

MINUTES

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

COMMITTEE ON FISH & GAME

Call to Order: By Senator Bob Pipinich, Chair, on March 16, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Sen. Bob Pipinich, Chair (D)
Sen. Tom Beck (R)
Sen. Don Bianchi (D)
Sen. John Brenden (R)
Sen. Chris Christiaens (D)
Sen. Bruce Crippen (R)
Sen. Gerry Devlin (R)
Sen. Judy Jacobson (D)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)

Members Excused: Sen. Gary Forrester, Vice Chair (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Kathy Collins, Committee Secretary

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

Committee Business Summary:

Hearing: HB 381, HB 595, HB 432
Executive Action: HB 381, HB 595, HB 432

HEARING ON HB 381

Opening Statement by Sponsor:

Representative Bill Ryan, House District 38, stated HB 381 was a result of some concerns of Montana residents that personnel from Malmstrom Air Force Base were not adequately trained for hunting in Montana. HB 381 would require Malmstrom personnel to complete a hunter's safety course. Representative Ryan stated the safety course is presently available at Malmstrom, and Pat Graham, Director, Department of Fish, Wildlife & Parks (DFWP), had expressed to Representative Ryan that he would be willing to help redesign the course to meet the needs of the adult hunter with regards to etiquette, landowner/hunter relationships, species

identification, etc. Representative Ryan stated HB 381 would not take effect until March 1, 1994.

Proponents' Testimony:

Bill Holdorf, representing himself, stated he supports HB 381. Mr. Holdorf stated if military personnel are allowed to hunt in Montana after a period of 30 days, they should be required to participate in a hunter's safety course to familiarize themselves with Montana hunting laws.

Opponents' Testimony:

None.

Informational Testimony:

Bob Lane, Chief Legal Council, DFWP, spoke from prepared testimony suggesting an alternative to HB 381 (Exhibit #1).

Questions From Committee Members and Responses:

Senator Mesaros asked Bob Lane what sort of guarantee there would be if the alternative suggested by DFWP was implemented. Mr. Lane stated the Department talked to the base commander, and the commander did not feel there should be a mandatory requirement to take the hunter's safety course because the personnel there would be singled out in a way that other hunters in the state are not. Mr. Lane stated there had been a commitment made that the types of areas needing to be addressed in the safety course will be offered.

Senator Crippen asked Representative Ryan if HB 381 should be tabled in deference to the alternative suggested by DFWP. Representative Ryan said, "no." Representative Ryan stated the course should be mandatory, and the alternative program would not make the course mandatory.

Senator Crippen asked Bob Lane what he meant by "alternative". Mr. Lane stated the Department feels the problem could be worked out without HB 381. Mr. Lane stated hunter's safety courses are not required of other adult hunters coming into Montana, and it would be discrimination to make the course mandatory for base personnel. Senator Crippen asked Mr. Lane if any other groups of people were given the same privileges as military personnel with regard to being able to hunt in Montana after 30 days. Mr. Lane said, "no." Senator Crippen stated if military personnel are given special privileges, they should have special responsibilities. Mr. Lane stated the Department felt the same purpose of HB 381 would be met with the alternative by making the hunter's safety course available as part of the base orientation.

Senator Devlin asked Mr. Lane why the Department has not seen the need for a safety course for military personnel before now. Mr. Lane stated the concerns expressed by residents of Montana about military personnel is something that has come up just recently. Mr. Lane stated the Department has not seen any more frequency of hunting violations by military personnel than by the general public. The Department does understand that people new to the state would benefit, particularly in landowner/sportsperson relationships, from a course which would address these areas of concern.

Senator Devlin asked Representative Ryan what type of program Malmstrom has at the present time, and what type of course they are planning to set up. Representative Ryan stated there are courses in place now and people to teach the courses throughout the year. Representative Ryan stated the military personnel at Malmstrom do not have to take the course because it is not in statute that the course be mandatory.

Senator Mesaros asked Representative Ryan if HB 381 would make the course mandatory and the alternative suggested by DFWP would make it voluntary. Representative Ryan said, "yes." Representative Ryan stated that while HB 381 would make the safety course mandatory, Malmstrom could design the course to fit the needs of the personnel taking the course.

Senator Crippen stated HB 381 is a good idea; the safety course should be mandatory.

Closing by Sponsor:

Representative Ryan respectfully closed and requested that Senator Mesaros carry HB 381.

HEARING ON HB 595

Opening Statement by Sponsor:

Representative Hal Harper, House District 44, stated HB 595 would clarify jurisdiction in fish and game matters. Representative Harper stated the Supreme Court has had problems with fish and game violators with penalties over \$1000 not being tried in Justice of the Peace court. HB 595 would allow the Department or the county attorney to handle these violators in the appropriate court. HB 595 designates violators with penalties under \$5000 be tried in Justice of the Peace court, and those with penalties over \$5000 be tried in district court.

Proponents' Testimony:

Bob Lane, DFWP, spoke from prepared testimony in support of HB 595 (Exhibit #2).

Dave Ross, representing the Montana Audubon Legislative Fund, stated he supported HB 595.

Bill Holdorf, representing Skyline Sportsmen's Association, stated he supported the bill introduced two years ago which was similar to HB 595 and he supported HB 595 in its present form.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Devlin asked Representative Harper if this bill was introduced two years ago. Representative Harper stated the bill Mr. Holdorf referred to was the fish transplant bill. Representative Harper stated HB 595 was a result of that bill.

Closing by Sponsor:

Representative Harper respectfully closed on HB 595 and stated Senator Crippen would carry the bill.

HEARING ON HB 432

Opening Statement by Sponsor:

Representative Liz Smith, House District 48, stated in 1987 the Legislature transferred Montana Board of Outfitters (MBO) from the jurisdiction of the DFWP to the Department of Commerce. This transfer was largely in response to public concerns about a possible conflict of interest between an agency charged with managing the number of licenses, permits, and hunting seasons for Montana's game animals and with managing an industry that uses those permits and has an interest in licenses and seasons. The MBO has been with the Department of Commerce for five years, and over that period of time has recognized several areas needing clarification. Representative Smith stated HB 432 seeks to accomplish housekeeping kinds of things.

Proponents' Testimony:

Max Chase, Chairman of MBO, stated at the end of the 1987 Legislative Session, the MBO was told to figure out what was needed and come back to this Session to identify those needs. Mr. Chase briefly explained what happened to HB 432 in the House and stated many people were involved in coming up with HB 432 as presented to the Committee today. Mr. Chase urged the Committee's support of HB 432.

Opponents' Testimony:

Jerry Strong, representing himself, stated he opposed HB 432. Mr. Strong stated at the time the MBO was transferred to the Department of Commerce, it was said to be for licensing purposes only. Mr. Strong said since that time, the fees have increased astronomically through MBO, and the rules and regulations have changed drastically. Mr. Strong stated, as an outfitter, he has to wade through a mountain of paperwork each year: paperwork he does not have the time for. Mr. Strong stated according to HB 432, his fees would increase 136% in order to hire more people. Mr. Strong stated he reports to 13 government agencies in order to stay in business, and he said it is getting ridiculous. Mr. Strong stated HB 432 would create more bureaucracy which is not needed.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Klampe, referring to page 15, line 15, asked Representative Smith to explain "an outfitter's license may not be transferred during any license year." Representative Smith stated the requirements for the licensure is that the standards of what they are allowed to do is on the application.

Senator Klampe asked Max Chase if an outfitter's license may not be transferred, how the licenses are sold. Mr. Chase stated the license is not a tangible asset; it is not a part of free enterprise. Mr. Chase stated licenses are not transferrable from one outfitter to another.

Senator Klampe asked Mr. Chase if a person has to buy their own license when purchasing an outfitter's business. Mr. Chase stated the person purchasing the business has to apply for his or her own license.

Senator Bianchi asked Mr. Chase if the reason there is no fiscal note is because of the stricken language on page 1, lines 10-11. Mr. Chase stated Senator Bianchi was correct, by taking that portion out of HB 432, there would be no fiscal impact.

Senator Jacobson asked Mr. Chase if the language referred to by Senator Bianchi was stricken because of the addition of an executive director. Mr. Chase said, "yes." Mr. Chase stated there was a mistake made when writing HB 432, and the language referring to the hiring of a private investigator should not have been included.

Senator Devlin asked Mr. Chase what added paperwork would HB 432 involve. Mr. Chase stated there would be no additional paperwork as a result of the passage of HB 432. Mr. Chase stated the

additional paperwork referred to by Mr. Strong was created by the rule-making process and the administrative body.

Closing by Sponsor:

Representative Smith stated HB 432 clarifies the standards needed with regard to license requirements, penalties and fines. Representative Smith urged the Committee's support of HB 432 and stated Senator Beck would carry the bill.

EXECUTIVE ACTION ON HB 381

Discussion:

Valencia Lane stated Representative Ryan and Bob Lane met in the hall to discuss amendments to HB 381 and both parties agreed that no amendments were needed. Ms. Lane stated the parties agree on HB 381 as written.

Senator Klampe asked if HB 381 was necessary if the alternative plan covers the needs of Malmstrom. Senator Crippen stated HB 381 would make the safety course mandatory, whereas the alternative plan would be voluntary.

Senator Bianchi stated there is nothing in the statutes to require someone to take the course.

Motion/Vote:

Senator Christiaens moved HB 381 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY with Senator Forrester voting by proxy.

EXECUTIVE ACTION ON HB 595

Motion/Vote:

Senator Crippen moved HB 595 BE CONCURRED IN. The motion CARRIED 10-1 with Senators Beck voting YES by proxy and Forrester voting NO by proxy.

EXECUTIVE ACTION ON HB 432

Motion/Vote:

Senator Devlin moved HB 432 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY with Senators Beck and Forrester voting by proxy.

Discussion on HB 341:

Senator Pipinich stated he had been contacted by a lot of the walleye fishermen and women who oppose HB 341.

Senator Crippen asked if the walleye fisherpersons use the live wells for fishing derbies. Senator Pipinich stated these people want to be able to keep the fish alive until they get the fish home to fillet and also for fishing derbies.

Senator Brenden stated many people want the bill tabled to give the concerned parties more time to come up with a bill which would be compatible for all parties.

Senator Bianchi stated HB 341 says fish cannot be transported live off a body of water. Senator Bianchi stated he did not see why the walleye fisherpersons could not fillet the fish at the site. Senator Bianchi stated there is no way to prohibit the illegal transportation or transplanting of fish without a bill like HB 341.

Senator Klampe stated HB 341 also addresses the problem of filleting at lakeside. HB 341 would set rules to allow for filleting at lakeside.

Senator Christiaens stated HB 341 would create problems for people from Great Falls. Senator Christiaens stated he had received roughly 1300 signatures from constituents opposing HB 341.

Senator Crippen asked Al Elser what can be done, under present law, about the illegal transplantation of fish into Montana's waters. Mr. Elser stated at the present time, the person doing the transplanting has to be caught in the act.

Senator Christiaens asked Mr. Elser if he could better explain the opposition to HB 341. Mr. Elser stated the walleye fisherpersons want to haul the live fish home and fillet them there. What the Department is suggesting is a provision to allow for the filleting of fish at lakeside. Mr. Elser stated the Commission can adopt provisions for certain counties to be exempt from the prohibition of transporting live fish. Mr. Elser stated the Department was under the impression that Walleye Unlimited was satisfied with the changes made to HB 341 in the House, but apparently they are still opposed to the bill.

Senator Klampe stated the cost of establishing fillet shacks at lakeside is minimal when compared to the cost of rehabilitating bodies of water where fish have been illegally introduced. Mr. Elser responded by saying he agreed with Senator Klampe.

Senator Crippen stated he did not understand why the walleye fishermen and women wanted to transport the live fish home. Senator Christiaens stated he believed walleye deteriorate

quickly once they have been killed and asked if this was correct. Senator Klampe stated he had heard that walleye taste better if they are fresh.

ADJOURNMENT

Adjournment: 4:45 p.m.



SENATOR BOB PIPINICH, Chair



KATHY COLLINS, Secretary

BP/kc

ROLL CALL

SENATE COMMITTEE Fish & Game DATE 3-16-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Jacobson	✓		
Senator Bianchi	✓		
Senator Christians	✓		
Senator Crippen	✓		
Senator Beck	✓		
Senator Mesaros	✓		
Senator Devlin	✓		
Senator Brenden	✓		
Senator Klampe	✓		
Senator Forrester			✓
Senator Pipinick	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration House Bill No. 381 (first reading copy -- blue), respectfully report that House Bill No. 381 be concurred in.

Signed: Senator Bob Pipinick
Senator Bob Pipinick, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration House Bill No. 432 (first reading copy -- blue), respectfully report that House Bill No. 432 be concurred in.

Signed: Senator Bob Pipinich
Senator Bob Pipinich, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration House Bill No. 595 (first reading copy -- blue), respectfully report that House Bill No. 595 be concurred in.

Signed:


Senator Bob Pipinich, Chair

SENATE FISH AND GAME

EXHIBIT NO. 1

DATE 3-16-93

BILL NO. HB 381

HB 381
March 16, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Fish and Game Committee**

The department appears today to suggest an alternative to HB 381 for your consideration.

It is our understanding that concerns with a lack of experience and training among military personnel specific to Montana's terrain, weather, landowner-sportsmen related issues, including ethics, and game laws were among the reasons for the drafting of HB 381.

While hunter safety courses currently offered in Montana address the above issues, the majority of class time is spent on safe handling of firearms, an area in which we would assume most military personnel receive adequate training.

Because there is a perception that military personnel are frequent violators of game laws, we checked records in our Fish, Wildlife and Parks Region 4 office, which is headquartered in Great Falls. For the past five years, citations were issued no more frequently to military personnel than to other Montana residents or visitors.

With the above in mind, we believe redesigning a course that is specific to issues such as hunter/landowner relations, hunter ethics and perhaps information on what to expect in the way of terrain and weather conditions throughout Montana is a reasonable

alternative to mandatory hunter education.

We have been in touch with Base Commander Colonel Pehan. He has expressed a willingness to expand Malmstrom's efforts specific to these issues and work with us in developing a more complete course that they would offer as a part of base orientation.

We believe our proposal represents a reasonable compromise between what is currently being offered at the base and a mandatory hunter education requirement.

SENATE FISH AND GAME

ENR. NO. 2

DATE 3-16-93

HB 595

March 16, 1993

BILL NO. HB 595

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Fish and Game Committee**

House Bill 595 will correct a jurisdictional defect in the authority of Justice Courts over prosecutions of certain fish and game violations. The Montana Supreme Court, in the case of Mosely v. Lake County, decided January 12, 1993, agreed that a Justice Court does not have jurisdiction over prosecutions for fish and game violations where the potential fine exceeds \$1,000.

A county attorney could still prosecute in state District Court. However, this would have significant adverse impacts on prosecutors. The increased procedural formalities in District Court, in comparison with Justice Court, would greatly increase the workload of prosecutors for most fish and game violations that come under the Supreme Court's decision.

Under the proposed amendment, fish and game misdemeanor violations would be treated like all other misdemeanor violations. Misdemeanors, with a potential fine under a specified amount, can be prosecuted initially only in Justice Court. However, for misdemeanors with a potential fine over a specified amount, the prosecution can be in either Justice Court or District Court. Because of an inadvertent defect in the statute, fish and game misdemeanors with a potential fine over \$1,000 can only be prosecuted in District Court. HB 595 will correct this and allow

prosecution of all fish and game misdemeanor violations in Justice Court, the same as all other misdemeanors.

The Supreme Court also questioned whether the restitution payment for illegal introductions of fish under Section 87-5-721, MCA, is allowed in a criminal sentence. The bill addresses this problem by holding violators civilly liable for the cost of eliminating or mitigating the effects of an illegal introduction of fish. The present law requiring mitigation would not be changed, only the procedure is changed in the bill. The department believes that a civil action in District Court is the proper procedure, because some mitigation cost may be very high.

Illegal fish introductions are one of the most serious problems for fish management, with mitigation costs exceeding \$100,000. Determining liability for costs of this magnitude is beyond the normal concept of a misdemeanor prosecution and the function of Justice Courts. A civil suit in District Court is appropriated to the potential magnitude of the liability and provides an accused with all formal safeguards of due process.

53rd LEGISLATIVE SESSION

FISH AND GAME COMMITTEE

PROXY VOTE

I, Senator Beck do hereby grant my proxy vote to Chairman Pipinich or Secretary Collins as follows:

BILLNUMBER

MOTION:

Do Pass HB 432
Yes HB 595 No _____

Do Not Pass
Yes _____ No _____

Indefinitely Postponed
Yes _____ No _____

Tabled
Yes _____ No _____

Sen Don Beck
Signature

3-16-93
Date

53rd LEGISLATIVE SESSION

FISH AND GAME COMMITTEE

PROXY VOTE

I, Senator Forrester do hereby grant my proxy vote to Chairman Pipinich or Secretary Collins as follows:

BILLNUMBER

MOTION

Do Pass HB 381
Yes HB 432 No HB 595
HB 595

Do Not Pass
Yes HB 341 No _____

Indefinitely Postponed
Yes _____ No _____

Tabled
Yes _____ No _____

Jay J. [Signature]
Signature

3-16-93
Date

DATE 3-16-93

SENATE COMMITTEE ON Fish & Game

BILLS BEING HEARD TODAY: HB 381, HB 595, HB 432

Name	Representing	Bill No.	Check One Support Oppose	
NAMES O. BLOSSOM	FWP HUNTER ED	381		
GARY C. STEWART	FWP HUNTER ED	381		
Irving "Max" Chase	Board on Commerce and Agriculture	432	X	
JERRY STRONG	SELF	432		X
BILL HOLDORF	SELF	381	✓	
BILL HOLDORF	SKYLINE SPORTSMEN	595	✓	
Bob Carr	DFWP	381 595	no record ✓	
Clay Landry	MA Trout Unlimited	595	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY