

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By CHAIRMAN AL BISHOP, on February 20, 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. Kenneth "Ken" Mesaros (R)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)

Members Excused: None

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: HB 289, HB 360 -
Posted 2/17/97
Executive Action: HB 289, SB 292, SB 287

HEARING ON HB 289

Sponsor: REPRESENTATIVE BOB PAVLOVICH, HD #37, Butte

Proponents: Joe Brand, Veterans of Foreign Wars, Helena
Jim Jacobsen, Montana Veterans Affairs
Division
Roger Hagan, Enlisted & Officers Associations,
Montana National Guard
Bill Holdorf, American Legion, Butte/Anaconda
L. F. Thomas, Anaconda Sportsmen
Tony Schoonen, Public Lands Access Association,
Inc.

**Jean Johnson, Executive Director, Montana
Outfitters & Guides Association**

Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 3:22}

Opening Statement by Sponsor:

REPRESENTATIVE BOB PAVLOVICH, HD #37, Butte, told the committee only 795 holders of the Legion of Valor are still living. Their organization will meet at Big Sky in August - 60-70 people are expected. He hoped Montana could recognize them by furnishing a free 4-day fishing license.

REPRESENTATIVE PAVLOVICH pointed out that he had revised the fiscal note from 795 down to 60 (EXHIBIT A), and thought probably only about 30 would fish - these people are all at least 75 years old.

The Department of Fish, Wildlife & Parks (DFWP) had said it would designate the area where they could fish, but the House Fish, Wildlife & Parks Committee thought they should be allowed to fish anywhere in Montana as long as they chose a legal fishing area.

{Tape: 1; Side: A; Approx. Time Count: 3:25}

Proponents' Testimony:

Joe Brand, Veterans of Foreign Wars, Helena, said the holders of the Legion of Valor have gone above and beyond the call of duty. He thought their contribution should be recognized. Also, the attendant advertising should bring others to Montana.

Jim Jacobsen, Veterans Affairs Division, totally supported the bill.

Roger Hagan, Enlisted & Officers Associations, Montana National Guard, thought it would be a great opportunity to let these veterans see the Last Best Place.

Bill Holdorf, American Legion, Butte/Anaconda, said he thought the bill would offer good advertising to the State of Montana and wouldn't cost anything.

L. F. Thomas, Anaconda Sportsmen, said his organization saw no harm in the bill.

Tony Schoonen, Public Lands Access Association, Inc., said he was also a veteran and supported the bill.

Jean Johnson, Executive Director, Montana Outfitters & Guides Association, thought it was an excellent bill and wholeheartedly supported it.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 3:29}

Questions From Committee Members and Responses:

SENATOR WILLIAM CRISMORE commented that if Montana is going to do something for these veterans, some outfitters should be lined up to help them. Jean Johnson said that was a good point and probably could be arranged.

Closing by Sponsor:

REPRESENTATIVE PAVLOVICH thanked SENATOR CRISMORE for his idea and thought there were a lot of good people in Montana who could take these veterans fishing.

HEARING ON HB 360

Sponsor: REPRESENTATIVE WILLIAM MENAHAN, HD #57, Anaconda

Proponents: Pat Graham, Director, Department of Fish, Wildlife & Parks
Roger Hagan, Walleyes Unlimited
Bill Holdorf, Skyline Sportsmen, Butte
Tony Schoonen, Public Lands Access Association, Inc.
Jim Richard, Montana Wildlife Federation
Jean Johnson, Executive Director, Montana Outfitters & Guides Association

Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 3:33}

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM MENAHAN, HD 57, Anaconda, told the committee the bill was prompted by People for the Ethical Treatment of Animals (PETA) and others who have tried to stop the lawful taking of fish and upland game birds. The bill is intended to put an end to this harassment.

Proponents' Testimony:

Pat Graham, Director, Department of Fish, Wildlife & Parks (DFWP), said past confrontations have largely centered around hunting and trapping, but harassment of fishermen is beginning. In fact, PETA's home page on the Internet targets fishing - they are strongly opposed to catch-and-release on the Madison.
EXHIBIT #1

Roger Hagan, Walleyes Unlimited, stated that his organization wholeheartedly supported HB 360.

Bill Holdorf, Skyline Sportsmen, Butte, said he had been personally harassed several times while hunting birds. In one instance he was on BLM land when the man who owned the adjacent property fired a gun and scared the birds. **Mr. Holdorf** went to the sheriff and the man was cited for shooting from a vehicle and from a road. Once he was fishing in southern Montana where the stream access law came into play. People on horseback kicked up mud to destroy the fishing.

Tony Schoonen, Public Lands Access Association, Inc., told the committee he takes people fishing and has been harassed numerous times. He presented several letters regarding harassment of bird hunters and fishermen. **EXHIBITS 2, 3, 4 and 5**

{Tape: 1; Side: A; Approx. Time Count: 3:40}

L. F. Thomas, Anaconda Sportsmen, said HB 360 was a good bill.

Jean Johnson, Executive Director, Montana Outfitters & Guides Association, said commercial sportsmen also supported the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR LOREN JENKINS asked how it was possible to go fishing for a wild animal. **REPRESENTATIVE MENAHAN** said he didn't know why Section 2, line 23 states "...or fishing for a wild animal by another."

SENATOR JENKINS said lines 27 and 28 also referenced fishing for a wild animal.

REPRESENTATIVE MENAHAN commented that it was a committee bill.

{Tape: 1; Side: A; Approx. Time Count: 3:43}

SENATOR STEVE DOHERTY said the statement on line 30, page 1, and lines 1 and 2 on page 2 contains the word "prohibit" twice and two negatives make a positive. **REPRESENTATIVE MENAHAN** said that might have to be corrected, too. The first bill was fine, but there appeared to be drafting errors in the third reading copy.

SENATOR VIVIAN BROOKE asked if this bill afforded a special class of protection. **REPRESENTATIVE MENAHAN** said it was for anyone who fished. It was the same as the bill that prohibits harassment of hunters.

SENATOR BROOKE asked why **REPRESENTATIVE MENAHAN** didn't think the law covering harassment of hunters covered people who were hunting birds or fishing. **REPRESENTATIVE MENAHAN** said angling and bird hunting weren't mentioned in the original bill. The only activity mentioned in that bill was big game hunting.

SENATOR BROOKE asked what punishment was connected with harassment of bird hunters and anglers. REPRESENTATIVE MENAHAN said it would be the same as for harassing big game hunters. CHAIRMAN AL BISHOP said it would be a misdemeanor punishable by a fine not to exceed \$500 or 30 days in jail or both for a first offense; a second offense would bring a fine not to exceed \$1000 or 1 year in jail or both.

{Tape: 1; Side: A; Approx. Time Count: 3:47}

SENATOR BROOKE asked Beate Galda if the crimes in question were addressed under any other statute. Beate Galda, Administrator, Enforcement Division, DFWP, said they weren't. Frightening away wildlife or fish is not a crime unless it hurts the animal.

SENATOR MIKE TAYLOR asked how many people have been convicted of harassing a big game hunter. Ms. Galda said she only knew of the one case in Bozeman that went to the Supreme Court. SENATOR TAYLOR asked if a farmer or rancher driving across his own or leased property would constitute harassment if someone were hunting. Ms. Galda said it wouldn't; harassment must be an intentional act.

SENATOR DOHERTY commented that he had heard of several instances on heavily used rivers where people threw rocks into holes to harass fishermen.

Closing by Sponsor:

REPRESENTATIVE MENAHAN thanked the committee for a good hearing. When bison hunting was legal, a number of bison hunters were harassed. After the bill passed the fine and court case put an end to the harassment.

EXECUTIVE ACTION ON HB 289

Motion/Vote: SENATOR LOREN JENKINS moved HB 289 BE CONCURRED IN. The motion carried unanimously and SENATOR BEA MCCARTHY offered to carry the bill.

EXECUTIVE ACTION ON SB 292

{Tape: 1; Side: A; Approx. Time Count: 3:52}

Motion: SENATOR JENKINS moved SB 292 DO PASS.

Discussion: SENATOR JENKINS said SB 292 was for a study that would determine where the Department of Fish, Wildlife & Parks spends money, and he wanted to know. He thought DFWP should pay for wildlife-related programs in other agencies. He didn't think anyone in the legislature understood the DFWP budget.

SENATOR McCARTHY said she had no problem with the idea of a study, but did have a problem with diverting license fees into the General Fund. She wanted the money to stay where the people paying the fees intended it to go.

CHAIRMAN BISHOP commented that he had asked **SENATOR GROSFIELD** if he wanted to be present for executive action on his bill and **SENATOR GROSFIELD** had said he didn't care what the committee did with the bill.

{Tape: 1; Side: A; Approx. Time Count: 3:56}

SENATOR BROOKE commented that along with the bill about hunting within cities, this was the bill on which she had received the most comment. Everyone strongly opposed it.

SENATOR KEN MESAROS thought the bill made it clear that federal funding would not be jeopardized. The bill merely required a study that would take an in-depth look at DFWP programs.

SENATOR MESAROS said he had also talked to **SENATOR GROSFIELD** who indicated he did have an interest in this bill.

SENATOR BISHOP said he had reported the conversation he had with **SENATOR GROSFIELD** word-for-word.

{Tape: 1; Side: A; Approx. Time Count: 3:59}

SENATOR McCARTHY commented that most studies came through resolutions that are ranked at the end of the session, rather than bills. Resolutions are prioritized. She asked if SB 292 would have to come before the prioritized list. **SENATOR BISHOP** said he thought it would.

Leanne Kurtz agreed. After the session, legislators are asked to rank resolutions. SB 292 would happen because it would be codified. **SENATOR McCARTHY** commented that it would cost \$41,000.

SENATOR MIKE TAYLOR asked **SENATOR MESAROS** if he considered the fact that the fiscal note called for an FTE a wish list or the way DFWP was attempting to kill the bill.

SENATOR MESAROS noted the sponsor hadn't agreed with the fiscal note because he hadn't signed it.

SENATOR DOHERTY said this bill only went one way - toward the use of DFWP money to supplement other agencies' budgets. He had asked **SENATOR GROSFIELD** if it could go both ways. A "WHEREAS" mentions not jeopardizing federal funds and identifying programs that wouldn't jeopardize federal funds, but another "WHEREAS" suggests taking fishing and hunting license funds to fund other departments. He said he was against that idea in principle and the bill as well.

He also noted that the study was called for in a bill and he thought it should have been a study resolution. The bill did not call for a bipartisan committee of the legislature.

If a study were decided upon, it should be ranked. He noted that the study was expected to cost over \$41,000/year or a total of \$82-83,000, and wasn't sure it would be that expensive. DFWP had not wanted to do the study and suggested it be given to an independent contractor. Whichever way it went, it would cost somebody something that wasn't in their budget and the legislature would be taking money away from sportsmen's interests.

Motion: SENATOR DOHERTY offered a substitute motion to TABLE SB 292, but said he wouldn't make that motion if someone else had something to say about the bill. SENATOR TAYLOR said he had several questions and SENATOR DOHERTY agreed to hold the motion.

SENATOR TAYLOR asked if DFWP pays for picking up roadkills.

{Tape: 1; Side: B; Approx. Time Count: 4:04}

SENATOR JENKINS said that is done by the Department of Transportation. SENATOR BILL CRISMORE said he knew; he had personally picked up several thousand.

SENATOR TAYLOR commented that in his area the department already gives money to the Tribes.

SENATOR DOHERTY asked if DFWP picks up roadkills or if they pay for picking them up if the Department of Transportation does the work.

Pat Graham said it varies - on highways it is done by the Department of Transportation. DFWP does not pay them because dead animals are picked up for safety reasons. Also, oils from decomposing carcasses eat into the road surface.

The department is more involved on county roads or if a dead animal is in someone's driveway. This work has been contracted in some places because it takes time from warden duties.

{Tape: 1; Side: B; Approx. Time Count: 4:08}

SENATOR JENKINS asked if there are clear criteria for spending the department's Dingell-Johnson, Wallop-Breaux and Pittman-Robertson federal dollars. Mr. Graham responded, "Several."

SENATOR JENKINS asked if Wallop-Breaux funds were related to water projects. Mr. Graham stated that when the Dingell-Johnson Act was amended in 1985 to include motor boat fuel tax, it was upgraded and renamed Wallop-Breaux. It is all one program now, related to boating and fishing.

SENATOR JENKINS commented that since there are criteria for spending, there must be programs where license dollars can't be spent, like parks. **Mr. Graham** said that was true. The State of Kansas built a road to a state park using license money, lost its federal funding for 3-6 months and had to pay back the money spent on the road.

SENATOR JENKINS asked if DFWP had ever identified these projects before. **Mr. Graham** said a House bill on donating meat was amended to include donating money from the game auctions, as well as meat, to food banks. Research on the issue determined that since it wasn't license money, DFWP could donate both animals and the money.

SENATOR JENKINS asked how conservation license fees were considered. **Mr. Graham** said they were license dollars.

Vote: **SENATOR BISHOP** said the committee had **SENATOR DOHERTY'S** substitute motion to **TABLE SB 292**. The motion **FAILED** with five senators voting no.

Vote: **SENATOR BISHOP** stated that the committee should return to the original **DO PASS** motion. A roll call vote was six to four against the motion and the motion **FAILED**.

{Tape: 1; Side: B; Approx. Time Count: 4:16}

EXECUTIVE ACTION ON SB 287

Amendments: sb028701.alk

Motion: **SENATOR BILL CRISMORE** moved SB 287 **DO PASS**.

Motion: **SENATOR CRISMORE** moved amendment sb028701.alk **DO PASS**.

Discussion: **Beate Galda** read and explained the amendment (**EXHIBIT #6**) at the request of **SENATOR CRISMORE**.

SENATOR BEA MCCARTHY asked why a weapon can't be confiscated at the time a crime is discovered. **Ms. Galda** said a weapon could be seized as evidence, go through the trial, and if the suspect were found guilty, the forfeiture procedure would follow.

SENATOR MCCARTHY asked what would keep a suspect from substituting a weapon of lesser value. **Ms. Galda** said the arresting officer would obtain identification of the weapon used in the crime before he returned it to the defendant.

{Tape: 1; Side: B; Approx. Time Count: 4:21}

SENATOR JENKINS asked why a weapon would be forfeited after a first offense. **SENATOR CRISMORE** replied that there are two parts to the bill: in the first part, hunting privileges would be revoked after a third conviction. In the second part of the

bill, a weapon would be forfeited for deliberately breaking the law, and that would be done after the first conviction.

SENATOR VIVIAN BROOKE asked if passage of this bill would add to the duties of DFWP or increase their responsibility. **SENATOR CRISMORE** said it would only give them additional powers. If someone breaks the law and the judge rules that he should lose his license for six months, is convicted again and loses his license for another six months, under current law he can hunt the following year. Under the bill, a judge would rule that person was a third time loser and he would not be able to buy another license. In addition to the fine, the bill would allow the department to take the weapon involved in certain types of violations.

Mr. Graham said the forfeiture would apply to: hunting out of season, hunting after dark, or hunting without a license. These are all felony violations, selected because they can't be done mistakenly. If it's after dark, it's after dark. The idea is to restrict the forfeiture to intentional actions and avoid accidental violations.

{Tape: 1; Side: B; Approx. Time Count: 4:26}

SENATOR BROOKE said her original question to **SENATOR CRISMORE** was whether or not this bill would add to the duties of DFWP and she still wanted to know if the forfeiture procedure would require the department to put more effort into enforcement.

Mr. Graham said he thought wardens would take the serial number of a gun involved in a crime and the court would decide whether or not to forfeit the weapon. He didn't think that would cause any additional work except, perhaps, going out to pick up the weapon.

SENATOR BROOKE asked if putting a case together would require more work. **Mr. Graham** said it wouldn't.

SENATOR KEN MILLER asked if a hunter could lose his gun if he shot something 10 minutes after sunset. **Mr. Graham** replied that technically he could, but that decision would be left to the discretion of the judge. Also, wardens decide what type of citations to issue.

{Tape: 1; Side: B; Approx. Time Count: 4:31}

SENATOR BISHOP asked if Montana had reciprocity with other states concerning someone who lost his license to hunt in Montana. **Ms. Galda** told him the last session authorized Montana's participation in the Interstate Wildlife Violator Compact. Eight western states are members. If an offense were revocable in one state, the other states would determine whether or not that offense could be considered revocable for the same time period under their laws.

SENATOR JENKINS asked what would happen to a rancher who was having trouble feeding his family and shot a deer in his haystack. **Ms. Galda** said that if the offense were committed out of hunger, there wouldn't be a problem, but that doesn't happen very often in Montana.

SENATOR JENKINS commented that under this bill it appeared the rancher would lose his rifle for the first offense. **Ms. Galda** said it was possible, but with game damage situations the department normally tries to work with farmers and ranchers. However, if there were numerous violations, a citation might result.

SENATOR JENKINS asked what would happen if someone ran over a deer, broke its leg and shot it. **Ms. Galda** said in that situation a person should call a warden, but if he were a long way from a telephone, it would not be considered a crime.

Vote: The **DO PASS** motion on the amendment **CARRIED** with **SENATORS TOEWS, MILLER and JENKINS** voting no.

Vote: The **DO PASS AS AMENDED** motion by **SENATOR CRISMORE** carried with **SENATORS TOEWS, MILLER and JENKINS** voting no.

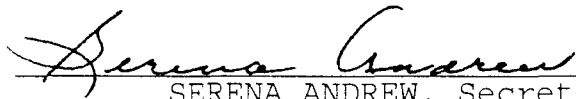
ADJOURNMENT

Adjournment: 4:38 p.m.

{This meeting was recorded on a Lanier recorder}



SEN. AL BISHOP Chairman



SERENA ANDREW, Secretary