

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON FISH & GAME

Call to Order: By CHAIRMAN AL BISHOP, on February 11, 1997, at  
3:00 p.m., in Room 402

#### ROLL CALL

**Members Present:**

Sen. Al Bishop, Chairman (R)  
Sen. Loren Jenkins, Vice Chairman (R)  
Sen. Vivian Brooke (D)  
Sen. William S. Crismore (R)  
Sen. Steve Doherty (D)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Mike Taylor (R)  
Sen. Daryl Toews (R)

**Members Excused:** Senator Ken Mesaros

**Members Absent:** None

**Staff Present:** Leanne Kurtz, Legislative Services Division  
Serena Andrew, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 287, Posted 2/5/97  
HB 271, Posted 2/6/97  
Executive Action: None

#### HEARING ON SB 287

**Sponsor:** SENATOR WILLIAM CRISMORE, SD #41, Libby

**Proponents:** Bob Lane, Chief Legal Counsel, Department of  
Fish, Wildlife & Parks  
Vince Fischer, Skyline Sportsmen, Butte  
Darrell Baker, Anaconda Sportsmen, Anaconda  
Dale Thomas, Anaconda Sportsmen, Anaconda  
Jim Bradford, President, Montana Bowhunters  
Association  
Ken Hoovestall, Walleyes Unlimited

**Opponents:** None

{Tape: 1; Side: A; Approx. Time Count: 3:04}

Opening Statement by Sponsor: SENATOR WILLIAM CRISMORE, SD #41, Libby, told the committee under SB 287 a person convicted of a hunting, fishing or trapping violation for the third time would be permanently prohibited from hunting, fishing or trapping in Montana.

In addition, upon conviction for the third time, the bill would mandate confiscation and subsequent auction of the rifle or bow used in commission of the violation, with proceeds of the sale going into the hunter safety program. He suggested amending the bill to allow proceeds of the sale to also be used in the Fish, Wildlife & Parks' Crimestoppers Program. EXHIBIT #1

Proponents' Testimony:

Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife & Parks (DFWP), supported the bill with SENATOR CRISMORE'S amendments. EXHIBIT #2

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Vince Fischer, Skyline Sportsmen, Butte, said his organization felt passage of SB 287 would allow appropriate handling of repeat offenders. The Skyline Sportsmen supported the bill.

Darrell Baker, Anaconda Sportsmen, Anaconda, also supported the bill.

Dale Thomas, Anaconda, supported the bill.

Jim Bradford, President, Montana Bowhunters, supported the bill.

Ken Hoovestall, Walleyes Unlimited, supported the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

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SENATOR MIKE TAYLOR asked how DFWP planned to track violators if they were not able to do it by computer at the present time. Beate Galda, Administrator, Enforcement Division, DFWP, said there was no problem tracking the record of a particular individual but the system does not identify the number of people who have been convicted twice or three times.

SENATOR TAYLOR asked if this were being addressed in the Montana Technology proposal. Ms. Galda said it would be worked out.

SENATOR TAYLOR commented that he was in favor of the bill but would like to know how much it would cost. Ms. Galda said the department estimated about 150 weapons might be confiscated in a year; at \$350/weapon it would come to about \$52,000 in additional income. Minimal cost was expected.

SENATOR TAYLOR asked how much the computer program would cost. Ms. Galda said DFWP could already meet the needs of the bill. By entering a person's name his entire record can be accessed and it becomes apparent if he has had prior convictions and how many. DFWP would inform the court at sentencing that the current case was a second or third offense.

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SENATOR LOREN JENKINS stated that Bob Lane had removed the reference to third-time violators when he mentioned that Subsection (5)(a) on page 3 deals with forfeiture of weapons used in commission of a crime, but left it in on lines 27-29 on page 2.

SENATOR JENKINS stated that Mr. Lane's testimony mentioned spotlighting and asked if the statute would cover jackrabbit hunting. Mr. Lane said he had meant a violation of big game hunting statutes. Hunting out of daily hours is a violation of the season. SENATOR JENKINS asked about marking the wrong day on a big game tag. Mr. Lane said the forfeiture provision was limited to: (1) hunting without the proper license and (2) hunting outside a closed season.

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SENATOR DARYL TOEWS commented that the amendments do state that weapons would be confiscated upon the first conviction for a serious crime.

SENATOR JENKINS asked if the department already had the ability to confiscate weapons for illegal hunting. Mr. Lane said weapons could be confiscated for evidence but would later be returned.

Closing by Sponsor:

SENATOR CRISMORE apologized to the committee for the need to add amendments. He thought it was proper to confiscate a rifle or bow on the first offense if the violation were of the type mentioned by Mr. Lane. The bill would result in about \$52,000 to be used for Tipmont or hunter safety education.

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HEARING ON HB 271

Sponsor: SENATOR STEVE DOHERTY, SD #24, Great Falls presented the bill in the absence of the sponsor, REPRESENTATIVE HAL HARPER, HD #52, Helena.

Proponents: Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife & Parks (DFWP)  
Ken Hoovestall, Walleyes Unlimited  
Frank Cooper, State Chairman, Trout Unlimited  
Al Wipperman, Montana Chapter, American Fisheries Society

Opponents: None

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, SD #24, Great Falls, stated that it is already illegal to introduce, transport or plant certain fish in Montana. The presence of lake trout in Yellowstone Lake is reason enough for that legislation. If fish are introduced, it should be the decision of professionals at Fish, Wildlife & Parks.

HB 271 would increase the penalty for illegal introductions from a misdemeanor to a fine of \$500-5,000 and imprisonment up to one year. It further states that the first \$500 of the fine may not be deferred or suspended.

Proponents' Testimony:

BOB LANE, Chief Legal Counsel, Department of Fish, Wildlife & Parks, (DFWP), said illegal introductions are a serious threat to Montana's fishery resource. For example, whirling disease in the Madison is believed to have resulted from an illegal introduction. EXHIBIT #3

Ken Hoovestall, Walleyes Unlimited, supported the bill.

Frank Cooper, State Chairman, Trout Unlimited, also supported the bill.

Al Wipperman, Montana Chapter, American Fisheries Society, said the primary interest of his organization was management and protection of fish and other aquatic organisms. EXHIBIT #4

Opponents' Testimony: None

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Questions From Committee Members and Responses:

SENATOR DARYL TOEWS asked if an increased penalty would actually deter potential violators and if there were room in the jails. SENATOR DOHERTY said it would require a fairly serious attempt at

"bucket biology" to result in jail time. The fine is more likely, but time could be spent in the county jail.

SENATOR TOEWS asked if SENATOR DOHERTY would entertain an alternative to the prison sentence. SENATOR DOHERTY said it was possible, but he would have to consult the primary sponsor.

SENATOR BEA MCCARTHY asked why the fiscal note carried BOB RANEY'S name. SENATOR DOHERTY said he didn't know. SENATOR KEN MESAROS pointed out that no one had signed the fiscal note.

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SENATOR LOREN JENKINS asked if the bill represented an unfunded mandate for county jails. SENATOR DOHERTY said every bill that makes something a crime and doesn't provide funding for prison terms falls into that category. Beate Galda, Administrator, Enforcement Division, DFWP, said her department pays the cost of incarceration if someone is sentenced to county jail for a fish or wildlife violation.

CHAIRMAN AL BISHOP said throwing the contents of a bait bucket into the water was obviously an offense, but he was unsure how a minnow getting off the hook was considered. Ms. Galda said a violation required an intentional act on the part of the fisherman. Also, there are restrictions on the type of bait used.

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Larry Peterman, Administrator, Fisheries Division, DFWP, explained that live bait is only allowed in the Eastern Fishing District because many people release bait into the water. Dead bait, however, may be used in the Central Fishing District.

SENATOR JENKINS asked about the boundaries of the fishing districts. Mr. Peterman said the Western District is everything west of the Continental Divide, the Central District is between the Continental Divide and a line down I-15 through Billings. East of that line is the Eastern District.

Closing by Sponsor:

SENATOR DOHERTY commented that it had been a good hearing - he had learned a lot. Illegal introductions are a real problem, taking recreational opportunities from others.

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EXECUTIVE ACTION ON HB 271

Motion: SENATOR JENKINS moved the HB 271 BE CONCURRED IN.

**Discussion:** SENATOR TOEWS suggested changing the one year jail time sentence in subsection (2)(a) to nine months of community service.

REPRESENTATIVE HAL HARPER, HD #52, Helena, sponsor of HB 271, commented that he was aware of only one conviction and 295 illegal introductions have been documented. He thought the bill would send a message to those who might consider bucket biology. He didn't think the bill would be used very often, if at all. He liked the idea of public service because in many cases the effects of these actions can never be reversed.

CHAIRMAN BISHOP agreed that jail sentences are going to have to be curtailed, but thought nine months community service might be too much. Also, he thought the community service sentence was usually in hours.

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SENATOR DOHERTY suggested adding something like "where appropriate, a sufficient length of community service could suffice for jail time," but thought the jail time language should remain in the bill.

SENATOR TOEWS withdrew his former suggestion in favor of something like "imprisonment for up to one year and language directing the convicting court to consider appropriate community service in lieu of jail time."

SENATOR JENKINS asked if people sentenced to community service were considered in contempt of court and automatically sentenced to jail time if they failed to perform the required service. He suggested "up to 1000 hours of community service."

SENATOR DOHERTY said that would mean the only way jail time would be mandated would be if someone failed to perform the community service. Telling the court "if appropriate, consider community service" would leave the sentence up to the court. Persons sentenced for a misdemeanor usually spend weekends in jail and clean up trash for six months.

Leanne Kurtz asked if the committee had decided on a specific number of hours. SENATOR DOHERTY said, "an appropriate amount of community service."

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SENATOR KEN MILLER suggested delaying the decision on HB 271 until a formal amendment was prepared.

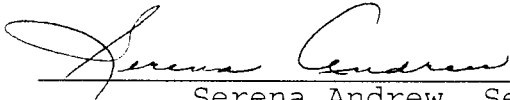
CHAIRMAN BISHOP agreed and deferred executive action on HB 271 until a future meeting.

ADJOURNMENT

Adjournment: 3:59 p.m.

{This meeting was recorded on a Lanier recorder.}

  
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Sen. Al Bishop, Chairman

  
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Serena Andrew, Secretary