

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN KENNETH "KEN" MESAROS**, on January 13, 1997, at 1:00 p.m., in Room 413/415.

ROLL CALL

Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Gerry Devlin (R)
Sen. Don Hargrove (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Walter L. McNutt (R)
Sen. Linda J. Nelson (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Thomas A. "Tom" Beck (R)

Members Absent: None

Staff Present: Doug Sternberg, Legislative Services Division
Angie Koehler, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 73, 01/07/97
Executive Action: None

HEARING ON SB 73

Sponsor: SENATOR BRUCE CRIPPEN, SD 10, BILLINGS

Proponents: Pat Graham, Department of Fish, Wildlife & Parks
Dr. Clarence Siroky, MT Department of Livestock
Ellen Engstedt, MT Alternative Livestock Producers
Dr. Bill Torgerson, Zoo Montana
Jim Richard, MT Wildlife Federation
Janet Ellis, MT Audubon Society
Al Whipperman, MT Chapter American Fisheries Society
Todd Damrow, MT Dept. Public Health & Human Services
Ken Hoovestall, Walleye Unlimited
Lorna Frank-Karn, MT Farm Bureau

Opponents: None

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, SD 10, BILLINGS: I present SB 73 at the request of the Department of Fish, Wildlife and Parks. The purpose of SB 73 is to provide the Department with authority needed to regulate the importation of exotic wildlife species into our state that pose a threat to human health, public safety, domestic livestock and native wildlife. In existing law, the Department of Livestock has the authority to evaluate the potential human or animal health aspects of wildlife species or exotic animals before they are allowed or introduced into the state. Under current law no state agency has the authority to regulate the importation of wildlife species. SB 73 establishes a review process for a new species before they are brought into the state. It is an action bill rather than a reaction bill. The question many may ask is, "Do we have a problem now?" We are beginning to have problems with this situation, but not nearly as many as other parts of our country.

Since 1966 the state has received import requests for a number of exotic animals including Australian sugar gliders, African hedgehogs, chimpanzees, flying squirrels, African lions, Bengal tigers, leopard cats, monkeys, Syrian bears and fennec fox. Some may have heard about the "ligertown" situation in Idaho. A liger is a cross between a male lion and a female tiger. There were about 50 lions and ligers that were kept on a ranch in squalid conditions. Some escaped and had to be shot. Another incident happened when a pet leopard was taken out for a walk, escaped the control of its owner and attacked a young boy. This boy almost died, it was about 14 months before he was well again. This bill is not going to eliminate the importation of lions and tigers into Montana. However, it will limit them to zoos and other facilities that are qualified to safely handle them.

An example of a very destructive feral population is wild hogs. In the Great Smoky National Park in North Carolina they eat, uproot and trample about 95 percent of the understory plants in the forest. They eat almost anything on the ground including snails, snakes, small mammals, nesting birds, eggs, etc. Another example is a sugar glider that looks like a squirrel, a harmless animal, but it feeds on tree sap. You can imagine what that would do to the orchards throughout the state.

This bill does not pertain to game farms. This bill has four principle parts. One requires an adoption of clean, dirty and gray lists. There will be amendments to this submitted by the Department of Fish, Wildlife and Parks. It will allow the Commission time to adopt rules before the effective date of this bill so that wildlife presently being imported into the state, for which there is minimal risk, will not be stopped. The third aspect of it requires consultation with the Department of Livestock and the Department of Agriculture in the rulemaking

process. The fourth allows for a method where individuals can petition for a species they want allowed into the state. They must have facts to support their petition.

(**SEN. CRIPPEN** expounded somewhat on Sections 1, 2 and 3 of the bill.) Section 4 provides the Commission with the authority to regulate by rule wildlife species that may be imported as pets, captive breeding, research or commercial purposes, commercial pet trade, etc. This Section would essentially establish three categories of imported wildlife species. A clean list, those that can be imported into the state without restriction. These would be species that present minimal risk of disease, ecological, environmental safety or health risk to the state. At the other end is the dirty list, wildlife species that may not be imported because they represent a serious risk. The gray list is species that may be imported under established conditions and controls set up by the Department.

Section 5 deals with the penalty section under the bill. Section 6 is a repealer, Section 7 deals with the effective dates where we have an immediate effective date on the rulemaking aspect of it and an October 1st effective date on the subsequent portion of the bill. **Pat Graham, Director of MT Department of Fish, Wildlife and Parks** is here to give further testimony. There will be amendments that clarify certain aspects so it does not affect zoos.

{Tape: 1; Side: A; Approx. Time Count: 1:13 p.m.}

Proponents' Testimony:

Pat Graham, MT Department of Fish, Wildlife and Parks: I am offering some further testimony as well as some proposed amendments. (**EXHIBIT 1**) **SEN. CRIPPEN** indicated that many people think this authority already exists within an agency of the State of Montana. In fact, it does not. (**EXHIBIT 2**) (Submitted written testimony.)

{Tape: 1; Side: A; Approx. Time Count: 1:20 p.m.}

Dr. Clarence Siroky, MT Department of Livestock, State Veterinarian: In the past several years, the Department has been charged with the responsibility of regulating the importation of animals that come into the state. It sounds as if we have authority over what comes in, but we really don't. We regulate individual animals, not species of animals. Those animals are individually regulated by virtue of meeting or not meeting certain test requirements or requirements per disease concerns.

This bill will actually come forward and identify whole species as a group which may pose a danger from a broader perspective. It is outlined from three perspectives in this state: agriculture/livestock, public health and wildlife/ecological considerations.

I have some concern with this bill as it talks solely about importation. I believe it's important to address more than that. Throughout this bill we would like to add possession in addition to importation. There are a couple of instances when the bill refers solely to importation and we would leave that alone. We believe possession should be interjected along with importation and the language be included to identify that.

We issue permits for animals to enter this state and there are different kinds of permits. In other words, if somebody had an animal that required six foot cages then we could have a list of several requirements for them to have that animal. The Department of Fish, Wildlife and Parks would issue a possession permit to have this animal, provided that these specifications are met. Once they are met, we would ask whether or not that person had a permit to own and possess that animal before we issued an importation permit for that animal to come in. One relies upon a qualified license and the other relies on individual specific action taking place at a specific time. I think we could clarify that to a certain extent.

Ellen Engstedt, MT Alternative Livestock Producers: At first we were concerned with how this bill would affect game farms. I have talked to officials at the Department of Livestock and the Department of Fish, Wildlife & Parks and with the amendments those concerns have been addressed. We appreciate this effort because we also have valuable animals and would like to be afforded protection from both disease and importation of strange exotics that could impact our livestock.

Dr. Bill Torgerson, Zoo Montana: I favor this bill with an amendment for an exclusion for the zoo. Following, are my reasons why. I was personally involved in the "ligertown" incident. I was called in by the Humane Society of the United States and was flown to the site. I was called the night before and told there was one lion out. By the time we got there at 10:00 a.m., there were 18 total animals that had been at large all night. The conditions of the facilities were horrifying. I've never seen anything so bad in all my life.

We are a different organization in terms of species we manage, as well as types and quality of facilities. Zoo Montana is the only zoo of its kind in this region. If you drive 10 hours in any direction from Billings you will come upon other zoos which are similar to what we're striving for. One of our goals is to become an accredited facility. (EXHIBIT 3 and EXHIBIT 4) I do have some information to pass around for your information about the accreditation process which implies all kinds of issues related to animal management, health and safety welfare concerning animals and people. With an exclusion for the zoo we would be in a position to continue our progress and development of a quality collection that will be a resource for this entire region. There is some discrepancy between roadside

menageries/zoos and Zoo Montana. We are a non-profit corporation.

Jim Richard, MT Wildlife Federation: We endorse the bill because we believe it's good for the native wildlife and habitat. We support **Dr. Siroky's** suggestion of adding the word "possession" in appropriate places in the bill.

Janet Ellis, MT Audubon Legislative Fund: We support this legislation. It will allow us to plan ahead to prevent imported animals from becoming a "knapweed" for the state. I have submitted written testimony giving a couple examples of problems. (EXHIBIT 5)

Al Whipperman, MT Chapter American Fisheries Society: Submitted written testimony. (EXHIBIT 6)

Todd Damrow, MT Department of Public Health and Human Services: Our Department supports legislation to limit the importation and possession of exotic wildlife species in Montana because of the potential threat to public health from diseases such as plague, rabies, tuberculosis and, in the case of animals originating from certain foreign countries, diseases such as *ebola virus* or, more recently discovered, *morbillivirus* which has been shown to kill horses and humans in Australia. This bill provides an opportunity for public health issues to be included in considering the advisability of importing and possessing exotic species. I would suggest that the Department of Public Health and Human Services be included with the Departments of Agriculture and Livestock for consultation in developing rules and reviewing requests for possession permits.

Ken Hoovestall, Walleye Unlimited: We support this bill for the reasons previously stated.

Lorna Frank-Karn, MT Farm Bureau: We do not have policy on it. I don't see anything wrong with the bill. We will support it.

{Tape: 1; Side: A; Approx. Time Count: 1:31 p.m.}

Questions From Committee Members and Responses:

SEN. DON HARGROVE: I would like to ask Luella Schultz to answer a question. Are you comfortable that the game farmers don't see any mischief or chicanery in this?

Ms. Schultz: I will refer that to Ellen Engstedt, Executive Secretary, Montana Alternative Livestock Producers, the largest group of game farmers. They have met and discussed this. I believe she would be better qualified than I to speak on their behalf.

Ms. Engstedt: We were concerned about the bill at first because it was pretty vague. There was some room in there as to whether

or not we were affected. With the proposed amendments and assurance from both Departments, the exclusion of the game farm industry seems pretty evident. We will monitor it through the process to make sure that it remains as it is.

SEN. HARGROVE: Many of us have spent a great amount of time trying to not have a lot more bills submitted. They have graciously backed off. Do you feel this would be a breach in the dike for the legislature?

Ms. Engstedt: No. That was a concern because the legislation that passed last session relating to game farms was very contentious. It did split the authority and take some issues from the Department of Fish, Wildlife & Parks and place those with the Department of Livestock. There are members of my group who would like to see more things moved from one Department to the other. In the 1995 legislation that did pass, negotiated rulemaking was part of it and the committee has now been established and is functioning quite well. They spent 20 out of 24 hours between Friday afternoon and Saturday afternoon with a group of people hammering out issues and rules for the game farm industry. The industry was a little slower coming on board because we were unable to promise that we wouldn't bring in some kind of legislation. This did raise another flag, was it a breach of the negotiated rulemaking that we all had decided to operate under? I don't feel that it is. It is very clear that game farms will not be addressed in this legislation.

CHAIRMAN KEN MESAROS: Turned the chair over to the **VICE CHAIRMAN RIC HOLDEN.**

{Tape: 1; Side: A; Approx. Time Count: 1:35 p.m.; Comments: Turned the tape over, not completely to the end.}

VICE CHAIRMAN HOLDEN: Questions from the committee.

SEN. GREG JERGESON: Would your client be able to import a species that is specifically prohibited by the dirty list?

Ms. Engstedt: I believe that game farm animals are defined in statute as to what animals are allowed to be permitted under a game farm permit or license. When applying for a game farm license, you are asked specifically what animals you are going to be handling. If it is not on your license, then I would assume you would not be able to import it because it is on the Department's list of prohibited species.

SEN. JERGESON: Pat, would that work practically?

Mr. Graham: That's correct. Those are game farm regulations. The law defines a quota of animals for purposes of considering them as game farm animals. The Commission has authority to develop a dirty list, if you want to call it that, for game farms as well. They exercised this in 1990 or 1991, I believe. They

put some importation restrictions in place at that time. For example, red deer and red deer hybrids are prohibited from importation as game farm animals. There is a separate process for us to regulate game farm animals that is currently in law.

SEN. JERGESON: This bill anticipates the issuance of a permit for people to import animals on the gray list and perhaps, the clean list. Is there going to be an application fee for a person applying for one of these permits? How are you going to pay for the administration of that without an application fee?

Mr. Graham: I don't think we discussed, specifically, a permit for this. The idea by using these lists was to reduce the amount of work the Department would have to do right now. It will be our burden to research the species on a request basis. By developing this into three categories we can lay out, up front to people, which species are allowed, not allowed and others we will allow under certain conditions and state what those conditions are.

SEN. JERGESON: Will there be an application fee to pay for the cost of your analysis concerning animals on the gray list?

Mr. Graham: We have not discussed that at this point. This does not propose that.

SEN. GERRY DEVLIN: The Department of Public Health and Human Services and the Department of Livestock would like to be part of the process by which you arrive at these various lists. Is there some way that we can include them? They have legitimate concerns about this.

Mr. Graham: If you look at Amendment 2 and 3, they speak to the involvement of the other agencies. The Department of Public Health and Human Services is not mentioned in those. We don't have a problem with including Public Health. We have, through the amendments, identified the opportunities for the Department of Livestock and the Department of Agriculture. I have no problem expanding that to include the public health concerns. It makes a lot sense.

SEN. DEVLIN: When you say you're going to consult with them, does it mean that you're going to listen?

Mr. Graham: Somebody has to have the authority to make a decision unless you want to give that to two bodies simultaneously. I don't know how else it could be done. The intent is to rely on the expertise of those agencies on issues they are concerned with. It's a very public process. I would suspect that if we were caught not listening to concerns that had been expressed through that public process, you and everyone else would become aware of it and would seek remedial action in the next legislative session. We do not intend to let that happen.

SEN. DEVLIN: Okay.

SEN. REINY JABS: How do you intend to police this? Will there be penalties if someone brings one in or if someone brings a pet in and you find out about it six months later?

Mr. Graham: Section 5 would rely on the existing penalty provisions that are currently in law. How you would find out about it is difficult to say. If somebody has a tiger in their backyard, somebody is going to let you know. As far as some of the smaller species are concerned, it is difficult. Some states, such as Hawaii, have it set up so that when you go through customs everything has to be checked in, whether it's plant, animal, vegetable, etc. We don't have any kind of system like that in Montana. It would be difficult to put one in place so we're going to have to rely on people's good judgement in asking us.

Occasionally, some species may get into the state that we don't want here. We will have to take action to remove them. Right now we don't have that authority. A year or two ago, a man sent a picture of a fish he had caught in Lake Elmo, which is very popular swimming and fishing area within the city limits of Billings. It was a piranha! Somebody had obviously decided to release it. This past year we had a small alligator caught on the banks of Big Spring Creek outside of Lewistown. We aren't going to eliminate that potential. What Montana has going for it is a much harsher climate than Florida, Hawaii, Texas, California, etc. so we're less susceptible to those releases of species. All we can do is concentrate on the requests we get from people and try to deal with them as objectively as we can.

SEN. JABS: Will there be a list made up so if somebody calls in you can tell them if it is allowable?

Mr. Graham: Correct. The best way to cut down on administrative costs is to do this up front for everybody.

VICE CHAIRMAN HOLDEN: On page 4, you're dealing with the whole idea of wildlife species being imported in. About 16 years ago we had some pheasants we raised on the ranch. We would butcher some, turn some loose and shoot some. Eventually, the Department became involved and grandfathered many of us that had them. As time went on, you had to start paying a fee, things kept stacking up and pretty soon what you did on your private property was really not your business any longer. The Department would come out and administer, check your fencing and all this red tape piles up. There are people who would like to get bobwhite quail or some other hunting birds. How would those kind of things fit into this new law?

Mr. Graham: There are separate statutes that relate to game shooting preserves. You're right, there is a statute that deals with the release of game birds into the population. There is a

provision that deals with hunting them with dogs. There is also a statute that deals with selling them and one that deals with rearing them. We were in the process, prior to this session, of trying to streamline that aspect of permits because it has compiled over a number of years. Some of it is duplicated, some of it is unnecessary. We were unable to complete that task. Hopefully, by next session, we'll be in a position where we can streamline those bird laws. This is one of the things that's covered under current statute. As I've tried to indicate, we're not changing current statute as it relates to bird farms, fur farms, zoos and menageries or game farms.

VICE CHAIRMAN HOLDEN: SEN. CRIPPEN, it seems we're making a lot of law with one bill because of all the rulemaking authority we're handing out. I know the zoo people think they're exempt and the game farmers think they're exempt, but I wonder. What do you think?

SEN. CRIPPEN: Rulemaking authority is an inherent process of the legislative process. The legislature makes the laws, but the laws are generally more broad in nature. That's why we asked the Departments to make rules to implement those laws. If we don't grant rulemaking authority then we would have to provide the dirty, gray and clean lists ourselves, as a legislative body. The fact that we provide rulemaking authority to the Department is not bad. It helps the process along. We just have to be very careful as to where we grant that authority. All departments have the right to have rulemaking authority, otherwise the laws we pass may have no effect whatsoever.

SEN. LINDA NELSON: What if something comes up on this list that I already have? Am I going to be required to get rid of my whatever or am I going to be punished? What is going to happen there?

SEN. CRIPPEN: It depends on what list it is on. If it's on the gray or dirty list, with the amendment that was proposed regarding possession, you may have a problem. If you have a Bengal tiger in your backyard that has been a family pet for a period of time, it is my understanding that you would probably have to give it to a zoo. You might ask that of the Department.

VICE CHAIRMAN HOLDEN: Would you like to redirect that?

SEN. NELSON: Yes, I would direct that to the Department. Would I have to turn over my Bengal tiger? Are you going to have an amnesty day?

Mr. Graham: That's a good question. That would certainly be the case. There would be several options here so it's hard to say. We had a similar situation with game farms when some "lists" came into effect. There were some species that were no longer permitted to be in the state. We first gave them the option of disposing of it, selling or whatever and a period of time to do

that. There were some people who didn't want to do that. We asked them to neuter the animal so if it did get out it couldn't continue to reproduce. This would also negate a pet trade within the state of a species that's not allowed. In the case of the tiger, maybe you could find or make sure that it was in a facility that provided all the safeguards needed to maintain public safety. There would be a range of options, but the intent is not to create a situation where a lot of people would be in violation of law and then fine them.

SEN. DEVLIN: You have three lists. Where does the importation of wolves fit into those lists? Are they dirty?

Mr. Graham: I was just drafting a response to **SEN. JERGESON** about that. I know what the politically correct answer is. The actual answer is that the wolf was a native species to Montana that became extinct and is now under the jurisdiction of the federal government.

SEN. DEVLIN: It's still the importation you're talking about. Do they have to come to the Department to get a permit to bring the wolf in?

Mr. Graham: Technically, no.

SEN. DEVLIN: Why not?

Mr. Graham: As with other legislation, the federal government does not have to comply with state law.

SEN. DEVLIN: They've got immunity?

Mr. Graham: I don't know what the legal word is.

SEN. DEVLIN: The statement of intent talks to the endangerment of livestock and on and on.

Mr. Graham: If they were a non-native species and had not existed here before, then it would. The federal government couldn't bring in a species other than under the Endangered Species Act in Montana.

SEN. DEVLIN: If somebody has one of these other "dirty list" species already in the state, does that open it up?

Mr. Graham: No, not under our laws it wouldn't. What I'm talking about is under the federal laws. The federal laws concerning endangered species only deal with native species. A species that has been introduced into the state and then has a difficult time making it, like the alligator, could not be classified as an endangered species in Montana just because somebody brought one in here.

{Tape: 1; Side: B; Approx. Time Count: 1:57 p.m.}

Closing by Sponsor:

SEN. CRIPPEN: There was never any intent to go in the back door, so to speak, with game farms. I think the legislation and amendments that are before you should deal with the question of game farms. If it doesn't, at the judgement of the Committee, I would urge you to come up with amendments that do. We have no objection to dealing with Zoo Montana and other people who might have some concern with zoos because this is going to be outside of their scope. This will require some education and I don't know how that will be financed. **VICE CHAIRMAN HOLDEN** mentioned something that affects private property rights. Anytime we pass a law such as this, we do infringe on it a little bit. A lot of times the public good or the property right of the next door neighbor is involved. For example, I decide to keep some tigers and lions and leopards because I enjoy them. The problem is they are next to **SEN. DEVLIN'S** sheep pens.

SEN. DEVLIN: I've got a remedy for that.

SEN. CRIPPEN: I'm sure that you do. I just don't know if you can shoot that fast, **SEN. DEVLIN**. So that's a case of private property rights being put down the line a little bit. **SEN. NELSON** raised an interesting point. Many people have some of these exotic animals in their possession now and just by their uniqueness and subsequent difficulty in caring for them, a lot of times people tire of them. What do you do if you have an imported cat type animal? If you don't want to kill it and turn it loose, then it's out in the wild next to **SEN. DEVLIN'S** sheep ranch and you have a problem. We don't have anything in the laws now to deal with it. To me that was a big surprise. I think it's a good bill and legislation. I urge your approval.

VICE CHAIRMAN HOLDEN: Closed the hearing on SB 73. Turned the chair back to **CHAIRMAN MESAROS**.

CHAIRMAN MESAROS: We will plan on taking executive action on Wednesday, January 15, 1997 on SB 43. There are questions on clarifying some language in SB 73. We may take executive action on SB 73 Wednesday as well.

Written Testimony:

(EXHIBIT 7) - Dave Pauli, Regional Director, The Humane Society of the United States

ADJOURNMENT

Adjournment: 2:00 p.m.


SEN. KEN MESAROS, Chairman


ANGIE KOEHLER, Secretary

KM/AK