISTS SUCH AS HUNTERS AND SKIERS.

AS SNOWMOBILERS, WE WANT TO ASSURE THESE LANDOWNERS THAT THEY WILL IN NO WAY BE HELD RESPONSIBLE FOR INJURIES THAT MAY OCCUR WHILE WE ARE THEIR GUESTS.

SNOWMOBILING IS NOT A DANGEROUS SPORT--BUT THERE IS AN ELEMENT OF RISK INVOLVED--MUCH THE SAME AS WHEN OPERATING AN AUTOMOBILE.

I HAVE SNOWMOBILED EXTENSIVELY FOR 18 YEARS--AND NOONE IN MY PARTY HAS HAD ANY SERIOUS DIFFICULTY--UNTIL 2 WEEKS AGO SATURDAY--WHEN ONE OF OUR GROUP CRASHED INTO A TREE--AND WAS KILLED. HE WAS GIVEN CPR AND MOUTH TO MOUTH RESUSCITATION UNTIL THE LIFE-FLITE HELICOPTER ARRIVED--BUT TO NO AVAIL.

ACCIDENTS CAN HAPPEN--AND INJURIES CAN OCCUR.

WE THEREFORE ASK YOU TO SUPPORT SB-139---AND MAKE IT CLEAR THAT WE ARE RESPONSIBLE FOR OUR OWN ACTIONS.

THANK YOU.

EVERETT E. WOODGERD

MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802
(406) 721-5700

BCC-87-052
January 28, 1987

SENATE FISH AND GAME

EXHIBIT NO. 7

DATE 1-29-87

BILL NO. SB 107

Senator Ed Smith, Chairman
Senate Fish and Game Committee
Montana State Senate
Capitol Station
Helena, MT 59620

Dear Senator Smith:

We are writing in support of SB-107, particularly in regard to the language change that the Fish and Game Commission shall rather than may "adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams. . .".

We have supported the citizen-initiated petition requesting the Fish and Game Commission to adopt a rule prohibiting hunting in one particular area of the Bitterroot River bottom from the beginning, believing that the no shooting area as defined would not inhibit the rights of hunters as there appear to be many other areas along the river bottom where they can engage in their sport without endangering the health, welfare and safety of people and property. Because of residential development and recreational use in this area, we feel that allowing hunting in the same area raises an issue of public safety that needs to be seriously considered by the Fish and Game Commission. The change of language would emphasize that the issue of public safety "shall" rather than "may" be considered, an important distinction.

Sincerely,

MISSOULA BOARD OF COUNTY COMMISSIONERS

Janet L. Stevens
Janet L. Stevens, Chairwoman

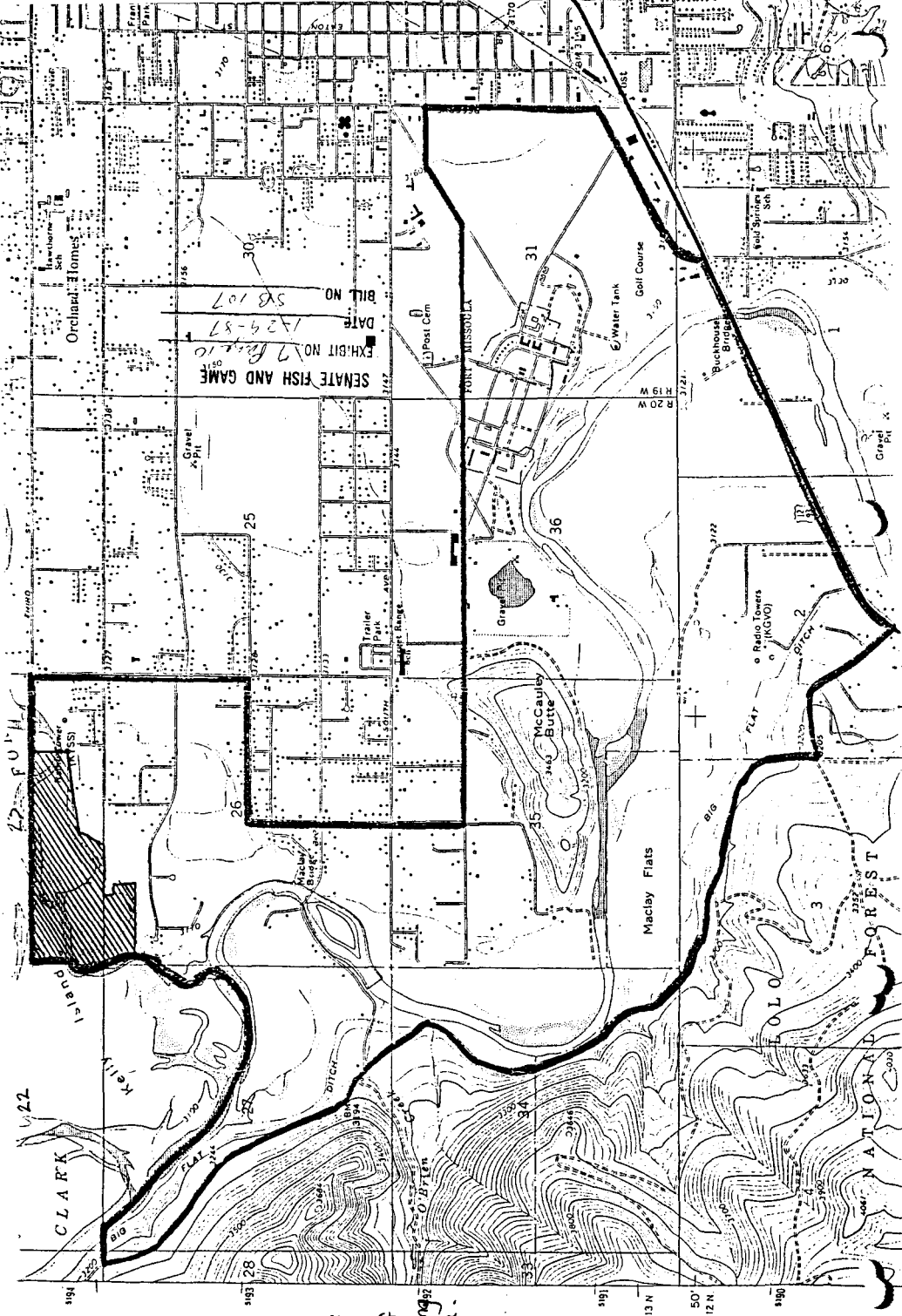
Barbara Evans
Barbara Evans, Commissioner

APPROVED: NOT AVAILABLE FOR SIGNATURE
Ann Mary Dussault, Commissioner

BCC/LM/lm
cc: Missoula Legislators



Crosshatched
land belongs
to F.W. + P.,
is not part of
the no shooting
request area.



SB 107
January 29, 1987

SENATE FISH AND GAME
EXHIBIT NO. B
DATE 1-29-87
BILL NO. 107

Comments on proposed amendment mandating the commission to adopt rules.

Amending Subsection (1) and (2) to provide that the "commission shall adopt rules" rather than the present "may adopt" will accomplish no purpose. It will not require that the Fish and Game Commission must adopt rules restricting the use of firearms because that can be done only where the use of firearms is a threat to public health, public safety or is necessary to protect property in the judgment of the commission. SB 107 as introduced details the criteria that must be considered when the commission decides whether to adopt rules restricting the use of firearms.

However, mandating the adoption of rules on lands and water under the regulatory control of the commission might mean rules would have to be adopted for all lands and water even where there is no need for any rules. This result makes no sense and is not desirable.

SENATE FISH AND GAME

EXHIBIT NO. 2

DATE 1-29-87

BILL NO. 107

SB 107
January 29, 1987

Comments on proposed amendment mandating the commission to adopt rules.

Amending Subsection (1) and (2) to provide that the "commission shall adopt rules" rather than the present "may adopt" will accomplish no purpose. It will not require that the Fish and Game Commission must adopt rules restricting the use of firearms because that can be done only where the use of firearms is a threat to public health, public safety or is necessary to protect property in the judgment of the commission. SB 107 as introduced details the criteria that must be considered when the commission decides whether to adopt rules restricting the use of firearms.

However, mandating the adoption of rules on lands and water under the regulatory control of the commission might mean rules would have to be adopted for all lands and water even where there is no need for any rules. This result makes no sense and is not desirable.

January 29, 1987

I am Alice Austin, 4741 Sundown Road, Missoula 59801. I speak for Citizen Petition, a group which seeks to close to hunting and discharge of firearms a mapped section of the Bitterroot River bottom near Missoula. The group includes residents of one area and others who recreate in the area. The effort is supported by institutions which control land in the area including the University of Montana, the Missoula High School District, the Missoula Country Club and the Larchmont Golf Club. Shooting is not permitted on Federal and Forest Service land in the area.

Senate Bill 107, an amendment of 87-1-303 MCA was drafted in response to a request of Citizen Petition and the Missoula County Commissioners. Our request was made to Senator Bill Farrell and Representative Budd Gould in whose districts the mapped area is.

As a part of SB 107, we ask for a word change. In 87-1-303 MCA Section (2) in the first sentence, we ask that the word may be changed to shall.

Another change has been proposed--It is that the word shall be followed by the words if necessary. We oppose the addition of the words if necessary.

Part of SB 107 is the addition of a section (4) providing criteria to be used in considering the need for public safety. We did not and do not request this section, but are not opposed to it.

Why do we ask for the word change in 87-1-303?

1. We feel that 87-1-303 as presently written gives a right to the Fish and Game Commission but not a responsibility. If the right to protect public safety is given to a public body, the responsibility to do so should also belong to that body.

2. There is a public safety problem in the mapped area which has not been solved. If we have to return to the Fish and Game Commission to ask for help, we need assurance that protecting public safety is the Commissions' responsibility as well as its right.

I will stop here in the interests of time and will try to answer any questions you have. I have some copies of materials about the area and the problem which I can give the Committee. I will hand the Committee Chairperson a letter from the Missoula County Commissioners which supports our word change request--Early in 1986 the Department of Fish Wildlife and Parks received copies of our petitions and letters of support up tho that time--Other material was added at the time of a July 1st, 1986, hearing in Missoula.

July 1, 1986.

STATEMENT TO THE MONTANA FISH AND GAME COMMISSION FOR THE CITIZENS'
PETITION ASKING FOR A NO SHOOTING, NO HUNTING
RULE

My name is Alice Austin. I live at 4741 Sundown Rd. My husband and I own a short piece of riverbank on the Bitterroot River in the area of the requested rule. I am one of the people who has gathered petition signatures and worked on the citizen effort to get a no shooting, no hunting status for the area defined in the hearing notice. We have done this because it is a much needed public safety measure.

We appreciate the presence of Fish and Game Commission members who have heavy demand on their time. We realize that the responsibility they take in regulating hunting of big game and birds and fishing for the state is important and requires great dedication. We realize that citizen public safety needs are not often the subject before you for decision making. We come to you because we have been advised by city and county officials to do so. It is the commission's role to decide whether an area outside city limits has become too populated for shooting and hunting.

You have studied a map showing buildings along the river. It is true that such a map indicates how many people reside close to the river. It gives no indication of the numbers of people who come to the river bottom, some who live in the mapped area and many who do not, to fish, walk, ride horseback, birdwatch, canoe, raft, kayak, swim, cross-country ski or picnic.

Unfortunately this river section is all too frequently used by target shooters, plinkers, and young, inexperienced or other hunters who have no means to travel farther to locations where hunting is better. These shooters and hunters are a clear and present danger to the people who live near the river, to others recreating in the area and to numerous domestic animals.

I and renters on our property have had bullets coming from across the river in our direction while walking and birdwatching in our woods. We have had trespassers with shotgun and bow and arrows near the river.

There is a concern about shotgun pellets. We have been told, "They only carry sixty yards." John Klapwyk and Briggs Austin set cardboard boxes at 200 feet and 400 feet and shot at them with a twelve gauge shotgun using number two birdshot. On checking the results they found that quite a number of shot had gone through two walls of the box at 200 feet. A few had gone through two walls of the box at 400 feet.

I ask that the Fish and Game Commission approve the proposed rule with the two conditions asked in the original petition. Number one states, "A landowner may use a gun to protect his property by controlling varmints or predators." This condition is asked for by owners of larger pieces of land who feel they need it. This condition is probably also covered by condition number two which says, "The constitutional right of any person to bear arms or to use lawful force to protect himself or his property is not restricted." If condition number one is not acceptable to the commission, we ask that condition two surely be included.

SENATE FISH AND GAME
EXHIBIT NO. 7- page 3
DATE 1-29-87
BILL NO. 58107

Blue Mountain Recreation Area adjacent to the area of this request had 14,500 visitor days in 1984 and 1985 according to an educated estimate which is part of Forest Service records. We cannot assume that that figure applies to the river bottom, but it is an indication of the numbers recreating in the general area. Those who use Maclay Flats adjacent to the river are in the recreation area and are included in that statistic. Blue Mt. Rd., a boundary of the request area, is an access for the recreators both in the river bottom and on Blue Mt.

The map before you shows, in orange tape, the places where cattle or sheep are on the river bank. Red tape shows the proposed wheel chair trail on Maclay Flats. Also proposed for Maclay Flats are environmental education opportunities for school children.

Stan Bradshaw, our hearing officer, has already received support comment for the proposed rule from Dr. Kraft, Superintendent of Schools, on behalf of Vo. Tech. Similar support has come from the Missoula Country Club. I am handing him a letter of support from the Missoula County Commissioners as well as a number of letters from individuals.

Thank you for your time.

Alice H. Austin

SENATE FISH AND GAME
EXHIBIT NO. 7 - Page 4
DATE 1-29-87
BILL NO. SB 107

SENATE FISH AND GAME COMMITTEE -
S. 1000 Hunting material for consideration - July 1st

Hunting is fine recreation for those who want to hunt. It is a threat to all other recreationists in the proximity of the hunting. It is not suitable where many other types of recreation are going on.

The Missoula County Recreation Needs Assessment Survey was completed in 1986 using a survey technique approved by Dept. of F.W. and P. and under the auspices of

Missoula City/County Office of Community Development

Missoula City/County Bicycle Program

Missoula City/County Dept. of Parks and Recreation

Montana Dept. of Fish, Wildlife and Parks

USDA - Forest Service

Dept. of Interior - BLM

Montana Power

Champion Timber Co.

Summit

It gives us the following figures:

% of people participating in Hunting	42.1%
Target Shooting	28.3%
Archery	0.4%
Walking, Hiking	94.1%
Fishing	73.4%
River Floating	41.1%

Since we have many people recreating between Buckhouse Bridge and Spurgin Rd. Access site, and since the survey's per cent levels indicate predominance for the combined non-hunting uses of Walking-Hiking, River Floating and Fishing, all of which occur in the area in question, it would seem to be a practical move to let this stretch of river be allotted to those uses. The hunters have now and will continue to have, Kelly Island, the area north of the Spurgin Access Site, all the Clark Fork River bottom on the north edge of Kelly Island and some of it upstream from there.

Public response to the Blue Mt. Management Planning process, which is now in the proposal stage, shows the following:

89% favored expansion of the no shooting zone on Blue Mt.

11% favored the same zone as currently or same with more signing

36% favored exclusion of archery on MacLay Flats and the development of wheel chair trail and environmental education for children

51% favored the wheel chair trail and environmental ed. but did not select an archery ban

Citizen Petition
July 4, 1986.

SHOOTING INCIDENTS IN THE RULE REQUEST AREA

1. At the hearing Mr. Ball stated that as far as he knew there had never been a shooting death in the rule request area. In about 1952 Arnold Skarland was shot and killed in what was called an accident, but which many felt was misuse of a firearm. A written comment has been turned in which is from Sig Skarland, brother of Arnold. This was a single incident long ago which would have no effect on any decision now.

2. The Klapwyks had a calf killed by a rifle shot.

3. While bird watching in our woods I have had bullets coming into our woods from across the Bitterroot. When I yelled at the shooters the bullets stopped coming my way, but the shooting continued. I called that the sheriff would be called. The shooters left. I called the sheriff's office.

4. Target shooters have fairly often been on the shore opposite our property. Bill Thomas asked me how often this has happened. He asked whether it was 50 times or more like 20 to 25. I replied that it was more like 20 to 25. Did he ever turn over to you the answers he got to his question asking? He asked questions of Holly Richardson and the Klapwyks also. I don't know of others. I told him of one target shooting incident when I called across the river to two young males telling them they were shooting on private property, and asked if they had permission. The land there belongs either to the Myrdal estate or to Mr. Wm. MacLay. They had motor cycles and a supply of beer. I looked at them through binoculars and one raised a gun pointing it at me. I moved upstream to get a view angle that would allow me to read the motor cycle plates. They caught on and turned the cycles around. Having learned not to let the shooters know I would call the sheriff, I left and did so. The sheriff's deputy told me over the phone later, "I sent them on their way. They were doing nothing illegal." I called Mike Sehested in the County Attorney's office at once. He agreed that the shooting on private land was illegal. I called the sheriff's office to say that I thought the deputy should be aware of what was or was not illegal. I have asked Mike Sehested several times about posting Blue Mt. Rd. for no shooting. He said it would be a good idea but it has never happened.

5. Once, after viewing target shooting going on across the river with a large rifle, I went over to check out the trajectory of the bullets. I had seen clearly where the target was and where the shooters stood. I learned that because of the curve of the river and curve of the road, some shooting was going on which would put bullets where rafters could be and some would put bullets on the road.

6. Most target shooters I called across the river to called back something unprintable. Once a man with a boy said, "Thank you, we'll go somewhere else."

SENATE FISH AND GAME

EXHIBIT NO. 7

DATE 1-21-87

FILE NO. 58-109

7. Once driving on Blue Mt. Rd. my husband and I came on two teenagers with 22's. Their motor bikes were parked and they were shooting at a can on the road.

8. In 1955 on hearing shooting once, I drove over to Blue Mt. Rd. and found two high school age boys shooting from the river side of the road across it at a target set on the slope on the west side of the road.

9. In 1964, on Nov. 30 John Martin of 422 Madison St. and Kenneth Manda Krysko of 298 Big Flat Rd. (a renter, Macley house) trespassed along the Bitterroot on the east side of the river. One had a shotgun, the other bow and arrows. They left the end of South Av. and walked down through Stephens' property, crossed the fence onto Austin property at a spot well signed against trespass and went along south onto Klapwyk property. The Klapwyks encountered them and made a complaint. At first they pleaded not guilty. Later when the court date got near, they pleaded guilty and paid fines.

At the hearing on July 1 at least one opposing testimony was from a Ravalli County resident (Victor) . I didn't get all the addresses but I believe this was not the only one from outside of the Kinsoul area. Only one person told specifically of having hunted in the request area. He had taken deer on the federal land bowhunting. I believe none of those opposing the rule live in the request area.

Alic H. Austin

SENATE FISH AND GAME

EXHIBIT NO. 2 Page 7

DATE 1-6-67

BILL NO. 58708

HOUSE AMENDMENTS TO
SENATE BILL 139

Position of Department of Fish, Wildlife and Parks
Prepared by Jim Flynn

The House Judiciary Committee's amendment to Section 8 of SB 139 (the Snowmobile Area Operator's Liability Bill) has made the originally proposed amendment to Section 70-16-302, MCA, unclear.

The Recreational Use Statute, in Montana and many other states, provides that persons in control of land who allow others to use that land for recreational purposes without consideration are held to a lower standard of liability. As introduced, SB 139 amended this statute to include the Department, along with landowners or tenants, when the Department enters into agreements with landowners to provide recreational opportunities.

However the House amendment only partially removes the Department from the originally proposed amendment. As now amended, SB 139 provides that the Department when it enters into agreements with landowners does not extend assurances that the property is safe but the Department is no longer described as having the same liability as landowners or tenants. It is not certain what standard of liability now would apply to the Department.

The original intent of the amendment to Section 70-16-302, MCA, was to clarify that the Department, in providing recreational opportunities under agreements with landowners where no fee is charged, has the same standard of liability as the landowner. If the Department is the actual landowner, then the lower standard of liability applies to the Department under the recreational use statute whether amended or not.

The intent was to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling. The amendment would also apply to Department agreements with landowners for such recreational activities as walk-in easements for access to public land and agreements providing for fishing access. The House amendments would leave all of this unclear as to whether the Department would be held to the same standard of liability as landowners under the Recreational Use Statute or held to the standard of ordinary negligence.

The Department believes that an allocation of a greater share of the risks to the willing participants involved in the inherently dangerous sport of snowmobiling is sound public policy. It would not absolve the Department from responsibilities for its acts but does provide protection from unreasonable liability. SB 139, as introduced, would not affect the ordinary negligence standard applied to the Department in the management of camping areas and developed recreation areas where use fees are charged.

Ken Honnstadt

Because the Department is the state agency responsible for the management of snowmobile recreation in Montana and because unreasonable liability responsibilities may make those management duties difficult to justify, the Department believes that Section 8 of SB 139 should be amended to the original language. This clarification of the Department's status will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport.

NAME: Scott Ross

1/29/87

ADDRESS: Box 5271 Helena 59604

PHONE: 449-4642

REPRESENTING WHOM? Montana Bowhunters Association

APPEARING ON WHICH PROPOSAL: SB109 Bishop

DO YOU: SUPPORT? ✓

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

AMENDMENTS TO SB 139

SENATE FISH AND GAME

EXHIBIT NO. _____

DATE Jan 29, 1987

BILL NO. 139

1. Page 2, line 10.

Following: "clubs,"

Insert: "landowners,"

2. Page 4, line 6.

Following: "condition;"

Insert: "and"

3. Page 4, line 7.

Following: "- in the"

Insert: "mechanical"

4. Page 4, lines 8 through line 10.

Following: "snowmobile"

Strike: remainder of line 8 through "area" on line 10

5. Page 5, line 19.

Following: "department"

Insert: " or the landowner"

STANDING COMMITTEE REPORT

January 29, 1987 19.....

MR. PRESIDENT

We, your committee on..... Fish and Game

having had under consideration..... Senate Bill No. 109

First reading copy (White)
color

"An Act to Authorize the Fish and Game Commission to Auction One
Male Shiras Moose License Each Year: and To Provide That Money
Generated by Such Auction be Used For The Benefit of Moose."

Respectfully report as follows: That..... Senate Bill No. 109

DO PASS

STATEMENT OF INTENT ATTACHED

~~XXXXXXXXXX~~

.....
Senator Ed Smith

.....
Chairman.

STANDING COMMITTEE REPORT

January 29

87

19.....

MR. PRESIDENT

Fish and Game

We, your committee on.....

Senate Bill

139

having had under consideration..... No.....

First reading copy (White)
color

"An Act Defining the Responsibility and Liability of Snowmobile
Area Operators and the Responsibility and Risk Borne by Snowmobilers"

Respectfully report as follows: That..... Senate Bill..... No. 139.....

be amended as follows:

1. Page 2, Line 10.
Following: "clubs,"
Insert: "landowners or their tenants,"
2. Page 4, line 6.
Following: "condition;"
Insert: "and"
3. Page 4, line 7.
Following: " in the"
Insert: "mechanical"
4. Page 4, lines 8 through line 10.
Following: "snowmobile"
Strike: remainder of line 8 through "area" on line 10
5. Page 5, line 15.
Following: "landowner"
Insert: "or tenant"
6. Page 5, line 19.
Following: "department"
Insert: " , the landowner, or the landowner's tenant"

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

.....
Senator Ed Smith

.....
Chairman.

January 29, 1987

MR. PRESIDENT,

THE FOUR COMMITTEE ON FISH AND GAME HAVING HAD UNDER CONSIDERATION SENATE BILL NO. 109, ATTACH THE FOLLOWING

STATEMENT OF INTENT:

**STATEMENT OF INTENT
SENATE BILL 109**

This bill requires a statement of intent because section 1 authorizes the fish and game commission to establish rules for the use of the license to be auctioned and for the conduct of the auction.

It is the intent of the legislature that the commission, in creating rules, shall consult with any other states which have similar legislation. The commission shall strive to maximize revenue generated by the auction and for that purpose shall select the method of auction which it determines will best attain that objective.

Because revenue from the auction of the license is not predictable, it is the intent of the legislature that the department shall use such money only for special projects related to moose research, management, and habitat improvement, and such funds may not be budgeted or used in place of funds regularly appropriated by the legislature for moose-related purposes.

Senator Ed Smith, Chairman