

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FISH & GAME**

**Call to Order:** By Bob Pipinich, Chair, on January 12, 1993, at 1:00 p.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bob Pipinich, Chair (D)  
Sen. Gary Forrester, Vice Chair (D)  
Sen. Tom Beck (R)  
Sen. Chris Christiaens (D)  
Sen. Bruce Crippen (R)  
Sen. Gerry Devlin (R)  
Sen. Judy Jacobson (D)  
Sen. Terry Klampe (D)  
Sen. Kenneth Mesaros (R)  
Sen. Dennis Nathe (R)

**Members Excused:** Senator Don Bianchi

**Members Absent:** None

**Staff Present:** Andrea Merrill, Legislative Council  
Kathy Collins, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SB 57, SB 58  
Executive Action: SJR 1

#### **HEARING ON SB 57**

##### **Opening Statement by Sponsor:**

Senator Bernie Swift, Senate District 32, stated SB 57 would put in place a marking for identification of game farm animals. SB 57 could clear up a question that has been long-standing, as far as game farmers are concerned, as to who has the authority for administering the brand inspection and the identification of animals when moved. Senator Swift handed out definitions relating to game farm activities (Exhibit #1).

**Proponents' Testimony:**

Cork Mortensen, Executive Secretary to the Board of Livestock spoke from a prepared statement in favor of SB 57 (Exhibit #2).

Les Graham, Montana Game Breeders Association, stated he supports SB 57 and urged the Committee to give it their consideration.

Pat Graham, Director, Department of Fish, Wildlife & Parks (FWP), spoke from a prepared statement in favor of SB 57 (Exhibit #3).

Janet Ellis, Montana Audubon Council, expressed her support of SB 57, being primarily interested in FWP and the Department of Livestock cooperating on game farm regulations. She felt that game farm animals do need to be regulated because of the threat to our native wildlife.

Stan Bradshaw, Montana Bowhunters Association, stated he supports SB 57 for the reasons expressed by both Les Graham and Pat Graham.

Welch Brogan, Cinnabar Game Farm, Corwin Springs, MT, stated he was in favor of Department of Livestock becoming involved; however, he felt that some consideration should be given to the matter of extra tagging. He felt identification requirements already in place are sufficient.

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Beck, in reference to section 1, line 24, asked Cork Mortensen if, at present time, livestock "must" be branded or "may" be branded. Mr. Mortensen said domestic livestock, "may" be branded. When asked why the language in the bill states "must", Mr. Mortensen turned the discussion over to Les Graham. Mr. Graham stated it is in the game farmer's best interest to be able to prove the animals are indeed their animals and that they are disease free. He said personally, he does not like this type of thing coming out of government, but if the requirement of individual identification is what is needed to protect the reputation of the game farmers, he is in favor of working with FWP on SB 57.

Senator Beck asked Pat Graham if there would be any exception to the requirement of the brand. Mr. Graham stated it would be in the farmer's own interest to have their animals branded. There are public animals outside the game farms that are not branded, and to distinguish between those animals belonging to the game farmer and those animals who no one has the incentive or interest to brand is why it is recommended branding be mandatory. He stated branding of the animal does not have to be done the minute the calf is born.

Senator Nathe asked Les Graham if the game farmers can use the brand on game animals that is recorded for their cattle. Mr. Graham replied some of the farmers have recorded brands, and there is also interest in freeze branding. The Montana Game Breeders Association went to the Board of Livestock meeting last summer and agreed on an ear tattoo. Although the tattoo is more difficult to read, it cannot be clipped out, and game farmers have been urged to take this type of approach.

Senator Mesaros asked Cork Mortensen if enforcement would fall under the Department of Livestock and if brand inspectors would be called on in the case of transfers. Mr. Mortensen stated on transfers of ownership or movement of animals, the Department's district inspectors issue the certificates for moves.

Senator Beck asked Les Graham if a freeze brand is recognized as a legal brand on an elk. Mr. Graham replied the Board of Livestock would have to take administrative action on that.

Senator Crippen asked Welch Brogan if he sells his elk for consumption. Mr. Brogan replied his animals have always been sold for propagation purposes.

Senator Beck asked Les Graham if tags and tattoos are required, or just brands. Mr. Graham replied SB 57 basically requires a whole-herd mark to be registered with the Department of Livestock. The prearranged agreement with the Department is that it will be tattoos at this point.

Les Graham commented that a great deal of the elk meat products on the market are from New Zealand. He also stated the thing of the future in branding game farm animals is electronic identification.

Senator Mesaros asked Les Graham if there would be a need for a physical identification, such as a tag. Mr. Graham replied that is correct, but the problem with the tags is they can be removed and replaced, which cannot be done with a tattoo.

Senator Mesaros asked Les Graham if there is a requirement of a tag in conjunction with a tattoo. Mr. Graham stated in the current rules that Pat Graham mentioned, there is a requirement of an ear tag in addition to the brand.

**Closing by Sponsor:**

Senator Swift stated the reason for SB 57 is to clarify administrative problems that game farmers have been suffering with since the law was put in place. He feels SB 57 will go a long way towards alleviating some of those problems. He urged the Committee to give SB 57 a do pass.

**HEARING ON SB 58****Opening Statement by Sponsor:**

Senator Bernie Swift, Senate District 32, stated SB 58 is a hunter activity bill. There are four key things SB 58 deals with: the inclusion of firearms in special hunting areas; giving youth who reside with an out-of-state parent resident hunting rights when visiting a resident parent; the clarification of who owns an animal once it has been killed and properly tagged; and making a second offense of hunter harassment a felony rather than a misdemeanor.

**Proponents' Testimony:**

Gary S. Marbut, representing Montana Shooting Sports Association (MSSA), stated his organization requested the drafting of SB 58. Referring to Section 1, allowing handgun hunting in restricted areas, he commented that the reason some of these areas are currently restricted to shotguns and muzzleloaders is because the areas are often semi-populated river bottom areas, and they don't want firearms that will reach five miles. These areas should allow handguns as well, as long as restrictions are followed (Exhibit #4). Referring to the matter of non-resident minors, Mr. Marbut stated he has received several phone calls from non-custodial resident parents who have expressed the desire to have their children hunt in Montana with resident status. Referring to Section 3, Mr. Marbut stated there is some confusion with the current laws as to who a lawfully taken, properly tagged animal belongs to. He stated clarification is needed in this area. Referring to Section 4, Mr. Marbut stated he feels the second offense of hunter harassment should carry a stiffer penalty than a first offense, perhaps several multiples of the first offense. He feels that a stiffer penalty would serve as a deterrent.

Albert M. Elwell, representing the Montana Weapons Collectors, stated because of Section 1 and Section 4 he supports SB 58.

James Dyke, Jr., Missoula, stated he felt it is reasonable to accept the suggestion of allowing handguns to be used in the areas referred to in Section 1 because the projectiles and the guns that the MSSA is asking to be allowed will not carry any further than modern black powder guns using sabots or shotguns using slugs. Mr. Dyke urged the Committee to support SB 58.

Pat Graham, FWP, spoke from written testimony in favor of SB 58 (Exhibit #5).

**Opponents' Testimony:**

Don Miller, Townsend, stated he opposed SB 58 for the reasons he felt handguns are not sufficient in killing big game and too much power concerning hunting privileges are given to FWP.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Jacobson, referring to the amendments suggested by FWP (Exhibit #5), asked Pat Graham if perhaps the resident parent who does not have joint custody of their minor children but does have visitation rights would be denied the rights afforded to parents with joint custody, if the bill is passed with the amendment the way it is worded now. Mr. Graham turned the question to Bob Lane, attorney for FWP. Mr. Lane said the bill could be amended to include parents with visitation only.

Senator Christiaens, referring to Section 4, lines 21-25, asked Pat Graham how many people in the past year would have been affected by these penalties. Mr. Graham replied none would have been.

Senator Crippen asked Pat Graham if he had an objection to making the second offense an upper-level misdemeanor instead of a felony. Mr. Graham replied he felt there should be a penalty that would make people think twice about committing a second offense; whether or not the second offense requires a felony or upping the fine on the second offense would be sufficient is something that should be looked at.

Senator Crippen stated he felt the penalty for the second offense should be stiffer but should be commiserate with the offense. Senator Crippen went on to ask if there was any place now where a hunter can hunt big game with a pistol. Senator Pipinich, referring to a bill passed in the 52nd legislative session, replied you can hunt big game with a pistol during general hunting season as long as it is not a rim-fired caliber. Pat Graham stated that particular bill was passed by the Legislature but was vetoed by the Governor. Senator Pipinich stated he stood corrected.

Senator Klampe commented to Pat Graham that his biggest concern is making sure the handguns don't in fact have a longer range than the muzzleloaders or the shotguns. Senator Klampe stated the way the amendment was worded seems vague, and he wanted to be sure about what the Commission means in their definition "based on safety considerations." Mr. Graham stated FWP worked around

the language already in the statute that gave the authority to limit, for those reasons, to shotguns and to archery. He stated the Commission had to be convinced that was, in fact, not going to contribute to the problem before they would authorize additional weapons. The Commission will use their judgement to ascertain whether a particular area can sustain additional hunting opportunities.

Senator Pipinich asked Pat Graham if FWP's amendments brought up anything about the black powder hunting. Mr. Graham stated instead of adding another item, which would be handguns, into the language that is currently there, FWP would remove the language in the amendment and replace with item #2 in their suggested amendments (Exhibit #5). "Hunting implements" could be bows, shotguns, handguns, black powder rifles, etc. Instead of listing each implement, FWP wanted to leave it to rule making and the Commission's authority to broaden it. Mr. Graham stated he believes the suggested amendment accomplishes what the intent of the legislation had, by giving the Commission that authority, and it would also address concerns by other interested in the black powder issue.

**Closing by Sponsor:**

Senator Swift stated the intent of SB 58 is to allow the use of handguns that are safe, and he felt the proposed amendments would be satisfactory, stating he would rather see "hunting arms" instead of "hunting implements" in item #2 of FWP's proposed amendments. Senator Swift also urged the Committee to give its consideration to Section 2 regarding non-resident minor children who live in a joint family situation. Senator Swift, referring to Section 4, stated the need for a stiffer penalty for the second offense.

**Discussion:**

Senator Kennedy, Senate District 3, presented the Committee with the amendments for SB 17, worked out by himself and Pat Graham, FWP (Exhibits #6 and #7). Senator Christiaens suggested postponing executive action on SB 17 until copies of the amendments could be distributed to the Committee members.

**EXECUTIVE ACTION ON SJR 1**

**Motion/Vote:**

Senator Forrester MOVED SJR 1 be TABLED. MOTION CARRIED UNANIMOUSLY.


SENATE FISH & GAME COMMITTEE

January 12, 1993

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ADJOURNMENT

Adjournment: 2:50 p.m.

  
SENATOR BOB PIPINICH, Chair

  
KATHY COLLINS, Secretary

BP/kc

# ROLL CALL

SENATE COMMITTEE Fish & Game DATE 1-12-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Pipinich	X		
Senator Forrester	X		
Senator Klampe	X		
Senator Nathe	X		
Senator Devlin	X		
Senator Mesaros	X		
Senator Beck	X		
Senator Crippen	X		
Senator Christiaens	X		
Senator Bianchi			X
Senator Jacobson	X		



SENATE FISH AND GAME

EXHIBIT NO. 1

DATE 1-12-93

BILL NO. SB 57

87-4-406. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of fish, wildlife, and parks.
- (2) "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.
- (3) "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game animals or parts of game animals, as authorized under this part.
- (4) "Game farm animal" means a privately owned caribou, black bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana or any other cloven-hoofed ungulate as classified by the department.
- (5) "Game farm shooting license" means the license required under 87-4-421 for a game farm operator to hunt the game farm animals indigenous to the state of Montana on his game farm.
- (6) "Person" means an individual, firm, corporation, association, or partnership.

History: En. Sec. 1, Ch. 570, L. 1983; amd. Sec. 3, Ch. 540, L. 1985.

SB 57

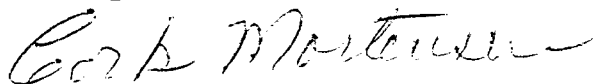
Mr. Chairman and members of the committee, for the record my name is Cork Mortensen and I am the Executive Secretary to the Board of Livestock. The Board and Department of Livestock support this legislation and urge you to support SB 57 for the following reasons:

In the last regular legislative session HB 556 was enacted which mandated a cooperative effort between the Department of Fish, Wildlife & Parks and the Department of Livestock in regulating the game farm industry.

Some of the animals which are classified as game farm animals are not covered by Department of Livestock statutes. It is for that specific reason this legislation is before you. Enaction of this legislation will allow us to comply with your (previous) legislative mandate.

Thank you for your time and consideration in this matter. Once again, the Board and Department of Livestock urge you to support this legislation. If you have any questions or need more information, I should be happy to respond.

Thank you,



Cork Mortensen  
Executive Secretary  
To the Board of Livestock

SENATE FISH AND GAME  
EXHIBIT NO. 3  
DATE 1/12/93  
BILL NO. SB 57

SB 57  
January 12, 1992

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

The Department of Fish, Wildlife & Parks and the Department of Livestock share regulatory authority for the licensing and operation of game farms in Montana. Fish, Wildlife & Parks' regulatory responsibility resides primarily in licensing, facility standards, record keeping and reporting. The Department of Livestock's regulatory authority is focused primarily in the animal health arena.

New rules were jointly adopted last May by Fish, Wildlife & Parks and the Board of Livestock. This bill clarifies Department of Livestock statutes to aid in implementing the new game farm rules. We support this legislation. We are pleased that the two agencies have been able to work closely in developing and implementing game farm regulations.

Section 1, subsection 2 of SB 57 provides statutory clarification for the issuance of herd tattoos for purposes of identification and ownership as required by the new joint game farm rules. These rules also require ear tag markers that provide for identification of individual game farm animals by the Department of Fish, Wildlife & Parks.

Technically, game farm animals do not fall within the definition of "domestic livestock." As a practical matter, however, we understand the need to include game farm animals in the definition of "livestock" (section.3, subsection 3) to facilitate dealing with herd brands/tattoos of game farm animals by Department of Livestock inspectors.

The new rules, which were developed as a result of legislation passed in 1991, also provide for inspection and issuance of transportation permits by Department of Livestock inspectors for game farm animals that are sold or transported in the state - the same procedure that the Department of Livestock has historically applied to domestic livestock. Previously, inspections and issuance of transportation permits for game farm animals were conducted by Fish, Wildlife & Parks law enforcement personnel.

Additional legislation will be submitted this session to address regulatory needs for game farms.



# Montana Shooting Sports Association

P.O. Box 4924 • Missoula, Montana 59806 • (406) 549-1252 • FAX (406) 251-3824

Asserting the Rights of Gun Owners in Montana

## Officers

Gary S. Marbut  
*President*  
John M. Mercer  
*Vice President*  
James M. McDonald  
*Secretary*  
Ronald E. Preston  
*Treasurer*

SENATE FISH AND GAME

URGENT NO. 4

DATE 1/12/93

BILL NO. SB 58

Re: SB 58

## Directors

Robert I. Davies  
*Bozeman*  
Jerome C. Glimm  
*Conrad*  
Roger Koopman  
*Bozeman*  
Gary S. Marbut  
*Missoula*  
James M. McDonald  
*Missoula*  
John M. Mercer  
*Sidney*  
Ronald E. Preston  
*Missoula*  
Tom Van Tighem  
*Great Falls*  
Judy Woolley  
*Plains*

## Definition of Handgun

The following definition of handguns for hunting in restricted areas is offered to the Fish, Wildlife and Parks Commission for use in implementation of SB 58.

"A suitable handgun includes all of the following:

1. Not capable of being shoulder-mounted, and
2. Has a barrell of less than 10 1/2 inches, and
3. Chambers a straight-walled cartridge not originally developed for rifles."

- End -

SB 58

January 12, 1993

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

SB 58 proposes to revise the hunting and fishing laws of Montana by authorizing certain hunting with handguns, revising provisions regarding residency of minors, clarifying ownership of tagged game, and increasing penalties for second or subsequent convictions of hunter harassment.

The department supports this bill with the following amendments:

Section 1 - 87-1-304 should be amended to allow the commission to restrict hunting in designated areas to the use of specified weapons for hunting purposes based on safety considerations or to provide diverse hunting opportunities and experiences. The commission would be able to make the decision without going to the legislature each time different types of weapons were considered for application for hunting in designated areas.

The department supports the concept of clarifying the residency status of minors not residing in Montana; however, we propose an amendment clarifying joint custody situations. The department proposes adding an amendment that joint custody qualifies the minor as a resident if one of the parents qualifies as a resident for purchase of resident hunting and fishing licenses.

The department does not feel ownership of tagged game needs additional clarification. However, we do not oppose this change.

We would support stronger penalties for a second or subsequent conviction of hunter harassment. We are uncertain if it warrants a felony penalty. A fine of up to \$1,000 and up to six months in jail is consistent with other serious fish and game misdemeanors.

PROPOSED AMENDMENT TO SB 58  
FIRST (WHITE) COPY

1. Title, Lines 5 and 6.  
Following: "AUTHORIZING"  
Strike: "CERTAIN HUNTING WITH HANDGUNS"  
Insert: "RESTRICTING AREAS TO SPECIFIED WEAPONS"
2. Page 1, line 23  
Following: "areas."  
Strike: page 1, line 23 through "safety" page 2, line 4  
Insert: "The commission may restrict areas and species to hunting with only specified hunting implements for the reasons of safety or of providing diverse hunting opportunities and experiences."
3. Page 6, line 2.  
Following: "parent"  
Insert: ", including a parent with joint custody,"

EXHIBIT 5  
DATE 1-12-93  
SB 58



SENATE FISH AND GAME

AMENDMENT NO. 6

PROPOSED AMENDMENT TO SB 17  
FIRST READING (WHITE) COPY

DATE 1/12/93

BILL NO. SB 17

1. Page 2, line 20.

Following: "animal"

Insert: "and provided the person meets the  
qualifications for a license in their resident  
state"

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PROPOSED AMENDMENT TO SB 17  
FIRST (WHITE) COPY

1. Page 3, line 7.  
Following: "(3)"  
Strike: "Such"  
Insert: "Any resident or nonresident"
2. Page 3, line 7.  
Following: "disabled"  
Strike: "persons shall"  
Insert: "person who is certified as disabled by the  
department and who is not residing in an  
institution may"

SENATE FISH AND GAME

EXHIBIT NO. 7

DATE 1-12-93

BILL NO. SB 17

DATE January 12, 1993  
 SENATE COMMITTEE ON Fish & Game  
 BILLS BEING HEARD TODAY: SB 57 - SB 58

Name	Representing	Bill No.	Check One	
			Support	Oppose
Wesley E. Brogan	Ginnabar Game Farm	57		
Dan Miller		58		X
Les Graham	MT Game Breeders Assn	57	✓	
E. J. Martensen	Dept. of Livestock	57	✓	
Stan Blackhall		57	✓	
A. M. F. Hall	WCSM & NWCC	58	←	
Janet Ellis	MT Audubon Council	57	✓	
James Dyke JR	Handgun hunters	58	✓	
Tom Waring	Self			
Gary S. Marbut	MT Shooting Sports Assoc	58	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY