

**MINUTES**

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

**COMMITTEE ON FISH & GAME**

**Call to Order:** By Senator Gary Forrester, Vice Chair, on March 18, 1993, at 3:00 p.m.

**ROLL CALL**

**Members Present:**

Sen. Bob Pipinich, Chair (D)  
Sen. Gary Forrester, Vice 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:** None.

**Members Absent:** None

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

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

**Committee Business Summary:**

Hearing: HB 576, HB 607  
Executive Action: HB 341, HB 338, HB 576, HB 607

**HEARING ON HB 576**

**Opening Statement by Sponsor:**

Representative Bill Endy, House District 74, stated HB 576 would make an amendment to Article 11, Section 12 of the Montana Constitution which would guarantee the right of citizens to hunt in Montana. Representative Endy stated six other states have adopted similar amendments to their constitutions.

**Proponents' Testimony:**

Bob Lane, Chief Legal Council, Department of Fish, Wildlife & Parks (DFWP), spoke from prepared testimony in support of HB 576 (Exhibit #1).

Jim Richard, representing the Montana Wildlife Federation (MWF), stated MWF strongly supports HB 576. Mr. Richard stated HB 576 would avoid the problems experienced with CI 62.

Stan Bradshaw, representing the Montana Bowhunters Association (MBA), stated MBA is in support HB 576.

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Mesaros asked Representative Endy if HB 576 would allow anyone with a legal license to hunt. Representative Endy stated if a person is of age or has completed the necessary requirements to obtain a license, he or she would have the right to hunt. Bob Lane stated the amendment to the constitution would not give the unrestricted right to hunt; it would provide some protection of recreational hunting through the right to bear arms. The problem with providing an absolute right to hunt is the lack of needed restrictions. Mr. Lane stated there are times it would be necessary to regulate hunting to provide for the diversity and populations of species in Montana. Mr. Lane stated HB 576 would not give the unrestricted right to hunt.

Senator Crippen asked Bob Lane what the definition of "other lawful purposes" would be. Mr. Lane stated the language was intended to be balanced in such a way as to provide the state the ability to regulate the use of firearms.

Senator Crippen asked Mr. Lane if a person would lose his or her right to bear arms if he or she were hunting illegally. Mr. Lane stated under the constitution as it is now, a person does not have the right to hunt without restriction. Senator Crippen stated by putting the phrase "lawful hunting" and "lawful purposes", there is a restriction which bothered him. Senator Crippen stated he should have the right to bear arms whether he is hunting legally or illegally. Senator Crippen said HB 576, as written, would imply if a person is hunting illegally, he or she does not have the right to own any firearms. Mr. Lane stated he did not believe HB 576 changes what is already in statute, it merely states how Montanans feel about hunting.

Senator Pipinich asked Mr. Lane if HB 576 regulates the arms a person can bear. Mr. Lane stated HB 576 would not give DFWP any particular authority, rather, it would protect the right to use firearms for hunting, recreational use, and other lawful purposes. Senator Pipinich asked Mr. Lane if all the firearms a person owns could be taken away if he or she were hunting illegally. Mr. Lane stated not under HB 576 nor the present statutes. Mr. Lane stated it is not the intent of HB 576 to allow firearms to be taken away from a citizen committing unlawful acts.

Senator Beck asked Mr. Lane if taking out "lawful" would change the intent of HB 576. Mr. Lane stated he would recommend against striking that particular language because it would make HB 576 more restrictive of what we now have.

Senator Jacobson asked Mr. Lane if taking out "lawful" with regards to hunting would go along with the language in the constitution as it is now. Mr. Lane stated there is nothing in the constitution guaranteeing the right to hunt in Montana, and that is why HB 576 is needed.

Senator Jacobson stated Mr. Lane did not fully answer her question. Senator Jacobson asked Mr. Lane why "lawful" could not be stricken from HB 576. Mr. Lane stated by striking that language, the provision would be narrower, but the interests being discussed would be protected.

Senator Crippen stated the area of the constitution dealing with the right to bear arms does not say the "lawful defense of home or personal property", and those qualifiers should not be in the constitution; they should be statutory. Senator Crippen said if HB 576 said, "for hunting and recreational uses" it would be implied that those activities must be lawful. Mr. Lane stated he could see Senator Crippen's point, and "lawful" may not have any purpose other than to confuse.

Senator Pipinich asked Representative Endy and Mr. Lane if they would be agreeable to an amendment to remove "lawful" from HB 576. Both Representative Endy and Bob Lane stated they would have no problem with striking "lawful".

**Closing by Sponsor:**

Representative Endy respectfully closed on HB 576.

**HEARING ON HB 607**

**Opening Statement by Sponsor:**

Representative Jim Elliott, House District 51, stated HB 607 addresses the particular problem in two state parks--the Thompson Falls state recreation area and the Big Arm/Elmo state park.

Representative Elliott stated there is a high cost to DFWP to lease the two parks from the Department of State Lands (DSL). It is the responsibility of DSL to maximize the return on school trust lands; however, it is being requested that an exception be made for land leased to DFWP for recreational purposes.

Representative Elliott said the Thompson Falls area lease is \$2,000 per year, which encompasses 25% - 30% of the total return on that park. At the Big Arm/Elmo park, the lease is \$17,000 per year, which is three and one-half times the return on that park. Representative Elliott said operating under these fiscal conditions makes it difficult to justify keeping the parks in existence. Representative Elliott stated public benefits need to be taken into account, and HB 607 allows the Board of Land Commissioners to determine whether a reasonable amount that the DSL can charge is a percent of the receipts. In other words, can it be considered to construe full market value for those lands. HB 607 also allows DSL to give DFWP up to a 20-year lease.

#### Proponents' Testimony:

George Ochenski, representing the Montana State Parks Foundation (MSPF), stated he supported HB 607.

Mark Dasplit, representing the Montana Audubon Legislative Fund (MALF), stated he supported HB 607 and provided written testimony (Exhibit #2).

#### Opponents' Testimony:

Bud Clinch, Commissioner, DSL, stated he stood as an opponent to HB 607. Mr. Clinch said the lands being discussed, the trust lands, were granted to the state of Montana in 1889 under the Enabling Act, which provides for these lands to be granted to the state to hold in trust. Furthermore, 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, in the United States Supreme Court and the supreme courts of other states which are subject to identical or similar trust obligations. Mr. Clinch stated the state is held to the same standards as the trustee of a private trust. The land must be administered solely for the benefit of the trust beneficiaries, the trust lands must be administered so as to achieve the largest, legitimate amount of money over the long term, and the Legislature cannot adopt a law in violation of the trust responsibilities. Mr. Clinch stated some of the premises of HB 607 are unconstitutional and are in violation of the Enabling Act for four reasons. First, HB 607 violates the full market value requirement. Second, the subsections which give the DFWP a lesser rate also violates the Legislature's duty to administer the trust estate with undivided loyalty to the beneficiaries--the school trusts. Third, the subsections violate the duty to obtain the largest, legitimate amount of money for the beneficiaries. Fourth, the provision of subsection 4 is

unconstitutional because an appraisal is necessary to determine the full market value of the land. Mr. Clinch stated it was ironic that while two bills are being introduced in this Legislative Session to mandate that the DSL raise existing rates on agricultural, grazing and other surface uses up to fair market value, HB 607 is introduced mandating DSL to accept less than fair market value. Mr. Clinch stated in order to fulfill the trust responsibilities, DSL stands in opposition to HB 607. Mr. Clinch stated the appraisal on the Thompson Falls area is over \$3 million. Under the statutes which guide DSL, in terms of coming up with a rental arrangement for commercial uses, the 5% rental of the appraised value would produce a revenue of approximately \$170,000 per year to lease that particular piece of property. Mr. Clinch stated DSL recognizes the value of recreational lands on the quality of life in Montana and the role of the DFWP has in regard to recreation. Mr. Clinch said DSL is compromised in being an advocate for receiving less than fair market value for some lands at the same time being mandated to receive full market value for others. Mr. Clinch stated DSL has entertained ideas whereby a holding lease could be established, realizing that commercial values are increasing and developing a strategy which would save the land from commercial development over a long period of time. This strategy may fulfill the obligation to maximize the return to the trust. Mr. Clinch stated he had the first draft language as to how DSL can assure that the lands currently being used for parks can continue to be used in such a manner and still fulfill the trust responsibilities for receiving fair market value. Mr. Clinch said the proposal does not guarantee that the DFWP will be the managing agent of that piece of land. There are stipulations on the use of the lands, and the lands would be put out for competitive bid, where the successful bidder would have to meet the stipulations. Mr. Clinch said it would be undetermined at this time if the proposal would be completely satisfactory to DFWP, but DSL feels there can be a reassurance that the land stays in recreational land and DSL receives fair market value for the school trust fund.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Brenden asked Mr. Clinch if a person who currently leases land would have to meet the highest bid on that land if it came up for competitive bid. Mr. Clinch said, "yes."

Senator Klampe, referring to the 5% of appraised value, asked Mr. Clinch if DSL was currently using this figure to assess lease amounts. Mr. Clinch stated it is stated in statute when properties classified as commercial lands, the minimum lease rental payment should be 5% of the appraised value. Mr. Clinch stated specific to the Big Arm/Elmo property, the most recent appraisal is in excess of \$3 million, and 5% of this amounts to

approximately \$170,000. Mr. Clinch stated until this time, there has not been an appropriate lease with DFWP, which has operated on that land under the previous lease for agricultural purposes. Part of the original shoreline was set aside by the Land Board in the 1950's, and an attorney general has since ruled that to be inappropriate action. Since DFWP has Dingle Johnson money available, they need to come up with a lease that specifically outlines the property.

Senator Brenden asked Mr. Clinch how much lakeshore frontage feet was being discussed. Mr. Clinch stated there are over 5,000 feet of lakeshore frontage. Senator Brenden asked Mr. Clinch if his appraisal was low on that frontage. Mr. Clinch said the recent appraisal, based on the recent sale of property in the same area, indicate the west shore of Flathead Lake has a lower value for lakeshore frontage than the east shore.

Senator Mesaros asked Mr. Clinch if a normal agricultural lease is 10 years. Mr. Clinch stated they are normally 10 years. Under the commercial leases, DSL has the option to lease up to 40 years. Senator Mesaros asked Mr. Clinch if he was comfortable with the study which came up with the fair market value. Mr. Clinch said he had not had a chance to look carefully at the study.

Senator Crippen asked Mr. Clinch how the property at Flathead is being used now. Mr. Clinch said there is a primitive campground on that property. Mr. Clinch stated the proposal is to expand the facilities. Senator Crippen asked Mr. Clinch if this property has commercial value. Mr. Clinch stated this property has tremendous commercial potential. Senator Crippen asked Mr. Clinch if DSL was violating their responsibilities by not maximizing the return on the property. Mr. Clinch said, "yes." Senator Crippen asked Mr. Clinch if "fair market value" dealt with a tangible return. Mr. Clinch stated "fair market value" meant dollars. John North, Chief Legal Council, DSL, stated the responsibilities to the trust dictate that the returns to the trust must be tangible returns. Senator Crippen asked Mr. North if DSL is in violation of their responsibilities to the trust. Mr. North said, "yes." Senator Crippen, referring the Mr. Clinch's testimony about the establishment of a holding lease, asked Mr. Clinch who would bid on the land. Mr. Clinch stated putting the land in a holding lease would put DSL in a position in the future to receive a greater amount than than would be received now, thereby fulfilling the fair marked value requirement. Mr. Clinch stated if the land was made available for lease with no restrictions, DSL might get proposals from individuals with high development potentials for casinos, condominiums, boat marinas, etc. Mr. Clinch stated DSL is in a difficult position of trying to fulfill their responsibilities to the trust.

Senator Crippen asked Representative Elliott to comment on what has been discussed thus far. Representative Elliott, reading

from the Montana State Constitution, Article X, stated "no such land, or any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest to be disposed of be ascertained in such manner as may be provided by law has been paid or saved and secured to the state." Representative Elliott stated he would argue that full market value of the estate as assessed for recreational purposes could satisfy that portion of the constitution. Representative Elliott stated he would also argue that portion of the constitution which says, "except in pursuance of general laws" would go along with 77-1-202, Administration of State Lands, subsection 2, which states, "it is consistent with the powers and the duties provided in subsection 1 that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of recreation." Representative Elliott stated DSL has never received full market value on certain lands.

Senator Beck asked Representative Elliott why there was no fiscal note with HB 607. Representative Elliott stated a fiscal note was not requested.

Senator Beck asked Arnie Olsen, Administrator, State Parks Division, DFWP, what the Department hoped to get out of HB 607. Mr. Olsen stated the Department is close to reaching an agreement with DSL, and while the Department does not expect special privileges from DSL, they also feel they should not be held at a higher standard. Mr. Olsen stated the land at Flathead Lake could be classified as public recreational land and put out to bid as public recreation land, and as long as the public is served, the Department would be happy with that.

Senator Beck asked Mr. Olsen if someone gained lease, through the bidding process, on property which the Department had made improvements to, would the new lessee have to pay the Department for those improvements. Mr. Olsen stated no improvements had been made on the land at Flathead because in order to afford improvements, the Department would need matching federal dollars, which would require at least a 20-year lease.

Senator Pipinich asked Mr. Olsen if HB 607 is needed. Mr. Olsen stated he was not sure HB 607 was needed if the Department and DSL could work out an agreeable solution. Representative Elliott stated HB 607 was not brought forward at the request of DFWP, and HB 607 was needed.

Senator Devlin asked John North how many leased the DSL has presently with governmental entities. Mr. North stated there are quite a few. Senator Devlin stated he would like to know how many other instances of leases DSL has which do not show fair market value. Mr. North stated he could get that information for the Committee.

Senator Klampe asked Mr. North if DSL and DFWP has the authority to reclassify lands without legislation. Mr. North stated the authority to reclassify lands is already in statute.

Senator Christiaens asked Arnie Olsen if the Department has to have at least a 20-year lease in order to receive Dingle Johnson funds. Mr. Olsen stated DFWP has to show they have control of the land in question in order to receive those federal dollars. A requirement of receiving federal funds is the Department must own the land in question or have at least a 20-year lease.

**Closing by Sponsor:**

Representative Elliott stated the Enabling Act has not been followed probably since Montana became a state. Representative Elliott said the proposal to privatize any state land is a heinous proposal, and he hoped this never happens in Montana. Representative the responsibilities of the DSL with respect to the school trust is an important point to consider. The land could be sold or leased now for its full market value and perhaps satisfy provisions of the state constitution; or the land could be leased for public recreation benefit and hold it for full market value. Representative Elliott stated the land value of the properties discussed will not go down, and by keeping these lands available for future generations to use as public recreation lands, DSL will satisfy their responsibility to the benefactors of those lands.

**EXECUTIVE ACTION ON HB 341**

**Motion/Vote:**

Senator Brenden moved HB 341 be TABLED. The motion CARRIED with Senators Klampe, Bianchi and Crippen voting NO.

**EXECUTIVE ACTION ON HB 338**

**Motion:**

Senator Pipinich moved HB 338 BE CONCURRED IN.

**Discussion:**

Senator Mesaros asked if the hearing had been closed on HB 338. Senator Pipinich stated he had talked with Representative Ream, and Representative Ream stated he would like the record to show that he requested the hearing be closed.

Bob Lane, DFWP, stated the parties involved discussed the possibility of raising the fees and decided they would like HB



338 to remain as is, allowing the ad hoc committee to continue the work on the fee schedule. Mr. Lane stated the committee does not at present have the information needed to address the fees now.

Les Graham, Montana Game Breeders Association, stated the fee is a token fee, and there are a variety of avenues which can be taken in this regard.

**Vote:**

The BE CONCURRED IN motion on HB 338 CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON HB 576**

**Motion:**

Senator Pipinich moved an amendment to HB 576 to remove "lawful" from the eight places it appears in HB 576.

**Discussion:**

Senator Beck stated there is some concern that adding the "right to hunt" amendment to the state constitution would allow anyone who comes into the state of Montana to hunt. Bob Lane, DFWP, stated taking out "lawful" may make hunting a fundamental right.

**Motion/Vote:**

Senator Crippen made a substitute motion to amend HB 576 by striking "and other lawful purposes" following "recreational use" in the four places that language appears. Senator Crippen's amendment CARRIED UNANIMOUSLY.

**Motion/Vote:**

Senator Beck moved HB 576 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY. Senator Crippen agreed to carry HB 576.

**EXECUTIVE ACTION ON HB 607**

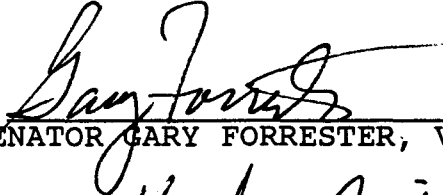
**Motion/Vote:**

Senator Mesaros moved HB 607 be TABLED. The motion CARRIED with Senators Bianchi, Christiaens and Crippen voting NO.

**Referred to Judiciary Committee: HB 576**

ADJOURNMENT

Adjournment: 4:45 p.m.



SENATOR GARY FORRESTER, Vice Chair



KATHY COLLINS, Secretary

GF/kc

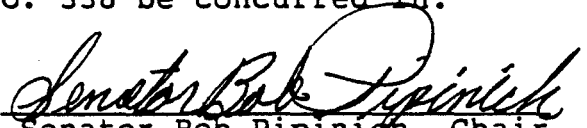
SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 18, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration House Bill No. 338 (first reading copy -- blue), respectfully report that House Bill No. 338 be concurred in.

Signed:

  
Senator Bob Pipinich, Chair

# ROLL CALL

SENATE COMMITTEE Fish & Game DATE 3-18-93

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 FISH AND GAME

EXHIBIT NO. 1

DATE 3-18-93

BILL NO. HB 576

HB 576

March 18, 1993

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

The bill proposes a constitutional amendment for voter approval that would protect a citizen's right to bear arms "for lawful hunting and recreational use and for other lawful purposes." Similar protection is provided by the constitution of at least six states, including Delaware, Nebraska, Nevada, New Mexico, North Dakota and West Virginia. The language chosen is carefully balanced so the state can fully regulate the recreational use of arms.

Protecting the right to bear arms for hunting and other recreational purposes will help secure and maintain hunting as an integral part of Montana's culture and heritage.

One-hundred and twenty-five years ago, your predecessors in the Second Territorial Legislature adopted Montana's first hunting laws. The laws sought to protect quail and partridge.

Just two years ago, the legislature adopted a resolution that established the third week in September as Montana's first Hunting Heritage Week - a time for Montanans to reflect on hunting as an expression of their culture; to acknowledge the contributions made

~~expression of their culture; to acknowledge the contributions made~~  
by sportsmen and sportswomen that have resulted in Montana's  
diverse wildlife populations; and to celebrate the rich traditions  
of Montana's hunting heritage. That bold resolution by Montana's  
lawmakers spawned week-long celebrations across Montana in 1991 and  
1992. Montana's "Hunting Hall of Fame" emerged out of Hunting  
Heritage Week in 1992 and 11 Montanans were inducted.

Yet, in today's social and political climate, when so many  
Americans live in urban locations far removed from nature's yearly  
cycle, Montanans have asked us to do more. This constitutional  
amendment further supplies the comfort many Montanans have asked  
their government to provide. Our statistics show that up to 50  
percent of our male population and 20 percent of our female  
population buy hunting licenses. In this day and age, those are  
phenomenal numbers. For many of our state's residents, to be a  
Montanan is to be a hunter. It is in our blood. It is our  
history, our heritage, and, if we are to maintain the quality of  
life so precious to all of us, it is our destiny.

This amendment will constitutionally recognize Montana's commitment  
to our hunting heritage.



# Montana Audubon Council

State Office: P.O. Box 595 • Helena, MT 59624 • (406) 443-3949

SENATE FISH AND GAME

EMERIT NO. 2

DATE 3-18-92

BILL NO. HB 576

3/18/93.

**Chapters:**

Bitterroot Audubon  
Bitterroot Valley

Flathead Audubon  
Flathead Valley

Five Valleys Audubon  
Missoula

Last Chance Audubon  
Helena

Pintlar Audubon  
Southwest Montana

Rosebud Audubon  
Miles City

Sacajawea Audubon  
Bozeman

Upper Missouri  
Breaks Audubon  
Great Falls

Yellowstone Valley  
Audubon  
Billings

Chairman Pipinich, members of the Committee. My name is Mark Daspit and I represent the Montana Audubon Legislative Fund. I am here today to speak in favor of House Bill 607.

As we all know, State Lands requires the maximum return possible for the school trust. Audubon feels that the passage of this bill will make it easier for the Department of Fish, Wildlife & Parks to lease lands in the Thompson Falls State and two units at Flathead Lake; Big Arm and Elmo.

With the revenue generated, the department would be able to use portions to pay the lease to the Department of State Lands. Audubon feels it would be beneficial for all to keep the lands open for public use.

We urge you to pass House Bill 607.

Thank You,

Mark E. Daspit



Recycled Paper

DATE 3-18-93

SENATE COMMITTEE ON \_\_\_\_\_

BILLS BEING HEARD TODAY: HB 576, HB 607

Name	Representing	Bill No.	Check One	
			Support	Oppose
Mark Patrick	MT. Audubon Leg. Fund	607	X	
Stan Bradshaw	MT. Bowhunters	576	✓	
BUD CLINCH	DSL	607		✓
GEORGE OCHENSKI	MT. STATE PARKS FOUNDATION ACTION FUND	607	X	

**VISITOR REGISTER**

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY