

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By Chairman Foster, on January 19, 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. Jim Elliott (D)
Rep. Duane Grimes (R)
Rep. Marian Hanson (R)
Rep. Dick Knox (R)
Rep. Bea McCarthy (D)
Rep. Brad Molnar (R)
Rep. Scott Orr (R)
Rep. Bill Ryan (D)
Rep. Emily Swanson (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Bob Clark (R), Rep. Fritz Daily (D)

Members Absent: None.

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 122
Executive Action: HB 122, HB 125

HEARING ON HB 122

Opening Statement by Sponsor:

REP. SHEILL ANDERSON, House District 81, Livingston, distributed written background information on HB 122 (EXHIBIT 1). See (EXHIBIT 1) for REP. ANDERSON's full opening statement. REP. ANDERSON also distributed written background information regarding the Fish, Wildlife, and Parks Department activities (EXHIBIT 2).

Proponents' Testimony:

Mr. Al Elser, Deputy Director of Fish, Wildlife, and Parks

distributed written testimony in support of HB 122 (EXHIBIT 3). See EXHIBIT 3 for Mr. Elser's presentation.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. BRAD MOLNAR informed Mr. Elser that two years ago he supported a similar bill and the Department opposed it. He asked Mr. Elser if there would be a form where anyone could submit a bid or whether it be offered to the closest landowner. Mr. Elser said that two years ago the legislation met opposition from the Department due to its dilemma of trying to organize the maintenance and operation of the wildlife management area. As a result of a 1992 Legislative Audit report, a draft policy is being written regarding the purposes of lease activities. The policy explicitly describes the necessity of having competitive bidding on any leases. Normal bidding processes are followed by the Department, and the contract is awarded to the best bid.

Closing by Sponsor:

REP. ANDERSON stated HB 122 is self-explanatory and it will benefit both the Department and the landowner.

EXECUTIVE ACTION ON HB 122

Motion: REP. MARION HANSON MOVED HB 122 DO PASS.

Discussion: REP. CHASE HIBBARD stated he may have a financial conflict and will abstain from voting.

Vote: HB 122 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 125

Discussion: Mr. Doug Sternberg addressed questions the committee had on HB 125 from the prior hearing. Easements running with the land have been recognized by common law for a long time and statutorily in Montana since 1895. The reason we have the statute is because the Supreme Court has never definitely ruled on whether an easement that is not listed could be considered to run with the land, even within the terms of the easement.

In reference to the questions regarding whether an easement agreement can already be accomplished, Mr. Sternberg stated easement agreements running with the land can be performed. However, if it is a listed easement, it is created as a right by law and there is no question that easement runs with the land. An easement that "runs with the land" means that once created, the easement holder has an ongoing right to use the eased property for the stated purpose, even if actual ownership of the eased property or the shooting range changes.

The easement precludes the use of the property for any use that could be interpreted as an interference with the easement. That is, a shooting range safety zone would preclude use of the property for any use that would preclude shooting range safety considerations. Liability is addressed through an easement because if the landowner or anyone else uses the easement for a non-conforming use and is injured (i.e., stray bullets), the shooting range is not liable. Anyone else uses the easement at their own risk.

The safety zone easement would lapse if the shooting range is sold and its original use changes so that there is no more range or if the easement is eventually purchased and title is merged with the range itself.

The shooting range safety zone easement issue is first presented in HB 125 and is a new concept.

Motion/Vote: REP. KNOX MOVED HB 125 DO PASS. Motion carried 15 to 1 with REP. HANSON voting no.

ADJOURNMENT

Adjournment: 3:25 p.m.



REP. MIKE FOSTER, Chair



MARY RIITANO, Secretary

ML/MR

HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

ROLL CALL

DATE

1/19/93

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 19, 1993

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Mr. Speaker: We, the committee on Fish and Game report that
House Bill 125 (first reading copy -- white) do pass.

Signed: _____

Mike Foster, Chair

141650SC.Hlh

HOUSE STANDING COMMITTEE REPORT

January 19, 1993

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Mr. Speaker: We, the committee on Fish and Game report that
House Bill 122 (first reading copy -- white) do pass.

Signed: _____

Mike Foster, Chair

141649SC.Flh

EXHIBIT 1

DATE 1-19-93

4/3/22

LC0369

BACKGROUND INFORMATION

INTRODUCTION

The Department of Fish, Wildlife and Parks proposes to amend Section 87-1-209, MCA, to allow the department to enter into nonmonetary lease transactions on land owned or otherwise controlled by the department in exchange for services rendered by the lessee on the leased land.

NEED FOR LEGISLATION

The need for this legislation was noted by the Office of the Legislative Auditor in their 1992 limited scope review of the department's real property leasing operations. The department had brought this issue to the attention of the Legislative Auditor.

The department owns wildlife management areas, fishing access sites, and parks across the state. On occasion, the department contracts with neighboring landowners who provide a service to the department in exchange for grazing livestock or planting crops on state property. Examples of the type of services rendered to the department by lessees include: leaving a portion of the planted crop so as to improve wildlife habitat; maintaining fences, roads, or boat ramps; and controlling weeds. Cooperating with local landowners promotes good will and avoids investing in costly equipment and personnel.

With these types of agreements, there is no exchange of cash. Instead, there is a bartering of services between the contractor and the department. Present statutes do not specifically allow the department to enter into barter agreements. The legislation amending 87-1-209, MCA, will clearly allow the department to continue the current practice of bartering for services with neighboring landowners. It will also avoid collecting cash from contractors for leases, and then paying them a like amount when they render services to the department. The department believes that this limited exception will allow good business and management practices to continue.

The department has historically entered into lease-out agreements covering certain management aspects on our property. A lease-out is defined as a contract by which the department conveys some interest in a specific parcel of property, for a specified term and a specified rent. On occasion the department will contract with adjacent landowners to provide a service to meet the rent arrangements of the lease. With these type agreements, there is no exchange of cash but rather a bartering of services between the contractor and the department. Technically, statute does not allow the department to enter into barter agreements. This legislation will allow the department to continue the current practice.

Examples of lease-out agreements for services:

Wildlife

Dome Mountain WMA: Ag lease, 40% of hay crop sold to highest bidder, receipts used to fund portion of operations costs of farming.

Blackfoot-Clearwater WMA: Grazing lease, services provided in fence maintenance and weed control.

Blackfoot-Clearwater WMA: Grazing lease, vegetation management by using cattle grazing in return for habitat management on adjacent private land.

Ninepipes WMA: Ag lease, 60 bales of straw used for goose

nest structures plus work in weed control and fence maintenance.

Elk Island WMA: Ag lease, 25% of grain left in fields for wildlife.

Parks

Beavertail Hill SP: Ag lease, caretaker mows pasture, keeps hay in exchange for weed control and fire protection.

Cooney SP: Ag lease, hay in exchange for one-quarter mile of cross fence, gravel for entrance road and fencing materials.

Chief Plenty Coups SP: Ag lease, 180 feet of split rail fence constructed in exchange for hay.

Fisheries

Fairweather FAA: Ag lease, 30% of crop left in field for wildlife.

Mallard's Rest FAA: Grazing lease, irrigation assessment payment and mowing of fire breaks.

Captain Clark FAA: Grazing lease, allows duck hunting on adjacent private land, removes silt from boat ramp, collects trash and litter, mows grass along road, maintains fences and installs signs.

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Cole Ponds FAA: Ag lease, 25% of alfalfa crop left standing
for nesting cover.

EXHIBIT 3
DATE 1-19-93
HB 122

HB 122
January 19, 1993

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

The purpose of this bill is to allow the department to lease land it controls to interested parties in exchange for services they perform on leased department land. Passage of the bill will establish specific statutory authority for these limited leases. The bill will also conform to a recommendation in the Office of the Legislative Auditor's 1992 review of the department's real property leasing operations.

The department owns wildlife management areas, fishing access sites, and parks across the state. We sometimes enter into lease agreements with interested parties who use department land for grazing, agricultural, or other uses.

Most lease agreements provide that lessors make cash payments to the department; this type of agreement would not be affected by the proposed legislation. A typical example is leasing acreage to the highest bidder to graze a specified number of animal units on department land.

Occasionally, it is advantageous for the department to enter into service lease agreements. In such cases, we contract with interested parties who perform a service on department land in

exchange for being allowed to graze livestock or plant crops on our property. Examples of services include: leaving a portion of a planted crop to improve wildlife habitat; maintaining fences, roads, and boat ramps; and controlling weeds.

With service lease agreements, there is no exchange of cash. Instead, the contractor performs services. Most of these leases involve wildlife management properties and have a fair market value of less than \$1000.

Service leases will be restricted by department policy. For example, leases may be approved only if the activity leaves the site in its existing or an improved condition. In addition, these leases will be advertised in the local newspaper, allowing interested parties to submit competitive bids. If competitive bids are not received, prices will be established by sources such as the Agriculture Statistic Board report, federal and state grazing rates, and the Montana Custom Rate/Lease Agreement Survey.

Present statutes do not specifically allow the department to enter into service payment agreements. The proposed legislation will clearly allow the department to continue the current practice of entering into agreements to lease land to interested parties in exchange for their performing services on that land.

There are several advantages to entering into service leases when applicable, rather than being restricted to cash leases. Service agreements avoid excessive staff time spent on paperwork. The department avoids investing in costly equipment and personnel required if we, rather than a lessee, performed the services. Finally, cooperating with local landowners promotes good will. We believe that this limited exception will allow good business and management practices to continue.

In closing, this amended legislation will recognize current practice and bring us into full compliance with state law and the 1992 Legislative Auditor's review.

PLEASE PRINT

Submitted written testimony

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0122, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing nonmonetary lease transactions by the Department of Fish, Wildlife & Parks in exchange for services rendered on the leased land.

ASSUMPTIONS:

1. All lease-outs require commission authorization.
2. The only non-cash payment lease arrangements that will be acceptable are where some property use (grazing, farming, etc.) would be exchanged for services (labor). No leases will be approved which involve goods.
3. Services rendered from such arrangements may only be provided on the site where the value was derived.
4. Service payment lease transactions will only be approved if the activity directly relates to maintaining the site in its existing condition.

FISCAL IMPACT:

No fiscal impact.

Dave Lewis 1-13-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Shiell W. Anderson 1-23-92
SHIELL W. ANDERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0122, as introduced
HB 122

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Fish & Game COMMITTEE BILL NO. CB122
DATE 1/19/93 SPONSOR(S) Shirley Anderson

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bob Lane	Fwp + p	✓	
ALERSEN	Fwp	✓	
Jim Manning	Legislative Auditor	✓	
W. Semer	MATR		
Mike Holsby	MACD		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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H8 122

Cole Ponds FAA: Ag lease, 25% of alfalfa crop left standing
for nesting cover.