

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN DOUG WAGNER**, on January 10, 1995, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Douglas T. Wagner, Chairman (R)
Rep. William Rehbein, Jr., Vice Chairman (Majority) (R)
Rep. Emily Swanson, Vice Chairman (Minority) (D)
Rep. Charles R. Devaney (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Marian W. Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Dick Knox (R)
Rep. Rod Marshall (R)
Rep. Brad Molnar (R)
Rep. Robert J. "Bob" Pavlovich (D)
Rep. Bob Raney (D)
Rep. Robert R. "Bob" Ream (D)
Rep. Paul Sliter (R)
Rep. Jack Wells (R)

Members Excused: Rep. Bill Tash (R)

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 94
Executive Action: HB 59

{Tape: 1; Side: A; Approx. Counter: 000; Comments: Tape is scratchy sounding throughout meeting.}

HEARING ON HB 94

Opening Statement by Sponsor:

REP. MATT BRAINARD, House District 62, Missoula informed the committee HB 94 is a bill for an act entitled "An act providing an exception from the 10-mile location restriction for a shooting preserve established exclusively for the practice of falconry hunting by the disabled; amending Section 87-4-502, MCA; and providing an immediate effective date." He distributed written testimony describing special requirements for the physically-challenged as well as the difficulty in finding good locations for this type of sporting activity. **EXHIBIT 1**

Proponents' Testimony:

Jim Chaffin, President of the Institute of Falconry for Physically Challenged Americans distributed written testimony explaining the benefits of having an exclusive falconry preserve for the disabled and how it would benefit physically-challenged Montanans. The organization sought no state funding. Private individuals have donated property, and it would be taken care of by those who use it. **EXHIBIT 2**

Opponents' Testimony:

Loran Perry, from Fort Benton, submitted a witness statement against HB 94 saying he did not want to see the 10-mile restriction changed. He felt that establishing one preserve in the Missoula area would not serve very many people. A disabled person is likely to have a person with him/her to retrieve the bird. Therefore, terrain is not a huge issue. In fact, he would like an increase in the 10-mile limit. **EXHIBIT 3**

Informational Testimony:

Pat Graham, Director, Fish, Wildlife, and Parks Department provided written informational testimony and an amendment. The amendment would prevent a person from starting a shooting preserve for falconry and then changing it to a regular shooting preserve at a later date. **EXHIBIT 4 AND 4A**

Questions From Committee Members and Responses:

REP. PAUL SLITER asked **Mr. Chaffin** for an explanation of falconry. **Mr. Chaffin** explained that falconry involved more than hunting. The program includes rehabilitating wildlife species. Some of the people involved do not want to hunt but enjoy wildlife. They even help handle propagation of the birds. By law, the young birds have to be given to falconers. **Mr. Chaffin** described special limitations about fences and terrain. **CHAIRMAN**

DOUG WAGNER reminded **Mr. Chaffin** to discuss testimony relevant to the question. **Mr. Chaffin** maintained that it was relevant testimony and was related to how the birds are trained. Falcon training is highly geared toward the trainer and falcon so that they develop a close relationship.

REP. DICK KNOX asked **Mr. Chaffin** if only Chinese pheasants are hunted. **Mr. Chaffin** replied that they were. **REP. KNOX** asked how the falconers control the falcon so that it only goes after Chinese pheasants. **Mr. Chaffin** said that the birds are taught when they are young to recognize Chinese pheasants. **REP. KNOX** asked how many were involved in the program. **Mr. Chaffin** informed the committee that there currently are 18 people in Montana.

REP. BRAD MOLNAR asked **Mr. Chaffin** why this reserve needed to be placed within the vicinity of another reserve. **Mr. Chaffin** replied that 360 acres had been given to his organization. This acreage and the nearest shooting preserve are 9 1/2 miles apart. **REP. MOLNAR** asked if his organization could sell or trade the land in the event the land could not be established as a preserve. **Mr. Chaffin** replied the land had been donated for the purpose of establishing a preserve and spoke of a nearby elk corridor. Residents of the surrounding area have not expressed objections of establishing the preserve. Pheasants that wander onto the surrounding property are legal game and the private landowner can harvest them.

REP. BOB REAM pointed out that this sport can already be done on private land during its designated hunting season without establishing a preserve. He asked **Mr. Chaffin** if their intent was to extend the season. **Mr. Chaffin** stated that the season was more than adequate, lasting from September 1st to March 31st. His organization wants to be able to buy, raise, and release their own pheasants and falcons. They want to be self sufficient.

REP. BOB PAVLOVICH asked **Pat Graham** the reason for the immediate effective date. **Mr. Graham** said he did not know. The same question was posed to **REP. BRAINARD**, the sponsor of the bill. **REP. BRAINARD** stated he did not know the reason either.

REP. JACK WELLS asked **Mr. Chaffin** to clarify if his organization's land was 9 1/2 miles from the nearest preserve. **Mr. Chaffin** confirmed that it was. **REP. WELLS** remarked that the bill was asking for an exception from the 10-mile limit. He asked **Mr. Chaffin** if it would be acceptable if the limit was reduced to nine or five miles. **Mr. Chaffin** said that it would be acceptable. **REP. WELLS** asked what the radius of control for a falcon was from the point the bird was released from. **Mr. Chaffin** stated the maximum was one mile. The falcon is a short, broad winged bird from the southwestern part of the United States. The falcon is an intelligent bird and does not get too far away from the point of release.

REP. EMILY SWANSON asked **Mr. Chaffin** about their definition of disabled. **Mr. Chaffin** replied that their definition is 100% disabled. **REP. SWANSON** asked **Mr. Chaffin** if he was disabled. **Mr. Chaffin** said that he was not disabled and that he would not be able to hunt with a falcon on the preserve. **REP. SWANSON** asked if he would be able to serve as a retriever to help a disabled person. **Mr. Chaffin** stated he would be able to help retrieve birds if a falconer let him.

REP. MOLNAR commented that the definition of disabled was not included in the bill. **Mr. Chaffin** said the definition was understood to be anybody who could not walk uphill, downhill, or on stairs. His organization has dealt with people who are quadriplegic, paraplegics, and war veterans to name a few.

REP. ROD MARSHALL asked **Mr. Chaffin** the reason he asked for an exception to the 10-mile rule rather than recommending a change to the 10-mile rule. **Mr. Chaffin** believed that anytime a preserve is established there is a good reason. The reason usually is because the game is plentiful and the area is pristine. **REP. MARSHALL** stated that there is a significant area between one preserve and another when the 10-mile rule is observed. He suggested that an amendment be made to reduce this distance to five, seven, or nine miles. **Mr. Chaffin** was agreeable to this.

REP. BILL REHBEIN asked **Pat Graham, FWP**, to talk about shooting preserves and how the passage of this bill would affect them. **Mr. Graham** informed the committee that there are approximately 54 shooting preserves. Their size is limited to 1,300 or less acres. The hunting season on the preserve is longer than the regular season. A preserve must be located 10 or more miles from the next preserve. Because animals are released into preserves, there is concern about the reared birds leaving the preserve and mingling with wild birds. The FWP Department would like a complete overhaul of the regulatory framework regarding preserves. **REP. REHBEIN** asked **Mr. Graham** if he thought there would be an adverse effect on regular shooting preserves if the 10-mile limit was reduced. **Mr. Graham** thought that reducing the limit was a different issue than just granting an exemption. He was not sure what position the FWP Department would take if the 10-mile limit was reduced. The FWP Department will likely bring in revised regulations for preserves during the 1997 legislative session.

CHAIRMAN WAGNER asked **Mr. Graham** if the department had the ability to grant permits to disabled people. **Mr. Graham** responded that the rulemaking authority of the FWP Commission allowed them to do so. **CHAIRMAN WAGNER** asked if the FWP department currently issued special permits to the disabled for falconry. **Mr. Graham** said they currently do not issue a separate permit to the disabled for falconry. **CHAIRMAN WAGNER** asked how the department qualified a disabled sportsperson. **Mr. Graham** reported the department used the definitions of disabled and non-

ambulatory. He was not aware of other definitions and suggested another definition could be drawn up. It would be very complex to do so. The department relies on a physician's determination as to whether or not a person is disabled. **CHAIRMAN WAGNER** asked if **Mr. Chaffin** had comments about the disabled's special permit. **Mr. Chaffin** said he is working with the chief law enforcement of the U.S. Fish and Wildlife Services on a bill to be sponsored at the national level that will help clarify and establish laws for falconry for the disabled.

Closing by Sponsor:

REP. BRAINARD remarked this group of falconers could operate in the normal hunting season on this piece of ground. Their main goals in establishing a preserve are to be able to buy, raise, and release birds and to manage the habitat themselves. It does not appear there would be problems with regular shooting preserves that use firearms. During Executive Session, amendments could be examined. He asked the committee to keep the testimony in mind and the goals the disabled are trying to accomplish. He urged the committee to pass HB 94.

EXECUTIVE ACTION ON HB 59

Motion: **REP. PAVLOVICH MOVED HB 59 DO PASS.**

Discussion:

REP. PAVLOVICH proposed to amend HB 59. He wanted to change the time for retrieval of big game from "after 6:00 p.m. on the day the animal is taken" to "noon to 2:00 p.m."

REP. MOLNAR contended there were problems with the bill. Animals may be wasted because the hunter only has a slim amount of access time and may have to wait for gates to be opened before retrieving his game. It would require the FWP Department to provide services seven days per week. The amendment improves HB 59 slightly, but does not make it a good bill.

REP. PAVLOVICH stated that the title of the bill would need to be changed in the amendments as well.

REP. REAM asked **Doug Sternberg**, Legislative Council, to clarify the proposed amendment's language. **Mr. Sternberg** said there will be a period on each hunting day when a person would have access. If access was not gained during that time, retrieval could occur the next day from noon to 2:00 p.m.

Motion/Vote: **REP. PAVLOVICH MOVED THE AMENDMENTS DO PASS.**
Motion passed unanimously.

Motion: **REP. PAVLOVICH MOVED HB 59 DO PASS AS AMENDED.**

Discussion:

REP. REHBEIN expressed concern over having no authority over federal land and their gates. State lands are sometimes hard to define. He opposed the bill.

REP. KNOX declared his opposition to the bill. He contended that it would create an "enforcement nightmare."

REP. PAVLOVICH stated he introduced the bill because bow hunters can utilize roads during their season. It only seemed fair to allow the big game hunters, especially disabled and senior citizens, the same privilege.

REP. REAM stated the only action taken by the department will be on designated wildlife management areas. He thought if the roads are closed in these areas, they are closed for a good reason. He asked if the department could respond to his comments. **Don Childress, Fish, Wildlife and Parks Department**, said some of the roads are closed all the time such as those closed for erosion control. Other closures start taking place from September 1st through the 15th. Winter closures start taking place around December 1st. **REP. REAM** stated that the only closures the department handles are on state-owned wildlife management areas. **Mr. Childress** confirmed his statement.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: Tape was turned over in the middle of REP. REAM and Don Childress discussion. Lost one minute. Tape is still scratchy sounding.}

REP. CHASE HIBBARD asked **REP. PAVLOVICH** where retrieval by motor vehicle is allowed for bow season and not for rifle season. **REP. PAVLOVICH** deferred the question to the department. **Mr. Childress** said the area he was referring to was south of Butte. He believed the wildlife management areas were left open until the winter closure on December 1st. Other road closures in the area take place on adjacent federally-owned land.

REP. SLITER remarked that several members of the committee may agree with the idea of opening land access so that disabled and senior citizen hunters can retrieve their game. He asked if anybody can fix the bill so that it does not make an enforcement nightmare. He agreed with **REP. PAVLOVICH'S** idea, but he recognized the concerns voiced by other representatives.

REP. MARSHALL felt that if bowhunters and others were being allowed onto the land, rifle hunters should be allowed to go onto the land as well. Since others are being allowed onto the land already, he did not see that additional enforcement would be needed. The gates could be left open until the end of the season for all hunters.

REP. HIBBARD insisted that he still did not see an example of where roads were open for bow hunters and then closed for rifle

hunters. He believed the problem with road closures existed on federally-owned land. Passing the bill will not help the gates closed on this land.

REP. PAVLOVICH asked **Mr. Graham** if it was possible for the department to "fix" the bill. **Mr. Graham** said he had examined the bill. When they looked at the grievance, no group of hunters had special treatment over another. When the department opens or closes roads, it applies to all people. He empathized with hunters who have difficulty in retrieving animals. There seemed to be no feasible way to resolve the dilemma.

Discussion:

REP. WELLS mentioned there is a wildlife management area by Gardiner that allows retrieval of game everyday from noon until 6:00 p.m. The vehicle activity does not displace wildlife because the game has migrated out of Yellowstone Park. He asked **Mr. Graham** if there could be a similar management program in specific areas. **Mr. Graham** thought that he had a good point. Currently, the Commission has the authority to make those types of adjustments.

CHAIRMAN WAGNER voiced his support for the bill. Closures on federally-owned land is a frustrating issue for many Montanans. If people are quick enough, they can use roads on federally-owned property before they close the roads. Montana could take the lead in deciding policies for access on its land. Perhaps this would serve as guide to the federal government on how they should handle their Montana acres.

REP. BOB RANEY said the difference between **CHAIRMAN WAGNER's** comments and what the Fish, Wildlife and Parks is doing is that they are managing tracts of lands for specific purposes. On the other hand, the forest service is managing their property for a totally different purpose. The FWP is trying to manage game and get along with private landowners. Monitoring game and controlling its populations are objectives of the FWP. This is completely different from the policies and objectives of the forest service.

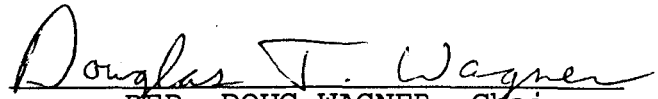
Motion/Vote: **REP. ELLIOTT** MOVED TO TABLE HB 59. Motion passed 14 to 4 with Reps. Hanson, Wells, Pavlovich, and Chairman Wagner voting no.

Discussion:

CHAIRMAN WAGNER asked if the committee wanted to vote on HB 94. A few members wanted to wait until the next meeting.

ADJOURNMENT

Adjournment: 4:00 p.m.


REP. DOUG WAGNER, Chairman


MARY RIITANO, Secretary

DG/mr

HOUSE OF REPRESENTATIVES

Fish and Game

ROLL CALL

DATE *January 10, 1995*

NAME	PRESENT	ABSENT	EXCUSED
Rep. Doug Wagner, Chairman	✓		
Rep. Bill Rehbein, Vice Chairman, Majority	✓		
Rep. Emily Swanson, Vice Chairman, Minority	✓		
Rep. Charles Devaney	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Chase Hibbard	✓		
Rep. Dick Knox	✓		
Rep. Rod Marshall	✓		
Rep. Brad Molnar	✓		
Rep. Bob Pavlovich	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Paul Sliter	✓		
Rep. Bill Tash			✓
Rep. Jack Wells	✓		



The Big Sky Country

EXHIBIT 1
DATE January 10, 1995
HB 94

MONTANA HOUSE OF REPRESENTATIVES

HOUSE OF REPRESENTATIVES

TESTIMONY

JANUARY 10, 1995

House bill 94 amends section 87-4-502, so that special shooting preserves of upland game birds may be established and operated for the practice of falconry hunting by disabled persons. HB bill 94 waives the normal 10 mile location restriction which is applied to preserves used for hunting with firearms. Firearm shooting preserves are not suitable for the practice of falconry hunting. Noise from firearms, the numbers of hunters in the field and the risk of injury or death to a valuable falcon lead to incompatibility between both sports.

Some special requirements are necessary for disabled falconers to access a preserve. These include the obvious such as special parking facilities, ramp ways, etc. and the not so obvious, terrain that provides good upland bird habitat and which also lends itself to special pathways and points of good visibility for the disabled to visually monitor their falcons.

Good locations are difficult to find and it is for this reason that HB-94 amends the 10 mile radius rule.

The number of disabled falconers is few, and the success rate for taking upland birds is low, therefore there should be no conflicts with regular firearm preserves. HB-94 will provide access to another facet of Montana life for the disabled and at the same time requires no special funding from the legislature.

EXHIBIT 2
DATE January 10, 1995
RE 94

HOUSE OF REPRESENTATIVES

TESTIMONY

JANUARY 10, 1995

There is no area in the United States or the world which is set up for disabled falconer (D.F.). Falconry is a unique sport which does not automatically insure successful hunting. It does insure a peace of mind and satisfaction to the falconer. All D. F. use falconry and its facets as therapy.

Problems occur with fences, ditches, marshy areas and land owners. All of these problems are easily overcome by establishing an exclusive D.F. area.

As the regulations read now, a harvesting area can not be located within a 10 mile radius of another. The D.F. areas are no competition to the shooting areas. I asked a shooting area owner if he felt there would be any competition by our area and he said absolutely not and he felt compassion for our idea. This was witnessed by John Firebaugh, Dept of Fish, Wildlife and Parks.

Falconry and shooting in the same area is a major disaster waiting to happen. Falconry is a high profile sport compared to the camouflage technique of shotgun hunting. An area designed for shooting cannot accommodate falconry via wheelchairs.

Harvesting areas are located at a specific spot because of natural assets. It stands to reason that the area around these

sites is also inclined to be a good area. I cannot advocate a D.F. area adjacent to a shooting area but I cannot see any problem with one being a mile away. Ten miles can bypass a lot of perfect area.

During the 1993-1994 hunting season two D.F. went hunting 109 times combined. The 109 trips afield produced 2 chinese ring-neck pheasants. This statistic is not an impact on the pheasant population.

Establishing D.F. areas is basically free at cost and easily constructed. Finding an area is the real challenge and 90 percent of potential areas are within 10 miles of a pay to hunt area.

D. F. is not completely hunting. Our project allows the disabled to actively plot the landscape, study the indigenous wildlife and collect college credit. Also D.F. can rehabilitate injured wildlife and release rehabilitated species on the area.

There is a need for areas, set up to accommodate D.F. This is not just a wild life thing it is a people thing. When a stranger walks up to you and thanks you for saving his friends life, you know!

Thank You for your valuable time.

Jim Chaffin
President, C.O.B.
Institute of Falconry for
Physically Challenged
Americans

EXHIBIT 3
DATE January 10, 1995
HB 94

HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME LORAN A PERRY BUDGET _____

ADDRESS Box 355 FORT BENTON, MT DATE 1-10-95

WHOM DO YOU REPRESENT? Se. of 5⁹⁴¹ S

SUPPORT _____ OPPOSE ☒ AMEND _____

COMMENTS: _____

I am opposed to HB 94. I am opposed to any
move to do away with the 10 mile limit between
shooting preserves -

Falconry does not require a shooting preserve now.
They are legal to practice falconry any place hunting,
is allowed from Sept 1 - March 31

A disabled falconer would need some body to
retrieve their bird, therefore fences, ditches, etc
would not matter

THB94N.H

House Bill No. 94
January 10, 1995
Testimony presented by Pat Graham
Montana Fish, Wildlife & Parks
before the
House Fish and Game Committee

This bill would provide an exception to the 10-mile limit between shooting preserves to allow shooting preserves established exclusively for falconry hunting by the disabled.

The department neither supports nor opposes this bill but recommends amendment of the bill by adding the language "and operated exclusively" to the exception for falconry hunting by the disabled. Although the bill is intended to provide an exception only for disabled falconers, there is nothing in the bill which would prevent a person from starting a shooting preserve for this limited purpose and then eventually changing the use to a more general shooting preserve. The proposed amendment would prohibit such a change unless the shooting preserve also meets all of the legal requirements any other shooting preserve has to meet.

There are currently 54 licensed shooting preserves in Montana. None of them is operated exclusively for the disabled. Montana also has 74 licensed falconers. We assume that there will be limited interest in establishing shooting preserves solely for disabled falconers.

Amendment Attachment
bg 1/9/95 10:15am
blj 1/9/95 12:10pm

EXHIBIT 4A
DATE January 10, 1994
HB 94

PROPOSED AMENDMENT TO HB 94
FIRST (WHITE) COPY

1. Title, line 5.
Following: "ESTABLISHED"
Insert: "AND OPERATED"
2. Page 1, line 19.
Following: "established"
Insert: "and operated"

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE January 10, 1994

BILL NO. HB94

SPONSOR(S) BRAINARD, CLARK, WELLS, JORE, REHBEIN
SENATOR HALLIGAN

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<u>FT BENTON</u> <u>LORAN A PERRY</u>			<input checked="" type="checkbox"/>
<u>Jim & Barbara Madden</u>			
<u>Deborah Perry</u>			<input checked="" type="checkbox"/>
<u>Jim Chaffin</u>		<input checked="" type="checkbox"/>	
<u>Tim Baker</u>			
<u>Mario Pittman</u>			<input checked="" type="checkbox"/>
<u>Ja B. H. Schram</u>			
<u>Scott Perry</u> <u>Fort Benton</u>			<input checked="" type="checkbox"/>

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

HR:1993

wp:visbcom.man

CS-14