

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By Chairman Foster, on January 14, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Mike Foster, Chair (R)
Rep. Chase Hibbard, Vice Chair (R)
Rep. Bob Ream, Minority Vice Chair (D)
Rep. Beverly Barnhart (D)
Rep. Bob Clark (R)
Rep. Fritz Daily (D)
Rep. Jim Elliott (D)
Rep. Duane Grimes (R)
Rep. Marian Hanson (R)
Rep. Dick Knox (R)
Rep. Bea McCarthy (D)
Rep. Brad Molnar (R)
Rep. Bill Ryan (D)
Rep. Emily Swanson (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Scott Orr

Members Absent:

Staff Present: Doug Sternberg, Legislative Council
Mary Riitano, Committee Secretary

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

Committee Business Summary:

Hearing: HB 125, HB 133
Executive Action: HB 110, HB 133, HB 125

Announcements:

Mr. Pat Graham, Director of Fish, Wildlife, and Parks distributed Wildlife Viewing Guides.

HEARING ON HB 133

Opening Statement by Sponsor:

REP. MIKE FOSTER, House District 32, Townsend, stated HB 133 is requested by Fish, Wildlife, and Parks Department. This bill

relates to an agreement being constructed among Bureau of Reclamation, Bureau of Land Management (BLM), and the Fish, Wildlife, and Parks. The purpose of HB 133 is to authorize BLM and other federal officials trained as law enforcement agents to enforce state statutes and rules. Under the current law, if a federal official came upon a person suspected of violating the law, he would have to call a fish and game warden in order for a citation to be issued.

Proponents' Testimony:

Mr. Graham provided written testimony **EXHIBIT 1**. Refer to **EXHIBIT 1** for **Mr. Graham's** full presentation.

Mr. Stan Bradshaw, Montana Trout Unlimited and Montana Bowhunters Associations, stated there is a lot of country and not very many people to cover it in terms of wildlife protection. He also stated both organizations support HB 133.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. BRAD MOLNAR asked **Mr. Graham** if the Department has spoken with the Forest Service and Park Service to see if they would want involvement. **Mr. Graham** said the Department has discussed this with the Forest and Park Services. The Department has identified a number of potential people, both from state and federal agencies, who might be available for appointments. A cooperative agreement needs to be signed so each group clearly understands its responsibilities.

REP. DICK KNOX asked **Mr. Graham** if the potential people have been trained prior to their involvement with this program or will the Department undertake the training. **Mr. Graham** stated that the people have already been trained as enforcement officers.

REP. WILLIAM RYAN asked **Mr. Graham** if other officers and agents referred to the people who are presently on lines 19 and 20 of HB 133. He further queried that these are people who are charged with enforcing laws and not employees of the Department. **Mr. Graham** stated that is part of the amendment. The Department has clarified the description of peace officer in the amendment.

REP. RYAN asked **Mr. Graham** if these officers have all the abilities of a game warden. **Mr. Graham** replied they would be able to enforce any state fishing, hunting, or parks regulation.

REP. DOUG WAGNER asked **Mr. Graham** if the peace officers are already trained in fish and game laws. **Mr. Graham** referred the question to **Mr. Irv Kent, Chief of the Fish, Wildlife, and Parks Enforcement Division**. **Mr. Kent** replied that most of the officers are in the same work environment as the Department. The department does provide training. The officers already have basic law enforcement training; however, the Department

familiarizes them with the specifics of fish and game laws.

REP. WAGNER said that the officers receive no pay except for pay vouchers or travel expenses and then asked if the Department foresees an increase in the area. Mr. Graham says the Department is not anticipating it. The cooperative agreements that the Department is working on is to help bring federal money to the state park system.

REP. MOLNAR asked Mr. Graham to clarify the fact that the officers receive no pay. Mr. Graham said that the officers, in effect, paid by the organization for which they work; however, HB 133 will extend their authority. Mr. Kent also responded to the question by saying that the agreement describes that each agency pays its own officers.

Closing by Sponsor:

REP. FOSTER thanked the committee and stated that HB 133 was a good common sense bill that will aid those areas where special types of agreements are being made.

HEARING ON HB 125

Opening Statement by Sponsor:

REP. RANDY VOGEL, House District 86, Billings, stated that HB 125 was "an act allowing a private easement for a firearms shooting safety zone." This is a non partisan mutual agreement bill that provides for an easement where there is a willing seller and a willing buyer. HB 125 would allow someone who builds a shooting range to buy, upon consent of the property owners around it, an easement that would allow them a range safety zone. The easement would be recorded at the county to make a potential buyer aware of the agreement.

Proponents' Testimony:

Mr. Alfred Ewell, Citizen stated HB 125 is straight forward and the organization supports it fully.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. JIM ELLIOTT stated he had concerns regarding the servitude attached to the land and wanted further explanation. Mr. Sternberg, Legislative Staff responded that in property law there is a process whereby a servitude is attached to a piece of property. When it is attached it becomes an easement. Once it becomes classified as an easement, the right to use that property for that purpose passes with the property.

REP. BOB REAM asked Mr. Sternberg if the easement precluded the surrounding landowner from subdividing his property and selling lots. Mr. Sternberg replied that it would not, outside the area

of the easement. The use of the easement is exclusive in the same way as the use of the main piece of property up to the edge of the easement. The main piece of property is subject to the use of the individual property owner. **REP. REAM** asked if this would be contained in the terms of the easement. He stated it doesn't preclude selling the land for residency. **Mr. Sternberg** explained that essentially there is a piece of property surrounded by private property. If the shooting range owner were to purchase a surrounding shooting range safety zone, and once that easement is purchased, property is attached to the original piece. If the property that surrounds the easement is private property, then the conditions of the easement do not affect the use of the other private property. It would preclude building if it was part of the terms of the easement. HB 125 establishes the easement as a recognized servitude that is attached to property. **REP. REAM** stated the owner of the shooting range would have to be certain the easement contained the conditions of subdividing. HB 125 does not automatically do this. **Mr. Sternberg** agreed that it doesn't. HB 125 basically establishes as a legal right the continued use of property surrounding a shooting range as a buffer zone.

REP. EMILY SWANSON asked **Mr. Sternberg** if the property that is being granted an easement stays in the ownership of the landowner and not the shooting range. **Mr. Sternberg** replied that it allows the use of that property for only the purposes designated in the easement.

REP. SWANSON asked **Mr. Sternberg** what are the advantages of acquiring the property as an easement as opposed to outright buying the buffer zone. She asked if money was a reason. **Mr. Sternberg** responded saying that it would probably be the first consideration. Once an easement is legally acquired and the servitude attached, the right to the easement passes with the property. There are legal advantages to acquiring property as an easement when actual possession of the property passes. **REP. SWANSON** asked **Mr. Sternberg** if the easement was recorded on both deeds. **Mr. Sternberg** answered yes.

REP. BEVERLY BARNHART stated that HB 125 doesn't suggest that money changes hands. **Mr. Sternberg** said she was correct. The consideration of money changing hands is between the landowner who is granting the easement and the person who is seeking it. It is not necessary for money to change hands to fulfill the requirements of an easement.

REP. ROBERT CLARK stated that if this policy had been enacted years ago, it could have saved the state of Montana money. The Montana Law Enforcement Academy lost their range in Bozeman to residences being built along the edge of the shooting range. If there had been an easement, people probably would not have built along the range. Montana could still be using the range, rather than sending officers across the state.

REP. CHASE HIBBARD asked Mr. Sternberg if the easement could be undone if the best use of the land should change or if the shooting range should sell and the easement use changed. Mr. Sternberg said he assumes it would.

REP. ELLIOT asked Mr. Sternberg if HB 125 defined range safety zone. Mr. Sternberg said he didn't believe so. REP. ELLIOT asked if there should be a definition. Mr. Sternberg replied it would be a good idea if it was defined within the context of the terms of the easement when the property would be used as a range safety zone and no further developments were to take place. CHAIRMAN FOSTER suggested that REP. VOGEL check with the Department to see if this was an essential item for HB 125. REP. VOGEL stated that range safety zone was not defined, but he would be willing to talk to the Department. CHAIRMAN FOSTER said he would not like to hold executive action until this point is clarified. REP. CLARK stated he doesn't want to give the impression that shooting ranges are not already safe. This agreement would provide a further safety zone for the shooting ranges. The actual agreement will define the size of the safety zone.

REP. ELLIOT asked Mr. Sternberg if there was a bill similar to HB 125 in the last regular session or the one prior. Mr. Sternberg said there have been bills addressing shooting ranges; however, he did not recall any in regard to establishing an easement. REP. CLARK said the Shooting Range Protection Act (SRPA) was passed last year. HB 125 could work in conjunction with SRPA and save people money. SRPA allows that if someone causes a range to be moved, then that person is responsible for the bill.

REP. DUANE GRIMES asked Mr. Ewell if he had any comments regarding the range safety zone. HB 486 introduced by REP. WYATT from Great Falls in the last session did pass. HB 125 would be an addition to it and help pending costs of relocating or preventing relocation of a shooting range.

Closing by Sponsor:

REP. VOGEL stated he had just bought a road easement and others have the right of passage on the road. He hoped that a shooting range easement would be seen in similar light. HB 125 is a mutual agreement bill between landowner and shooting range owner.

EXECUTIVE ACTION ON HB 110

Motion/Vote: REP. MARION HANSON MOVED HB 110 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 133

Motion/Vote: REP. HANSON MOVED HB 133 DO PASS. Motion carried unanimously.

Motion/Vote: REP. HANSON MOVED THE AMENDMENTS DO PASS. Motion carried unanimously.

Motion/Vote: REP. HANSON MOVED HB 133 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 125

REP. REAM asked Mr. Sternberg if a right of easement could be granted without HB 125. Mr. Sternberg replied it was possible. HB 125 attempts to legalize this particular right of easement.

Motion/Vote: REP. CLARK MOVED HB 125 DO PASS.

Discussion:

REP. CLARK asked Mr. Sternberg why HB 125 was necessary since right of an easement could be granted without this bill. Mr. Sternberg said the intention of the legislation is to set out specific servitudes attached to land; however, the right of easement has been a statute for some time.

REP. REAM stated he has mixed feelings about HB 125. He has a similar problem with a shooting range in his district because of urbanization. HB 125 addresses safety but not sound pollution. Mr. Sternberg quoted Section 76-9-102 of the Montana codes which states, "Standards adopted by a state agency or a unit of local government to limit levels of noise that may occur in the outdoor atmosphere may not apply to shooting ranges." Mr. Sternberg quoted Section 76-9-103 which says, "The laws of this state concerning planning, master plans, or comprehensive plans may not be construed to authorize an ordinance, resolution, or a rule that would prohibit the establishment of new shooting ranges but may regulate the construction of shooting ranges to specified zones." HB 125 addresses the zoning concept. REP. CLARK replied to REP. REAM that the addition of an easement would help with the sound problem.

REP. BEA MCCARTHY requested to wait with executive action due to all the questions regarding the issue.

REP. KNOX stated that an easement is a major encumbrance. Much negotiation will occur between the landowner and the shooting range owner and in his opinion a lot of money will change hands.

REP. BARNHART expressed the opinion HB 125 was not necessary because the agreement can be entered into presently.

CHAIRMAN FOSTER deferred further discussion of this bill for Tuesday, January 19.

Motion: REP. REAM MOVED TO PASS CONSIDERATION OF HB 125. Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:30 p.m.



REP. MIKE FOSTER, Chair



MARY RIITANO, Secretary

MF/MR

HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

ROLL CALL

DATE

Jan 14, 1993

NAME	PRESENT	ABSENT	EXCUSED
VICE-CHAIRMAN CHASE HIBBARD	X		
VICE-CHAIRMAN BOB REAM	X		
REP. BARNHART	X		
REP. CLARK	X		
REP. DAILY	X		
REP. ELLIOT	X		
REP. GRIMES	X		
REP. HANSON	X		
REP. KNOX	X		
REP. MCCARTHY	X		
REP. MOLNAR	X		
REP. ORR			X
REP. RYAN	X		
REP. SWANSON	X		
REP. WAGNER	X		
CHAIRMAN MIKE FOSTER	X		

HOUSE STANDING COMMITTEE REPORT

January 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that
House Bill 110 (first reading copy -- white) do pass.

Signed: _____

Mike Foster
Mike Foster, Chair

(first reading copy -- white)

HOUSE STANDING COMMITTEE REPORT

January 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that
House Bill 133 (first reading copy -- white) do pass as amended

Signed: _____

Mike Foster, Chair

And, that such amendments read:

1. Page 1, lines 13 and 19.

Following: "service," on line 13

Strike: "officers and agents"

Insert: "peace officers"

2. Page 1, line 19.

Following: "management,"

Strike: "and other federal officers and agents"

Insert: "national park service, and corps of engineers"

EXHIBIT 1

DATE 1/14/93

1

HB 133

HB 133
January 14, 1993

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

HB 133 is an act to authorize the Department of Fish, Wildlife and Parks to expand the federal agencies from which we could designate certain federal officers and agents as ex officio wardens to enforce state Fish, Wildlife and Parks laws and regulations. The department is suggesting an amendment to further clarify our intent by specifying that the federal officers and agents would be peace officers of the Bureau of Land Management, National Park Service, and Corps of Engineers.

Section 87-1-503 presently allows the Department of Fish, Wildlife and Parks to designate ex officio warden status to officers of the U. S. Forest Service and agents of the U. S. Fish and Wildlife Service. In addition, most state game wardens are presently deputized as U. S. Special Game Management deputies. This cross certification has worked out extremely well in addressing serious poaching crimes.

Federal officers are adequately trained and can successfully fulfill these ex officio duties without any additional cost to the department.

We are now requesting authorization to use officers from other federal natural resource agencies. The need is in state parks and recreation areas during high use periods and occasional assistance for wildlife enforcement efforts during hunting seasons. This bill will allow us to work with these federal agencies on some of our sites where we are pursuing federal partnerships, such as Hell Creek State Park and Canyon Ferry State Park. We anticipate more federal/state partnerships in the future. The type of enforcement duties performed will be limited to enforcement of Fish, Wildlife and Parks statutes that are presently being performed by state game wardens or parks rangers.

PROPOSED AMENDMENT TO SB 133
FIRST (WHITE) COPY

1. Page 1, line 18.
Following: "service,"
Strike: "officers and agents"
Insert: "peace officers"
2. Page 1, line 19.
Following: "management"
Strike: "and other federal officers and agents"
Insert: "national park service, and corps of engineers"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Wh Bx Time

COMMITTEE

BILL NO.

125

DATE 1/14/93

SPONSOR(S) Randy Vogel

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[illegible]

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Fish & Game

COMMITTEE

BILL NO.

133

DATE

11/14/92

SPONSOR(S)

- Mike Foster

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tony Schooner	SEB	✓	
Stan Bradshaw	MTL & IBA	✓	
Janet Ellis	MT Audubon	✓	
Pat Grobman	FWP	✓	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.