

HOUSE BILL 386

Introduced by Molnar

1/28	Introduced
1/28	Referred to Fish & Game
1/28	First Reading
1/28	Fiscal Note Requested
2/02	Fiscal Note Received
2/04	Fiscal Note Printed
2/11	Hearing
2/18	Tabled in Committee

1 House BILL NO. 386
 2 INTRODUCED BY Brad McInerney
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING OUTFITTER
 5 LICENSING PROVISIONS; REVISING THE DEFINITION OF OUTFITTER
 6 BY REMOVING THE AGRICULTURAL EXEMPTION; REVISING THE
 7 CRITERIA FOR DETERMINING WHAT CONSTITUTES COMPENSATION;
 8 REVISING OUTFITTER QUALIFICATIONS TO INCLUDE RESTRICTIONS ON
 9 THE LEASE OF CERTAIN LANDS; LIMITING THE NUMBER OF OUTFITTER
 10 LICENSES; REMOVING THE CLASS B-11 NONRESIDENT DEER
 11 COMBINATION LICENSE SET-ASIDE FOR PERSONS INTENDING TO HUNT
 12 WITH A RESIDENT LANDOWNER AND INCREASING THE OUTFITTER
 13 SET-ASIDE FOR THAT LICENSE; REVISING PENALTY PROVISIONS;
 14 AMENDING SECTIONS 37-47-101, 37-47-102, 37-47-302,
 15 37-47-308, 37-47-344, 87-2-510, AND 87-2-511, MCA; AND
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 19 **Section 1.** Section 37-47-101, MCA, is amended to read:
 20 "37-47-101. Definitions. As used in this chapter,
 21 unless the context requires otherwise, the following
 22 definitions apply:
 23 (1) "Board" means the board of outfitters provided for
 24 in 2-15-1883.
 25 (2) "Department" means the department of commerce

1 provided for in Title 2, chapter 15, part 18.
 2 (3) "License year" means that period commencing January
 3 1 and ending December 31 of the same year.
 4 (4) "Nonresident" means a person other than a resident.
 5 (5) "Outfitter" means any person--except--a--person
 6 ~~providing-services-on-real-property-that--he--owns--for--the~~
 7 ~~primary-pursuit-of-bona-fide-agricultural-interests;~~ who:
 8 (a) engages in the business of outfitting for hunting
 9 or fishing parties, as the term is commonly understood;
 10 (b) for consideration provides any saddle or pack
 11 animal or personal service for hunting or fishing parties or
 12 camping equipment, vehicles, or other conveyance, except
 13 boats, for any person to hunt, trap, capture, take, or kill
 14 any game and accompanies such a party or person on an
 15 expedition for any of these purposes;
 16 (c) for consideration furnishes a boat or other
 17 floating craft and accompanies any person for the purpose of
 18 catching fish; or
 19 (d) for consideration aids or assists any person in
 20 locating or pursuing any game animal.
 21 (6) "Participant" means a person using the services
 22 offered by a licensed outfitter or professional guide.
 23 (7) "Professional guide" and "guide" mean a person:
 24 (a) who is an employee of an outfitter and who
 25 furnishes only personal guiding services in assisting a

person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he the guide owns in assisting a person to hunt or take game birds or fish. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.

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

Section 2. Section 37-47-102, MCA, is amended to read:

"37-47-102. Determination of what constitutes consideration. The (1) Except as provided in subsection (2), the providing of the services, property, access, or equipment mentioned in 37-47-101(5) or the advertising of services to assist persons to hunt, pursue, or take wildlife or to fish shall--be is presumed to have been for consideration for the purposes of this chapter.

(2) The providing of property or access under the fish, wildlife, and parks block management program is not consideration for the purposes of this chapter."

Section 3. Section 37-47-302, MCA, is amended to read:

"37-47-302. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal

thereof of a license shall meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform ~~his~~ the duties as of an outfitter;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and ~~his~~ the outfitter's clients (all equipment and facilities ~~shall--be~~ are subject to inspection at all reasonable times and places by the board or its designated agent);

(3) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated thereunder under those laws as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof of the ecosystem;

(4) have not been convicted or forfeited bond of \$100 or more on more than one violation of the fish and game laws or applicable regulations of any state or the United States within the past 5 years;

(5) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous

1 outfitter's, professional guide's, or conservation license
2 from the state of Montana;

3 (6) have not, at any time, promulgated any false or
4 misleading advertising relating to the business of
5 outfitting;

6 (7) have not been finally adjudged by a court of law
7 guilty of any substantial breach of written or oral contract
8 with any person utilizing the applicant's services as an
9 outfitter or professional guide during the license year
10 immediately preceding that for which the application is
11 made;

12 (8) have not committed any negligent act or misconduct
13 while acting as an outfitter or professional guide that
14 caused a danger or unreasonable risk of danger to person or
15 property of any client of such the outfitter or professional
16 guide during the license year immediately preceding that for
17 which the application is made;

18 (9) have not, at any time, pleaded guilty to or been
19 adjudged by a court guilty of a felony, unless civil rights
20 have been restored pursuant to law. No A person may not
21 apply for or hold an outfitter's license during any period
22 of time in which a sentence has been deferred or suspended
23 for a felony.

24 (10) have not entered into a lease of private land that
25 borders a block of public land composed of greater than

1 2,560 acres if the lease does not provide reasonable, posted
2 public access to the adjacent public land. The determination
3 of whether access is reasonable must be made by a committee
4 composed of:

5 (a) one member of the Montana outfitters and guides
6 association;

7 (b) one member from the agency involved in the
8 management of the affected public land;

9 (c) one member from a local or statewide sporting
10 advocacy group;

11 (d) one member of the general public; and

12 (e) a game warden from the area in question.

13 (11) have substantially complied with all board
14 regulations and state and federal laws concerning outfitters
15 and professional guides, if the applicant has previously
16 held a license as an outfitter or professional guide."

17 **Section 4.** Section 37-47-308, MCA, is amended to read:

18 **"37-47-308. Kinds of licenses.** (1) After receipt of the
19 application and when all the conditions and requirements of
20 this part have been satisfied, the board shall, subject to
21 the conditions of subsections (4) and (5), issue either of
22 the following licenses, depending upon its determination of
23 the applicant's ability and the service that the applicant
24 can perform with the equipment listed on his the
25 application:

(a) a general license authorizing him the applicant to perform all the functions of an outfitter as that term is defined in 37-47-101; or

(b) a special license authorizing him the applicant to perform only the function of outfitting listed on the license.

(2) The license ~~shall~~ must be in the form prescribed and ~~shall be~~ is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license ~~shall~~ must be issued upon reapplication thereof, subject to the conditions of subsections (4) and (5).

(4) The total number of outfitter licenses issued may not exceed the number of current licenses on [the effective date of this act].

(5) The limitation in subsection (4) does not apply to a license issued to a landowner who was actively engaged in outfitting or fee hunting prior to [the effective date of this act] if 15% of the landowner's net income during the 3 years prior to application for licensure was from outfitting or fee hunting, based on state income tax returns for the applicable period."

Section 5. Section 37-47-344, MCA, is amended to read:

***37-47-344. Penalties -- disposition of fines.** (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.

(2) A person who represents himself-as to the public that the person is an outfitter or purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$500. In addition, the person must be assessed the amount of all costs incurred by the board in investigating and preparing the case for trial.

(3) A person who enters into a lease in violation of 37-47-302(10) is punishable by a fine of \$20,000 and, in addition, must be assessed the amount of all costs incurred by the board in investigating and preparing the case for trial.

(4) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter."

Section 6. Section 87-2-510, MCA, is amended to read:

***87-2-510. (Temporary) Class B-11--nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in

87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of \$238 beginning March 1, 1992, and \$245 beginning March 1, 1994, or upon payment of the fee of \$248 beginning March 1, 1992, and \$250 beginning March 1, 1994, if the license is one of the ~~4,000~~ 3,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or--to hunt--with--a-resident-sponsor-on-land-owned-by-that-sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

87-2-510. (Effective March 1, 1994) Class B-11--nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of \$220 or upon payment of the fee of \$225 if the license is one of the

~~4,000~~ 3,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or--to--hunt-with-a-resident-sponsor-on-land-owned-by-that-sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year."

Section 7. Section 87-2-511, MCA, is amended to read:

"87-2-511. Sale of Class B-10 and Class B-11 licenses.

(1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and ~~2,000~~ 3,000 Class B-11 licenses reserved for applicants indicating their intent to use the services of a licensed outfitter, and--~~2,000~~---of---the authorized--Class--B-11--licenses--reserved--for--applicants indicating--their--intent-to-hunt-with-a-resident-sponsor-on-land-owned-by--that--sponsor, as provided in subsections subsection (2) and (3).

(2) Each application for a reserved license under subsection (1) must contain a written affirmation that the

applicant intends to hunt with a licensed outfitter or--a resident--sponsor and must indicate the name of the licensed outfitter or--resident--sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter or--resident--sponsor and which that affirms that the outfitter or--resident will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with him the outfitter, where they hunted, and what game was taken; and

(c) not accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in this title.

~~{3}--The certificate--signed--by--the--resident--sponsor pursuant to subsection {2} must also affirm that the sponsor is--a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.~~

{4}{3} The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or--resident--sponsor.

{5}{4} All Class B-10 and Class B-11 licenses not

reserved under subsection (1) and all unsold reserved licenses available under subsection ~~{4}{3}~~ must be issued by a drawing among all applicants for the respective unreserved licenses."

NEW SECTION. **Section 8.** Effective date. [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0386, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: The bill revises outfitter licensing provisions; revising the definition of outfitter by removing the agricultural exemption; revising the criteria for determining what constitutes compensation; revising outfitter qualifications to include restrictions on the lease of certain lands; limiting the number of outfitters licenses; removing the Class B-11 nonresident deer combination license set-aside for persons intending to hunt with a resident landowner and increasing the outfitter set-aside for that license; revising penalty provisions.

ASSUMPTIONS:

Department of Fish, Wildlife and Parks (FWP):

1. The FWP will receive at least 3,000 nonresident deer combination license applicants who intend to hunt with a licensed outfitter. It will cost \$3.00 to process each certificate.

Department of Commerce:

2. There will be a limit of 650 non-landowner outfitters upon passage of the proposed legislation, 50 new applications per year, and 30% will generate contested cases.
3. There will be workload increases at the Department of Commerce to cover the system for monitoring the number of outfitters, creating a waiting list, and conducting contested case hearings concerning denial of applications of non-landowner outfitters.
4. The five person access committee will meet five times per year, for one day per meeting, and the Board of Outfitters will pay the costs of the meetings out of its current fee structure.
5. The budget for the Board of Outfitters will be based on current and modified levels as recommended by the executive budget, for FY94 and FY95.
6. After it has been determined which pieces of legislation have passed, the Department of Commerce will have to evaluate staffing needs for the POL Bureau, since there is no way of currently determining the total workload increase.

FISCAL IMPACT:

DEPARTMENT OF FISH, WILDLIFE AND PARKS:

Expenditures:	FY94			FY95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Process land owner certificates	6,000	0	(6,000)	6,000	0	(6,000)
Process outfitter certificates	6,000	9,000	3,000	6,000	9,000	3,000
Total	12,000	9,000	(3,000)	12,000	9,000	(3,000)

(continued on next page)

David Lewis 2-2-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-4-93
BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0386, as introduced

HB 386

	FY94			FY95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Revenues:</u>						
Land owner sponsored	500,000	0	(500,000)	500,000	0	(500,000)
Outfitter sponsored	500,000	750,000	250,000	500,000	750,000	250,000
Open	<u>490,000</u>	<u>735,000</u>	<u>245,000</u>	<u>490,000</u>	<u>735,000</u>	<u>245,000</u>
Total	1,490,000	1,485,000	(5,000)	1,490,000	1,485,000	(5,000)

Net Impact: The net effect to the Department of Fish, Wildlife and Parks would be a loss of \$2,000 per year.

DEPARTMENT OF COMMERCE:

	FY94			FY95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Personal Services	6,860	8,110	1,250	7,360	8,610	1,250
Operating Expenses	<u>182,741</u>	<u>200,991</u>	<u>18,250</u>	<u>181,284</u>	<u>199,534</u>	<u>18,250</u>
Total	189,601	209,101	19,500	188,644	208,144	19,500
<u>Revenues:</u>						
Fees	150,050	169,550	19,500	150,050	169,550	19,500
Net Impact:	(39,551)	(39,551)	0	(38,594)	(38,594)	0

TECHNICAL NOTES: The effective date should be changed to March 1, 1994, the beginning of the Department of Fish, Wildlife and Parks license year.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: The licensed outfitters will continue to pay higher fees to support the program.

HB 386