

HOUSE BILL NO. 406

INTRODUCED BY GRADY, BRANDEWIE, MENAHAN, HANSON

IN THE HOUSE

JANUARY 21, 1987 ON MOTION, RULES SUSPENDED TO ALLOW  
INTRODUCTION OF HB NO. 406.

JANUARY 22, 1987 INTRODUCED AND REFERRED TO COMMITTEE  
ON FISH & GAME.

FEBRUARY 19, 1987 COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.  
STATEMENT OF INTENT ADOPTED.

FEBRUARY 20, 1987 PRINTING REPORT.

FEBRUARY 21, 1987 SECOND READING, DO PASS.  
ENGROSSING REPORT.

FEBRUARY 23, 1987 THIRD READING, PASSED.  
AYES, 90; NOES, 9.  
TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE  
ON FISH & GAME.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 30, 1987 SECOND READING, CONCURRED IN.  
ON MOTION, RULES SUSPENDED AND BILL  
PLACED ON THIRD READING THIS DAY.  
THIRD READING, CONCURRED IN.  
AYES, 42; NOES, 8.  
RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 406  
 2 INTRODUCED BY Grady P. Lewis Menahan  
 3 M. Hancock

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE NAME OF  
 5 THE MONTANA OUTFITTERS' COUNCIL TO THE BOARD OF OUTFITTERS;  
 6 TO TRANSFER THE COUNCIL TO THE DEPARTMENT OF COMMERCE; TO  
 7 TRANSFER LICENSING AUTHORITY FOR OUTFITTERS AND GUIDES FROM  
 8 THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE BOARD OF  
 9 OUTFITTERS; AMENDING SECTIONS 2-15-3403, 87-4-101, 87-4-102,  
 10 87-4-104, 87-4-127, 87-4-128, AND 87-4-142, MCA; AND  
 11 REPEALING SECTIONS 87-4-105, 87-4-106, AND 87-4-144, MCA."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 2-15-3403, MCA, is amended to read:  
 15 "2-15-3403. ~~Montana---outfitters+---council~~ Board of  
 16 outfitters. (1) There is a ~~Montana-outfitters+---council~~ board  
 17 of outfitters.

18 (2) The ~~council~~ board consists of seven members. Each  
 19 member shall be a licensed outfitter and shall represent one  
 20 of the seven fish and game administrative districts. A  
 21 member shall be selected by the licensed outfitters residing  
 22 in that district by election at an annual meeting of the  
 23 outfitters to be held in the city where the regional  
 24 headquarters is located during the month of March. A  
 25 majority vote cast by written ballot of all the outfitters

1 in attendance at the meeting shall determine the member from  
 2 the district. At the election an alternate member shall  
 3 also be elected by written ballot to serve if the member is  
 4 unable to act.

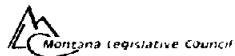
5 (3) If a member or alternate resigns or a vacancy  
 6 exists for any reason on the ~~council~~ board, the ~~council~~  
 7 board at its next official meeting after the vacancy occurs  
 8 shall recommend to the director of the department of ~~fish,~~  
 9 ~~wildlife,-and-parks~~ commerce the names of two licensed  
 10 outfitters residing in the administrative region where the  
 11 vacancy occurred to fill the vacancy for the remainder of  
 12 the unexpired term. If a vacancy cannot be filled from that  
 13 administrative region, the appointment must be made from an  
 14 adjoining region. If a vacancy cannot be filled from an  
 15 adjoining region, the appointment must be made from any  
 16 remaining region. The director shall fill the vacancy from  
 17 the names submitted.

18 (4) The members shall serve staggered 3-year terms and  
 19 take office on the day they are elected.

20 (5) The ~~council~~ board is allocated to the department  
 21 of commerce for administrative purposes only as prescribed  
 22 in 2-15-121.

23 ~~{6}--The-council-is-not-subject-to--the--provisions--of~~  
 24 ~~2-15-122.~~

25 ~~{7}--Members---of---the---council---are---entitled---to---be~~



1 ~~reimbursed--and--compensated--as--are--members--of--advisory~~  
2 ~~councils-in-2-15-122(5);-~~"

3 Section 2. Section 87-4-101, MCA, is amended to read:

4 "87-4-101. Definitions. As used in this part chapter,  
5 unless the context requires otherwise, the following  
6 definitions apply:

7 (1) "Board" means the board of outfitters provided for  
8 in 2-15-3403.

9 (2) "Department" means the department of commerce  
10 provided for in Title 2, chapter 15, part 18.

11 (3) "License year" means that period commencing  
12 January 1 and ending December 31 of the same year.

13 (4) "Nonresident" means a person other than a  
14 resident.

15 (5) "Outfitter" means any person, except a person  
16 providing services on real property that he owns for the  
17 primary pursuit of bona fide agricultural interests, who:

18 (a) engages in the business of outfitting for hunting  
19 or fishing parties, as the term is commonly understood;

20 (b) for consideration provides any saddle or pack  
21 animal or personal service for hunting or fishing parties or  
22 camping equipment, vehicles, or other conveyance, except  
23 boats, for any person to hunt, trap, capture, take, or kill  
24 any game and accompanies such a party or person on an  
25 expedition for any of these purposes;

1 (c) for consideration furnishes a boat or other  
2 floating craft and accompanies any person for the purpose of  
3 catching fish; or

4 (d) for consideration aids or assists any person in  
5 locating or pursuing any game animal.

6 ~~(4)--"Outfitters'--council"---means---the---Montana~~  
7 ~~outfitters'-council-provided-for-in-2-15-3403-~~

8 (6) "Professional guide" means a person who is an  
9 employee of an outfitter and who furnishes only personal  
10 guiding services in assisting a person to hunt or take game  
11 animals or fish and who does not furnish any facilities,  
12 transportation, or equipment.

13 (7) "Resident" means a person who qualifies for a  
14 resident Montana hunting or fishing license under 87-2-102.

15 (8) "Participant" means a person using the services  
16 offered by a license licensed outfitter or professional  
17 guide."

18 Section 3. Section 87-4-102, MCA, is amended to read:

19 "87-4-102. Determination of what constitutes  
20 consideration. The providing of the services, property, or  
21 equipment mentioned in 87-4-101(3)(5) or the advertising of  
22 services to assist persons to hunt, pursue, or take wildlife  
23 or to fish shall be presumed to have been for consideration  
24 for the purposes of this part chapter."

25 Section 4. Section 87-4-104, MCA, is amended to read:

1 "87-4-104. Powers and duties of department board  
2 relating to outfitters and guides. The department board  
3 shall:

4 (1) prepare and publish an information pamphlet which  
5 contains the names and addresses of all licensed outfitters.  
6 This pamphlet shall be available for free distribution as  
7 early as possible during each calendar year but not later  
8 than the second Friday in March. The pamphlet shall contain  
9 the names and addresses of only those outfitters who have a  
10 valid license for the current license year. The costs of  
11 publication of the pamphlet shall be paid from the state  
12 special revenue fund, fish and game account.

13 (2) cooperate with the federal government through its  
14 appropriate agencies or instrumentalities in matters of  
15 mutual concern regarding the business of outfitting and  
16 guiding in Montana;

17 ~~(3) establish a minimum of two meetings annually with~~  
18 ~~the outfitters' council;~~

19 ~~(4) consult with the outfitters' council to develop~~  
20 ~~policy concerning the administration of outfitting;~~

21 ~~(5) designate a warden with no conflict of interest~~  
22 ~~whose primary duties are to administer outfitting and~~  
23 ~~guiding laws and regulations;~~

24 (6)(3) when the fish and game commission determines it  
25 necessary to protect the fishing resource, public health,

1 public safety, or public welfare, establish and regulate a  
2 moratorium on, applicable to either or both the Madison  
3 River or the Big Hole River, on the issuance of outfitter  
4 licenses for the purpose of float fishing, as defined in  
5 87-4-101(3)(c)(5)(c), except that those fishing outfitters  
6 licensed in 1980 may receive renewal licenses, if qualified.  
7 The total number of professional guide licenses endorsed by  
8 fishing outfitters under a moratorium may not be less than  
9 the total number issued in 1980.

10 (4) establish outfitter standards and professional  
11 guide standards;

12 (5) adopt:

13 (a) rules of procedure;

14 (b) rules to administer and enforce this chapter,  
15 including but not limited to rules prescribing all requisite  
16 qualifications for licensure. These qualifications must  
17 include training, experience, knowledge of rules of  
18 governmental bodies pertaining to outfitting, and condition  
19 and type of gear and equipment; and

20 (c) any reasonable rules, not in conflict with this  
21 chapter, necessary for safeguarding the health, safety, and  
22 welfare of those persons using the services of outfitters  
23 and for the protection of landowners and the general public;

24 (6) hold hearings and proceedings to suspend or revoke  
25 licenses of outfitters and professional guides for due

1 cause."

2 Section 5. Section 87-4-127, MCA, is amended to read:

3 "87-4-127. Fees. (1) The department board shall  
4 establish fees commensurate with costs as provided in  
5 37-1-134.

6 (2) Applications shall be accompanied by a license fee  
7 as specified by the department board.

8 (3) If a nonresident resides in a state requiring  
9 residents of the state of Montana to pay in excess of the  
10 amount established by the department board for a similar  
11 license, the fee for such nonresident outfitter's or  
12 professional guide's license shall be the same amount as the  
13 higher fee charged in the state where the nonresident  
14 resides. ~~All--fees--collected--under--this--part--shall--be  
15 deposited--as--provided--in--87-1-601-~~

16 (4) The license fee shall be used to investigate the  
17 applicant, to enforce this part, and for administrative  
18 costs."

19 Section 6. Section 87-4-128, MCA, is amended to read:

20 "87-4-128. Investigation of applicant -- issuance or  
21 denial of license. (1) The ~~director--in--his--discretion--may  
22 cause--to--be--made--such--additional--investigation--and--inquiry  
23 relative--to--the~~ board shall investigate each applicant for  
24 an outfitter's or professional guide's license and an  
25 applicant's determine his qualifications ~~as--he--considers~~

1 advisable.

2 (2) The director board may deny or refuse to issue any  
3 new license or to renew any previous license if ~~in--his  
4 opinion,~~ the applicant does not meet the qualifications  
5 herein stated. In the event that any application for license  
6 is denied or refused, the director board shall immediately  
7 notify the applicant, setting forth in the notice the  
8 grounds upon which the denial or refusal is based.

9 (3) Final decision as to issuance of renewal licenses  
10 shall be made not later than 30 days from the date of  
11 receipt of the completed application for renewal and not  
12 later than 90 days from the date of receipt of a completed  
13 application for a new license.

14 (4) A licensee in good standing is entitled to a new  
15 license for the ensuing license year upon complying with the  
16 provisions of this part chapter, and completing an  
17 application for license renewal on a form provided by the  
18 department board, and payment of the renewal fee, but is  
19 exempt from having to retake the written examination.

20 (5) An outfitter licensee must make an application for  
21 license renewal by January 1 of the license year. A penalty  
22 fee of \$50 will be charged in addition to the regular  
23 resident or nonresident outfitter's license fee if the  
24 application for such license is not completed and made by  
25 January 1 of the license year. This subsection does not

1 apply to a new applicant for an outfitter's license."

2 Section 7. Section 87-4-142, MCA, is amended to read:

3 "87-4-142. Procedure for suspension or revocation of  
4 license -- reissuance. (1) Proceedings for the revocation or  
5 suspension of a license issued hereunder may be taken upon  
6 charge or recommendation of any person. All such charges or  
7 recommendations must be made in writing, must state the  
8 facts upon which such charge or recommendation is based, and  
9 must be signed and sworn to by the person making the charge  
10 or recommendation. Any such charge or recommendation shall  
11 be filed with the director board. Thereupon, the director  
12 board shall initiate a preliminary investigation of all  
13 facts in connection with the charge.

14 ~~{2}--A--copy-of-all-information-shall-be-transmitted-to~~  
15 ~~the-outfitters'-council--The-outfitters'-council--may--make~~  
16 ~~recommendation--as--to--the--action--to--be--taken--Any-such~~  
17 ~~recommendation-shall-be-made-in-writing-and-delivered-to-the~~  
18 ~~director-within-20-days-after-date-of--transmittal--of--such~~  
19 ~~information-to-the-council;~~

20 {3}{2} If the accusation be deemed to be unfounded or  
21 trivial, the director board shall dismiss the same and will  
22 advise the licensee charged and the complaining party of the  
23 action. Should If the ~~director-determine~~ board determines  
24 the charge or recommendation to have good cause and to be  
25 sufficiently founded, he it shall appoint a hearing officer

1 who shall conduct a hearing on such charges in accordance  
2 with the Montana Administrative Procedure Act.

3 ~~{4}~~{3} The director board thereupon shall cause a copy  
4 of the ~~charge-recommendation-of-the-council;~~ and a record  
5 of the investigation to be served upon the licensee involved  
6 not less than 20 days prior to the day set for hearing  
7 thereon, which hearing shall be before an appointed hearing  
8 officer at a time and place set by such officer. At the  
9 hearing, the licensee involved may be represented by  
10 counsel. After full, fair, and impartial hearing, the  
11 director board may suspend the accused's license or his  
12 right to hold a license for a period not to exceed 3 years,  
13 may order the license revoked, or may dismiss the charge or  
14 recommendation based upon the facts shown at the hearing.

15 {5}{4} A revoked or suspended license may be reissued  
16 or reinstated at the discretion of the director board."

17 NEW SECTION. Section 8. Transfer of agency -- name  
18 change -- duties transferred. (1) The Montana outfitters'  
19 council is transferred to the department of commerce and is  
20 renamed the board of outfitters.

21 (2) The authority and functions of the department of  
22 fish, wildlife, and parks regarding licensing of outfitters  
23 and guides are transferred to the board of outfitters, and  
24 any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129,  
25 87-4-131, and 87-4-143 to the department of fish, wildlife,

1 and parks or to the department or director, meaning the  
2 department of fish, wildlife, and parks or the director of  
3 that department, is changed to the board, meaning the board  
4 of outfitters.

5 NEW SECTION. Section 9. Codification instruction. The  
6 code commissioner shall recodify Title 87, chapter 4, part  
7 1, as a separate chapter of Title 37, and the provisions of  
8 Title 37, chapter 1, apply. The code commissioner shall  
9 change internal references accordingly.

10 NEW SECTION. Section 10. Repealer. Sections 87-4-105,  
11 87-4-106, and 87-4-144, MCA, are repealed.

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB406, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act changing the name of the Montana Outfitter's Council to the Board of Outfitters and transferring the council to the Department of Commerce from the Department of Fish, Wildlife and Parks and the licensing authority to the Board from the Department level.

ASSUMPTIONS:

1. Assume FY87 budget is \$48,000 as per Department of Fish, Wildlife and Parks (DoFWP) figures.
2. Assume the Board of Outfitters will be attached to DOC for administrative purposes only and therefore services provided will be the same as those provided to other boards already located in the department.
3. Assume there are 1,852 licensees providing an income of \$108,700 as per DoFWP information.
4. Assume that there will be 4 meetings per year lasting 2 days each, therefore two days of meals and one evening lodging. Also, assume an average of 300 miles travel per board member per meeting.
5. Assume that the board will need \$10,000 extra for contracted services to carry out any additional duties not normally carried out by DOC for administratively attached boards.
6. Assume FY88 will need \$500 to adjust board rules to the new department location, etc.
7. Assume the relationship between the amount of income and expenditures will be reviewed during the biennium to see if they are in fact appropriate.

FISCAL IMPACT:

Expenditures:

	FY88			FY89			Biennium Difference
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference	
Earmarked Special Revenue	\$ 48,078	\$ 43,314	(\$5,364)	\$ 48,078	\$ 42,545	(\$ 6,133)	(\$11,497)

Revenues:

Earmarked Special Revenue	\$108,700	\$108,700	\$ 0	\$108,700	\$108,700	\$ 0	\$ 0
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EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

None apparent.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The board's expenses and license fees should remain fairly constant in the future unless statutory requirements are changed or there is an increased number of licensees or an increase in litigation.

David L. Hunter DATE 1/26/87  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

Rep Grady DATE 1-26-87  
 EDWARD GRADY, PRIMARY SPONSOR  
 Fiscal Note for HB406, as introduced.

HB 406

Fiscal Note Request, HB406, as introduced.

Form BD-15

Page 2

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

Section 6(3) on page 8, line 9 - This is probably superceded by the Montana Administrative Procedures Act. So is Section 7 to the extent this language conflicts with MAPA.

Section 4, on line 11 and 12, page 5 state "...shall be paid from the state special revenue fund, fish and game account." Is this a correct reference considering the function transfer?

HB-406

APPROVED BY COMM.  
ON FISH AND GAME

1 STATEMENT OF INTENT

2 HOUSE BILL 406

3 House Fish and Game Committee

4

5 A statement of intent is submitted for this bill  
6 because the board of outfitters established in section 1 is  
7 required to adopt rules under section 4 concerning the  
8 licensing of outfitters and guides. Because the licensing  
9 and enforcement authority is simply being transferred from  
10 the department of fish, wildlife, and parks to the board  
11 with no substantive change in requirements, it is intended  
12 that the board of outfitters should adopt rules  
13 substantially similar to those currently in place as adopted  
14 by the department.

## 1 HOUSE BILL NO. 406

2 INTRODUCED BY GRADY, BRANDEWIE, MENAHAN, HANSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE NAME OF  
5 THE MONTANA OUTFITTERS' COUNCIL TO THE BOARD OF OUTFITTERS;  
6 TO REVISE THE METHOD OF SELECTION OF MEMBERS; TO TRANSFER  
7 THE COUNCIL TO THE DEPARTMENT OF COMMERCE; TO TRANSFER  
8 LICENSING AUTHORITY FOR OUTFITTERS AND GUIDES FROM THE  
9 DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE BOARD OF  
10 OUTFITTERS; TO PROVIDE PENALTIES FOR VIOLATIONS; AMENDING  
11 SECTIONS 2-15-3403, 87-4-101, 87-4-102, 87-4-104, 87-4-127,  
12 87-4-128, AND 87-4-142, MCA; AND REPEALING SECTIONS  
13 87-4-105, 87-4-106, AND 87-4-144, MCA; AND PROVIDING AN  
14 IMMEDIATE EFFECTIVE DATE FOR A PORTION OF THE ACT."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 2-15-3403, MCA, is amended to read:

18 "2-15-3403. Montana-outfitters'-council Board of  
19 outfitters. (1) There is a Montana-outfitters'-council board  
20 of outfitters.

21 (2) (A) The council board consists of seven members.  
22 Each-member-shall-be-a-licensed-outfitter-and-shall  
23 represent-one-of-the-seven-fish-and-game-administrative  
24 districts.-A-member-shall-be-selected-by-the-licensed  
25 outfitters-residing-in-that-district-by-election-at-an

1 annual-meeting-of-the-outfitters-to-be-held-in-the-city  
2 where-the-regional-headquarters-is-located-during-the-month  
3 of-March.-A-majority-vote-cast-by-written-ballot-of-all-the  
4 outfitters-in-attendance-at-the-meeting-shall-determine-the  
5 member-from-the-district.-At-the-election-an-alternate  
6 member-shall-also-be-elected-by-written-ballot-to-serve-if  
7 the-member-is-unable-to-act.

8 (3) If a member or alternate resigns or a vacancy  
9 exists for any reason on the council board, the council  
10 board at its next official meeting after the vacancy occurs  
11 shall recommend to the director of the department of fish,  
12 wildlife, and parks commerce the names of two licensed  
13 outfitters residing in the administrative region where the  
14 vacancy occurred to fill the vacancy for the remainder of  
15 the unexpired term. If a vacancy cannot be filled from that  
16 administrative region, the appointment must be made from an  
17 adjoining region. If a vacancy cannot be filled from an  
18 adjoining region, the appointment must be made from any  
19 remaining region. The director shall fill the vacancy from  
20 the names submitted. TO BE APPOINTED BY THE GOVERNOR.

21 (B) FIVE MEMBERS MUST BE LICENSED OUTFITTERS, EACH OF  
22 WHOM HAS A MINIMUM OF 5 YEARS' EXPERIENCE AS A LICENSED  
23 OUTFITTER AND IS ACTIVELY INVOLVED IN THE OUTFITTING  
24 BUSINESS. EACH OUTFITTER MEMBER SHALL REPRESENT ONE OF THE  
25 FIVE DISTRICTS DESIGNATED IN 2-15-3402(2). TWO QUALIFIED

1 PERSONS IN EACH DISTRICT MUST BE NOMINATED FOR APPOINTMENT  
 2 BY THE LICENSED OUTFITTERS RESIDING IN THAT DISTRICT AT AN  
 3 ANNUAL MEETING OF THE OUTFITTERS IN THAT DISTRICT TO BE HELD  
 4 ON A SATURDAY DURING MARCH OR APRIL. A LICENSED OUTFITTER  
 5 WHO DOES NOT ATTEND THE ANNUAL MEETING MAY ASSIGN HIS VOTE  
 6 TO AN ATTENDING OUTFITTER BY A WRITTEN AND SIGNED PROXY.  
 7 ONLY ONE SUCH PROXY VOTE MAY BE CAST BY AN ATTENDING  
 8 OUTFITTER. NAMES OF NOMINEES MUST BE SUBMITTED TO THE  
 9 GOVERNOR, WHO WILL SELECT ONE OUTFITTER FROM EACH DISTRICT  
 10 TO BE A BOARD MEMBER.

11 (C) THE GOVERNOR SHALL ALSO APPOINT ONE MEMBER WHO IS  
 12 AN EMPLOYEE OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS  
 13 AND ONE MEMBER FROM THE GENERAL PUBLIC.

14 (3) A VACANCY ON THE BOARD MUST BE FILLED IN THE SAME  
 15 MANNER AS THE ORIGINAL APPOINTMENT.

16 (4) The members shall serve staggered 3-year terms and  
 17 take office on the day they are elected.

18 (5) The council board is allocated to the department  
 19 of commerce for administrative purposes only as prescribed  
 20 in 2-15-121.

21 ~~{6}--The council is not subject to the provisions of~~  
 22 ~~2-15-122.~~

23 ~~{7}--Members of the council are entitled to be~~  
 24 ~~reimbursed and compensated as are members of advisory~~  
 25 ~~councils in 2-15-122{5}.~~

1 (6) EACH MEMBER OF THE BOARD IS ENTITLED TO RECEIVE  
 2 COMPENSATION AND TRAVEL EXPENSES AS PROVIDED FOR IN  
 3 37-1-133."

4 Section 2. Section 87-4-101, MCA, is amended to read:  
 5 "87-4-101. Definitions. As used in this part chapter,  
 6 unless the context requires otherwise, the following  
 7 definitions apply:

8 (1) "Board" means the board of outfitters provided for  
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 13 January 1 and ending December 31 of the same year.

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 15 resident.

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 17 providing services on real property that he owns for the  
 18 primary pursuit of bona fide agricultural interests, who:

19 (a) engages in the business of outfitting for hunting  
 20 or fishing parties, as the term is commonly understood;

21 (b) for consideration provides any saddle or pack  
 22 animal or personal service for hunting or fishing parties or  
 23 camping equipment, vehicles, or other conveyance, except  
 24 boats, for any person to hunt, trap, capture, take, or kill  
 25 any game and accompanies such a party or person on an

1 expedition for any of these purposes;

2 (c) for consideration furnishes a boat or other  
3 floating craft and accompanies any person for the purpose of  
4 catching fish; or

5 (d) for consideration aids or assists any person in  
6 locating or pursuing any game animal.

7 ~~{4}--"Outfitters' council" means the Montana~~  
8 ~~outfitters' council provided for in 2-15-3403.~~

9 {5}{6} "Professional guide" means a person who is an  
10 employee of an outfitter and who furnishes only personal  
11 guiding services in assisting a person to hunt or take game  
12 animals or fish and who does not furnish any facilities,  
13 transportation, or equipment.

14 {6}{7} "Resident" means a person who qualifies for a  
15 resident Montana hunting or fishing license under 87-2-102.

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17 offered by a ~~license~~ licensed outfitter or professional  
18 guide."

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21 consideration. The providing of the services, property, or  
22 equipment mentioned in 87-4-101{3}{5} or the advertising of  
23 services to assist persons to hunt, pursue, or take wildlife  
24 or to fish shall be presumed to have been for consideration  
25 for the purposes of this ~~part~~ chapter."

1 Section 4. Section 87-4-104, MCA, is amended to read:  
2 "87-4-104. Powers and duties of department board  
3 relating to outfitters and guides. The department board  
4 shall:

5 (1) prepare and publish an information pamphlet which  
6 contains the names and addresses of all licensed outfitters.  
7 This pamphlet shall be available for free distribution as  
8 early as possible during each calendar year but not later  
9 than the second Friday in March. The pamphlet shall contain  
10 the names and addresses of only those outfitters who have a  
11 valid license for the current license year. ~~The costs of~~  
12 ~~publication of the pamphlet shall be paid from the state~~  
13 ~~special revenue fund, fish and game account.~~

14 (2) cooperate with the federal government through its  
15 ~~appropriate agencies or instrumentalities~~ in matters of  
16 mutual concern regarding the business of outfitting and  
17 guiding in Montana;

18 ~~{3}--establish a minimum of two meetings annually with~~  
19 ~~the outfitters' council;~~

20 ~~{4}--consult with the outfitters' council to develop~~  
21 ~~policy concerning the administration of outfitting;~~

22 ~~{5}--designate a warden with no conflict of interest~~  
23 ~~whose primary duties are to administer outfitting and~~  
24 ~~guiding laws and regulations;~~

25 ~~{6}{3}--when the fish and game commission determines it~~

1 ~~necessary to protect the fishing resource, public health,~~  
 2 ~~public safety, or public welfare, establish and regulate a~~  
 3 ~~moratorium on, applicable to either or both the Madison~~  
 4 ~~River or the Big Hole River, on the issuance of outfitter~~  
 5 ~~licenses for the purpose of float fishing, as defined in~~  
 6 ~~87-4-101(3)(c)(5)(c), except that those fishing outfitters~~  
 7 ~~licensed in 1988 may receive renewal licenses, if qualified.~~  
 8 ~~The total number of professional guide licenses endorsed by~~  
 9 ~~fishing outfitters under a moratorium may not be less than~~  
 10 ~~the total number issued in 1988.~~

11 (3) ENFORCE THE PROVISIONS OF THIS CHAPTER AND RULES  
 12 ADOPTED PURSUANT TO THIS CHAPTER;

13 (4) establish outfitter standards and professional  
 14 guide standards;

15 (5) adopt:

16 (a) rules of procedure;

17 (b) rules to administer and enforce this chapter,  
 18 including but not limited to rules prescribing all requisite  
 19 qualifications for licensure. These qualifications must  
 20 include training, experience, knowledge of rules of  
 21 governmental bodies pertaining to outfitting, and condition  
 22 and type of gear and equipment; and

23 (c) any reasonable rules, not in conflict with this  
 24 chapter, necessary for safeguarding the health, safety, and  
 25 welfare of those persons using the services of outfitters

1 and for the protection of landowners and the general public;  
 2 (6) hold hearings and proceedings to suspend or revoke  
 3 licenses of outfitters and professional guides for due  
 4 cause."

5 Section 5. Section 87-4-127, MCA, is amended to read:  
 6 "87-4-127. Fees. (1) The department board shall  
 7 establish fees commensurate with costs as provided in  
 8 37-1-134.

9 (2) Applications shall be accompanied by a license fee  
 10 as specified by the department board.

11 (3) If a nonresident resides in a state requiring  
 12 residents of the state of Montana to pay in excess of the  
 13 amount established by the department board for a similar  
 14 license, the fee for such nonresident outfitter's or  
 15 professional guide's license shall be the same amount as the  
 16 higher fee charged in the state where the nonresident  
 17 resides. ~~All fees collected under this part shall be~~  
 18 ~~deposited as provided in 87-1-601.~~

19 (4) The license fee ~~shall be used~~ FEES MUST BE  
 20 DEPOSITED IN THE STATE SPECIAL REVENUE FUND AND MUST BE USED  
 21 BY THE BOARD to investigate the applicant, to enforce this  
 22 part, and for administrative costs, SUBJECT TO 37-1-101(6)."

23 Section 6. Section 87-4-128, MCA, is amended to read:  
 24 "87-4-128. Investigation of applicant -- issuance or  
 25 denial of license. (1) ~~The director in his discretion may~~

1 ~~cause-to-be-made-such-additional-investigation--and--inquiry~~  
 2 ~~relative--to--the~~ board shall investigate each applicant for  
 3 an outfitter's or professional guide's license and an  
 4 applicant's determine his qualifications ~~as-he-considers~~  
 5 ~~advisable.~~

6 (2) The director board may deny or refuse to issue any  
 7 new license or to renew any previous license ~~if--in--his~~  
 8 ~~opinion,~~ the applicant does not meet the qualifications  
 9 herein stated. In the event that any application for license  
 10 is denied or refused, the director board shall immediately  
 11 notify the applicant, setting forth in the notice the  
 12 grounds upon which the denial or refusal is based.

13 (3) Final decision as to issuance of renewal licenses  
 14 shall be made not later than 30 days from the date of  
 15 receipt of the completed application for renewal and not  
 16 later than 90 days from the date of receipt of a completed  
 17 application for a new license.

18 (4) A licensee in good standing is entitled to a new  
 19 license for the ensuing license year upon complying with the  
 20 provisions of this part chapter, and completing an  
 21 application for license renewal on a form provided by the  
 22 department board, and payment of the renewal fee, but is  
 23 exempt from having to retake the written examination.

24 (5) An outfitter licensee must make an application for  
 25 license renewal by January 1 of the license year. A penalty

1 fee of \$50 will be charged in addition to the regular  
 2 resident or nonresident outfitter's license fee if the  
 3 application for such license is not completed and made by  
 4 January 1 of the license year. This subsection does not  
 5 apply to a new applicant for an outfitter's license."

6 Section 7. Section 87-4-142, MCA, is amended to read:  
 7 "87-4-142. Procedure for suspension or revocation of  
 8 license -- reissuance. (1) Proceedings for the revocation or  
 9 suspension of a license issued hereunder may be taken upon  
 10 charge or recommendation of any person. All such charges or  
 11 recommendations must be made in writing, must state the  
 12 facts upon which such charge or recommendation is based, and  
 13 must be signed and sworn to by the person making the charge  
 14 or recommendation. Any such charge or recommendation shall  
 15 be filed with the director board. Thereupon, the director  
 16 board shall initiate a preliminary investigation of all  
 17 facts in connection with the charge.

18 ~~(2)--A-copy-of-all-information-shall-be-transmitted--to~~  
 19 ~~the--outfitters'--council;--The-outfitters'--council--may--make~~  
 20 ~~recommendation-as-to--the--action--to--be--taken;--Any--such~~  
 21 ~~recommendation-shall-be-made-in-writing-and-delivered-to-the~~  
 22 ~~director--within--20--days--after--date--of--transmittal--of--such~~  
 23 ~~information-to-the-council;~~

24 ~~(3)~~(2) If the accusation be deemed to be unfounded or  
 25 trivial, the director board shall dismiss the same and will



1 advise the licensee charged and the complaining party of the  
 2 action. ~~Should If the director--determine~~ board determines  
 3 the charge or recommendation to have good cause and to be  
 4 sufficiently founded, ~~he it~~ shall appoint a hearing officer  
 5 who shall conduct a hearing on such charges in accordance  
 6 with the Montana Administrative Procedure Act.

7 ~~†4†~~(3) The ~~director board~~ thereupon shall cause a copy  
 8 of the charge~~7-recommendation-of-the-council~~, and a record  
 9 of the investigation to be served upon the licensee involved  
 10 not less than 20 days prior to the day set for hearing  
 11 thereon, which hearing shall be before an appointed hearing  
 12 officer at a time and place set by such officer. At the  
 13 hearing, the licensee involved may be represented by  
 14 counsel. After full, fair, and impartial hearing, the  
 15 ~~director board~~ may suspend the accused's license or his  
 16 right to hold a license for a period not to exceed 3 years,  
 17 may order the license revoked, or may dismiss the charge or  
 18 recommendation based upon the facts shown at the hearing.

19 ~~†5†~~(4) A revoked or suspended license may be reissued  
 20 or reinstated at the discretion of the ~~director board~~."

21 NEW SECTION. SECTION 8. PENALTIES -- DISPOSITION OF  
 22 FINES. (1) A PERSON WHO VIOLATES ANY PROVISION OF THIS  
 23 CHAPTER OR RULE ADOPTED UNDER THIS CHAPTER IS GUILTY OF A  
 24 MISDEMEANOR AND IS PUNISHABLE BY A FINE NOT EXCEEDING \$500.

25 (2) A PERSON WHO REPRESENTS HIMSELF AS AN OUTFITTER OR

1 PURPOSELY ENGAGES IN OUTFITTING WITHOUT A LICENSE AS  
 2 REQUIRED BY THIS CHAPTER IS GUILTY OF A MISDEMEANOR AND IS  
 3 PUNISHABLE BY A FINE OF NOT LESS THAN \$200 AND NOT MORE THAN  
 4 \$500. IN ADDITION, THE PERSON MUST BE ASSESSED THE AMOUNT OF  
 5 ALL COSTS INCURRED BY THE BOARD IN INVESTIGATING AND  
 6 PREPARING THE CASE FOR TRIAL.

7 (3) FIFTY PERCENT OF ALL FINES PAID UNDER THIS SECTION  
 8 MUST BE DEPOSITED IN THE GENERAL FUND OF THE COUNTY IN WHICH  
 9 THE CONVICTION IS OBTAINED, AND 50% MUST BE DEPOSITED IN THE  
 10 STATE SPECIAL REVENUE FUND FOR THE USE OF THE BOARD IN  
 11 ENFORCING THIS CHAPTER.

12 NEW SECTION. SECTION 9. ENFORCEMENT. INVESTIGATIONS  
 13 AND ARRESTS FOR VIOLATIONS OF THIS CHAPTER MAY BE MADE BY  
 14 ANY PEACE OFFICER; WARDEN OF THE DEPARTMENT OF FISH,  
 15 WILDLIFE, AND PARKS; OR FEDERAL AGENCY ENFORCEMENT  
 16 PERSONNEL.

17 NEW SECTION. Section 10. Transfer of agency -- name  
 18 change -- duties transferred. (1) The Montana outfitters'  
 19 council is transferred to the department of commerce and is  
 20 renamed the board of outfitters.

21 (2) The authority and functions of the department of  
 22 fish, wildlife, and parks regarding licensing of outfitters  
 23 and guides are transferred to the board of outfitters, and  
 24 any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129,  
 25 87-4-131, and 87-4-143 to the department of fish, wildlife,

1 and parks or to the department or director, meaning the  
2 department of fish, wildlife, and parks or the director of  
3 that department, is changed to the board, meaning the board  
4 of outfitters.

5 NEW SECTION. Section 11. Codification instruction.  
6 (1) The code commissioner shall recodify Title 87, chapter  
7 4, part 1, as a separate chapter of Title 37, and the  
8 provisions of Title 37, chapter 1, apply. The code  
9 commissioner shall change internal references accordingly.

10 (2) THE CODE COMMISSIONER SHALL RECODIFY SECTION  
11 2-15-3403 AS AN INTEGRAL PART OF TITLE 2, CHAPTER 15, PART  
12 18.

13 NEW SECTION. Section 12. Repealer. Sections 87-4-105,  
14 87-4-106, and 87-4-144, MCA, are repealed.

15 NEW SECTION. SECTION 13. TRANSITION -- EFFECTIVE  
16 DATE. (1) MEMBERS OF THE BOARD OF OUTFITTERS MAY BE  
17 NOMINATED AND APPOINTED UPON PASSAGE AND APPROVAL OF  
18 SECTIONS 1 THROUGH 12 BUT MAY NOT TAKE OFFICE PRIOR TO THE  
19 EFFECTIVE DATE OF SECTIONS 1 THROUGH 12. THE BOARD UPON  
20 APPOINTMENT MAY ADOPT RULES AS AUTHORIZED IN SECTIONS 1  
21 THROUGH 12, BUT SUCH RULES MAY NOT BECOME EFFECTIVE PRIOR TO  
22 THE EFFECTIVE DATE OF SECTIONS 1 THROUGH 12.

23 (2) THIS SECTION IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 406

3 House Fish and Game Committee

4

5 A statement of intent is submitted for this bill  
6 because the board of outfitters established in section 1 is  
7 required to adopt rules under section 4 concerning the  
8 licensing of outfitters and guides. Because the licensing  
9 and enforcement authority is simply being transferred from  
10 the department of fish, wildlife, and parks to the board  
11 with no substantive change in requirements, it is intended  
12 that the board of outfitters should adopt rules  
13 substantially similar to those currently in place as adopted  
14 by the department.



THIRD READING  
HB-406

## HOUSE BILL NO. 406

INTRODUCED BY GRADY, BRANDEWIE, MENAHAN, HANSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE NAME OF THE MONTANA OUTFITTERS' COUNCIL TO THE BOARD OF OUTFITTERS; TO REVISE THE METHOD OF SELECTION OF MEMBERS; TO TRANSFER THE COUNCIL TO THE DEPARTMENT OF COMMERCE; TO TRANSFER LICENSING AUTHORITY FOR OUTFITTERS AND GUIDES FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE BOARD OF OUTFITTERS; TO PROVIDE PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 2-15-3403, 87-4-101, 87-4-102, 87-4-104, 87-4-127, 87-4-128, AND 87-4-142, MCA; AND REPEALING SECTIONS 87-4-105, 87-4-106, AND 87-4-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR A PORTION OF THE ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-3403, MCA, is amended to read:

"2-15-3403. Montana ~~outfitters'~~ council Board of outfitters. (1) There is a Montana ~~outfitters'~~ council board of outfitters.

(2) (A) The council board consists of seven members. ~~Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an~~

~~annual meeting of the outfitters to be held in the city where the regional headquarters is located during the month of March. A majority vote cast by written ballot of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an alternate member shall also be elected by written ballot to serve if the member is unable to act.~~

~~(3) If a member or alternate resigns or a vacancy exists for any reason on the council board, the council board at its next official meeting after the vacancy occurs shall recommend to the director of the department of fish, wildlife, and parks ~~commerce~~ the names of two licensed outfitters residing in the administrative region where the vacancy occurred to fill the vacancy for the remainder of the unexpired term. If a vacancy cannot be filled from that administrative region, the appointment must be made from an adjoining region. If a vacancy cannot be filled from an adjoining region, the appointment must be made from any remaining region. The director shall fill the vacancy from the names submitted. TO BE APPOINTED BY THE GOVERNOR.~~

(B) FIVE MEMBERS MUST BE LICENSED OUTFITTERS, EACH OF WHOM HAS A MINIMUM OF 5 YEARS' EXPERIENCE AS A LICENSED OUTFITTER AND IS ACTIVELY INVOLVED IN THE OUTFITTING BUSINESS. EACH OUTFITTER MEMBER SHALL REPRESENT ONE OF THE FIVE DISTRICTS DESIGNATED IN 2-15-3402(2). TWO QUALIFIED

1 PERSONS IN EACH DISTRICT MUST BE NOMINATED FOR APPOINTMENT  
 2 BY THE LICENSED OUTFITTERS RESIDING IN THAT DISTRICT AT AN  
 3 ANNUAL MEETING OF THE OUTFITTERS IN THAT DISTRICT TO BE HELD  
 4 ON A SATURDAY DURING MARCH OR APRIL. A LICENSED OUTFITTER  
 5 WHO DOES NOT ATTEND THE ANNUAL MEETING MAY ASSIGN HIS VOTE  
 6 TO AN ATTENDING OUTFITTER BY A WRITTEN AND SIGNED PROXY.  
 7 ONLY ONE SUCH PROXY VOTE MAY BE CAST BY AN ATTENDING  
 8 OUTFITTER. NAMES OF NOMINEES MUST BE SUBMITTED TO THE  
 9 GOVERNOR, WHO WILL SELECT ONE OUTFITTER FROM EACH DISTRICT  
 10 TO BE A BOARD MEMBER.

11 (C) THE GOVERNOR SHALL ALSO APPOINT ONE MEMBER WHO IS  
 12 AN EMPLOYEE OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS  
 13 AND ONE MEMBER FROM THE GENERAL PUBLIC.

14 (3) A VACANCY ON THE BOARD MUST BE FILLED IN THE SAME  
 15 MANNER AS THE ORIGINAL APPOINTMENT.

16 (4) The members shall serve staggered 3-year terms and  
 17 take office on the day they are elected.

18 (5) The council board is allocated to the department  
 19 of commerce for administrative purposes only as prescribed  
 20 in 2-15-121.

21 ~~{6}--The council is not subject to the provisions of~~  
 22 ~~2-15-122.~~

23 ~~{7}--Members of the council are entitled to be~~  
 24 ~~reimbursed and compensated as are members of advisory~~  
 25 ~~councils in 2-15-122{5}.~~

1 (6) EACH MEMBER OF THE BOARD IS ENTITLED TO RECEIVE  
 2 COMPENSATION AND TRAVEL EXPENSES AS PROVIDED FOR IN  
 3 37-1-133."

4 Section 2. Section 87-4-101, MCA, is amended to read:  
 5 "87-4-101. Definitions. As used in this part chapter,  
 6 unless the context requires otherwise, the following  
 7 definitions apply:

8 (1) "Board" means the board of outfitters provided for  
 9 in 2-15-3403.

10 (2) "Department" means the department of commerce  
 11 provided for in Title 2, chapter 15, part 18.

12 ~~{1}~~(3) "License year" means that period commencing  
 13 January 1 and ending December 31 of the same year.

14 ~~{2}~~(4) "Nonresident" means a person other than a  
 15 resident.

16 ~~{3}~~(5) "Outfitter" means any person, except a person  
 17 providing services on real property that he owns for the  
 18 primary pursuit of bona fide agricultural interests, who:

19 (a) engages in the business of outfitting for hunting  
 20 or fishing parties, as the term is commonly understood;

21 (b) for consideration provides any saddle or pack  
 22 animal or personal service for hunting or fishing parties or  
 23 camping equipment, vehicles, or other conveyance, except  
 24 boats, for any person to hunt, trap, capture, take, or kill  
 25 any game and accompanies such a party or person on an

1 expedition for any of these purposes;

2 (c) for consideration furnishes a boat or other  
3 floating craft and accompanies any person for the purpose of  
4 catching fish; or

5 (d) for consideration aids or assists any person in  
6 locating or pursuing any game animal.

7 ~~{4}--"Outfitters' council" means the Montana~~  
8 ~~outfitters' council provided for in 2-15-3403.~~

9 {5}{6} "Professional guide" means a person who is an  
10 employee of an outfitter and who furnishes only personal  
11 guiding services in assisting a person to hunt or take game  
12 animals or fish and who does not furnish any facilities,  
13 transportation, or equipment.

14 {6}{7} "Resident" means a person who qualifies for a  
15 resident Montana hunting or fishing license under 87-2-102.

16 {7}{8} "Participant" means a person using the services  
17 offered by a license licensed outfitter or professional  
18 guide."

19 Section 3. Section 87-4-102, MCA, is amended to read:

20 "87-4-102. Determination of what constitutes  
21 consideration. The providing of the services, property, or  
22 equipment mentioned in 87-4-101{3}{5} or the advertising of  
23 services to assist persons to hunt, pursue, or take wildlife  
24 or to fish shall be presumed to have been for consideration  
25 for the purposes of this part chapter."

1 Section 4. Section 87-4-104, MCA, is amended to read:

2 "87-4-104. Powers and duties of department board  
3 relating to outfitters and guides. The department board  
4 shall:

5 (1) prepare and publish an information pamphlet which  
6 contains the names and addresses of all licensed outfitters.  
7 This pamphlet shall be available for free distribution as  
8 early as possible during each calendar year but not later  
9 than the second Friday in March. The pamphlet shall contain  
10 the names and addresses of only those outfitters who have a  
11 valid license for the current license year. ~~The costs of~~  
12 ~~publication of the pamphlet shall be paid from the state~~  
13 ~~special revenue fund, fish and game account.~~

14 (2) cooperate with the federal government through its  
15 ~~appropriate agencies or instrumentalities~~ in matters of  
16 mutual concern regarding the business of outfitting and  
17 guiding in Montana;

18 ~~{3}--establish a minimum of two meetings annually with~~  
19 ~~the outfitters' council;~~

20 ~~{4}--consult with the outfitters' council to develop~~  
21 ~~policy concerning the administration of outfitting;~~

22 ~~{5}--designate a warden with no conflict of interest~~  
23 ~~whose primary duties are to administer outfitting and~~  
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25 ~~{6}{3}--when the fish and game commission determines it~~

1 necessary to protect the fishing resource, public health,  
 2 public safety, or public welfare, establish and regulate a  
 3 moratorium on, applicable to either or both the Madison  
 4 River or the Big Hole River, on the issuance of outfitter  
 5 licenses for the purpose of float fishing, as defined in  
 6 87-4-101(3)(c)(5)(c), except that those fishing outfitters  
 7 licensed in 1980 may receive renewal licenses, if qualified.  
 8 The total number of professional guide licenses endorsed by  
 9 fishing outfitters under a moratorium may not be less than  
 10 the total number issued in 1980.

11 (3) ENFORCE THE PROVISIONS OF THIS CHAPTER AND RULES  
 12 ADOPTED PURSUANT TO THIS CHAPTER;

13 (4) establish outfitter standards and professional  
 14 guide standards;

15 (5) adopt:

16 (a) rules of procedure;

17 (b) rules to administer and enforce this chapter,  
 18 including but not limited to rules prescribing all requisite  
 19 qualifications for licensure. These qualifications must  
 20 include training, experience, knowledge of rules of  
 21 governmental bodies pertaining to outfitting, and condition  
 22 and type of gear and equipment; and

23 (c) any reasonable rules, not in conflict with this  
 24 chapter, necessary for safeguarding the health, safety, and  
 25 welfare of those persons using the services of outfitters

1 and for the protection of landowners and the general public;  
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 13 amount established by the department board for a similar  
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 15 professional guide's license shall be the same amount as the  
 16 higher fee charged in the state where the nonresident  
 17 resides. ~~All fees collected under this part shall be~~  
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 20 DEPOSITED IN THE STATE SPECIAL REVENUE FUND AND MUST BE USED  
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 22 part, and for administrative costs, SUBJECT TO 37-1-101(6)."

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 3 an outfitter's or professional guide's license and an  
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 7 new license or to renew any previous license ~~if--in--his~~  
 8 ~~opinion,~~ the applicant does not meet the qualifications  
 9 herein stated. In the event that any application for license  
 10 is denied or refused, the director board shall immediately  
 11 notify the applicant, setting forth in the notice the  
 12 grounds upon which the denial or refusal is based.

13 (3) Final decision as to issuance of renewal licenses  
 14 shall be made not later than 30 days from the date of  
 15 receipt of the completed application for renewal and not  
 16 later than 90 days from the date of receipt of a completed  
 17 application for a new license.

18 (4) A licensee in good standing is entitled to a new  
 19 license for the ensuing license year upon complying with the  
 20 provisions of this part chapter, and completing an  
 21 application for license renewal on a form provided by the  
 22 department board, and payment of the renewal fee, but is  
 23 exempt from having to retake the written examination.

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 25 license renewal by January 1 of the license year. A penalty

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22 fish, wildlife, and parks regarding licensing of outfitters  
23 and guides are transferred to the board of outfitters, and  
24 any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129,  
25 87-4-131, and 87-4-143 to the department of fish, wildlife,

1 and parks or to the department or director, meaning the  
 2 department of fish, wildlife, and parks or the director of  
 3 that department, is changed to the board, meaning the board  
 4 of outfitters.

5 NEW SECTION. Section 11. Codification instruction.  
 6 (1) The code commissioner shall recodify Title 87, chapter  
 7 4, part 1, as a separate chapter of Title 37, and the  
 8 provisions of Title 37, chapter 1, apply. The code  
 9 commissioner shall change internal references accordingly.

10 (2) THE CODE COMMISSIONER SHALL RECODIFY SECTION  
 11 2-15-3403 AS AN INTEGRAL PART OF TITLE 2, CHAPTER 15, PART  
 12 18.

13 NEW SECTION. Section 12. Repealer. Sections 87-4-105,  
 14 87-4-106, and 87-4-144, MCA, are repealed.

15 NEW SECTION. SECTION 13. TRANSITION -- EFFECTIVE  
 16 DATE. (1) MEMBERS OF THE BOARD OF OUTFITTERS MAY BE  
 17 NOMINATED AND APPOINTED UPON PASSAGE AND APPROVAL OF  
 18 SECTIONS 1 THROUGH 12 BUT MAY NOT TAKE OFFICE PRIOR TO THE  
 19 EFFECTIVE DATE OF SECTIONS 1 THROUGH 12. THE BOARD UPON  
 20 APPOINTMENT MAY ADOPT RULES AS AUTHORIZED IN SECTIONS 1  
 21 THROUGH 12, BUT SUCH RULES MAY NOT BECOME EFFECTIVE PRIOR TO  
 22 THE EFFECTIVE DATE OF SECTIONS 1 THROUGH 12.

23 (2) THIS SECTION IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 406

3 House Fish and Game Committee

4

5 A statement of intent is submitted for this bill  
6 because the board of outfitters established in section 1 is  
7 required to adopt rules under section 4 concerning the  
8 licensing of outfitters and guides. Because the licensing  
9 and enforcement authority is simply being transferred from  
10 the department of fish, wildlife, and parks to the board  
11 with no substantive change in requirements, it is intended  
12 that the board of outfitters should adopt rules  
13 substantially similar to those currently in place as adopted  
14 by the department.

## HOUSE BILL NO. 406

INTRODUCED BY GRADY, BRANDEWIE, MENAHAN, HANSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE NAME OF THE MONTANA OUTFITTERS' COUNCIL TO THE BOARD OF OUTFITTERS; TO REVISE THE METHOD OF SELECTION OF MEMBERS; TO TRANSFER THE COUNCIL TO THE DEPARTMENT OF COMMERCE; TO TRANSFER LICENSING AUTHORITY FOR OUTFITTERS AND GUIDES FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE BOARD OF OUTFITTERS; TO PROVIDE PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 2-15-3403, 87-4-101, 87-4-102, 87-4-104, 87-4-127, 87-4-128, AND 87-4-142, MCA; AND REPEALING SECTIONS 87-4-105, 87-4-106, AND 87-4-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR A PORTION OF THE ACT AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-3403, MCA, is amended to read:

"2-15-3403. Montana outfitters' council Board of outfitters. (1) There is a Montana outfitters' council board of outfitters.

(2) (A) The council board consists of seven members. Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. A member shall be selected by the licensed

outfitters residing in that district by election at an annual meeting of the outfitters to be held in the city where the regional headquarters is located during the month of March. A majority vote cast by written ballot of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an alternate member shall also be elected by written ballot to serve if the member is unable to act.

(3) If a member or alternate resigns or a vacancy exists for any reason on the council board, the council board at its next official meeting after the vacancy occurs shall recommend to the director of the department of fish, wildlife, and parks commerce the names of two licensed outfitters residing in the administrative region where the vacancy occurred to fill the vacancy for the remainder of the unexpired term. If a vacancy cannot be filled from that administrative region, the appointment must be made from an adjoining region. If a vacancy cannot be filled from an adjoining region, the appointment must be made from any remaining region. The director shall fill the vacancy from the names submitted. TO BE APPOINTED BY THE GOVERNOR.

(B) FIVE MEMBERS MUST BE LICENSED OUTFITTERS, EACH OF WHOM HAS A MINIMUM OF 5 YEARS' EXPERIENCE AS A LICENSED OUTFITTER AND IS WHO ARE ACTIVELY INVOLVED IN THE OUTFITTING BUSINESS. EACH OUTFITTER MEMBER SHALL REPRESENT ONE OF THE

1 FIVE DISTRICTS DESIGNATED IN 2-15-3402(2). TWO QUALIFIED  
 2 PERSONS IN EACH DISTRICT MUST BE NOMINATED FOR APPOINTMENT  
 3 BY THE LICENSED OUTFITTERS RESIDING IN THAT DISTRICT AT AN  
 4 ANNUAL MEETING OF THE OUTFITTERS IN THAT DISTRICT TO BE HELD  
 5 ON A SATURDAY DURING MARCH OR APRIL. A LICENSED OUTFITTER  
 6 WHO DOES NOT ATTEND THE ANNUAL MEETING MAY ASSIGN HIS VOTE  
 7 TO AN ATTENDING OUTFITTER BY A WRITTEN AND SIGNED PROXY.  
 8 ONLY ONE SUCH PROXY VOTE MAY BE CAST BY AN ATTENDING  
 9 OUTFITTER. NAMES OF NOMINEES MUST BE SUBMITTED TO THE  
 10 GOVERNOR, WHO WILL SELECT ONE OUTFITTER FROM EACH DISTRICT  
 11 TO BE A BOARD MEMBER.

12 (C) THE GOVERNOR SHALL ALSO APPOINT ONE MEMBER WHO IS  
 13 AN EMPLOYEE OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS  
 14 AND ONE MEMBER FROM THE GENERAL PUBLIC.

15 (3) A VACANCY ON THE BOARD MUST BE FILLED IN THE SAME  
 16 MANNER AS THE ORIGINAL APPOINTMENT.

17 (4) The members shall serve staggered 3-year terms and  
 18 take office on the day they are elected.

19 (5) The council board is allocated to the department  
 20 of commerce for administrative purposes only as prescribed  
 21 in 2-15-121.

22 ~~(6) The council is not subject to the provisions of~~  
 23 ~~2-15-122.~~

24 ~~(7) Members of the council are entitled to be~~  
 25 ~~reimbursed and compensated as are members of advisory~~

1 ~~councils-in-2-15-122(5):~~

2 (6) EACH MEMBER OF THE BOARD IS ENTITLED TO RECEIVE  
 3 COMPENSATION AND TRAVEL EXPENSES AS PROVIDED FOR IN  
 4 37-1-133."

5 Section 2. Section 87-4-101, MCA, is amended to read:  
 6 "87-4-101. Definitions. As used in this part chapter,  
 7 unless the context requires otherwise, the following  
 8 definitions apply:

9 (1) "Board" means the board of outfitters provided for  
 10 in 2-15-3403.

11 (2) "Department" means the department of commerce  
 12 provided for in Title 2, chapter 15, part 18.

13 ~~(1)(3)~~ "License year" means that period commencing  
 14 January 1 and ending December 31 of the same year.

15 ~~(2)(4)~~ "Nonresident" means a person other than a  
 16 resident.

17 ~~(3)(5)~~ "Outfitter" means any person, except a person  
 18 providing services on real property that he owns for the  
 19 primary pursuit of bona fide agricultural interests, who:

20 (a) engages in the business of outfitting for hunting  
 21 or fishing parties, as the term is commonly understood;

22 (b) for consideration provides any saddle or pack  
 23 animal or personal service for hunting or fishing parties or  
 24 camping equipment, vehicles, or other conveyance, except  
 25 boats, for any person to hunt, trap, capture, take, or kill

1 any game and accompanies such a party or person on an  
2 expedition for any of these purposes;

3 (c) for consideration furnishes a boat or other  
4 floating craft and accompanies any person for the purpose of  
5 catching fish; or

6 (d) for consideration aids or assists any person in  
7 locating or pursuing any game animal.

8 ~~{4}--"Outfitters' council" means the Montana~~  
9 ~~outfitters' council provided for in 2-15-3403.~~

10 {5}{6} "Professional guide" means a person who is an  
11 employee of an outfitter and who furnishes only personal  
12 guiding services in assisting a person to hunt or take game  
13 animals or fish and who does not furnish any facilities,  
14 transportation, or equipment.

15 {6}{7} "Resident" means a person who qualifies for a  
16 resident Montana hunting or fishing license under 87-2-102.

17 {7}{8} "Participant" means a person using the services  
18 offered by a license licensed outfitter or professional  
19 guide."

20 Section 3. Section 87-4-102, MCA, is amended to read:

21 "87-4-102. Determination of what constitutes  
22 consideration. The providing of the services, property, or  
23 equipment mentioned in 87-4-101{3}{5} or the advertising of  
24 services to assist persons to hunt, pursue, or take wildlife  
25 or to fish shall be presumed to have been for consideration

1 for the purposes of this part chapter."

2 Section 4. Section 87-4-104, MCA, is amended to read:

3 "87-4-104. Powers and duties of department board  
4 relating to outfitters and guides. The department board  
5 shall:

6 (1) prepare and publish an information pamphlet which  
7 contains the names and addresses of all licensed outfitters.  
8 This pamphlet shall be available for free distribution as  
9 early as possible during each calendar year but not later  
10 than the second Friday in March. The pamphlet shall contain  
11 the names and addresses of only those outfitters who have a  
12 valid license for the current license year. ~~The costs of~~  
13 ~~publication of the pamphlet shall be paid from the state~~  
14 ~~special revenue fund, fish and game account.~~

15 (2) cooperate with the federal government ~~through its~~  
16 ~~appropriate agencies or instrumentalities~~ in matters of  
17 mutual concern regarding the business of outfitting and  
18 guiding in Montana;

19 ~~{3}--establish a minimum of two meetings annually with~~  
20 ~~the outfitters' council;~~

21 ~~{4}--consult with the outfitters' council to develop~~  
22 ~~policy concerning the administration of outfitting;~~

23 ~~{5}--designate a warden with no conflict of interest~~  
24 ~~whose primary duties are to administer outfitting and~~  
25 ~~guiding laws and regulations;~~

1       ~~(6)(3) when the fish and game commission determines it~~  
 2       ~~necessary to protect the fishing resource, public health,~~  
 3       ~~public safety, or public welfare, establish and regulate a~~  
 4       ~~moratorium on applicable to either or both the Madison~~  
 5       ~~River or the Big Hole River, on the issuance of outfitter~~  
 6       ~~licenses for the purpose of float fishing, as defined in~~  
 7       ~~87-4-101(3)(c)(5)(c), except that those fishing outfitters~~  
 8       ~~licensed in 1980 may receive renewal licenses, if qualified.~~  
 9       ~~The total number of professional guide licenses endorsed by~~  
 10       ~~fishing outfitters under a moratorium may not be less than~~  
 11       ~~the total number issued in 1980.~~

12       (3) ENFORCE THE PROVISIONS OF THIS CHAPTER AND RULES  
 13       ADOPTED PURSUANT TO THIS CHAPTER;

14       (4) establish outfitter standards and professional  
 15       guide standards;

16       (5) adopt:

17       (a) rules of procedure;

18       (b) rules to administer and enforce this chapter,  
 19       including but not limited to rules prescribing all requisite  
 20       qualifications for licensure. These qualifications must  
 21       include training, experience, knowledge of rules of  
 22       governmental bodies pertaining to outfitting, and condition  
 23       and type of gear and equipment; and

24       (c) any reasonable rules, not in conflict with this  
 25       chapter, necessary for safeguarding the health, safety, and

1       welfare of those persons using the services of outfitters  
 2       and for the protection of landowners and the general public;  
 3       (6) hold hearings and proceedings to suspend or revoke  
 4       licenses of outfitters and professional guides for due  
 5       cause."

6       Section 5. Section 87-4-127, MCA, is amended to read:  
 7       "87-4-127. Fees. (1) The department board shall  
 8       establish fees commensurate with costs as provided in  
 9       37-1-134.

10       (2) Applications shall be accompanied by a license fee  
 11       as specified by the department board.

12       (3) If a nonresident resides in a state requiring  
 13       residents of the state of Montana to pay in excess of the  
 14       amount established by the department board for a similar  
 15       license, the fee for such nonresident outfitter's or  
 16       professional guide's license shall be the same amount as the  
 17       higher fee charged in the state where the nonresident  
 18       resides. ~~All fees collected under this part shall be~~  
 19       ~~deposited as provided in 87-1-601.~~

20       (4) The license fee ~~shall be used~~ FEEs MUST BE  
 21       DEPOSITED IN THE STATE SPECIAL REVENUE FUND AND MUST BE USED  
 22       BY THE BOARD to investigate the applicant, to enforce this  
 23       part, and for administrative costs, SUBJECT TO 37-1-101(6)."

24       Section 6. Section 87-4-128, MCA, is amended to read:  
 25       "87-4-128. Investigation of applicant -- issuance or

1 denial of license. (1) ~~The director-in-his-discretion-may~~  
 2 ~~cause-to-be-made-such-additional-investigation--and--inquiry~~  
 3 ~~relative--to--the~~ board shall investigate each applicant for  
 4 ~~an~~ outfitter's or professional guide's license and ~~an~~  
 5 ~~applicant's~~ determine his qualifications ~~as-he-considers~~  
 6 ~~advisable.~~

7 (2) The director board may deny or refuse to issue any  
 8 new license or to renew any previous license if ~~in--his~~  
 9 ~~opinion,~~ the applicant does not meet the qualifications  
 10 herein stated. In the event that any application for license  
 11 is denied or refused, the director board shall immediately  
 12 notify the applicant, setting forth in the notice the  
 13 grounds upon which the denial or refusal is based.

14 (3) Final decision as to issuance of renewal licenses  
 15 shall be made not later than 30 days from the date of  
 16 receipt of the completed application for renewal and not  
 17 later than 90 days from the date of receipt of a completed  
 18 application for a new license.

19 (4) A licensee in good standing is entitled to a new  
 20 license for the ensuing license year upon complying with the  
 21 provisions of this part chapter, and completing an  
 22 application for license renewal on a form provided by the  
 23 department board, and payment of the renewal fee, but is  
 24 exempt from having to retake the written examination.

25 (5) An outfitter licensee must make an application for

1 license renewal by January 1 of the license year. A penalty  
 2 fee of \$50 will be charged in addition to the regular  
 3 resident or nonresident outfitter's license fee if the  
 4 application for such license is not completed and made by  
 5 January 1 of the license year. This subsection does not  
 6 apply to a new applicant for an outfitter's license."

7 Section 7. Section 87-4-142, MCA, is amended to read:

8 "87-4-142. Procedure for suspension or revocation of  
 9 license -- reissuance. (1) Proceedings for the revocation or  
 10 suspension of a license issued hereunder may be taken upon  
 11 charge or recommendation of any person. All such charges or  
 12 recommendations must be made in writing, must state the  
 13 facts upon which such charge or recommendation is based, and  
 14 must be signed and sworn to by the person making the charge  
 15 or recommendation. Any such charge or recommendation shall  
 16 be filed with the director board. Thereupon, the director  
 17 board shall initiate a preliminary investigation of all  
 18 facts in connection with the charge.

19 ~~(2)--A-copy-of-all-information-shall-be-transmitted--to~~  
 20 ~~the--outfitters'-council--The-outfitters'-council-may-make~~  
 21 ~~recommendation-as-to--the--action--to--be--taken--Any--such~~  
 22 ~~recommendation-shall-be-made-in-writing-and-delivered-to-the~~  
 23 ~~director--within--20--days-after-date-of-transmittal-of-such~~  
 24 ~~information-to-the-council--~~

25 ~~(3)}~~(2) If the accusation be deemed to be unfounded or



1 trivial, the director board shall dismiss the same and will  
 2 advise the licensee charged and the complaining party of the  
 3 action. ~~Should~~ If the director--determine board determines  
 4 the charge or recommendation to have good cause and to be  
 5 sufficiently founded, he it shall appoint a hearing officer  
 6 who shall conduct a hearing on such charges in accordance  
 7 with the Montana Administrative Procedure Act.

8 ~~(4)~~(3) The director board thereupon shall cause a copy  
 9 of the charge~~7-recommendation-of-the-council~~7 and a record  
 10 of the investigation to be served upon the licensee involved  
 11 not less than 20 days prior to the day set for hearing  
 12 thereon, which hearing shall be before an appointed hearing  
 13 officer at a time and place set by such officer. At the  
 14 hearing, the licensee involved may be represented by  
 15 counsel. After full, fair, and impartial hearing, the  
 16 director board may suspend the accused's license or his  
 17 right to hold a license for a period not to exceed 3 years,  
 18 may order the license revoked, or may dismiss the charge or  
 19 recommendation based upon the facts shown at the hearing.

20 ~~(5)~~(4) A revoked or suspended license may be reissued  
 21 or reinstated at the discretion of the director board."

22 NEW SECTION. SECTION 8. PENALTIES -- DISPOSITION OF  
 23 FINES. (1) A PERSON WHO VIOLATES ANY PROVISION OF THIS  
 24 CHAPTER OR RULE ADOPTED UNDER THIS CHAPTER IS GUILTY OF A  
 25 MISDEMEANOR AND IS PUNISHABLE BY A FINE NOT EXCEEDING \$500.

1 (2) A PERSON WHO REPRESENTS HIMSELF AS AN OUTFITTER OR  
 2 PURPOSELY ENGAGES IN OUTFITTING WITHOUT A LICENSE AS  
 3 REQUIRED BY THIS CHAPTER IS GUILTY OF A MISDEMEANOR AND IS  
 4 PUNISHABLE BY A FINE OF NOT LESS THAN \$200 AND NOT MORE THAN  
 5 \$500. IN ADDITION, THE PERSON MUST BE ASSESSED THE AMOUNT OF  
 6 ALL COSTS INCURRED BY THE BOARD IN INVESTIGATING AND  
 7 PREPARING THE CASE FOR TRIAL.

8 (3) FIFTY PERCENT OF ALL FINES PAID UNDER THIS SECTION  
 9 MUST BE DEPOSITED IN THE GENERAL FUND OF THE COUNTY IN WHICH  
 10 THE CONVICTION IS OBTAINED, AND 50% MUST BE DEPOSITED IN THE  
 11 STATE SPECIAL REVENUE FUND FOR THE USE OF THE BOARD IN  
 12 ENFORCING THIS CHAPTER.

13 NEW SECTION. SECTION 9. ENFORCEMENT. INVESTIGATIONS  
 14 AND ARRESTS FOR VIOLATIONS OF THIS CHAPTER MAY BE MADE BY  
 15 ANY PEACE OFFICER; WARDEN OF THE DEPARTMENT OF FISH,  
 16 WILDLIFE, AND PARKS; OR FEDERAL AGENCY ENFORCEMENT  
 17 PERSONNEL.

18 NEW SECTION. Section 10. Transfer of agency -- name  
 19 change -- duties transferred. (1) The Montana outfitters'  
 20 council is transferred to the department of commerce and is  
 21 renamed the board of outfitters.

22 (2) The authority and functions of the department of  
 23 fish, wildlife, and parks regarding licensing of outfitters  
 24 and guides are transferred to the board of outfitters, and  
 25 any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129,

1 87-4-131, and 87-4-143 to the department of fish, wildlife,  
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 9 provisions of Title 37, chapter 1, apply. The code  
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 12 2-15-3403 AS AN INTEGRAL PART OF TITLE 2, CHAPTER 15, PART  
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 15 87-4-106, and 87-4-144, MCA, are repealed.

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 20 EFFECTIVE DATE OF SECTIONS 1 THROUGH 12. THE BOARD UPON  
 21 APPOINTMENT MAY ADOPT RULES AS AUTHORIZED IN SECTIONS 1  
 22 THROUGH 12, BUT SUCH RULES MAY NOT BECOME EFFECTIVE PRIOR TO  
 23 THE EFFECTIVE DATE OF SECTIONS 1 THROUGH 12.

24 (2) THIS SECTION IS EFFECTIVE ON PASSAGE AND APPROVAL.

25 NEW SECTION. SECTION 14. TERMINATION DATE. THIS ACT

1 TERMINATES JUNE 30, 1991.

-End-

# STANDING COMMITTEE REPORT

## SENATE

March 27, 1987 19.....

MR. PRESIDENT

We, your committee on ..... Fish and Game .....

having had under consideration ..... House Bill ..... No. 406 .....

Third reading copy ( Blue )  
color

LICENSING OF OUTFITTERS BY BOARD OF OUTFITTERS IN DEPARTMENT OF COMMERCE  
Representative Ed Grady (Senator Jergeson)

Respectfully report as follows: That ..... House Bill ..... No. 406 .....

be amended as follows:

1. Title, line 14.  
Following: "ACT"  
Insert: "AND A TERMINATION DATE"
2. Page 2, lines 21 to 23.  
Following : "OUTFITTERS"  
Strike: remainder of line 21 through "IS" on line 23  
Insert: "who are"
3. Page 13, line 24.  
Insert: "NEW SECTION. Section 14. Termination date. This act terminates June 30, 1991."

Amendments to HB 406  
e:\7086d

AB

AND AS AMENDED  
BE CONCURRED IN

~~DO PASS~~  
~~XXXXXX~~

~~DO NOT PASS~~  
~~XXXXXXXXXX~~

*Ed Smith*

Senator Ed Smith

Chairman.

3-27-87  
5:15