

**MINUTES**

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

**COMMITTEE ON EDUCATION**

**Call to Order:** By Senator Blaylock, on December 10, 1993, at  
3:52 p.m.

**ROLL CALL**

**Members Present:**

Sen. Chet Blaylock, Chair (D)  
Sen. Harry Fritz, Vice Chair (D)  
Sen. John Brenden (R)  
Sen. Bob Brown (R)  
Sen. John Hertel (R)  
Sen. Spook Stang (D)  
Sen. Daryl Toews (R)  
Sen. Mignon Waterman (D)  
Sen. Bill Wilson (D)

**Members Excused:** Senator Yellowtail

**Members Absent:** None

**Staff Present:** Eddye McClure, Legislative Council  
Sylvia Kinsey, Committee Secretary

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

**Committee Business Summary:**

Hearing: Senate Bill 37  
Executive Action: SB 37

**HEARING ON SENATE BILL 37**

**Opening Statement by Sponsor:** Senator Bruski-Maus, SD 12, read a quote from the MCA, 78-7-601 "it is in the best interest and to the great advantage of Montana to seek the highest development of state owned lands in order that they might be placed in our highest and best use, thereby derive greater revenue for the support of the common schools, the University System and other institutions benefitting therefrom, and that in so doing, the economy of the local community as well as the state, is benefitted as a result of such development". She said SB 37 is an act requiring the sale of state public lands. We have about 23 million acres and this bill only covers 4.8 million with certain exemptions providing no additional leases for agriculture, grazing or other surface uses be granted. When outstanding surfaces expire the land is to be sold to the highest

bidder with sale preference extended to the prior lessee. she said she believed the bill offered solutions to problems we are facing in Montana and offers solutions. She said the money from the sale of state lands would be placed in the permanent trust fund to provide interest for Montana schools.

**Proponents' Testimony:** Lorna Frank, Montana Farm Bureau, said at their last convention the delegates reaffirmed their position on recommending the sale of state land or the transfer to private ownership.

Senator Larry Tveit, SD 11, said he endorsed the concept of this bill. We are not getting our money out of state lands on grazing nor on the lands that are tillable. He believed a cash lease might bring in more money, and the isolated state lands should be looked at and could recover considerably more money by selling them at market value.

David Kasten, rancher and lessee of state lands in Eastern Montana said he would like to see the state lands sold first and the trust lands looked at in the future.

**Opponents' Testimony:** Representative Bill Endy, HD 74, said he was in strong opposition to this bill. On page 3 of the bill where it says our procedures presently allow, currently lessees can match public bids and maintain their interest in the property. One of the land owners who had about 40,000 acres leased and another has about 200,000 acres of private land. If Bill Endy and family put all our money together and bid on any of that property, that guy could outbid us and most of the people in the state of Montana. Another reason is that he has a house with 5 acres, and he hunts on it along with his BLM land and did not want to see it sold to those special interest people with all the money.

Jeff Hagenes, Montana Department of State Lands spoke in opposition to SB 37 and said the Department was not opposed to selling state land but had to oppose this bill because of the methodology of some of the things proposed in it. He gave written testimony. (Exhibit 1)

Jim McDermant, Medicine River Canoe Club, spoke in opposition to SB 37. He said the bill cites financial gain in property tax reduction as an underlying reason for this proposal. They felt these small monetary gains were far exceeded by the public benefit these lands provide to all our citizens.

Gregg Hester, Gallatin Wildlife Association, spoke in opposition to SB 37. One of the reasons this special session was called was to deal with property tax relief. Property values have risen considerably in recent years and will likely continue to rise. If we were to sell state lands at today's prices, it would look like a fire sale in the future.

Delores Colburg, representing herself, said as a past Superintendent of Schools she was still very much interested in the question of state lands. She said she believed the bill was well intended, but thought there were problems with it. When she was State Superintendent she would meet with her counterparts around the state and they discussed school lands. Her colleagues learned Montana had wisely retained our state lands, they said they had made the mistake several years ago when it looked good, and have been bemoaning that action ever since. She said a key piece of land around Alice Creek near Lincoln was in a place where people wanted to come in and develop. The environmental degradation of that land plus the Blackfoot would have been appalling. It was a key piece of school land they would not give over that prevented the rape and pillage of that land.

Tony Schoonen, Coalition for Appropriate Management of State Lands, said they also oppose the sale of state lands. This bill would create a huge bureaucracy of lawyers, appraisers, 72 new FTE's (Full Time Employees), etc. and believed there would not be much money saved.

Jim Richard, Montana Wildlife Association said these state lands represent a recreation and cultural heritage which gives them a value beyond any monetary benefits that accrue. He endorsed the statements of the opponents and said if these lands benefit the private sector economically, we are providing our number one industry, Agriculture, with some reasonably priced grazing fees and are probably benefitting our number two industry tourism by having an asset which lands itself to the attractiveness of Montana.

Lewis E. Hawkes, Executive Director of the Public Lands Access Group in Bozeman said they are opposed to HB 37 since it looks like a temporary fix of some financial problems. They would have no objection to isolated pieces of land being sold, but are opposed to the policy of land sales. He said they had late word of the hearing and handed in several sheets of signatures of people who were opposed to this bill. (exhibit 2)

Laurie Thomas, Anaconda Sportsman's Club, said they lease state lands on the Big Hole River. If this land is sold a big campground will go there and we have one of the largest elk herds in the state of Montana. He asked what would happen if they lose that land.

Sam Babich, Butte Skyline Sportsman's Association, said they are opposed to this bill. He said there would be a loss of income from loss of recreation in the future, as well as the cost of selling the lands which will be tremendous. That land is almost priceless, people are coming in and buying up land at unbelievable prices and he could not understand selling the best asset you have.

Representative Wayne Stanford, HD 47, Stevensville, said he was

opposed to this bill. He has been a teacher for 24 years, and has learned that history is important. We teach history to learn from the mistakes made in the past so we do not repeat them. Montana is one of the few states that have retained their state lands, and we should learn from the mistakes other states have made when they sold their lands.

Mich Jackson, Director, Montana Association of Conservation Districts could not remain for the hearing and left written testimony. (exhibit 3)

Informational Testimony : None

Questions From Committee Members and Responses: Senator Brenden, Daniels County, asked Tony Schoonen if we get raises in grazing fees etc. would you help in supporting a full payment in lieu of taxes and Mr. Schoonen said \$265,000 already comes out of the general fund in lieu of taxes, and mentioned the Duffield report.

Senator Toews said we heard a reference to our lands as hunter's lands. The constitution calls for the state lands to bring in the greatest amount of revenue and a state Land Board to uphold the constitution. We have these State Lands people in a box and he asked Mr. Schoonen if he could help get State Lands out of the box. At the present time they are not fulfilling their constitutional duty and that is why Wyoming had to sell some of their land, because they had the same constitution we have. He asked how this could be worked out. Mr. Schoonen said he believed Senator Blaylock's SB 424 last session creating an Advisory Board which would evaluate the uses of state land would help in raising the grazing fees, recreational fees, and said oil and gas leases have been going very cheap. He had another document (but not with him) where Governor Schwinden gave rates to certain oil and gas companies under leases. All of these things have been what he believed to be poor management that has gone on in State Lands in the past. He believed this Land Board is trying to make an attempt, through the bills and the Advisory Council they set up, to try to rectify that. He said the 1972 constitution refers to state school lands as public lands. Granted the highest monetary return has to be obtained, but it has not been because of decades of poor management. They have not had the money to hire the extra help in the Forestry Division and in the Oil and Gas Leasing Division so it has been a serious problem for the Land Board.

Senator Brenden said there are about six counties that have the majority percentage in acres of state land in their counties. He said for the smaller counties with the biggest percentage, and ten years as leases comes up was a concern to him. You could create a potential of declining the market value of that land, and he believed ten years was too short except in cases of isolated tracts. He asked Senator Bruski-Maus if her bill

continues on if she would be amenable to increase that length of time. Senator Bruski-Maus said she had the same problems, the time was getting late to make amendments before the meeting, and she believed these things would be brought out and amendments could be made in a more thought-out pace. In a county where a lot of sections are involved it would probably deflate the price of the land if it was sold.

Doug Sternberg, Legislative Council, said it comes down to the constitutional requirement that the Board maintain and manage state lands and derive the highest and best use on that land. There is nothing in the bill as drafted, that would preclude the Board selling isolated tracts first, or in any other order. The fiscal note indicates that as the leases come up the lands would be subject to sale, and that is over a ten year period because leases for agricultural and grazing under the enabling act, have been limited to a ten year period. As the leases expire, the lands would be subject to sale. The decision as to whether the sale would secure the largest measure of legitimate and reasonable value to the state and whether it would be an advantageous sale, that decision remains with the Land Board. When you are looking at a ten year time frame for the sale of land, that is rather elusive because there are also leases on state lands that go beyond that and would not come into that time frame and he believed the fiscal note did mention that additional sales will be required after ten years for longer term leases.

Senator Toews asked someone from the sports people if we were to consolidate these lands, would the sports people be willing to let the return on the investment be one of the major considerations on the purchase of different or consolidated property or would the hunting and fishing etc. be the driving force in purchasing property. Sam Babich said he believed the biggest concern they have, is not so much that they have to have the individual tracts, and he has been a staunch supporter of block management. Their biggest problem is that there are some sections they believe are necessary to retain to provide access to other lands, such as federal lands. They have never had a set policy that they have to have everything. They have been willing to negotiate and work with other groups in that area and believed anything that came along they would be willing to look at. He said they have been fighting long and hard for access for everybody.

Senator Toews asked Mr. Babich if he was more concerned about access and would not be opposed to purchasing or trading property based on the economic value so long as you still had no access problems. Mr. Babich said directly yes, indirectly no. If you are selling off a prime elk habitat to a private owner that will lock it up you would have a problem there. You have to look at all economic valuation of it, at what is on the land itself before you trade it.

Senator Blaylock asked Mr. Hagenes if he was correct in saying

any sale of state school lands, by law we would have to retain all mineral rights to that land. Mr. Hagenes said at the current time, yes, but this bill would take away that right and would sell mineral rights also.

Senator Blaylock asked if we did this on some kind of a cycle when the leases come up, how many do come up each year. Mr. Hagenes said on agricultural and grazing leases there would be approximately 950 come up for renewal each year. Sen. Blaylock asked for a guess on how many acres that would involve and was told about 490,000 acres.

**Closing by Sponsor:** Senator Bruski-Maus thanked the committee for a good hearing and said she would urge consideration of what this bill will do for education now and in the future. She pointed out it would also provide property tax relief, help repair of state buildings etc. She said no one had asked her to carry the bill, it was her own idea, and the only people who advised her were her constituents.

#### EXECUTIVE ACTION ON SENATE BILL 37

**Motion:** Senator Stang moved Senate Bill moved SB 37 be TABLED.

**Discussion:** Senator Stang said he would make his motion on the basis that Senator Toews had bill that only provided for a study and the Senate killed it on a 25-25 tie vote, he would make his motion to table the bill.

**Vote:** Motion to table SB 37 voted, passed 4 voting yes, 3 voting no, 3 absent, roll call vote.

#### ADJOURNMENT

Adjournment: 4:55 p.m.

  
SENATOR BLAYLOCK, Chair

  
SYLVIA KINSEY, Secretary

CB/sk

## ROLL CALL

SENATE COMMITTEE EDUCATION AND CULTURAL RESOURCES DATE

12-10-93

[illegible]

# ROLL CALL VOTE

SENATE COMMITTEE EDUCATION AND CULTURAL RESOURCES S BILL NO. SB 37

DATE 12-10-93 TIME 4:45 A.M. P.M.

NAME	YES	NO
SENATOR FRITZ, V.C.		
SENATOR BRENDEN		✓
SENATOR BROWN		
SENATOR HERTEL		✓
SENATOR STANG	✓	
SENATOR TOEWS		✓
SENATOR WILSON	✓	
SENATOR WATERMAN	✓	
SENATOR YELLOWTAIL		
SENATOR BLAYLOCK, Chair	✓	
	4	3

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SECRETARY

\_\_\_\_\_  
CHAIR

MOTION: SEN. STANG MOVED SB 37 BE TABLED.



EXHIBIT  
12-10-93  
SB 37

TESTIMONY OF JEFF HAGENER

ADMINISTRATOR, LAND ADMINISTRATION DIVISION

DEPARTMENT OF STATE LANDS

ON

SENATE BILL 37

Senate Education and Cultural Resources Committee

Friday, December 10, 1993

Senate Bill 37 is a complex bill in its intent and the number of statutes that are amended and repealed. A bill of this complexity is difficult to fully digest within the short time frame that review has been allowed. The bill appears somewhat inconsistent in intent when sections 1 and 2 require the board to sell the lands, and then section 27 requires approval and confirmation of all sales by the board based on the Board's determination of whether the sale is in the state's best interest. This appears to leave in place the board's current discretion as to whether or not to sell.

If the reasoning behind the sale of state land is to achieve a greater rate of return from the state's assets, the desired rate of return, and the basis for calculating that rate, needs to be established. Some types of land (i.e. agricultural and commercial) currently generate a much higher rate of return than other land types (grazing). Furthermore, the past rates of return are reliant on the rental rates which have been set by statute. SB 424, enacted during the last regular session, clearly places the

duty of achieving full market value from the state lands upon the Land Board. SB 424 also established the state land board advisory council to review rental rates and make recommendation to the board on rates that would obtain full market value. Therefore, rental rates, and thus the rate of return, may soon increase. An additional source of revenue is the recreational use program on state lands. That program, which was instituted in 1992, is beginning to generate additional revenues from state lands.

Implementing a program to sell approximately 4.9 million acres over the next ten years will require substantial planning, resources and funding as indicated in the fiscal note. The Legislature may wish to establish a process, or authorize rulemaking by the Land Board, to charge all costs to the eventual buyers. A state special revenue account could be established to either fund state personnel to process the sales, or contract out with the private sector for processing the sales.

In our brief review, the Department has identified several technical problems:

First, management of current leases and programs will not cease for many years beyond the first ten years of agricultural and grazing lease renewals. There will be longer running mineral lease held by production. Additionally, several types of commercial leases have longer terms than ten years. It can also be

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SB 37

expected that not all tracts offered for sale will sell. The bill, as drafted, does not appear to allow for continued leasing of unsold tracts or tracts on which the surface lease has expired but, a mineral lease is still in effect. Leaving these tracts vacant will result in lost revenue to the trusts, encourages trespass and will result in lack of on-the-ground management such as weed control.

Second, there is some confusion as to whether mineral estates are to be sold together with the surface estate or at separate sales. Selling mineral estates along with the surface estate may be giving up substantial future trust revenues from royalties of unknown mineral deposits. An example is several state sections near Lincoln on which there was no recognized mineral potential eight to ten years ago. A newly proposed gold mine now includes those sections. If the mine becomes reality, the trusts will realize from \$50 to \$100 million in royalties. Statutes enacted in the past recognized the unknown potential of mineral resources and therefore, withdrew those resources from sale and reserved them for the state.

Third, sales of any state land is not a simple process, forcing the sales in a short term is apt to complicate the process even further. Areas that currently raise legal problems are improvement settlements, determining the legality and location of existing easements and dealing with mortgages currently held against the leasehold interest. All sales will require compli-

ance with MEPA and the Antiquities Act. This compliance may result in conditions of sales which effect the value of the land.

These issues take substantial time and effort to resolve and can be expected to be compounded with forced sales.

Fourth, placing these volumes of land on the real estate market in such a short term may overload the market for these type of properties and therefore, drive land values down.

Fifth, this bill, if it is intended to require sale of all state lands outside of state forests, may be over broad. Rough estimates of land values indicate that the value of state lands have increased from \$650 million seven years ago, to \$1 billion at present. Timber and recreational land values are continuing to appreciate at a rapid rate. Lands sold in the near future may be of much higher value in five or ten years in the future. Any decision to sell which fails to take into account the appreciation potential of the land, as a trust asset, may ultimately reduce the value of the trusts's available asset value. Perhaps, the Land Board should be given the discretion to not to sell these lands now.

In summary, the department is not opposed to sales of state lands, but believes SB 37 does not properly address all the issues that must be considered. The state land board advisory council should be allowed time to perform its duty. It would seem appropriate to wait for the results of the advisory council,

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study the sales issue over the following year(s) and then proceed during the next regular legislative session.

STATE SCHOOL LANDS

SB 37

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SIGNATURES

ON 12/09/93 the Montana Legislature  
(SENATE) PASSED a Resolution by one vote to  
sell all Montana State School Lands,  
now we understand a Senator is  
introducing a Bill with hearing  
on 12/10/93 to sell the Lands.

We the undersigned are totally  
opposed to the selling of State  
School Lands.

Lewis S. Hawtzen	16 Channing Ln, Bozeman	587-2736
Andy G. Adams	Box 471 Belgrade	388-6702
Francis Hancock	721 Yellowstone Belgrade	388-4975
Dennis Lovell	212 Park Ave E Bozeman	388-1671
Jeff Becht	905 S. Colorado Bozeman	388-3318
Ken Wideman	910 WARD BELGRADE MT	388-1226
Sam Gorske Jr	2826 COLTER-BOZEMAN, MT.	586-573
John A. DeLo	2826 COLTER-BZN, MT.	586-5732
Eugene J. Borsdorf	573 MT. HWY 287 #4 ENNIS MT	682-4175
Pauline K. Borsdorf	573 MT HWY 287 #4, ENNIS MT	682-4175
Glenn E. Winters	1422 Cherry Dr. Bozeman MT	587-2536
Carl L. Humbelt	1139 S. Cedarwood Dr. Bozeman MT	587-092
Wendy D. Seltzer	3302 Sandance Dr Bozeman, MT	586-272
Cheryl	Box 1497 Bozeman MT	587-14
Cheryl	Box 1497 Bozeman MT	586-2535
Cheryl	122 ENNIS LAKE RD. ENNIS	587-29
Cheryl	122 ENNIS LAKE RD. ENNIS	682 4733

SENATE RECORD  
EXHIBIT NO. 12  
DATE 12-10-93  
BILL NO. SB 37

Cindy Tate	4446 Bannock Dr.	586-4931
Laura Hubner	16103 Rocky Mtn Rd	388-6207
Ron John	16103 Rocky Mtn Rd	388-6207
Steve McPaul	204 W. Jefferson Apt #19	388-6907
Dan Haugen	204 W. Jefferson #19	388-6907
Becky Matthews	17 W Lammie #104	586-8577
Mark S Davis	3650 MAGENARD BOZEMAN	586 1191
Bill Heckerman	1815 SOURDOUGH RD	586-9770
Julie Hansen	PO Box 421 Belgrade	388-1429
Mike Muehl	701 Nouse #2 Boz.	586-5619
Paul & Newby	411 Mountain View Bozeman	586-2804
Tom Satre	1305 BALDY Mtn Ln.	388-6688
Hans. Ols	450 TOPAZ Belgrade	388-4434
Kevin Chin	404 W. Grant Boz, Mt.	587-8888
Tony Jacob	1104 S. Nouse Bozeman	586-9930
AL ARMSTRONG	1307 WILDFLOWER WAY BOZEMAN	586-1811
Kathryn A. Biegel	8580 Silverberry Lane Bozeman	587-0344
James A Biegel	P.O. Box 686 Bozeman	587-0355
Gray Womans	P.O. Box 1863 Bozeman	586-3141
Chad Seelhoff	3331 Yellowbell Bozeman	586 4777
John Van	9229 Canyon Tr Bozeman	586-0039
Sen. J. Chaman	Box 495 Gardiner Mt.	848-9499
Robin Collins	Box 201 GARDINER, MT.	848-7226
John Collins	Box 201 Gardiner MT	848-7226

12  
Bruce A Oakley 126 W Roschal Belgrade MT 388 6822

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Rodney Z. Winter P.O. Box 160058 Big Sky MT 59716

~~Rodney Winter~~ " " " "

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James Swenson

707 1/2 N. Bozeman Ave. Boz. M.

Mary Ellen Anderson Aloha, OR.

Roger Bla

121 Black Mt. Dr. Boz. M.

(91)

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 Jim [unclear] 11045 MONTANA CT GALLATIN BOZEMAN 585-8425  
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 Patsy Landato 21 Valley DR Boz MT 586-1093  
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 Miss [unclear] 1007 EAGLE CT LHM. MT. 59047  
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 Beverly Carter  
 Kathy Lewis  
 A. J. Jennings  
 Pete Dabbs  
 John Brown  
 Christine Bergum  
 Joe Sautwood  
 Gray Barrett  
 Rick Barrett  
 Kennedy R. Conner  
 Mike Stovall  
 KIRK STOVALL  
 LORI MCCAFFREY  
 John McCaffrey

Manhattan, KS  
 BELGRADE MT  
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Sharon C. Hopeman Bozeman  
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Betty Houghton Bozeman, MT.  
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Bonnie Mei Bozeman, MT  
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Catherine C. Lightberg Manhattan, MT  
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Cory Houghton 3600 Magenta Rd. Bozeman, MT 586-6179  
Craig Houghton 12 E Garfield Bozeman, MT 59715 586-4207  
Michael S. Houghton 12607 Camp Creek Rd. Manhattan, MT 59715  
Thomas E. Houghton 7010 Bristol Lane Bozeman, MT 59715  
Carl Houghton P.O. Box 175 Bozeman, MT 59736  
Susie Houghton 4555 Shandale Lane Bozeman 59715  
Jim Clon 4555 Shandale Lane Bozeman 59715

Carol Reed 821 W. Mendenhall <sup>Bozeman</sup> Bozeman, Mt. 587-8  
Gary Reed " Bozeman, Mt. "  
Shelley Beal 73 Chestnut <sup>Bozeman</sup> Bozeman, Int. 586-7000  
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Denise Heil POB 3262 Bozeman MT 587-2578  
Bar Heil " " " " "  
Andy DiSanti 610 South Willson Bozeman MT 58775  
Terry Seavey 4415 Thorpe Rd. Bel. MT 59714  
Kandy Seavey 4415 Thorpe Rd Belgrade MT 59714  
Ron Hall 14 Heeb Ln. Manhattan MT 59724  
Bob Stutz 902 E MISSOULA Belgrade MT 59714  
Stuart J. DesRosier 1021 B Grant Chamberlain Bozeman MT 59715  
Kathy DeRosa " Bozeman MT 59715  
Jim Hart Jr. 1703 DRIFTWOOD DR. BOZEMAN MT 59715  
Dan Nelson 1605 West Dunstan Boz. MT. 59715  
Kamala Webb 310 N. Montana Boz. MT- 59715  
Howard Thompson Box 130 Ennis, MT 59729  
Judy Thompson Box 130 Ennis, MT 59729

12-10-93  
SB37

Senate Bill #37

AN ACT REQUIRING SALE OF STATE-OWNED  
Public LANDS.

PREPARED BY	
DATE	

Mick JACKSON - Director - MONTANA Association  
of CONSERVATION DISTRICTS.

MACD would support SB37 if the  
following were added. 1. The principal be  
kept fully intact. Only interest be spent.  
2. Clear wording that all water rights  
go with the land. 3. Possible conservation  
easements so the land can't be sold  
to a second party for development.

The conservation easements be in place  
before the land is sold by the state.

SENATE EDUCATION  
EXHIBIT NO. 3  
DATE 12-10-93  
BILL NO. SB 37

DATE 12-10-93SENATE COMMITTEE ON EducationBILLS BEING HEARD TODAY: SB 37 (SB 37)

&lt; ■ &gt; PLEASE PRINT &lt; ■ &gt;

Check One

Name	Representing	Bill No.	Support	Oppose
Mick JACKSON-Director	MONTANA ASSOCIATION of CONSERVATION DISTRICTS	37	✓	
Gregg Hester	Gallatin Wildlife Association	SB37		✓
Lewis E. HAWKES	PUBLIC LAND ACCESS	4		✓
L. F. THOMAS	INDEPENDENT SPORTSMEN			✓
Jim McDermand	Medicine River Canoe Club	37		X
BILL ENDY	Rep HD 74	37		✓
Tony Schuman	State Lands Coalition	37		X
Jim Erickson	MT Wildlife Fed	37		X
Sam BABICH	SKYLINE SPORTSMAN ASS	37		X
Stan Fraser	Prickley Pear SPORTSMEN	37		X
Jim Erickson	MT. Wildlife Fed	37		X
Jeff Nagener	MT. Dept. of State Lands	37		X
George Schunk	Atty Gen	37		
Dolores Colburg	Self	37		X

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY