

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH AND GAME

Call to Order: By Chairman Severson, on February 28, 1989,
at 1:00 p.m. in Room 402 at the State Capitol.

ROLL CALL

Members Present: Sen. Elmer Severson, Sen. John Anderson,
Jr., Sen. Judy Jacobson, Sen. Al Bishop, Sen. Loren
Jenkins, Sen. Bill Yellowtail.

Members Excused: None

Members Absent: Sen. Paul Rapp-Svrcek

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE JOINT RESOLUTION 6

Presentation and Opening Statement by Sponsor: Rep. Mark
O'Keefe stated that this bill is the biennial dog sled
resolution. It has now been changed to the Centennial
dog sled race. I brought a program of the race. (See
Exhibit #1) We had a centennial musher from Washington
as well as from North Dakota. A centennial flag was
carried in the race and signed by the racers and will
be on display at the Montana Historical Society.

List of Testifying Proponents and What Group they Represent:

Charles Van Hook, Montana Centennial Sled Dog Race
Coordinator
Linda Stahl Anderson, Lewis & Clark County Commissioner

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Charles Van Hook stated that the race is the same one that
has been under the Governor's Cup in the past. Every
year Montanan's become more involved. This year ESPN
camera crews were here and there will be a one hour
long documentary on this race as well as on the state

of Montana. This should improve the image of the state across the country. He referred us to the owners manual in the program (Exhibit #1). This event is owned by Montanans. There is a tremendous diversity of people involved. It is a celebration of Montanans coming together. We support this resolution.

Linda Stahl Anderson wanted to go on record as supporting the resolution.

Questions From Committee Members: None

Closing by Sponsor: Rep. O'Keefe stated that he hasn't heard of much opposition to this resolution. We call this race 500 miles of hell in the middle of paradise. That is going to be the logo that kicks off the ESPN story on this race. I think Montana will reap a lot of benefits from this centennial event.

HEARING ON HOUSE BILL 244

Presentation and Opening Statement by Sponsor: Rep. Bernie Swift stated that HB 244 is to preserve those safe and designated shooting ranges that we already have in place. The Fish, Wildlife and Parks Department made an inventory and determined that we have at least 51 shooting ranges that are designated safe. We have others that are not designated safe and we need some work on those. We are aiming to preserve those that we have that are safe and are being used both by public and private. Those 51 ranges designated safe have 12 that are open to the public and 39 that are open to members only. About 22,000 members of the NRA are citizens of Montana. In our hunter safety program we have trained about 220,000 youth in a period of 32 years. The main thrust of this bill is to maintain and keep those shooting ranges that are in place. This bill is in keeping with the laws that already exist.

List of Testifying Proponents and What Group they Represent:

Gary Marbut, Montana Rifle & Pistol Association,
Western Montana Fish and Game Association, Montana
Action Shooting Council, Big Sky Council Shooting
Club

Terry Smith, Yellowstone Rifle Club of Billings
Bill Bigelow, Montana Field Rep. for NRA
Bud Elwell, Montana Weapons Collectors

List of Testifying Opponents and What Group They Represent:

Mona Jamisin, Montana Association of Planners
Robert Rasmussen, Helena citizen
Linda Stahl Anderson, Montana Association of Counties
Chris Kaufmann, Montana Environmental Information
Coalition
Jeffrey Smith, Assistant Planning Director, Butte-
Silver Bow
Howard Geip, Flathead County Commissioner
Jim Ben Arsdale, Mayor of Billings
Kathy Macefield, Helena Planning Committee
Tom Harrison, Montana Sheriff's & Peace Officers Assoc.
Ramon S. White, Gallatin County Commissioner

Testimony:

Gary Marbut stated that the closure of shooting ranges is beginning to be a problem in Montana. We need to develop security for those people in the local areas who want to have a place to shoot. A companion piece of legislation will be coming from the House providing funds from hunting and fishing license fees under FWP as matching grants to improve and build shooting ranges around Montana. We are having more and more problems with landowner/sportsman conflict and shooting in improper places. We want to address this problem in a responsible way. That means we need a growing inventory of safe places to shoot. An essential part of that is protecting the places that we have.

A law enforcement academy range closed down because of encroachment. That was the first victim of this kind of protective language in the law. The bill does allow two methods of local government to deal with a troublesome range. We are creating this opportunity in this bill. Section (5), sub-section (2) says that if there is build-up around a range, and there are complaints by the neighbors, they can re-locate the range. Another opportunity to deal with a troublesome range is if there are genuine safety problems on that range. Then they should bring their range to safety standards. If they fail to do that, there can be a citation issued to suspend operation of that range. The range safety standards used are those developed by the NRA. They have been developing these standards for over 100 years.

There is a group in Bozeman that worked for several years looking for an area to establish a safe shooting range. They were unable to find a location where they would have a 20 year lifespan for a range. Under the

terms of this bill they would be able to build a range in one of the places they found and there would be a mechanism to deal with that range if encroachment occurred.

Terry Smith passed around an aerial photo of the Billings Shooting Range. At the time the photo was taken (1979) there was already a sub-division being built right across the road. Their property and buildings are worth \$250,000,000 today. When the property was purchased they were at least five miles from the fringe of Billings. We have tried very hard to be good neighbors by strict rules. We contract with the Billings Police Department, Eastern Montana Campus Police, Airport Police, National Guard, Army Reserve and other organizations. I urge your support of this bill.

Bill Bigelow left his testimony. See Exhibit #2.

Bud Elwell stated that his organization communicates with approximately 380,000 people per year here in Montana. People always ask me where a safe place to shoot is. We support this bill.

Mona Jamisin stated they are opposed to this bill. We are opposed to the way the bill accomplishes the purposes to which it sets out. Section (1) on page 1, lines 22 to 25 talks about the policy of the state of Montana. It is to protect the locations and investments of shooting ranges. The section places the emphasis in the wrong place. On page 2, lines 14 through 25 these sections make it clear that zoning does not apply. The bill states that there may be prevention of the operation of a shooting range, but it also states that it would only be in effect for six months unless it proves a clear and provable safety hazard to the adjacent population. I would think that the range presenting a hazard to the population should be enough. Also, in order to move an existing range, the taxpayers would have to pay for that move. I think the effective date of this act should be the grandfather language which would protect all shooting ranges currently in operation.

Robert Rasmussen stated his background is in planning. I agree with the aspect of promoting safety in shooting ranges. But I think the bill goes too far in exempting shooting ranges from other provisions of law. It exempts shooting ranges against noise levels, planning and zoning statutes.

Linda Stahl Anderson stated that they are opposed to the bill. The cost of relocation is very costly.

Chris Kaufmann stated that they are opposed to the bill. It goes beyond just protecting ranges.

Jeffrey Smith left his testimony. See Exhibit #3.

Howard Geip stated that they oppose the bill and don't think it will accomplish what it sets out to do.

Jim Ben Arsdale stated that he is against this bill. The planning and zoning in a city is to protect everyone, even rifle ranges. Local governments must have the ability to zone in order to plan for the future development of county and city.

Kathy Macefield left her testimony. See Exhibit #4.

Tom Harrison stated they are concerned with this bill. The peace officers need a shooting range but we are concerned about the drafting of this bill. There is no definition in the bill as to what constitutes a shooting range. How many are we allowed and where can they be established. As long as you have a bullet proof facility you can put it next door with no regard to the fact that you might knock \$10 million off the property value of other people's property. I think the focus of the bill is wrong.

Questions From Committee Members: Sen. Jenkins asked Gary Marbut where he would put a shooting range. Mr. Marbut stated that there are certain criteria that must be met and they are stated in the NRA rules. There are a few underground ranges in Montana which are accepted. But, they are very expensive facilities to build.

Sen. Jenkins asked Mr. Rasmussen if he would put up a development next to a shooting range. Mr. Rasmussen stated that he would not do that. The concern is regarding the language in the proposed legislation that addresses zoned areas.

Sen. Jenkins asked Mr. Rasmussen why he zoned around a landfill. He stated that there were no zoning regulations that affected the location of the residences adjacent to the landfill. There are situations where new developments are reviewed by local governments and we make an effort to review those types of contracts. But many exemptions and elements occur without any review.

Sen. Jenkins asked Mr. Rasmussen if there were any restrictions in the bill. He stated that there are no restrictions and that is the problem with the bill.

Sen. Anderson asked Gary Marbut about the funding of the ranges. Mr. Marbut stated that nearly all the ranges in Montana are funded by private effort.

Sen. Anderson mentioned to Gary Marbut that the county commissioners in his district don't feel the county should be obligated to pay for relocating these ranges. Mr. Marbut stated that the counties are not obligated to relocate the ranges. They are only given the opportunity to respond to community concern. This bill does not require the counties to finance the relocation but it does give them that option.

Sen. Anderson asked Linda Stahl Anderson how the Lewis & Clark County commissioners felt about county-financed relocation of ranges. She stated that MACO is opposed to this bill. One thing that was not mentioned is the creation of an S.I.D. If the people in the area did not want to pay those costs, the county commissioners would not be able to create an S.I.D.

Sen. Severson asked Linda Stahl Anderson if that were the case, wouldn't that be a money-making situation with the rise of property value? She stated that the bill does not speak to those who own the property. There is a question as to whether the land that was relinquished would equal the value that the local government would have to pay out for the relocation.

Sen. Jacobson mentioned to Gary Marbut that he changed the bill in section (5) from the minimum standards of the NRA to the minimum range safety standards established by the Fish and Game Commission. But on the Statement of Intent it still states "... minimum range safety standards adopted by the NRA..." What is the difference between the two. Mr. Marbut stated that at this time the Dept of FWP does not have range safety standards. We have said here that they have the authority to work on range safety standards in order to give them guidance. The Fish and Game will have rule making authority to establish minimum range safety standards and those could be less than but not more than the NRA standards.

Sen. Jacobson asked Mr. Marbut why, in section (5), it says that a shooting range may not be prevented from operation unless it presents a clear and provable safety hazard to the adjacent population and then also

has to fail to meet the minimum standards. Why are they both in place. Mr. Marbut stated because different people have different interpretations of what amounts to a safety hazard. As an example, a man living near a law enforcement shooting range in Bozeman found a lead bullet on his roof. He asserted that the bullet came from the law enforcement range and, therefore, was unsafe. There was never any proof or fact-finding and, as a result, the attorney general ordered the range closed. That was dependant upon one person's interpretation.

Sen. Yellowtail asked Gary Marbut if there is a case in law that determines "clear and provable" and also who determines "clear and provable." Mr. Marbut stated that it is unspecified in the bill. They gave the authority to three entities to invoke the provisions of this bill. Municipal government, agencies of state government and courts. There is a provision that says if a range is under a suspension of operation order, and the range can obtain a certificate of compliance with minimum range safety standards, then that vacates the order to suspend. That is a check built into the bill.

Sen. Yellowtail asked Mr. Marbut how the court gets involved. Mr. Marbut gave an example; suppose you were operating a range and I was on an adjacent property. I can decide to sue you for the drop in my property value, and the court gets guidance in this piece of legislation.

Sen. Severson asked Mr. Marbut if the range re-locates do they get ownership of the ground that is there. Mr. Marbut stated that they get the same property interest they had in the previous location. If they had a lease then they have to get a lease where they are going. If they own the property where they came from, then they have to own the property where they are going.

Sen. Jacobson asked Mr. Marbut who determines that it is a suitable alternative site. It was originally written so that the FWP would do that. But they did not want that role and through amendments they were deleted from that role. That may very well be a function of the courts.

Closing by Sponsor: Rep. Swift stated that this bill protects the ranges in place. If you want to change the wording in the latter part of section (10) I will comply with that. All I have heard the opponents say is that they want the opportunity to tell you to get

out because it interferes with the planning process. In law, when you zone, people that are in place still have their prerogative of property rights and protection under the Montana Constitution.

HEARING ON HOUSE BILL 186

Presentation and Opening Statement by Sponsor: Rep. Ream stated that under current law, a person who illegally takes wildlife and a judge finds them guilty, they have to pay the civil penalties as well as restitution to the state for the value of that wildlife loss. They are required to post bond, but we overlooked also requiring a bond for the restitution portion of the penalty. What this bill does is insert a restitution.

List of Testifying Proponents and What Group they Represent:

Ron Marcoux, Department of Fish, Wildlife & Parks
Janet Ellis, Montana Audubon Legislative Fund
Don Chance, Montana Wildlife Federation

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ron Marcoux left his testimony. See Exhibit #5.
Janet Ellis left her testimony. See Exhibit #6 and 6a.

Don Chance stated that they support this bill.

Questions From Committee Members: None

Closing by Sponsor: Rep. Ream stated that the restitution law has worked well and about \$16,000 was paid. We hope this bill will close the loophole of fees not paid by non-resident hunters.

EXECUTIVE SESSION ON HOUSE BILL 186

Discussion: Sen. Jacobson moved a "Do Pass". Sen. Jenkins asked Mr. Bob Lane, Attorney for FWP if a resident who paid a bond would be immediately affected by this. He stated that he would. He stated that he did not have any figures on how many people paid a bond last year. The procedure for most violators, resident or non-resident would be to simply pay the fine.

Mr. Lane stated that the substance is not changed of the previous inaction but added a restitution penalty. Any person who is a violator is obligated to that penalty. We are talking about the mechanism by which we might enact that penalty. At present, a resident who is sited for violation and forfeits bond, the court can then bring him back into court. I think that is an inconvenience for a resident who wants to get it over quickly. It allows him no opportunity to simply forfeit the bond.

ADJOURNMENT

Adjournment At: 2:58 p.m.



ELMER D. SEVERSON, Chairman

LAB/FISMIN.228

FISMIN.228

ROLL CALL

FISH AND GAME

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2/28/89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Elmer Severson	X		
Sen. John Anderson Jr.	X		
Sen. Judy Jacobson	X		
Sen. Al Bishop	X		
Sen. Paul Rapp-Svrcek		X	
Sen. Loren Jenkins	X		
Sen. Bill Yellowtail	X		

Each day attach to minutes.

SENATE FISH AND GAME

EXHIBIT NO. 1

DATE February 28, 1989

FILE NO. HSR6



**MONTANA CENTENNIAL
SLED DOG RACE · 1989**



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D. C. 20036

BILL BIGELOW
NRA FIELD REPRESENTATIVE
IDAHO, MONTANA

Box 1208
BIG TIMBER, MT 59011
(406) 932-4480

February 28, 1989

Testimony in favor of HB 244

My name is Bill Bigelow. I reside at Big Timber, MT. I am the National Rifle Association Field Representative for Montana and Idaho.

One of the overriding reasons I urge your support of this bill is to protect the future and present investments of this state.

HB 244 is part of a two-pronged package. The second part is HB 403, a Bill to fund a \$250,000 expenditure by the Department of Fish, Wildlife & Parks to build suitable public ranges in the next bi-ennium.

If we are to make such a bold expenditure of hunters' money, we must put in place a reasonable law to protect the investment from unwarranted and frivolous attack. There are those who might some day find the range to be an unwanted neighbor. The idea is to avoid the same type of situation which has caused the Montana Law Enforcement Academy to be without any sort of training range.

Normal encroachment by new neighbors in the past has meant the usurpation of property rights and invested dollars. This loss has nearly always been borne by the shooting facility owners. HB 244 provides for shooting range protection for all but clear and proveable safety hazards.

I urge your support in protecting our state's investment in our shooting ranges. Thank you.

The national experience from the point of view of gun owners has been a succession of range closures due to population encroachment.

SENATE FISH AND GAME

EXHIBIT NO. 2

DATE February 28, 1989

BILL NO. HJR 6



Butte-Silver Bow Planning Board

TESTIMONY

House Bill 244
Senate Fish and Game Committee
by
Jeffrey N. Smith
Assistant Planning Director
Butte-Silver Bow
February 28, 1989

SENATE FISH AND GAME

EXHIBIT NO. 3

DATE February 28, 1989

BILL NO. HB 244

Honorable Elmer Severson, Chairman
and Committee Members:

I am opposed to the passage of House Bill 244 for several reasons. First, this legislation eliminates local government's ability to reasonably protect people from the unacceptable impacts of an unwanted adjacent land use.

Second, it is imperative that local government retain the ability to regulate land uses within their jurisdictions. The local government must be able to establish a basic set of expectations about the uses of land within their jurisdictions in order to stabilize land values and promote private investment in this land. Exempting a particular type of land use, especially one like a shooting range, which could have profound adverse impacts on surrounding property, diminishes significantly the government's ability to plan for the orderly development of an area and to establish basic expectations about future land use and land value.

Third, provisions in this legislation which require a local government or agency to pay for the relocation, if a shooting range is found to be incompatible with surrounding land uses, points out this bill's inconsistency with logic. By applying established review criteria to a shooting range proposal, it can be determined prior to the operation of the shooting range whether it is going to be incompatible with surrounding land uses or not. Knowing a problem exists before substantial investment takes place will save money. Taxpayers' money. Passage of this legislation will place an unfair and unnecessary burden on the budgets of local government, if a shooting range must be relocated after a determination of incompatibility is established. Existing review criteria can prevent a shooting range from locating in an inappropriate place before substantial money is spent to develop it.

Thank you for this opportunity to address the committee. I urge you to reject House Bill 244 for the reasons stated here.

Jeffrey N. Smith

Commissioners
Russell J. Ritter, Mayor
Rayleen Beaton
Tom Huddleston
Rose Leavitt
Blake J. Wordal



City-County
Administration Building
316 North Park
Helena, MT 59623

Phone: 406/442-9920

William J. Verwolf
City Manager

City of Helena

February 28, 1989

Chairman Elmer Severson
Senate Fish and Game Committee
State Capitol Building
Helena, Montana 59620

SENATE FISH AND GAME

EXHIBIT NO. 4

DATE February 28, 1989

BILL NO. HB 244

Dear Chairman Severson and Members of the Senate Fish and Game Committee:

This letter is written to express concerns about -- and opposition to -- HB 244, "An Act Protecting Shooting Range Locations; Exempting Shooting Ranges from Certain Laws Relating to Litter Control, Community Decay, Disorderly Conduct, and Public Nuisance; Amending Sections 7-5-2109, 7-2-5-2110, 45-8-101, 45-8-111, and 76-2-206, MCA; and Providing an Effective Date."

I regret that the title of the proposed bill does not specifically state that it would exempt shooting ranges from the planning and zoning statutes. If the intent of the bill had been more accurately represented in its title, opposition would have been stated at the hearings before the Montana House of Representatives. As a planner, I must urge that HB 244 not be passed.

The planning and zoning statutes (Title 76, Chapters 1 and 2 respectively) are intended "to promote the orderly development of [Montana's local] governmental units and environs." The purpose of Chapter 1 is to "encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that ... residential areas provide healthy surroundings for family life...." (76-1-102, MCA)

Chapter 2 states that zoning is authorized "for the purpose of promoting health, safety, morals, or the general welfare of the community" and that a city and a county are empowered to regulate and restrict the location and use of buildings, structures and land.... The statutes further state that zoning regulations "shall be made in accordance with a comprehensive plan and designed to secure safety from fire, panic and other dangers; to promote health and the general welfare.... Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of the land...." (76-2-203 and 76-2-304, MCA)

The planning and zoning statutes are intended to maintain some protection for the public's safety and general welfare while also protecting their property values. Through the public hearing process, a community can determine which uses are compatible and appropriate -- and inappropriate -- in certain locations. Eliminating this local government review does not allow compatibility with the adjacent land uses to be considered. A shooting range could negatively affect property values if noise and safety concerns cannot be adequately addressed -- which is contrary to protecting the public's safety and general welfare. As a result, HB 244 would essentially reduce the rights of private property owners to protect their own property values.


To add further insult to injury, this bill states that a local government cannot prevent or inhibit the operation of a shooting range with its zoning regulations for more than six months. This limitation would allow a shooting range to be located in an inappropriate location after that six month period. Given that situation, is it reasonable to require a local government to pay for relocating a shooting range -- at the tax-payers' expense? Is not local government's -- and the State of Montana's -- first responsibility to its citizens and to their protection? HB 244 provides an unfair advantage to shooting ranges (and the National Rifle Association) at the expense of the people.

The bill states that the only way a shooting range could be prevented from operating is if it presents a clear and provable safety hazard and also fails to meet the minimum range safety standards established by the Fish and Game Commission. The intent of the bill states that "the minimum safety standards may not be more restrictive than the minimum range safety standards adopted by the national rifle association." What are those minimum safety standards (of both organizations) and who would enforce them? Do those minimum safety standards adequately protect people travelling in the area of the shooting range -- such as a pedestrian, jogger, bicyclist, or a motorist?

The proposed bill would exempt shooting ranges from any litter control. Considering that the bill would allow shooting ranges to be located in any area, leaving lead, copper, or brass deposits -- whether they be shells that have been fired or not -- so that they could easily be picked up by children would not contribute to the safety of the general public.

Lastly, referring to the policy statement of HB244, I question if exempting shooting ranges from planning and zoning statutes would sincerely provide for the health, safety, welfare of the citizens of the state. I sincerely hope that you will reconsider the negative effects of this bill and not pass HB 244.

Sincerely,



Kathy Macefield, City of Helena

HB 186
February 28, 1989

Testimony presented by Ron Marcoux, Department of Fish, Wildlife & Parks

The present restitution statutes for illegal killing or possession of certain wildlife have a loophole for nonresidents cited for a violation for which the restitution penalty might apply. If the nonresident posts bail (also called bond) to assure his presence at trial, the nonresident may elect not to appear. The nonresident forfeits only the bail or bond because Montana courts no longer have jurisdiction over the nonresident when he is outside the state. A person charged with any crime, except homicide, is entitled to post bail or bond as determined by the court.

In practice, the nonresident who has forfeited bond cannot be convicted, nor can the court or jury make a finding that the "illegal killing or possession was done knowingly or purposely" as required by Section 87-1-112, MCA. Both are prerequisites for assessing the restitution penalty.

Forfeiting bail or bond is a method of avoiding the restitution penalty for nonresidents. While the nonresident might be arrested later under a bench warrant if he should return to the state and be discovered, this is not a practical solution to a real problem. In contrast, the resident is subject to the jurisdiction of the court and can be brought into court should he or she fail to appear. The resident does not have the same loophole by which to avoid responsibility for the restitution penalty.

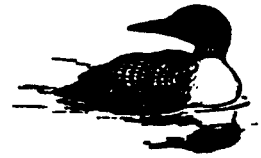
To rectify this problem, the department is proposing in HB 186 to provide that persons who forfeit bond or bail are subject to the restitution penalty just as convicted persons are now liable. Further, the amendments provide that the finding of knowingly or purposely is not required when bail or bond is forfeited and that forfeited bail or bond may be used to pay restitution.

With these changes, the justice courts would be able to adjust their bail or bond schedules to cover both the underlying penalty and the restitution. It is important to reiterate that any person cited, whether a resident or nonresident, can appear to contest the charges and/or the restitution penalty.

Therefore, both residents and nonresidents would be equally subject to liability for the restitution penalty for illegally killing or possessing our most treasured fish and wildlife species. This would treat violators of fish and game laws the same as violators of all other state statutes.

The department urges your support of HB 186.

Montana Audubon Legislative Fund



Testimony on HB 186
Senate Fish & Game Committee
February 28, 1989

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Society and represents over 2500 members statewide.

The Audubon Fund wants to go on record in support of HB 186. This legislation closes a loop-hole in the current restitution law that prevents collection of these penalties when a defendant chooses to forfeit a cash bail bond. By closing this loop-hole, the resource will ultimately benefit.

Restitution penalties allow Montanan's to get some of the value of lost wildlife back from a person who "knowingly or purposely" took that animal. In the case of many defendants from out-of-state, the individual will post a bond in the field and choose to forfeit that bond in order to return home. In such cases, no restitution penalty can be collected.

If HB 186 passes, a "restitution bond" could be posted in the field. If the defendant went to court and it was not shown s/he "knowingly or purposefully" took the animal, the individual would then not have to pay a restitution penalty. If the individual decided to forfeit their cash bail bond, the state would get reimbursed for the loss of its wildlife.

Restitution penalties and other laws aimed at discouraging the illegal taking of Montana's wildlife are particularly important today because of the increase in commercial poaching operations in Montana. Higher fines make poaching less lucrative. More and more states are adopting restitution legislation as a way to regain at least a portion of the value of the wildlife lost by illegal means.

We urge you to vote "Do Pass" on this important measure.

SENATE FISH AND GAME

EXHIBIT NO. 6

DATE February 28, 1989

BILL NO. HB 186

Wildlife Restitution and Cash BondsEXHIBIT NO. 6aDATE February 28, 1989

Restitution penalties are designed to discourage the illegal taking of wildlife. Currently, when a judge finds that a person has illegally taken an animal, the violator can be charged (fined):

- 1) a penalty for breaking a Montana law
- 2) a restitution penalty to allow Montana to get some of the value of the lost wildlife back.

What does HB 186 do?

If HB 186 passes, a "restitution bond" could be posted in the field. In many cases, many defendants from out-of-state post a bond in the field to cover their wildlife violation. These individuals often then forfeit that bond in order to return home. Currently no restitution penalty can be collected - so the state loses the wildlife and doesn't get reimbursed for that loss.

How are bonding rates determined?

Wardens currently collect cash bonds in the field. These bonds act as the security given to insure the defendant's appearance in court. The bond rates are determined by a Bail Bond Schedule established by the Commission on Lower Courts. This schedule must be posted by the JP or magistrate. "Restitution bonds" would be part of the posted bond schedule - they couldn't be "made up." If an animal appeared to have been taken illegally, the animal would be confiscated and the restitution bond added to the bond posted in the field.

Does cash "disappear" from wardens who take cash bonds in the field?

No! Wardens must show defendants the bond schedule before collecting the bond. When they receive the money, the warden gives the defendant a receipt for any bond taken in the field. The judge then will issue the warden a receipt for the bond when it is filed in court.

How do defendants come up with the money for a cash bond?

Defendants come up with money to post a cash bond in a variety of ways: most nonresidents carry large amounts of cash; cash advances on credit cards at bank machines can be used; violators can get money from a bank (money transfer) or wire for money; JPs accept checks for amounts over \$300 (it is a federal offense to bounce a check for a bond - collection will follow the violator to his home state); and items of value (firearms, etc.) can be held for a bond.

Does HB 186 reduce the amount of money going to counties?

No. All money collected as a fine or forfeiture is divided in the following way: 50% to the local government, 45% to the state treasurer, and 5% to the Department of Fish, Wildlife and Parks. The restitution penalty would go to the Dept. of Fish, Wildlife and Parks.

What happens if a person is wrongfully accused of killing an animal?

A bond posted in the field is only a security that a defendant will appear in court. Only when the defendant fails to make a court appearance, is the bond forfeited. In the case of restitution penalties, the court would have to establish that the defendant "knowingly and purposefully" took the animal. If this was not established during the court hearing, the individual would get their restitution fee back.

Why is this bill necessary?

Restitution penalties and other laws aimed at discouraging the illegal taking wildlife are particularly important today because of the increase in commercial poaching activities in Montana. Higher fines make poaching less lucrative.

WITNESS STATEMENT

NAME: CARY S. MARBUT DATE: 2/28

ADDRESS: POB 4924, MISSOULA 59806

PHONE: 549-1252

REPRESENTING WHOM? MRPA, WMFGA, MASC, BSPSC

APPEARING ON WHICH PROPOSAL: HB244

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME: JEFFREY N. SMITH DATE: 2-28-89

ADDRESS: 155 W. GRANITE ST

PHONE: 723-8262 X221

REPRESENTING WHOM? BUTTE-SILVER BOW

APPEARING ON WHICH PROPOSAL: HB 244

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE 2/28/89

COMMITTEE ON Just & Name

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
<i>Mark [unclear]</i>	HD 45	HB 244		
H. TERRY SMITH	Yellowstone Rifle Club	HB 244	✓	
A. W. Flwell	WCSM	HB 244	✓	
JEFFREY SMITH	BUTTE - SILVER BOW	HB 244		✓
GARY MARBUT	MRPA, WMFGA, MASC, BSPSC	HB 244	✓	
Charles Van Hook	MT. Cent. Sled Dog Race	HB 244	✓	
Kathy Macfie (Q)	City of Helena	HB 244		X
Janet Ellis	Audubon	HB 186	✓	
BILL Begebe	NRA	HB 244	✓	
Chris Kaubren	MEIC	HB 244		✓
Robert Rasmussen	Self	HB 244		✓
John Paul Anderson	City of Billings	HB 244		✓
Mona Jamison	Nat. Assoc. of Planners	HB 244		✓
Linda Stoll-Anderson	MT Assn of Counties	HB 244		✓
" " "	Self	HB 244	✓	
Howard W Gipe	Flathead Co. Com. 4	HB 244		✓