

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FISH & GAME**

**Call to Order:** By CHAIRMAN FOSTER, on February 16, 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. Scott Orr (R)  
Rep. Bill Ryan (D)  
Rep. Emily Swanson (D)  
Rep. Doug Wagner (R)

**Members Excused:** None.

**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 607  
Executive Action: HB 576, HB 607, HB 381, HB 432, HB 338,  
HB 313, HB 412, HB 595, HB 341, HB 354,  
HB 314, HB 369

**EXECUTIVE ACTION ON HB 576**

**Motion/Vote:** REP. BOB CLARK MOVED HB 576 DO PASS. Motion carried unanimously.

HEARING ON HB 607Opening Statement by the Sponsor:

REP. JIM ELLIOTT, House District 51, Trout Creek, stated HB 607 addresses a problem in parks, particularly in the Thompson Falls and Flathead Lake areas. The lease at Thompson Falls State Park represents one-third of the amount of the fees collected. Department of State Lands has the responsibility to maximize returns on its lands. He suggested an exception should be made for land leased to Fish, Wildlife, and Parks Department for recreational purposes. The FWP Department has set aside money for improvements for these sites, which will be matched by federal money if a long-term lease can be obtained. Currently, the Department of State Lands is bound statutorily not to grant long-term leases.

Proponents Testimony:

REP. JOHN MERCER, House District 50, Polson, stated that under the Constitution and other laws, the Department of State Lands must maximize returns on its property. There is school trust land which is being used for state parks. HB 607 directs the Department of State Lands to allow these lands to still be used for parks. The parks benefit many people. He declared that if parks are lost, it would be a tragedy. He believed everything possible should be done to preserve state parks for the benefit of Montana residents.

Mr. George Ochenski, Montana State Parks Foundation, expressed the organization's support of HB 607.

Mr. Tony Shoonen, Coalition for program managing state lands, felt that something should be worked out through legislation to allow long-term leasing. He declared his support of the bill.

Opponents Testimony:

Mr. Bud Clinch, Commissioner of State Lands, distributed written testimony (EXHIBIT 1).

Questions from Committee Members and Responses:

REP. EMILY SWANSON asked REP. ELLIOTT if the purpose of HB 607 was to allow the FWP Department to manage state parks better. REP. ELLIOTT replied yes. The federal government will provide funds to help improve Lake Elmo and Big Arm State Parks if a long-term lease can be secured. It also lowers the operating costs of these parks. REP. SWANSON asked how these two parks are managed currently. REP. ELLIOTT referred the question to Mr. Arnie Olson, Fish, Wildlife, and Parks (FWP) Department. Mr. Olson explained that there is no lease on Big Arm and Lake Elmo State Parks for the shoreline. There is a basic lease for the portion of the property which is under state park management.

Improvements are needed at these sites to meet disability and human health standards. There is an opportunity to obtain federal money if a long-term lease can be obtained. If no lease is obtained, these sites will need to be returned to the Department of State Lands.

REP. DOUG WAGNER asked REP. ELLIOTT if currently the public is charged for use of these areas. REP. ELLIOTT said that he believed there was a charge. Mr. Pat Graham, Director of Fish, Wildlife, and Parks Department, stated that there is a vehicle fee of \$3 and a 50 cents single user fee. Camping fees are \$6 for improved sites and \$3 for undeveloped sites. REP. WAGNER asked if it was anticipated the charges will remain the same if a long-term lease is obtained and improvements made. Mr. Graham said that the camping improvements made at Big Arm may result in increased fees for the camper. However, no change in entrance fees is planned.

REP. MARIAN HANSON asked Mr. Clinch how many acres are involved. Mr. Clinch said there are several tracts of land involved. The Big Arm tract involves about 234 acres and one mile of lake shoreline. REP. HANSON asked how many other park sites are being considered. Mr. Clinch said there are approximately four or five other sites.

REP. BEVERLY BARNHART inquired about the orchard leases on the Big Arm property. Mr. Clinch replied that there are adjacent orchards but was unsure what the return was on them. For the past two years, the apple crop has been frozen out. The rental payment is a percentage of the crop share. He felt that the issue was classification of the specific lands for agricultural purposes versus commercial purposes that the FWP Department uses.

REP. BRAD MOLNAR stated that currently a portion of the Big Arm land is classified as agricultural. He asked Mr. Clinch if changing to a commercial classification will result in receiving \$270,000 instead of apples. Mr. Clinch said that the tract of land is approximately 244 acres. It is a combination of shoreline and an adjacent grazing lease that FWP Department assumed at renewal time. The apple orchard is a comparative lease. It is not the portion being considered for transfer. REP. MOLNAR stated the FWP Department is paying on an AUM basis and the Department of State Lands wants to change it to a commercial basis. Mr. Clinch confirmed his statement. On that portion of the tract of land, the set-aside easement along the lakeshore is more valuable, but there is no lease arrangement. It was set aside in the 1950's for the FWP Department. However, a later attorney general's opinion on this arrangement was that the Department of State Land still must assess and receive payments for the trust.

Closing by Sponsor:

REP. ELLIOTT stated he had discussed the issue with REP. BARDANOUVE. REP. BARDANOUVE is a strong proponent of the state parks system and is adamant about retaining school trust lands for their maximized use and value. His response regarding questions about the Enabling Act was that Montana has never followed that law. REP. ELLIOTT referred to Article X, Section 11, in the Montana Constitution, which basically describes how state lands can be disposed of. He felt it was within legislative authority under subsection (2) to pass laws regarding exceptions to disposal of state lands, which may or may not return full value to the school trust. On page three, lines 10-15, leases granted under this section will satisfy the Department of State Land's statutory responsibility by allowing it to choose to maintain trust land through a lease for public purposes. He referred to state lands which have camping site fees, grazing fees, outfitter leases, and orchard leases. In none of these are the leases held to the same standards as state parks. Basically, HB 607 will give the Department of State Lands legislative authority to examine the fair market value for use of the public recreational sites and then determine how much to charge the FWP Department for the state parks in question.

EXECUTIVE ACTION ON HB 607

Motion: REP. ELLIOTT MOVED HB 607 DO PASS.

Motion: REP. ELLIOTT MOVED HB 607 BE AMENDED.

Discussion:

Mr. Sternberg distributed copies of proposed amendments (EXHIBIT 2). Basically, the amendments give the Department of State Lands discretion in the issuance of leases not to exceed 20 years and confirm that leases to the FWP Department for recreational camp site purposes will not exceed 20 years.

CHAIRMAN MIKE FOSTER asked REP. ELLIOTT for the origin of the amendments. He explained that they originated in the FWP Department, and he finds them acceptable. CHAIRMAN FOSTER inquired what the Department of State Land's opinion was on the amendments. REP. ELLIOTT stated it gives them a little more freedom in the length of leases.

REP. BEA MCCARTHY asked if the Department of State Lands could give their opinion. Mr. Clinch declared that the amendments will not alter their position significantly. He explained they are currently allowed to lease up to 40 years under the commercial lease status.

Vote: AMENDMENTS DO PASS. Motion carried unanimously.

Motion: REP. ELLIOTT MOVED HB 607 DO PASS AS AMENDED.

Discussion:

REP. WAGNER asked why it was necessary for the bill to have an immediate effective date. REP. ELLIOTT said that if the language regarding the effective date were omitted, the bill would take effect in the next fiscal year and would impact the FWP Department's budget.

REP. CHASE HIBBARD asked REP. ELLIOTT what kind of precedent might be set for recreational properties around the state and if areas, other than the ones described, would be affected. REP. ELLIOTT said he did not know of other parks which would be affected. He did not believe there would be any challenges made by the public regarding Department of State Land and FWP Department agreements. REP. HIBBARD asked if there were other state lands which would qualify under HB 607. REP. ELLIOTT said that he did not know.

REP. HANSON commented that she had asked the Department of State Lands if additional areas would qualify under HB 607. Their response was that four or five other parks could qualify. REP. ELLIOTT asked if the parks she spoke of are currently leased to the FWP Department. REP. HANSON said that according to the Department of State lands, there are four or five parks that the FWP Department could lease.

Vote: HB 607 DO PASS AS AMENDED. Motion passed 12 to 4 with REPS. KNOX, MCCARTHY, HANSON, AND CLARK voting no.

EXECUTIVE ACTION ON HB 381

Motion: REP. BILL RYAN MOVED HB 381 DO PASS.

Motion: REP. RYAN MOVED HB 381 BE AMENDED.

Discussion:

Mr. Sternberg distributed a copy of proposed amendments (EXHIBIT 3). He explained that the amendments delay the effective date until March 1, 1994, and the change would be noted in the title of the bill.

Vote: AMENDMENTS DO PASS. Motion carried unanimously.

Motion/Vote: REP. RYAN MOVED HB 381 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 432

Motion: REP. HANSON MOVED HB 432 DO PASS.

Motion: REP. MCCARTHY MOVED HB 432 BE AMENDED.

**Discussion:**

Mr. Sternberg distributed a copy of proposed amendments (EXHIBIT 4). The amendments were requested by Ms. Jean Johnson, Montana Outfitters and Guides Association (MOGA). Two amendments strike Sections one and 19. The MOGA decided it did not want to include cattle drives and other recreational excursions under the definition of an outfitter. They also decided against working with the Department of Commerce to hire a full-time investigator. Currently they have the authority to hire an investigator and it would raise outfitting license fees if another investigator were hired. The remaining amendments reflect the changes in the title and in codification instructions.

CHAIRMAN FOSTER asked if the effect of the amendments negate the fiscal note. Mr. Sternberg explained if the amendments were adopted, they would have an impact on the fiscal note. Licenses would not be required for cattle drives and other recreational excursions and one FTE would be eliminated due to not hiring a person for full-time investigative purposes.

REP. MCCARTHY asked Mr. Sternberg if the committee strikes Section one, would the Board of Outfitters lose control over licenses. He stated that MOGA desires to remove Section one from the bill. It is not being repealed from present law.

REP. MOLNAR inquired if the Board of Outfitters is giving up their investigative powers through these amendments. Mr. Sternberg explained that the Board, through the Department of Commerce, is presently able to investigate infractions of outfitting laws. Section 19 provided specific qualifications for an investigator. In removing section 19, it would not affect the present investigative authority of the Board.

REP. BARNHART asked Mr. Sternberg if she understood correctly that cattle drives would no longer be subject to outfitting licensure. Mr. Sternberg said by striking Section one of the bill, licensure is required only of those who conduct activities under current law. The definition will not be expanded.

REP. FRITZ DAILY declared his support of the amendments. However, he has a concern regarding how many additional bills have been introduced allowing the Board to hire additional investigators. He felt the committee should scrutinize HB 432 closely.

REP. SWANSON asked REP. DAILY who pays for an investigator that is hired. REP. DAILY replied that it is paid for out of outfitter license fees.

**Vote:** AMENDMENTS DO PASS. Motion carried unanimously.

**Motion:** REP. HANSON MOVED HB 432 DO PASS AS AMENDED.

Discussion:

REP. DAILY asked the committee to look at section 17, pages 19 and 20. He declared that under current law, if the person who has hired an outfitter violates fish and game laws, the outfitter and the person are equally responsible. In the proposed language of HB 432, it does not remain this way. He believed that this should not be done. If a person is with a guide, then no violations should be occurring. He felt HB 432 does more than housekeeping.

REP. HIBBARD asked if the representative from the MOGA could address REP. DAILY's concern. Ms. Johnson said that line nine states "an outfitter, agent, or employee of such an outfitter who willfully fails to report a violation is liable." She explained it is a clarification of language and that an outfitter remains liable. REP. DAILY said that it still concerns him.

REP. MOLNAR believed outfitters should remain responsible for their clients' actions.

REP. HIBBARD commented that "an agent or employee" is being added, but the responsibility remains the same. REP. MOLNAR disagreed, saying the outfitter is responsible only if it is reported to a game warden.

REP. SWANSON pointed out that there is a continuation of the sentence which states, "and the outfitter, agent, or employee is not an active participant." She said that in her interpretation, if the outfitter was an active participant, even if he reports it, he is implicated. The assumption is that the outfitter is an active participant until he proves otherwise.

REP. MCCARTHY referred the committee to subsection two, page 20, of the bill.

CHAIRMAN FOSTER declared in his opinion there were no problems with the language.

REP. WAGNER said he agreed with CHAIRMAN FOSTER.

Vote: ROLL CALL VOTE HB 432 DO PASS AS AMENDED. Motion passed 13 to 3 with REPS. DAILY, MOLNAR, and RYAN voting no.

EXECUTIVE ACTION ON HB 338

Motion: REP. BOB REAM MOVED HB 338 DO PASS.

Discussion:

REP. REAM presented written testimony from Mr. Russ Kilpatrick, Great Bear Adventure (EXHIBIT 5).

Mr. Sternberg distributed copies of an amendment proposed by Mr.

Lon Mitchell, Department of Livestock (EXHIBIT 6). The amendment clarifies that the Department of Livestock is responsible for the individual marking of game farm animals, not the FWP Department.

Vote: AMENDMENT DO PASS. Motion passed unanimously.

Motion: REP. REAM MOVED HB 338 BE AMENDED.

Discussion:

REP. REAM stated the remaining amendments found in (EXHIBIT 6) were proposed by Ms. Janet Ellis, Montana Audubon, and have been approved by the FWP Department.

Mr. Sternberg explained that the second set of amendments makes grammatical changes and clarifies definitions.

Discussion:

CHAIRMAN FOSTER said that HB 338 is a compromise bill. He had no difficulty with the amendments; however, he wanted assurance that the amendments were acceptable to the parties involved. REP. REAM stated that they were acceptable to the Department.

Vote: SECOND SET OF AMENDMENTS DO PASS. Motion carried unanimously.

Motion: REP. REAM MOVED HB 338 DO PASS AS AMENDED.

Motion: REP. MOLNAR MOVED HB 338 BE AMENDED.

Discussion:

Mr. Sternberg distributed copies of amendments proposed by REP. MOLNAR (EXHIBIT 7). The amendments would increase the license fees and allow the Department to charge an additional one-time surcharge of \$500 for each license renewed during 1994.

REP. MOLNAR explained the increase in license fee would help fund the program at the FWP Department.

REP. ELLIOTT commented that not all game farms are large operations.

CHAIRMAN FOSTER suggested not proposing too many changes because the substance of the bill will lose its meaning. He declared that he strongly opposed any amendment which would change the substance and allow the compromise to fall apart.

REP. REAM remarked that the fees in HB 338 are already being doubled. In his opinion, a graduated fee system based on the size of game farm operation might be a viable option in the future.



Vote: THIRD SET OF AMENDMENTS DO PASS. Motion failed 14 to 2 with REPs. DAILY and MOLNAR voting yes.

Vote: HB 338 DO PASS AS AMENDED. Motion passed unanimously.

EXECUTIVE ACTION ON HB 313

Motion: REP. BARNHART MOVED HB 313 DO PASS.

REP. BARNHART commented that HB 313 provides a student fishing license.

Motion: REP. BARNHART MOVED HB 313 BE AMENDED.

Discussion:

Mr. Sternberg distributed copies of the proposed amendments (EXHIBIT 8). The amendments will create a new class of nonresident student fishing license, allow issuance of paddlefish tags to students holding the license, and provide a delayed effective date.

REP. BARNHART thought that creating a new class of license would be less complicated than providing a resident exception for a nonresident student.

REP. MCCARTHY asked if vo-techs and junior colleges would be included. REP. BARNHART explained the definition in the bill would include all college students. Mr. Sternberg remarked that the language in the proposed amendments is the same as the original bill. REP. MCCARTHY asserted she wanted all students covered. Mr. Sternberg's interpretation was that anyone who could provide proof of full-time enrollment at any Montana university or college would qualify for the license. REP. MCCARTHY felt that if the word "system" was used it would include all students and address her concern.

REP. DAILY asked Mr. Sternberg to phrase an amendment which would include all students. He said that any student who is attending "a unit of the Montana university system or a Montana college" would qualify.

Substitute Motion/Vote: REP. DAILY MOVED TO AMEND THE AMENDMENT. Motion carried unanimously.

REP. CLARK inquired about the fiscal note reflecting the amendment.

REP. REAM stated that the proposed fiscal note would be unchanged. Mr. Graham agreed with REP. REAM.

REP. CLARK asked Mr. Graham what the cost would be for implementing a new type of license. Mr. Graham said the exact cost is unknown, but it would involve printing costs.

Vote: HB 313 BE AMENDED. Motion carried unanimously.

Motion: REP. BARNHART MOVED HB 313 DO PASS AS AMENDED.

Discussion:

REP. CLARK asserted that Montana presently subsidizes its nonresident students enough.

Substitute Motion: REP. CLARK MOVED HB 313 BE TABLED.

Discussion:

REP. REAM commented that nonresidents will be paying 100% of the costs of their education with the Board of Regents' recent recommendation.

Vote: ROLL CALL VOTE TO TABLE HB 313. Motion failed 9 to 7 with REPS. CLARK, GRIMES, HANSON, KNOX, MCCARTHY, WAGNER, and FOSTER voting yes.

Discussion:

REP. BARNHART declared her support of HB 313.

CHAIRMAN FOSTER stated his opposition to HB 313.

REP. ELLIOTT remarked that he strongly opposed a similar idea presented in the last legislature. He had time to reflect on it and concluded that students will fish regardless of whether or not they can afford a license.

REP. HIBBARD believed that the bill portrays Montana's duty and heritage to be good hosts to visiting students.

REP. DUANE GRIMES felt students are already provided an opportunity to fish and that the current policy should remain in place.

REP. WAGNER asked if there were currently opportunities for nonresident students to get a short-term permit. REP. REAM reported that there is a 2-day license which costs \$10.

REP. CLARK asked REP. BARNHART how Montana students were treated in other states with regard to fishing. REP. BARNHART said that she did not know.

REP. REAM commented that Montana formerly covered 25% of the costs of educating nonresidents. Tuition for nonresidents has risen significantly. There may be some decrease in FWP Department revenue. He said that he supported the bill.

Vote: ROLL CALL VOTE HB 313 DO PASS AS AMENDED. Motion failed 9 to 7 with REPS. HIBBARD, REAM, BARNHART, ELLIOTT, MCCARTHY, RYAN,

and SWANSON voting yes.

Motion/Vote: REP. ELLIOTT MOVED HB 313 BE TABLED. Motion carried 15 to 1 with REP. BARNHART voting no.

EXECUTIVE ACTION ON HB 412

Motion: REP. DAILY MOVED HB 412 DO PASS.

Discussion:

REP. MOLNAR declared that there are not many things about game farms that he liked. He felt that HB 412 goes beyond game farming to a man's right to use his land as he sees fit.

Vote: ROLL CALL VOTE HB 412 DO PASS. Motion failed 11 to 5 with REPs. BARNHART, DAILY, MCCARTHY, RYAN, and SWANSON voting yes.

Motion: REP. HANSON MOVED HB 412 BE TABLED. Motion carried 15 to 1 with REP. DAILY voting no.

EXECUTIVE ACTION ON HB 595

Motion: REP. DAILY MOVED HB 595 DO PASS.

Discussion:

CHAIRMAN FOSTER asked Mr. Graham where other fines for violations typically go in the FWP Department. Mr. Graham explained that the fines are used to recover costs for mitigation or rehabilitation of the body of water. The money for mitigation or the rehabilitation would come from the general license fund. There is a direct relation between the amount of damage caused and the amount of money that will be returned to account.

REP. WAGNER asked CHAIRMAN FOSTER if he was referring to actual costs. CHAIRMAN FOSTER said yes.

REP. HANSON asked for clarification regarding the purpose of HB 595.

REP. REAM said that HB 595 deals with the penalties for a person who transplants fish. Mr. Sternberg explained that HB 595 addresses a Supreme Court decision which dealt with court jurisdiction, especially in regard to extensive damages of fish transplantation. HB 595 clarifies jurisdictional questions.

Vote: HB 595 DO PASS. Motion carried 15 to 1 with REP. ORR voting no.

EXECUTIVE ACTION ON HB 341

Motion: REP. REAM MOVED HB 341 DO PASS.

Discussion:

CHAIRMAN FOSTER reported that the meetings between the Department and Walleyes Unlimited resulted in no solutions.

Mr. Sternberg distributed copies of two different sets of amendments. One set was proposed by REP. HARPER (EXHIBIT 9) and the other was proposed by Mr. Riley Johnson, Walleyes Unlimited (EXHIBIT 10). REP. HARPER's amendments are an attempt by the FWP Department to add a Statement of Intent, place the walleye fishermen's concerns under rulemaking authority, leave the penalty for transportation of game fish in statute, and provide a delayed effective date. Mr. Johnson's amendments attempt to put into statute rather than administrative rule what would constitute a "body of water" and "access area."

Motion: REP. REAM MOVED REP. HARPER's AMENDMENTS.

Discussion:

REP. REAM remarked that REP. HARPER's amendments give the FWP Department rulemaking authority. Transplanting fish is a serious problem and he supported the bill. He felt the walleye fishermen's concerns would be better addressed through the rulemaking function of the FWP Department.

Vote: AMENDMENTS DO PASS. Motion carried unanimously.

Motion/Vote: REP. REAM MOVED HB 341 DO PASS AS AMENDED. Motion carried 15 to 1 with REP. RYAN voting no.

EXECUTIVE ACTION ON HB 354

Motion: REP. SWANSON MOVED HB 354 DO PASS.

Discussion:

Mr. Sternberg distributed copies of a proposed amendment (EXHIBIT 11). The amendment is proposed by Ms. Janet Ellis, Montana Audubon, and provides clarification for the types of changes in management that might be subject to public input.

Motion/Vote: REP. REAM MOVED THE AMENDMENT DO PASS. Motion passed 14 to 2 with REPS. KNOX and WAGNER voting no.

Motion: REP. SWANSON MOVED HB 354 DO PASS AS AMENDED.

Discussion:

REP. HANSON felt that currently there were enough safeguards and was not in favor of the bill.

CHAIRMAN FOSTER commented that he will propose an amendment to eliminate fishing access sites if the bill is passed.

REP. DICK KNOX declared he did not support the bill.

REP. SCOTT ORR remarked that the legislation seemed premature.

Vote: ROLL CALL VOTE DO PASS HB 354 AS AMENDED. Motion failed 10 to 6 with REPS. REAM, BARNHART, DAILY, MOLNAR, RYAN, and SWANSON voting yes.

Motion/Vote: REP. HANSON MOVED HB 354 BE TABLED. Motion carried 15 to 1 with REP. BARNHART voting no.

#### EXECUTIVE ACTION ON HB 314

Motion: REP. KNOX MOVED HB 314 DO PASS.

#### Discussion:

REP. KNOX declared his support of the bill.

Motion: REP. HANSON MOVED HB 314 BE AMENDED.

#### Discussion:

Mr. Sternberg circulated a copy of REP. RANEY's proposed amendments (EXHIBIT 12). The amendments remove penalties for nonresidents who use primitive parks without paying, make codifying changes in the title, and remove the south end of Canyon Ferry Reservoir management area from consideration as a primitive park.

Vote: AMENDMENTS DO PASS. Motion carried unanimously.

Motion: REP. ORR MOVED TO REMOVE LOGAN STATE PARK AND THOMPSON CHAIN-OF-LAKES STATE PARK FROM CONSIDERATION. He explained that Champion donated the land to the State of Montana. A solution is in the final stages of what to do with the park. It will be handled as a fishing access site and basically left alone. He felt designating the area as a primitive park would affect the current process.

#### Discussion:

REP. SWANSON asked REP. ORR how the process would be changed. REP. ORR stated there were many uncertainties regarding the final plan for the area. REP. SWANSON asked for confirmation regarding the plan of leaving the area as it is. REP. ORR said that it will be left as is for the time being, but as a fishing access site not a state park.

REP. ELLIOTT asked Mr. Olson to address REP. ORR's concern regarding Logan State Park and Chain-of-Lakes. Mr. Olson explained that boat ramps and boat parking areas will be constructed to meet requirements of a fishing access site. HB 314 prohibits further development of a designated park.

REP. WAGNER remarked that there is an advisory council working on solutions, funding sources, and rules for the Chain-of-Lakes area. He supports REP. ORR's amendment.

REP. REAM explained that the only developments specifically prohibited in HB 314 relate to development for RV's, new roads, and electricity. He asked REP. ORR if these were being discussed for the Chain-of-Lakes area. REP. ORR said yes. There is a lot of private land dispersed around the lakes, and there are many concerns regarding grazing, hunting, and the loon survival.

REP. WAGNER asked Mr. Ochenski if Thompson Chain-of-Lakes was indeed a state park. Mr. Ochenski explained that when the bill was drafted it was going to be a state park. However, due to funding difficulties, the FWP Department changed it to a fishing access site which allowed them access to Dingell-Johnson federal funds. If the committee decided to remove it, that would be acceptable.

Vote: DO PASS REP. ORR's AMENDMENT. Motion carried unanimously.

Motion: REP. HIBBARD MOVED TO REMOVE HEADWATERS STATE PARK FROM CONSIDERATION.

Discussion:

CHAIRMAN FOSTER commented that the Headwaters State Park is a beautiful place. He compared the park with the Sluice Boxes State Park. He felt Sluice Boxes State Park was an ideal candidate for HB 412.

REP. REAM asked Mr. Graham if developments relating to RV development, electricity, or new roads were being considered for the Headwaters State Park. Mr. Graham said that he is unsure of the future plans for that park. He explained that there is a lack of funds. He stated that the main issue was what site should or should not be included for consideration.

REP. SWANSON said that the original intent of the bill was to create a type of park which will be considered as a primitive park. The purpose is to leave it undeveloped. She wondered if consideration of the parks should be made during the development process. REP. SWANSON explained that she does not want the committee to lose sight of the concept of primitive parks.

REP. BARNHART felt that Headwaters State Park should remain as is and that the people in the surrounding area should be able to visit without paying a fee.

REP. HANSON said she agreed with REP. HIBBARD.

REP. MCCARTHY felt that one issue is whether or not a park should remain in its current state or be further developed. The other

issue is whether or not Montana citizens should have free access. She does not want to see the park developed further.

REP. ELLIOTT believed that the issue was whether or not to stop developing these parks further. Headwaters State Park is an interesting historical park. He explained this piece of land belonged to all people. He opposes the motion to remove the park.

CHAIRMAN FOSTER felt that most of the parks were ideal candidates for HB 412. It would be easier to remove the park now than to try and remove it in the future.

Vote: ROLL CALL VOTE DO PASS REP. HIBBARD's AMENDMENT. Motion failed 9 to 7 with REPS. HIBBARD, CLARK, GRIMES, HANSON, ORR, WAGNER, and FOSTER voting yes.

Motion: REP. MCCARTHY MOVED HB 314 DO PASS AS AMENDED.

Discussion:

Mr. Sternberg distributed copies of FWP Department proposed amendments (EXHIBIT 13). The amendments would exempt changes that would be necessary for the disabled and for historic or cultural purposes, provide a sunset date, and allow the decision of elimination of user fees to remain with the commission.

REP. DAILY asserted that the committee should vote on the bill as it is.

REP. MCCARTHY asked if through the Department's amendments the user fees will be eliminated. Mr. Sternberg explained that the user fees would remain intact.

Vote: HB 314 DO PASS AS AMENDED. Motion carried 12 to 4 with REPS. WAGNER, CLARK, ORR, and GRIMES voting no.

EXECUTIVE ACTION ON HB 369

Motion: REP. HANSON MOVED HB 369 DO PASS.

Motion: REP. HIBBARD MOVED HB 369 BE AMENDED.

Discussion:

REP. HIBBARD distributed a copy of proposed amendments (EXHIBIT 14). He explained that the amendments take 20% of the money obtained under the habitat acquisition program and designate it for administrative purposes. The remaining funds are divided into thirds: one-third would be allocated for leases, easements, and cooperative management agreements; one-third would be allocated for fee title, and the no net gain provision would be removed; and one-third would become available for grants to

landowners. **REP. HIBBARD** explained he is prepared to make a motion to table HB 214.

**CHAIRMAN FOSTER** stated that if the amendment passes, HB 498 and HB 369 may be tabled as well. He explained that a resolution will be offered requesting more effort on the part of landowners and sportsmen to try and resolve the current conflicts. It is hoped that through this effort, future legislatures will see those involved reach a compromise.

**REP. HANSON** said she would concede to the compromise offered by **REP. HIBBARD**.

**REP. ELLIOTT** asked what is being debated. **CHAIRMAN FOSTER** said that it is his intention the amendments be debated and then voted on.

**REP. DAILY** asked **REP. HIBBARD** if the amendments are adopted, one-third of the money from the HB 526 program will be used for habitat. **REP. HIBBARD** stated one-third will be used for habitat acquisition similar to what is described in HB 526 and the no net gain provision would be removed. **REP. DAILY** said that it was his understanding that one-third of the money would be used for habitat; one-third would be used for access; and one-third would be used for leases, easements, and cooperative agreements. He understands the purpose of the amendments and that a compromise is trying to be reached. In his opinion this compromise would not be viewed favorably by the sportsmen. He predicted the amendments would result in chaos among the sportsmen and that they might begin working with the initiative process. He declared that he will not vote for the amendment or the bill.

**REP. ELLIOTT** said that a major concern is giving HB 526 money to landowners to improve wildlife habitat on the ranches. He stated that he raises wildlife for the state of Montana and that he does have problems. He does not begrudge the people who pay money into the land acquisition fund to use it for what it was intended for. The mild weather is a major factor in the increased wildlife population. When he has gone to the Department for help in controlling animals on his property, he obtained help immediately. He felt this bill will infuriate the sportsmen who pay into the habitat acquisition fund. He will vote against that.

**REP. WAGNER** felt that the term "sportsman" is being used loosely. He is a sportsman and would not support extending the sunset on HB 526. He does not see a need for acquiring additional wildlife habitat. Private landowners have the potential to close off a lot more land than the Department has open for the sportsman. He would like to see an end to the feuding between landowners and sportsmen. He declared his support of the amendment.

**REP. SWANSON** felt that it has not been a good forum for discussing controversial issues. She believed that it was the



wrong place for this type of polarization and was not conducive to problem solving. In her opinion, these concepts should be tabled until the involved parties can reach solutions and compromise.

**REP. KNOX** believed that the current situation requires the type of compromise that has been proposed. Game populations are healthy all over the state. The land acquisition program waves a red flag to private landowners. He felt the proposed amendments may help the volatile situation.

**REP. RYAN** believed that compromise was the key issue; however, he does not want the original purpose of HB 526 lost. When the money is split three ways, it places restrictions on how the money will be spent. He opposed the amendment.

**REP. HANSON** reported that 96% of the money in the habitat acquisition fund is obtained through out-of-state hunter's licenses. There have been seven years of study on this issue, and it unknown how much longer landowners will tolerate the present situation. She said that she would support a resolution.

**REP. MOLNAR** stated that if the bill can be passed, it may show that the committee can compromise. The Senate is proposing a sunset on HB 526. He supported the amendment.

**Vote:** ROLL CALL VOTE DO PASS REP. HIBBARD'S AMENDMENT. Motion carried 9 to 7 with REPS. REAM, BARNHART, DAILY, ELLIOTT, MCCARTHY, RYAN, and SWANSON voting no.

**Motion/Vote:** REP. HANSON MOVED HB 369 DO PASS AS AMENDED. Motion failed 8 to 8 with REPS. REAM, BARNHART, CLARK, DAILY, ELLIOTT, MCCARTHY, RYAN, and SWANSON voting no.

#### ADJOURNMENT

Adjournment: 6:45 p.m.



REP. MIKE FOSTER, Chair



MARY RIITANO, Secretary

ML/MR

# HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

ROLL CALL

DATE

2-16-93

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

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that House Bill 338 (first reading copy -- white) do pass as amended

Signed: Mike Foster  
Mike Foster, Chair

And, that such amendments read:

1. Page 2, line 6.  
Strike: "and"  
Insert: "or"
2. Page 6, line 18.  
Strike: "big"  
Following: "game"  
Insert: "animal"
3. Page 7, line 11.  
Strike: "big"  
Following: "game"  
Insert: "animal"
4. Page 9, line 16.  
Following: "license"  
Insert: "for a specific facility"
5. Page 10, lines 15 and 16.  
Following: "livestock" on line 15  
Strike: "and the department"
6. Page 16, lines 3 and 6.  
Strike: "big"  
Following: "game"  
Insert: "animal"

Committee Vote:  
Yes 10, No 0.

391424SC.Hss

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that  
House Bill 432 (first reading copy -- white) do pass as amended

Signed: Mike Foster  
Mike Foster, Chair

And, that such amendments read:

1. Title, lines 10 and 11.  
Strike: "ALLOWING" on line 10 through "INVESTIGATORS;"  
on line 11
2. Title, line 13.  
Strike: "37-47-101,"
3. Page 1, line 20 through page 3, line 22.  
Strike: section 1 in its entirety  
Renumber: subsequent sections
4. Page 23, line 11 through line 25.  
Strike: section 19 in its entirety  
Renumber: subsequent sections
5. Page 24, line 8.  
Strike: "[Sections 15 and 19] are"  
Insert: "[Section 14] is"
6. Page 24, line 10.  
Strike: "[sections 15 and 19]"  
Insert: "[section 14]"

Committee Vote:  
Yes 13, No 3.

391413SC.Hss

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that House Bill 607 (first reading copy -- white) do pass as amended

Signed: \_\_\_\_\_

Mike Foster, Chair

And, that such amendments read:

1. Page 1, lines 22 and 23.

Following: "to" on line 22

Strike: remainder of line 22 through "the" on line 23

Insert: "fully meet trust responsibilities for the management of"

Following: "trust" on line 23

Insert: "lands"

2. Page 2, line 12

Strike: "must"

Insert: "may"

3. Page 3, lines 24 and 25.

Following: "purposes" on line 24

Strike: remainder of line 24 through "of" on line 25

Insert: "may not exceed"

Committee Vote:

Yes 12, No 4.

391414SC.Hss

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that  
House Bill 576 (first reading copy -- white) do pass.

Signed:   
Mike Foster, Chair

Committee Vote:  
Yes , No .

391401SC.Hpf

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that  
House Bill 595 (first reading copy -- white) do pass.

Signed: Mike Foster  
Mike Foster, Chair

Committee Vote:  
Yes 15, No 1.

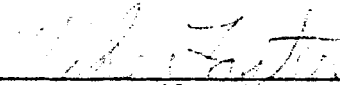
391404SC.Hpf

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that House Bill 381 (first reading copy -- white) do pass as amended

Signed: 

Mike Foster, Chair

And, that such amendments read:

1. Title, line 9.

Strike: "AN IMMEDIATE"

Insert: "A DELAYED"

2. Page 6, line 7.

Strike: "on passage and approval"

Insert: "March 1, 1994"

-END-

Committee Vote:

Yes 12, No 0

391407SC.HOF



HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Fish and Game report that House Bill 341 (first reading copy -- white) do pass as amended

Signed: Mike Foster  
Mike Foster, Chair

And, that such amendments read:

1. Title, line 7.

Strike: "AN"

Insert: "A DELAYED"

2. Page 1, line 8.

Insert: "STATEMENT OF INTENT"

The purpose of House Bill No. 341 is to improve the effectiveness of existing regulations that prohibit transplanting of fish in Montana waters by clarifying rulemaking authority of the department of fish, wildlife, and parks and the fish, wildlife, and parks commission with regard to transplantation activities. The legislature recognizes that some activities by anglers will be restricted by this legislation. Therefore, it is the intent of the legislature that the department of fish, wildlife, and parks develop rules to alleviate some of those concerns. The commission shall consider rules that permit anglers to fillet their fish in the field and that designate locations within the state where legally taken game fish may be transported in live wells away from the body of water in which the fish were taken. The department shall prepare these proposed regulations for public review and approval by the fish, wildlife, and parks commission for incorporation in the 1994-95 Montana fishing regulations."

3. Page 1, line 21.

Following: line 20

Insert: "(a) the possession and transportation of legally taken game fish according to rules adopted by the commission;"

Renumber: subsequent subsections

4. Page 3, line 10.

Following: "live fish"

Insert: "away from the body of water in which the fish were taken"

Committee Vote:

Yes 15, No 1.

391401SC.Hss

5. Page 3, line 11.

Following: "bait"

Strike: ", away from the body of water in which the fish were  
taken"

Insert: "and"

6. Page 3, line 13.

Following: "part 6,"

Insert: "and this section"

Following: "or"

Insert: "as"

7. Page 3, line 19.

Strike: "July 1, 1993"

Insert: "March 1, 1994"

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that House Bill 314 (first reading copy -- white) do pass as amended

Signed: Mike Foster

Mike Foster, Chair

And, that such amendments read:

1. Title, line 6.

Following: "PARKS;"

Insert: "AND"

2. Title, lines 7 through 10.

Strike: ";" on line 7 through "MCA" on line 10.

3. Page 2, line 15.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

4. Page 3, line 1.

Following: "park;"

Insert: "and"

5. Page 3, lines 2 through 5.

Strike: ";" on line 2 through "park" on line 5

6. Page 4, lines 16 and 17.

Strike: "and" on line 16 through "charges" on line 17

7. Page 4, line 18 through page 6, line 3.

Strike: section 5 in its entirety

Renumber: subsequent section

-END-

Committee Vote:

Yes 6 , No 4 ,

35-11  
391436SC.Kpf

HOUSE OF REPRESENTATIVES  
FISH & GAME COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 432 NUMBER 1

MOTION: Bill as amended

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD	✓	
VICE-CHAIRMAN REAM	✓	
REP. BARNHART	✓	
REP. CLARK	✓	
REP. DAILY		✓
REP. ELLIOT	✓	
REP. GRIMES	✓	
REP. HANSON	✓	
REP. KNOX	✓	
REP. MCCARTHY	✓	
REP. MOLNAR		✓
REP. ORR	✓	
REP. RYAN		✓
REP. SWANSON	✓	
REP. WAGNER	✓	
CHAIRMAN FOSTER	✓	

13 3

HOUSE OF REPRESENTATIVES  
FISH & GAME COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 313 NUMBER 2

MOTION: Table 313

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD		✓
VICE-CHAIRMAN REAM		✓
REP. BARNHART		✓
REP. CLARK	✓	
REP. DAILY		✓
REP. ELLIOT		✓
REP. GRIMES	✓	
REP. HANSON	✓	
REP. KNOX	✓	
REP. MCCARTHY		✓
REP. MOLNAR	✓	
REP. ORR		✓
REP. RYAN		✓
REP. SWANSON		✓
REP. WAGNER	✓	
CHAIRMAN FOSTER	✓	

7 9

HOUSE OF REPRESENTATIVES  
FISH & GAME COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 33 NUMBER 3

MOTION: Do pass as amend

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD	✓	
VICE-CHAIRMAN REAM	✓	
REP. BARNHART	✓	
REP. CLARK		✓
REP. DAILY		✓
REP. ELLIOT	✓	
REP. GRIMES		✓
REP. HANSON		✓
REP. KNOX		✓
REP. MCCARTHY	✓	
REP. MOLNAR		✓
REP. ORR		✓
REP. RYAN	✓	
REP. SWANSON	✓	
REP. WAGNER		✓
CHAIRMAN FOSTER		✓

7 9

HOUSE OF REPRESENTATIVES  
FISH & GAME COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 412 NUMBER 4

MOTION: Do pass

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD		✓
VICE-CHAIRMAN REAM		✓
REP. BARNHART	✓	
REP. CLARK		✓
REP. DAILY	✓	
REP. ELLIOT		✓
REP. GRIMES		✓
REP. HANSON		✓
REP. KNOX		✓
REP. MCCARTHY	✓	
REP. MOLNAR		✓
REP. ORR		✓
REP. RYAN	✓	
REP. SWANSON	✓	
REP. WAGNER		✓
CHAIRMAN FOSTER		✓

5 11

HOUSE OF REPRESENTATIVES  
FISH & GAME

COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 354 NUMBER 5

MOTION: Do pass as AMEND

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD		✓
VICE-CHAIRMAN REAM	✓	
REP. BARNHART	✓	
REP. CLARK		✓
REP. DAILY	✓	
REP. ELLIOT		✓
REP. GRIMES		✓
REP. HANSON		✓
REP. KNOX		✓
REP. MCCARTHY		✓
REP. MOLNAR	✓	
REP. ORR		✓
REP. RYAN	✓	
REP. SWANSON	✓	
REP. WAGNER		✓
CHAIRMAN FOSTER		✓

6 10



HOUSE OF REPRESENTATIVES  
FISH & GAME COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 314 NUMBER 46

MOTION: Delete Headquarters State Park pg 3 line 2

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD	✓	
VICE-CHAIRMAN REAM		✓
REP. BARNHART		✓
REP. CLARK	✓	
REP. DAILY		✓
REP. ELLIOT		✓
REP. GRIMES	✓	
REP. HANSON	✓	
REP. KNOX		✓
REP. MCCARTHY		✓
REP. MOLNAR		✓
REP. ORR	✓	
REP. RYAN		✓
REP. SWANSON		✓
REP. WAGNER	✓	
CHAIRMAN FOSTER	✓	

79

# HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

## ROLL CALL VOTE

DATE 2/16/93 BILL NO. 369 NUMBER 7

MOTION: Hibbard amendment

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD	✓	
VICE-CHAIRMAN REAM		✓
REP. BARNHART		✓
REP. CLARK	✓	
REP. DAILY		✓
REP. ELLIOT		✓
REP. GRIMES	✓	
REP. HANSON	✓	
REP. KNOX	✓	
REP. MCCARTHY		✓
REP. MOLNAR	✓	
REP. ORR	✓	
REP. RYAN		✓
REP. SWANSON		✓
REP. WAGNER	✓	
CHAIRMAN FOSTER	✓	

97

HOUSE OF REPRESENTATIVES  
FISH & GAME

COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 369 NUMBER 8

MOTION: do pass as amended

NAME	AYE	NO
VICE-CHAIRMAN HIBBEARD	✓	
VICE-CHAIRMAN REAM		✓
REP. BARNHART		✓
REP. CLARK		✓
REP. DAILY		✓
REP. ELLIOT		✓
REP. GRIMES	✓	
REP. HANSON	✓	
REP. KNOX	✓	
REP. MCCARTHY		✓
REP. MOLNAR	✓	
REP. ORR	✓	
REP. RYAN		✓
REP. SWANSON		✓
REP. WAGNER	✓	
CHAIRMAN FOSTER	✓	

8 8

TESTIMONY OF BUD CLINCH  
COMMISSIONER OF STATE LANDS

EXHIBIT 1

DATE 2/16/93

HB 607

ON

HOUSE BILL 607  
HOUSE FISH AND GAME COMMITTEE

FEBRUARY 16, 1993

House Bill 607 deals with lands administered by the Department of State Lands. These lands are commonly called "trust lands." Montana's state trust lands were granted to the state of Montana in 1889 under the Montana Enabling Act, which is the federal law under which Montana became a state. The Enabling Act provides that the lands are granted to the state to hold in trust for the public schools, the School for the Deaf and Blind, the University of Montana, Montana State University, Montana Tech, Western Montana College, the Pine Hills School, the State Veteran's Hospital, and for capitol buildings. In its Constitution, Montana has agreed to administer the lands under this trust obligation. The trust duty of the Legislature has been the subject of many decisions in the Montana Supreme Court, the United States Supreme Court, and the supreme courts of other western states who are subject to identical or very similar trust obligations.

These courts have established:

1. That the state is held to the same standards as the trustee of a private trust.
2. That the land must be administered solely for the benefit of the trust beneficiaries. In other words, the Legislature must deal with the trust lands with undivided loyalty to the beneficiaries. Even though the Legislature has other interests and responsibilities, it must consider only the interests of the trust when dealing with trust property.
3. That the trust land must be administered so to achieve the largest legitimate amount of money over the long term for the trust beneficiaries.
4. That the Legislature cannot adopt a law in violation of the trust responsibilities.
5. That any time an interest in the land is given up, the state must receive full market value for that interest.

Although the purpose of House Bill 607 is not expressly stated in the language of the bill, it appears that its intent is to allow the Department of Fish, Wildlife and Parks to lease

recreation areas and campsites on state trust land by paying a "reasonable amount" for the land rather than full market value. If this is the case, then subsections (3) and (5) of Section 1 are unconstitutional and in violation of the Enabling Act for four reasons. First, they violate the full market value requirement. Second, these subsections, which give the Department of Fish, Wildlife and Parks a lesser rate, probably because of the benefits to the public of inexpensive public campgrounds, also violate the Legislature's duty to administer the trust estate with undivided loyalty to the beneficiaries. Third, they violate the duty to obtain the largest legitimate amount of money for the beneficiaries. And finally, the provision of subsection (4) of Section 1 that eliminates the appraisal of the tract before leasing is unconstitutional because an appraisal is necessary to determine full market value.

Section 1(1) of House Bill 607 provides that the department may issue a lease to the Department of Fish, Wildlife, and Parks without competitive bidding. My legal staff advises me that no case or statute would render this provision unlawful. Although there is some legal risk in adopting this section, we do not oppose it because it is not clearly unlawful.

In summary, the Department opposes HB607 but would support it if it were amended to clearly require payment of full market value. The Department will make its staff available to draft amendments if the Committee so requests.

EXHIBIT 2  
DATE 2/16/93  
HB 607

Amendments to House Bill No. 607  
White Reading Copy

Requested by Dept. of FWP  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 13, 1993

1. Page 1, lines 22 and 23.

Following: "to" on line 22

Strike: remainder of line 22 through "the" on line 23

Insert: "fully meet trust responsibilities for the management of"

Following: "trust" on line 23

Insert: "lands"

2. Page 2, line 12

Strike: "must"

Insert: "may"

3. Page 3, lines 24 and 25.

Following: "purposes" on line 24

Strike: remainder of line 24 through "of" on line 25

Insert: "may not exceed"

EXHIBIT 3  
DATE 2/16/93  
HB 381

Amendments to House Bill No. 381  
White Reading Copy

Requested by Rep. Ryan  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 10, 1993

1. Title, line 9.

Strike: "AN IMMEDIATE"

Insert: "A DELAYED"

2. Page 6, line 7.

Strike: "on passage and approval"

Insert: "March 1, 1994"

Amendments to House Bill No. 432  
White Reading Copy

Requested by Jean Johnson, MOGA  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 9, 1993

EXHIBIT 4  
DATE 2/16/93  
HB 432

1. Title, lines 10 and 11.  
Strike: "ALLOWING" on line 10 through "INVESTIGATORS;"  
on line 11
2. Title, line 13.  
Strike: "37-47-101,"
3. Page 1, line 20 through page 3, line 22.  
Strike: section 1 in its entirety  
Renumber: subsequent sections
4. Page 23, line 11 through line 25.  
Strike: section 19 in its entirety  
Renumber: subsequent sections
5. Page 24, line 8.  
Strike: "[Sections 15 and 19] are"  
Insert: "[Section 14] is"
6. Page 24, line 10.  
Strike: "[sections 15 and 19]"  
Insert: "[section 14]"



**FAX**  
**IT!****FAX**  
**IT!**

# insty-prints

EXHIBIT 5  
DATE 2/16/93  
HB 338

131 Main Street  
Kalispell, Montana 59901  
(406) 752-8812 FAX (406) 752-8814

## Facsimile Cover Sheet

To: Legislature Fax #: 444-4105

Attention: Flat. Head Cnty. Rep. & Sen.

From: Russ Kilpatrick Great Bear  
Adventure

Date: 2/16/93

# of pages to follow 13

Comments: Special ATT. Mary Riitano

F.W.P. Committee (In care of names)

**FAX**  
**IT!****FAX**  
**IT!**

**GREAT BEAR ADVENTURE****Box 212****Kila, MT 59920****HB # 338****Feb. 12, 1993**

DEAR REP. REAM,

IN RESPONSE TO OUR CONVERSATION, I'M LISTING MY OBJECTIONS AND REASONS WHY THIS TYPE OF LEGISLATION IS UNFAIR IN THAT IT GIVES UNWARRANTED POWERS TO EW & P. THEIR EXPERTISE IN THESE AREAS IS AT BEST MINIMAL, MAYBE A LAYMAN'S POINT OF VIEW, BUT CERTAINLY NOT PROFESSIONAL BY ANY STRETCH. MATTERS CONCERNING OFFENDERS OF CURRENT LAWS SEEMS SUFFICIENT SINCE THE PERPETRATORS HAVE BEEN RECOGNIZED WITHIN THE ELK FARMING INDUSTRY. IMPOSING THIS NEW LEGISLATION UPON GREAT BEAR ADVENTURE CANNOT BE TOLERATED. I FEEL FOR YOUR DILEMMA, BUT FOR UNIQUE BUSINESSES LIKE OURS, THESE FOLLOWING CONTROVERSIES ARE CIVILLY AND CONSTITUTIONALLY DISCRIMINATORY.

**HOUSE BILL # 338**

PARAGRAPH 1 (PAGE 1, LINE 6) DOES THIS MEAN THAT A LICENSE IS NO LONGER NEEDED OR NO MORE SHOOTING RANCHES? THESE ANIMALS ARE PRIVATELY OWNED AND SHOOTING OR ANY OTHER USE SHOULD BE DETERMINED BY THE OWNER. STANDARD HUNTING AND LOCAL LAWS CONCERNING GUN DISCHARGE ARE ALREADY SUFFICIENT.

Exhibit 5

2-16-93

HB-338

SECTION 1 ITEM 5 (PAGE 2, LINES 12-13): DOES THIS REFER TO INDIGENOUS OR ANY CROWN-HOOED UNGULATE?

IMPALAS ARE NOT INDIGENOUS. ARE THEY THEN CONSIDERED GAME? I THINK THAT "ANY OTHER" NEEDS TO BE SPECIFIC. AGAIN, THESE ARE BROAD AND VAGUE TERMS. MAYBE ELK RANCHERS ARE IN AGREEMENT BECAUSE THEY ALREADY SEE THE SAME LOOPS. AGAIN THE PROBLEM IS SPECIFIC, YET THIS BILL IS GENERAL AND UNFAIR TO THE OTHER SPECIES. TYPICAL STEREOTYPING.

SECTION 3 ITEM 1(d) (PAGE 3, LINES 21-23): THIS SHOULD BE AMENDED TO ELIMINATE THESE THREE LINES BEGINNING WITH "TOGETHER WITH THE NATURE..." THIS IS PRIVATE PROPERTY. THE LEGAL DESCRIPTION IS ENOUGH. I DO NOT BELIEVE ELWY P IS IN THE LAND BROKER BUSINESS, AND THE INFORMATION ASKED FOR IS IN VIOLATION OF PRIVACY. THIS IS MORE MISUSED POWER. TOTALLY UNWARRANTED.

SECTION 3, ITEM 3 (1), (PAGE 4, LINES 8-10): AGAIN THIS IS NONE OF ELWY P'S BUSINESS. THE AGENT OR PRESIDENT OF THE CORPORATION IS ENOUGH. BE SPECIFIC, WHAT ARE THEY LOOKING FOR? OMIT LINES 8-12. THIS BILL IS BEGINNING TO SOUND LIKE INTERPOL.

SECTION 3, ITEM 3 (c) (PAGE 4, LINES 11-12): TOTALLY OMIT  
THIS IS COMICAL. THIS SUGGESTS THAT THE CORPORATION SUPPLY  
FW & P WITH ITS OWN CREDENTIALS OF RESPONSIBILITY DOESN'T  
FW & P KNOW THAT RESPONSIBLE PEOPLE HAVE CORPORATIONS.  
FW & P HAS NO AUTHORITY TO PROBE CORPORATE INFORMATION.  
SPECIAL AGENTS HAVE AUTHORITY TO PROBE IF AN INTERACTION  
OCCURS. INVASION OF PRIVACY AND CORPORATE DISCRIMINATION.

SECTION 3, ITEM 2 (PAGE 4, LINES 13-25, PAGE 5, LINES 1-17):

I'VE PERSONALLY EXPERIENCED FW & P'S MANIPULATION OF  
THIS TYPE OF LEGISLATION. THIS GIVES FW & P MORE UNWARRANTED  
POWER. THE LAW HAS TO BE SPECIFIC IN TERMS SO IT CAN BE  
APPLIED EQUALLY AND FAIRLY THROUGHOUT THE INDUSTRY.  
I'M CURRENTLY AT WAR WITH THIS ISSUE IN REGION 1. I'M  
BEING TOLD THAT AN ENVIRONMENTAL IMPACT STUDY MAY HAVE  
TO BE DONE ON A BROWN BEAR'S IMPACT ON THE ENVIRONMENT  
(READ THE ENCLOSED LETTER). HE IS THE ENVIRONMENT! I'M  
ALSO ENCLOSING AN EXAMPLE OF A FW & P ENVIRONMENTAL  
ASSESSMENT, AN EMBARRASSING CONGLOMERATION OF  
UNWARRANTED ACCUSATIONS BY FW & P EXPERTS, AND TWO  
YEARS LATER, I'M TOLD THIS E.A. MAY NEED TO BE SUPPLE-  
MENTED (SEE LETTER). I'VE PERSONALLY BEEN HARASSED,  
DISCRIMINATED AGAINST, MANIPULATED, AND MY LIVELIHOOD CAN  
AND HAS BEEN HELD IN THE BALANCES BY FW & P EMPLOYEES.

Exhibit 5

2-16-93

HB-338

SECTION 4, ITEM 1 (b-c) (PAGE 5, LINES 24-25, PAGE 6, LINES 1-10)  
OMIT. IF BY CIRCUMSTANCE 5 YEARS AGO, I POACHED A  
DEER TO FEED MY FAMILY DURING BAD TIMES, WAS CAUGHT AND  
FINED, I COULD NOT HAVE A GAME FARM LICENSE? THIS IS  
ABSURD. FWY P CANNOT HAVE THIS KIND OF AUTHORITY.

SECTION 4, ITEM 2 (a) (PAGE 6, LINES 13-17) THE FENCING  
DILEMMA AGAIN. THE AUTHORITY TO DETERMINE PROPER  
FENCING TO KEEP OUR ANIMALS IN CAN ONLY BE DETERMINED  
BY AN EXPERIENCED OWNER. FWY P ONLY DEALS WITH "WILD"  
FREE-ROAMING ANIMALS. OUR ANIMALS ARE CONDITIONED,  
SOMETHING FWY P IS UNFAMILIAR WITH. IS THERE A DIFFERENCE  
OR NOT BETWEEN CONTAINING WILD DOGS OR TRAINED OR  
CONDITIONED ONES? Species Specifics! Please.

SECTION 4, ITEM 2 (c) (PAGE 6, LINES 21-24) AGAIN, BROAD  
BASED POWER IS GIVEN TO FWY P TO DETERMINE THROUGH THE  
APPLICANT'S "DEMONSTRATION OF NECESSARY SKILLS." ISN'T THIS  
VAGUE TO THE POINT THAT THE INEXPERIENCE OF FWY P EMPLOYEES  
AS CURATORS OR ANIMAL TRAINERS CAN CAUSE MISTJUDGMENT  
OF NECESSARY SKILLS? I'VE ALREADY EXPERIENCED THIS CRISIS.  
I'VE ATTACHED NEWSPAPER CLIPPINGS OF JURISDICTIONAL LIMBO  
BETWEEN DEPARTMENTS. ONE MUST REALIZE THAT THE BURDEN  
OF POWER AND AUTHORITY, WHEN UNQUALIFIED, CAN RESULT IN  
INDECISION, CONFUSION AND THE APPLICANT'S DESTRUCTION.

THESE BROAD-BASED POWERS AND VAGUE DESCRIPTIONS, CREATE THE VERY BASE FOR MISUSED POWER.

OPINION WHEN WE REALIZE THAT CURRENT LAWS ARE INSUFFICIENT, WHY DO WE CONTINUALLY TRY TO PATCH THEM WITH REVISIONS? YOU CAN ONLY PATCH A TUBE SO MUCH, THEN IT'S TIME FOR A NEW ONE. THE GAMING LAWS, ZOO AND GAME FARM REGULATIONS NEED TO BE COMPLETELY REWRITTEN. THREE YEARS AGO WHEN I FIRST BEGAN COMMUNICATION WITH VARIOUS DEPARTMENTS CONCERNING CURRENT LAWS, BOB BIRD, AL ELZER, GREG BARNUS AND BILL BOHARSKI SUGGESTED GETTING TOGETHER WITH ME TO WORK UP BILLS CONCERNING THESE LAWS. OUR LAWS, INCLUDING REVISIONS, NEED TO BE SHOWN AS HISTORY, AND PRECEDENT AND TREND-SETTING LAWS ESTABLISHED WHICH ADDRESS THE VARIETY OF FUNCTIONS OF GAME FARMS AND SPECIES WITH INPUT FROM THE PROFESSIONAL OPERATORS TO REFLECT THE DIFFERENT CONCERNS AND REQUIREMENTS. LEGISLATORS MUST CONSIDER THE MOTIVES OF PARTICIPANTS, DISCOVER THROUGH PERSONAL COMMUNICATION WHETHER THEY ARE MONETARY OR REHABILITATIVE AND LIFE-SAVING RESEARCH ORIENTED. MONETARY DRIVE SEEMS TO PRODUCE THE MOST INTERACTIONS. TIGHT-KNIT RELATIONS WITH CONCERNED STATE AGENCIES IS A MUST, AND

Exhibit 5-

2-16-93

HB-338

WITH THE LATTER MOTIVES. AN EXAMPLE IS GREAT BEAR ADVENTURE'S CONTINUUAL CONTACTING OF ALL CONCERNED AGENCIES WITH USEFUL AND UPDATED WORLD WIDE INFORMATION ON DNA, DISEASES, CONDITIONING, ETC.

SECTION 4, ITEM 3 (LINES 415) THIS SHOULD BE AMENDED TO READ "PROVED HAZARDS" AND "PROVEN IMPACTS", NOT LEFT OPEN TO FWYP EMPLOYEE'S PERSONAL DETERMINATIONS.

SECTION 4, ITEM 3 (a)(1) (PAGE 7, LINES 10-25)

(a) THIS SHOULD BE OMITTED BECAUSE IT IS DISCRIMINATORY AGAINST GAME FARMS. THIS COULD PROHIBIT THE ESTABLISHMENT OF A GAME FARM, BUT THERE IS NO PROVISION TO PREVENT A HOLIDAY INN, CAMPGROUND, McDONALD'S OR A SHEEP OR CATTLE OPERATION ON THE VERY SAME PROPERTY. IS FWYP IN A POSITION TO PURCHASE ALL PROPERTY THAT FITS THIS DESCRIPTION TO PREVENT ANY DEVELOPMENT OF ANY KIND? THIS IS ALSO HYPOCRITICAL WHEN VIEWED IN THE LIGHT OF THE AMOUNT OF HABITAT DESTROYED BY OPEN-RANGE LIVESTOCK.

(b) THIS SHOULD BE OMITTED

(d) WHO DETERMINES "UNACCEPTABLE THREAT"? IN MY EXPERIENCE FWYP'S DETERMINATION OF "UNACCEPTABLE THREATS" WERE TOTALLY UNWARRANTED AS IS OBVIOUS IN THEIR EA AND SUPPLEMENTAL ATTACHMENTS TO MY TWO PERMITS. I REFER

AGAIN TO COMMENTS RE SECTION 4, ITEM 2 (c). IN MY CASE, THE EXPERIENCE OF THOSE WHO HAVE HAD BEARS RAISED IN CAPTIVITY WAS IGNORED AND STIPULATIONS WERE BASED ON SUPPOSITIONS OF CONTAINING AN ADULT TAKEN FROM THE WILD.

I MUST STRESS THAT I'M CURRENTLY IN POLICY LIMBS PENDING POSSIBLE LAWSUITS TO CLARIFY ALREADY EXISTING VAGUENESS IN THE LAWS. MORE OR INCREASED BROAD-BASED POWERS FOR FW & P IN FIELDS IN WHICH THEY HAVE LITTLE EXPERTISE IS UNACCEPTABLE.

I CLOSE STATING THAT FURTHER EXAMINATION OF THIS IS UNNECESSARY BECAUSE HB #338 IS UNACCEPTABLE AS WRITTEN.

SINCERELY,

*Russell A. Kilpatrick*

PRES. Great Bear Adventure Inc.  
QUESTIONS: 755-3502

CC: Sen. Forrester, Rep. Boharski, Rep. Fisher, Rep. Dowell, Rep. Herron, Rep. Waszenri, Rep. Wagner, Sen. Brown, Sen. J. Kennedy Jr., Sen. Harp. cc: ATT: Mary Riitano Rm. 312-3A



Exhibit 5  
2-16-93  
HB-338

**MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**  
1420 East Sixth Avenue  
Helena, Montana 59620  
(406) 444-2449

**ENVIRONMENTAL ASSESSMENT**

**Division/Bureau** Wildlife/Enforcement

**Project or Application** Great Bear Adventure Park

**Description of Project** Russell and Peggy Kilpatrick, Box 212, Kila, Montana, 59920, have made application for a Roadside Zoo and Menagerie Permit to operate a drive-through bear park near Coram, Montana. The Kilpatricks have fenced an 8-acre parcel of land in Tract 2 of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 21, T31N R19W, MPM, (See Exhibit 1), and will place three to six black bears in the fenced area initially. These bears will be available for viewing on a fee basis by the public in a vehicle drive-through natural-appearing setting.

The park contains a coniferous vegetation community dominated by lodgepole pine (Pinus contorta) and enclosed by a single perimeter fence consisting of a 6-foot high steel page-wire mesh below three strands of barbed wire, to make an 8-foot high perimeter fence. The perimeter fence also contains electrified wired near the bottom on both the inside and outside, (See Exhibit 3). The bears will utilize natural foods found in the coniferous vegetation community, supplemented by selected prepared foods, grains and minerals.

**Description of Benefits and Purposes of Proposed Action:** The drive-through park is intended to provide an opportunity for the public to view bears in a natural setting. This natural-appearing setting could allow people to learn about bear behavior, feeding habits, resting patterns and social interactions. The location is near Glacier National Park and optimizes opportunities to attract travelers and tourists during the late spring/summer/early fall seasons.

**Affected Agencies:** The nature of the proposal will be of concern to several agencies or entities from the federal level to the local level. These concerns range from regulatory to environmental to social. A listing of agencies and entities have jurisdictional or environmental review responsibility in the proposed action includes, but may not be limited to:

- U.S. Forest Service, Flathead National Forest
- U.S. Park Service, Glacier National Park
- U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator
- State of Montana, Department of Highways
- State of Montana, Department of Fish, Wildlife and Parks
- Flathead County Regional Development Office
- Chamber of Commerce, Columbia Falls
- State of Montana, Environmental Quality Council, Helena

**Evaluation of Impacts on the Physical Environment:**

Location: The site of the park is within habitat classified as Management Situation 1 for grizzly bear recovery and management. These areas are important to the survival of grizzly bear in a natural, free-ranging condition. The probability is great that major activities and programs may have direct and/or indirect relationships to the conservation and recovery of grizzly bear. The 8-acre parcel currently fenced, and plans to fence an additional 14 acres, is not a major activity but will remove that land base from seasonal use potential by grizzly bear. Activities like the Great Bear Adventure Park do contribute to the cumulative affects of other minor activities and can become a long-term impact to the recovery of a segment of the grizzly bear population.

The site of the park is not in compliance with a Master Plan developed by the Flathead County Regional Development Office for planning and development of rural areas of the county, but the site has not been zoned in accordance with the Master Plan. The park is near other commercial development along U.S. Highway 2 and near the town of Coram, Montana, both of which contribute toward a cluster-development concept that tends to minimize a concern for impacts to a reported grizzly bear travelway between Glacier National Park and the Great Bear Wilderness.

The site of the park is within habitats currently available to a broad variety of terrestrial wildlife uses. The fenced park will be dedicated to a single species use. Black bear that have been introduced into the fenced park will become an attractant to individual wild bears, both black and grizzly, that use the park area on a seasonal basis. Wild bears have an acute sense of smell and find much of their food by smelling. Bears have the capability of smelling carcasses from several miles away. Male bears find many of their mates by smelling and following scent trails.

Size: The park contains about 8 acres, of which a portion is used as a permanent road bed. Six black bear are to be placed in the fenced park and are to utilize the natural foods found on the site. The park may be expanded to 22 acres in the future. Based upon published literature for black bear home range size in habitats similar to the park, 8 acres will be inadequate to satisfy the seasonal needs of an average female black bear. The addition of five other bears to the confined park will result in modifications to the habitat that will no longer represent a natural-appearing setting. Supplemental feeding of the confined bears will become the primary source of food.

**Evaluation of Impacts on the Human Population:**

Location: The site is accessed from U.S. Highway 2 about 1½ miles north of Coram, Montana. Based upon projected use levels, traffic volumes and safety conditions will be within designed standards utilized by the Montana Department of Highways for this portion of Highway 2.

Exhibit 5

2-16-93

HB-338

Educational Opportunity: Public comment on the educational value of the park was divided but several people suggested that a facility like the Great Bear Adventure Park could be a valuable educational opportunity for the public. The park concept is consistent with emerging interests in watchable wildlife programs and opportunities. Local travel promotion groups indicate that there are needs for developments like the park that have potential to extend the recreational opportunities and season in this valley.

There are concerns that the Great Bear Adventure Park may convey the wrong perception of black bears in this natural-appearing setting and that segments of the public may develop erroneous expectations of bear-human interactions during encounters in truly natural settings. The size of the park, proposed stocking density and availability of natural foods does indicate that supplemental feeding will probably become the primary food source for the bears and that may be an incorrect perception to portray of bears in a natural setting. The appearance of the vegetation within the fenced park will be modified by the concentrated bear use and could mislead the public about bear use of natural environments.

Bears within the park will become more tolerant of people and may display learned behavior responses to people that are not compatible with people and bears in natural environments. The Great Bear Adventure Park will establish operational procedures that prohibit feeding of bears by visitors. There is a concern that people touring the park will feed the semi-wild bears and that human behavior may be transferred to feeding of wild bears in nearby Glacier National Park. Glacier National Park, and other national parks supporting wild bear populations, have established and actively enforce by policy, brochures, and signs a program discouraging feeding of wild animals by visiting tourists and motorists. Feeding of wild animals in Glacier National Park is a continuing concern in the Park's management program.

Perimeter Fencing: The perimeter fencing design employed by the Great Bear Adventure Park is in variance with currently used standards for animal containment under the Roadside Menagerie and Zoo or Game Farm regulations of Montana. The escapement of captive animals as well as the restraint of entry by wild animals is a concern in the fencing design at the park. The issues relative to this concern involve the integrity of gene pools in wild populations and safety of the public around the electric fence.

Bears brought into the Great Bear Adventure Park are not native to this area and could possess genetic characteristics that would not be desirable in wild bear populations if the captive bears were to escape. Conversely, if wild bears were to gain entry into the park in search of a mate during the breeding season, exchange of genetic characteristics into the wild could also occur. The occurrence of captive bears in the park may be an attractant to wild bears and their presence in the surrounding area could be viewed as a safety concern by segments of the public.

The perimeter fence is marked with warning signs at irregular intervals. Great Bear Adventure Park visitors will be restricted to their vehicles while touring the park and should not come in contact with the electric fence and receive a shock from the fence. The electric fence is pulse-charged by a relatively high voltage with a low amperage and should not be life threatening to people coming in contact with the fence although the experience will be quite unforgettable.

The concern for design of the perimeter fence in relation to escapement or restraint of bears and to public safety was reviewed by a grizzly bear specialist with the Department of Fish, Wildlife and Parks who has considerable experience in the use of electric fences to restrain bears from livestock and beehive food sources. The specialist's report is attached as Exhibit 6 and provides recommendations to improve the effectiveness of the perimeter fence.

#### **Description and Analysis of Reasonable Alternatives:**

1. Great Bear Adventure Park could utilize proven fencing techniques or modify the existing fence to lessen concerns for escapement of confined bears or for restraint of wild bears trying to enter the park.
2. Great Bear Adventure Park could use fewer bears or enlarge the park to improve the public perception of bears and their use of natural-appearing settings.

#### **Mitigation, Stipulations and Other Controls:**

1. Black bear only.
2. All bears sterilized.
3. All bears tattooed.
4. Food storage - in odor-proof containers as per U.S.D.A., A.P.H.I.S. rules.
5. Veterinary care program - need to be more specific in vaccinations that will be administered.
6. No road-killed ungulates in feeding program.
7. All provisions of roadside zoo and menagerie regulations apply except caging requirements (12.6.1302).
8. Fencing requirements:
  - backup fence energizer, 12-volt system, deep cycle battery.
  - warning signs adequate to protect public if electrical fence system approached from outside of park.
9. Fencing recommendations:
  - enhance existing fence as per recommendations, or
  - develop outside perimeter fence and use trained dogs to minimize or prevent bear escapement or entry and human entry or injury.
10. Permit review - annually with revocation rights.
11. Escaped bears - owner liable for damage and/or expenses incurred in capturing escaped bears.

**Montana Department  
of  
Fish, Wildlife & Parks**



Region One  
490 North Meridian Rd.  
Kalispell, MT 59901  
(406) 752-5501  
FAX: 406-257-0349  
Ref:DV122.93  
November 10, 1992

Mr. Russell Kilpatrick  
Box #212  
Kila, MT 59920

Dear Russ:

You have recently made request through the Region One Office of the Department of Fish, Wildlife and Parks for permission to import and possess at the Great Bear Adventure Park a coastal brown bear from Alaska. Under the stipulations of your existing zoo and Menagerie Permit with the Department, you are limited to black bear only. If you now wish to bring in bears other than the black bear (Ursus americanus), you will have to apply for a new permit.

In considering a new permit, the Department would supplement the Environmental Assessment completed for the original Zoo and Menagerie Permit to include considerations for a coastal brown bear and complete another public involvement procedure. From a practical standpoint, we wouldn't have time to do this until after the new year.

The coastal brown bear is a geographical subspecies of the grizzly/brown bear group Ursus arctos. As such, the importation of a coastal Brown Bear would be subject to Federal as well as State regulations. The supplemental Environmental Assessment would make this disclosure and would bring the U.S. Fish and Wildlife into the application review process. It is quite likely that concerns related to possible escapement, disease transmission and gene pool contamination in native grizzly bear populations would necessitate preparation of an environmental impact statement. This effort would take several months to complete and could involve a financial commitment on your part.

We will await your decision and new permit application before proceeding further on permitting to include a coastal Brown Bear at the Great Bear Adventure Park.

Sincerely,

Dan Vincent  
Regional Supervisor

JC/dc

Exhibit 5-  
2-16-93  
H3-338

## Bear park remains open despite rabies diagnosis

By The Daily Inter Lake  
and The Associated Press

A black bear that died at the new Great Bear Adventure Park at Coram was infected with rabies, state veterinarian Donald Ferlicka confirmed Friday, but the park remained open Saturday.

The park's status is in a sort of jurisdictional limbo, with state and county officials differing on whether there is authority to close the facility.

Meanwhile, the owners of the park say they are considering legal action, and question whether the bear died of rabies.

The rabies diagnosis is 98-percent sure, the state veterinarian said.

Montana Department of Fish, Wildlife and Parks officials met

in Kalispell Friday to determine whether the department has the power to close the park. The drive-through park operates under a department-granted zoo permit.

The Flathead City-County Health Department has no jurisdiction, said local health director Dennis Klukan.

But on Saturday, Dan Vincent, of the local Fish, Wildlife, and Parks department, said that Klukan would make the final decision.

Peggy Kilpatrick, who owns and operates the park with her husband, Russell, said that various agencies Friday "were more or less saying they want it shut down."

But no one took that step and  
See BEAR PARK on Page A2

July 21, 1991

## Bear park

July 21, 1991

Continued from Page A1

"a lot of people came through today and had a lot questions," Kilpatrick said of her customers.

She said she is concerned that "it is being reported the bear died of rabies and we don't know that. The autopsy is not complete."

For that reason, Kilpatrick said she wants to limit her comments, but did say that the couple is looking at possible legal action in the matter.

The remaining four bears appear to be healthy but will be quarantined and kept under observation for as long as six months, the longest known period for rabies to develop, Ferlicka said. There is no rabies vaccine for bears.

Rabies in bears is "extremely rare," Ferlicka said. Bears, especially grizzlies, are regularly tested after maulings, and this is the first time in Montana, to his knowledge, the results have been positive.

The 2-year-old male bear, one of five at the Coram park, died Monday. Russell Kilpatrick sus-

bear autopsied.

Ferlicka credited Greg Markellis, veterinarian at LaSalle Veterinary Clinic, with making the diagnosis possible.

Half the brain was sent to the Montana State University animal lab in Bozeman, where the diagnosis was made. The brain tissue is being forwarded to the Centers for Disease Control in Atlanta for virus typing.

Two of the bears came from game farms in South Dakota, and the others, including the one that died, were bought at a game farm in Red Lodge in Carbon County.

"We've determined this exposure (to rabies) may have occurred in Carbon County," Ferlicka said. Both Carbon and Flathead counties are under quarantine because of rabid skunks.

Russell Kilpatrick believed the bear's death was caused by visitors from California who threw something out of their car for the bear to eat last weekend.

Ferlicka said the Bozeman lab tests did not rule out the possibility of drugs, and the wild-animal disease lab at Colorado State University is including that possibility in tests it is conducting on the

other half of the bear's brain.

Rabies is outside the direct authority of the local board, Klukan said Friday. If potential public health emergency did develop, the board would seek a court injunction.

The health department made its rabies vaccine available to the people who took part in the bear autopsy. Rabies is spread by saliva entering wounds.

Marilyn White, animal supervisor, said there have been further reports of rabies other than two skunks in the Haskill Basin near Whitefish.

Amendments to House Bill No. 338  
White Reading Copy

Requested by Janet Ellis, Montana Audubon  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 9, 1993

1. Page 2, line 6.  
Strike: "and"  
Insert: "or"
2. Page 6, line 18.  
Strike: "big"  
Following: "game"  
Insert: "animal"
3. Page 7, line 11.  
Strike: "big"  
Following: "game"  
Insert: "animal"
4. Page 9, line 16.  
Following: "license"  
Insert: "for a specific facility"
5. Page 10, lines 15 and 16.  
Following: "livestock" on line 15  
Strike: "and the department"
6. Page 16, lines 3 and 6.  
Strike: "big"  
Following: "game"  
Insert: "animal"

do not pass

Amendments to House Bill No. 338  
White Reading Copy

EXHIBIT 7  
DATE 2/16/93  
HB 338

Requested by Representative Molnar  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 8, 1993

1. Page 9, line 2.

Strike: "\$200"

Insert: "\$500"

2. Page 9, line 3.

Strike: "\$50"

Insert: "\$250"

3. Page 9, line 3.

Following: "."

Insert: "The department may charge an additional one-time  
surcharge of \$500 for each license renewed during fiscal  
year 1994."



Amendments to House Bill No. 313  
White Reading Copy

Requested by Representative Barnhart  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 16, 1993

1. Title, line 7.

Strike: "RESIDENT"

Insert: "NONRESIDENT STUDENT"

Strike: "AND"

Following: "SECTION"

Strike: "87-2-102"

Insert: "87-2-306"

2. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

3. Page 1, line 11 through page 3, line 18.

Strike: section 1 in its entirety

Insert: "NEW SECTION. Section 1. Class B-5--nonresident student fishing license. A person not a resident, as defined in 87-2-102, who is attending a unit of the Montana university system or a Montana college in a full-time enrollment status and who is a holder of a valid conservation license, upon payment of \$20 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a Class B-5 license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department."

Section 2. Section 87-2-306, MCA, is amended to read:  
"87-2-306. Paddlefish tags. The department may issue paddlefish tags to holders of valid Class A, Class B, and Class B-4, and Class B-5 fishing licenses for a fee of \$4 beginning March 1, 1992, and \$5 beginning March 1, 1994, for residents and \$15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department."

NEW SECTION. Section 3. {standard} Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 3, and the provisions of Title 87, chapter 2, part 3, apply to [section 1].

NEW SECTION. Section 4. {standard} Effective date. [This act] is effective March 1, 1994."

Amendments to House Bill No. 341  
White Reading Copy

Requested by Representative Harper  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 11, 1993

1. Title, line 7.

Strike: "AN"

Insert: "A DELAYED"

2. Page 1, line 8.

Insert: "STATEMENT OF INTENT"

The purpose of House Bill No. 341 is to improve the effectiveness of existing regulations that prohibit transplanting of fish in Montana waters by clarifying rulemaking authority of the department of fish, wildlife, and parks and the fish, wildlife, and parks commission with regard to transplantation activities. The legislature recognizes that some activities by anglers will be restricted by this legislation. Therefore, it is the intent of the legislature that the department of fish, wildlife, and parks develop rules to alleviate some of those concerns. The commission shall consider rules that permit anglers to fillet their fish in the field and that designate locations within the state where legally taken game fish may be transported in live wells away from the body of water in which the fish were taken. The department shall prepare these proposed regulations for public review and approval by the fish, wildlife, and parks commission for incorporation in the 1994-95 Montana fishing regulations."

3. Page 1, line 21.

Following: line 20

Insert: "(a) the possession and transportation of legally taken game fish according to rules adopted by the commission;"

Renumber: subsequent subsections

4. Page 3, line 10.

Following: "live fish"

Insert: "away from the body of water in which the fish were taken"

5. Page 3, line 11.

Following: "bait"

Strike: ", away from the body of water in which the fish were taken"

Insert: "and"

6. Page 3, line 13.

Following: "part 6,"

Insert: "and this section"

Following: "or"

Insert: "as"

7. Page 3, line 19.

Strike: "July 1, 1993"

Insert: "March 1, 1994"

Amendments to House Bill No. 341  
White Reading Copy

Requested by Riley Johnson, Walleyes Unltd  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 13, 1993

1. Page 3, lines 11 and 12.

Strike: "the"

Insert: "a"

Following: "water" on line 11

Strike: remainder of line 11 through "taken" on line 12

Insert: "or its access area to any other body of water or its  
access area,"

2. Page 3, line 14.

Following: "state."

Insert: "As used in this subsection:

(a) "body of water" means waters open to public fishing and  
governed by the department; and

(b) "access area" means any public road that gives direct  
and specific access to a body of water or any boat ramp, fishing  
site, campground, or picnic area adjacent to a body of water."

Amendments to House Bill No. 354  
White Reading Copy

Requested by Janet Ellis, Montana Audubon  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 10, 1993

1. Page 3, line 9.  
Following: "management"  
Insert: "between public agencies"

Amendments to House Bill No. 314  
White Reading Copy

Requested by Rep. Raney  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 5, 1993

1. Title, line 6.  
Following: "PARKS;"  
Insert: "AND"
2. Title, lines 7 through 10.  
Strike: ";" on line 7 through "MCA" on line 10.
3. Page 2, line 15.  
Strike: subsection (3) in its entirety  
Re-number: subsequent subsections
4. Page 3, line 1.  
Following: "park;"  
Insert: "and"
5. Page 3, lines 2 through 5.  
Strike: ";" on line 2 through "park" on line 5
6. Page 4, lines 16 and 17.  
Strike: "and" on line 16 through "charges" on line 17
7. Page 4, line 18 through page 6, line 3.  
Strike: section 5 in its entirety  
Re-number: subsequent section

Amendments to House Bill No. 314  
White Reading Copy

Requested by Pat Graham, FWP  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 10, 1993

1. Title, lines 6 and 7.  
Strike: "ELIMINATING" on line 6 through "PARKS;" on line 7
2. Title, line 9.  
Strike: "AND"
3. Title, line 10.  
Following: "MCA"  
Insert: "; AND PROVIDING A TERMINATION DATE"
4. Page 1.  
Strike: lines 23 through 25 in their entirety
5. Page 2, lines 6 and 12.  
Strike: "4"  
Insert: "3"
6. Page 3, line 19.  
Strike: "and"
7. Page 3, line 24.  
Following: "trash"  
Insert: "  
    (f) improvements necessary to ensure compliance with the  
    federal Americans With Disabilities Act; and  
    (g) improvements necessary to provide for historic and  
    cultural preservation"
8. Page 4, line 8 through line 17.  
Strike: Section 4 in its entirety  
Renumber: subsequent sections
9. Page 6, lines 5 and 8.  
Strike: "4"  
Insert: "3"
10. Page 6, line 9.  
Insert: "NEW SECTION. Section 6. Termination. [This act]  
    terminates October 1, 1995."

Amendments to House Bill No. 369  
White Reading Copy

Requested by Rep. Hibbard  
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff  
February 5, 1993

1. Page 3, line 8.

Strike: "(a)"

Following: "Eighty"

Strike: "Forty"

Insert: "Eighty"

2. Page 3, line 9.

Following: "section"

Strike: ", "

Insert: "must be divided in the following manner:

- (a) one-third, "

3. Page 3, line 11.

Following: "87-1-209"

Strike: "."

Insert: ";"

4. Page 3, lines 12 and 13.

Strike: "Forty percent of the money allocated by this section"

Insert: "one-third"

5. Page 3, line 15.

Strike: "+"

Insert: "; and

(c) one-third, together with the interest and income from the money, must be used for leases, cooperative management agreements, and conservation easements on wildlife habitat."



HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

FISH & GAME

COMMITTEE

BILL NO.

607

DATE

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Les Graham			
Diane Graham			
Don Childress			
Harry Peterman			
Gene Owen	F&P		
BUD CLINCH	DSL		✓
John North	DSL		✓
May Chan	Beardapout <sup>EX</sup> Hitters		
Edwin Johnson			
Pat Graham	DFWP		
Bob Moe Bob Lane	DFWP		

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