

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION**

Call to Order: By **CHAIRMAN RIC HOLDEN**, on January 19, 2001 at 3:00 P.M., in Room 303, Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Chairman (R)
Sen. Pete Ekegren, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Walter McNutt (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Tom Zook (r)

Members Excused: Sen. Arnie Mohl (R)
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Laramie Cumley, Committee Secretary
Doug Sternberg, Legislative Services

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 15, 1/4/01 & SB 95, 1/3/01
Executive Action: SB 42, SB 143

EXECUTIVE ACTION ON SB 42

Motion: SEN. MIKE HALLIGAN moved that SB 42 DO PASS.

Doug Sternberg explained the amendments **SB004201.ate**. The amendments were suggested by **SEN. MCCARTHY** who presented the bill. **EXHIBIT (ags15a01)**

SEN. HALLIGAN withdrew his motion do pass.

Motion/Vote: **SEN. HALLIGAN** moved that **AMENDMENTS BE ADOPTED**.
Motion carried unanimously.

Motion/Vote: **SEN. HALLIGAN** moved that **SB 42 DO PASS AS AMENDED**.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 143

Motion/Vote: **SEN. PETE EKEGREN** moved that **SB 143 DO PASS**.

SEN. HALLIGAN stated that he had spoken to the **Department of Agriculture** regarding the administrative authority to raise these fees in a much more proactive manner without reporting to the Legislature every time these fees need to be increased. The Department has been asked to make a presentation at some point to the committee regarding their vast number of fees and associated issues.

SEN. EKEGREN noted that he had requested a list of fees and a letter of explanation from the Department and it had not been received yet.

Mr. Peck replied that a fraction of the fee structure was established by the Department rule and there is a fraction of the fee structure that is required to go through the Legislature to be adjusted. The committee has received a letter from the Department of Agriculture **EXHIBIT (ags15a02)** stating that a meeting will be scheduled for next year with all of the Department constituency groups to review the request of putting fees in place by rule. Also to explain that the committee had suggested this more efficient way of doing business. This, in turn, would go through the Administrative Procedure Act to enact those services and report back to you next session with those results.

SEN. HALLIGAN suggested that the Chairman may want to correspond with the Department to ensure that the committee's interest in this issue is understood.

Vote: Motion **carried unanimously.**

HEARING ON SB 95

Sponsor: **SEN. AL BISHOP**

Proponents:

Jim Kehr, Representing himself
Stan Frasier, Representing himself
Bill Orsello, Montana Wildlife Federation
John Smart, Representing himself
Fred Easy, Prickly Pear Sportsmen Association
John Gibson, Billings Rod and Gun Club
Jeff Barber, Montana Wildlife Association
Tony Shoonen, Skyline Sportsmen Association, Public
Lands Access Association, State Lands Coalition
L.F. Thomas, Anaconda Sportsmen
Toby Day, Representing himself

Opponents:

Bob Brastrup, Representing himself
John Bloomquist, Montana Stockgrowers Association
Ken Mesaros, Representing himself
Carol Lambert, Women Involved in Farm Economics
Page Dringmun, Montana Landowners Alliance
Jim Almond, J.B. Grierson Company
SEN. BILL TASH, DILLION
John Swanz, Montana Stockgrowers Association
Chuck Rein, Montana Stockgrowers Association
John Semple, Montana Cattlewomens Association
Vicki Olson, Montana Public Lands Council
Bill Crismore, Representing himself
Mike Murphy, Montana Water Resource Association
John Youngberg, Montana Farm Bureau
Bob Stephens, Montana Grain Growers Association
Darrell Olson, Representing himself
James Hanson, Sweet Grass County Farm Bureau
Tack Van Cleve, Representing himself
Pachy Burns, Representing himself
Cliff Cox, Montana Farm Bureau
William Duffield, Fallon County
Elaine Allestad, Sweet Grass County Commissioner

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, Billings stated that if a hunter enters, legally posted private land that is not posted, without permission, that would constitute a criminal trespass according to Title 45 in present Montana law. If a hunter enters private land that is not posted, without permission, this would be a civil trespass unless the hunter was otherwise notified by the landowner. The relationship between hunters and landowners had

been strained because too many criminal prosecutions have resulted from the 1999 amendments to 87-3-304, MCA. If SB 95 becomes law, present criminal trespass laws would provide sufficient protection for a landowner who legally posted property to prohibit hunting or any other activity. This bill causes the legislature to post his land whether he wants it posted or not. When we passed this total responsibility, criminal liability law, we posted this fellow's land. He does not want his land posted; he has never posted his land. He would have to put out a welcome sign: "Welcome hunters" or something like that, you do not need permission. The land is owned by ranchers for the most part, and they are absentee. Once the crop is off, they are in town, Arizona or New Mexico. Nothing out there can be hurt or harmed. Everybody's land in Montana was posted by this provision in the law. We are trying to protect the private property rights. You should get permission from the landowner, if possible even if you do not know who owns the land, where they are, or how to find them. He said to the committee, "If you believe in private property rights, here's your chance to help out the people, to give them back their private property rights."

Proponents' Testimony:

Jim Kehr stated that most sportsmen truly are responsible. The last thing they want is the landowner screaming over the hill in his pickup truck, coming to yell at them for not having permission. Former **Sen. Ken Mesaros'** bill last session caused hunting trips for out-of-state friends who come to Montana every year to be cut short because it was so difficult to find landowners. Time was spent trying to find who owned great vast pieces of property. Bureau of Land Management maps were hard to read. Although we know how to read maps, we still could not figure them out. If a landowner does not want people to hunt, it is not expensive to buy a can of orange paint and paint it. There may be a system that could work for everyone. This seems like a huge waste of time, that we argue back and forth about stepping on someone's property, with or without permission.

Stan Frazier said the bill passed two years ago was a bad idea then, a bad idea four years ago, and it is still a bad idea. It caused more problems, and it actually was a solution where no problem existed. He recalled at the time, there was no evidence whatsoever that there was any trespass problem. Yet the legislature saw fit to go ahead and fix something that was not broken.

Bill Orsello expressed concern with the current law. It is a matter of equal protection under the law. For five months of the year the possibility of being a felon arises by making a mistake

and crossing over onto private properties. Any other time judgement is made under completely different criteria. The onus is on both himself and the landowner that they must mark their properties; he must abide by that marking. But for five weeks of the year when he is out in the field, all of a sudden that all goes down the tubes. He said it is wrong to put people in a position to inadvertently trespass through no fault of their own. He stated two people that he knows have small rural tracts of land which were surveyed in the last five years and found that their surveys were so out of whack with the reality of where their property was that their houses were not even on the property that they thought they bought. To put us in that situation when we have existing laws that address the issues. We should revert back to the old existing law.

John Smart stated opportunities for the resident hunter, which are beneficial to the economy of the state, in the billions of dollars, have continued to go down hill. He asked "are we going to discourage our young people from taking up the sport of hunting, buying four wheel drives, firearms, and camping materials? We spend billions of dollars a year in the pursuit of recreation and the existing trespass laws are punitive and unfair. A friend quit hunting because he was prosecuted for accidentally wandering on to private, checkerboard national forest land where there was no fence or no posting anywhere other than three miles away. The current law is designed almost to be an act of intimidation or a threat to a very conscientious, law-abiding hunter who happens to be in a maze of public and private land. The wildlife in question are everyone's property and so should the opportunity to harvest that wildlife. In many cases, the people who own property adjacent to public land are already exploiting the public land at subsidized rates for grazing and or hunting. The way the law has been going, it is this mood of lets privatize everything, hunting access etc., and that's going to be just great for Montana. What is best for everyone in the state?

Fred Easy, Prickly Pear Sportsman's Association representing 927 members, stated he frequently visits Froid, Montana. The Department of Fish and Wildlife manages a large block management program in the area. Most of his experiences there in 25 years have been great experiences without any problems, without requiring this trespass law. Most of the rural communities are supportive of the public and their access to bird hunting. The Froid volunteer fire department hosts a steak fry, (where everyone comes in and gets permission and you have all the written permission that you need.) It is been going on for 20 years out there, at least as long as he has been there. That is what the bill from last session has done. This made him an outlaw.

John Gibson, Billings Rod and Gun Club, stated his group consists of some 1250 family memberships. He is supporting the bill out of respect for **SEN. BISHOP** who has been a long and trusted friend of sportsmen in Montana.

Jeff Barber, Montana Wildlife Federation, said SB 95 is about fixing the wrong of previous session of the legislature. Last session, a crime was created, a crime that did not really fit the actions of the hunter. If someone is out hunting and wanders off of public land, onto private land accidentally they would be guilty of criminal trespass. someone could be carrying a land ownership map, a BLM map, a USGS map, and a gun and could still not know exactly where they were. Just a few years ago, it was found out that the boundary of the Crow Indian Reservation was not exactly where it was thought to be. He asked how a landowner or hunter with numerous maps, some as old as the 1940's, supposed to be exact on a location. He steps one foot off of public land onto private land and he is guilty of criminal trespass. He can be fined up to \$500 and or put in jail for up to six months.

Tony Shoonen, Skyline Sportsman Association, Public Lands Access Association, and the State Lands Coalition, stated in the last bill, Fish and Game employees tripped over the sportsmen to get up and testify for the bill, promising that they would put out maps for people to use. He stated two or three of their employees called Fish, Wildlife and Parks, and were told "Go to the courthouse in that respective area and do the research yourselves." Few would be capable of doing that. What that bill has done is discourage our youth, people that are beginning to hunt. They do not have the background to do that. Also, the elderly people do not want to take the time to do that. That was the biggest anti-hunting bill that Montana has ever seen.

L. F. Thomas stated the bill last session was unfair he hoped it could be made fair for everyone. Our opponents will probably get up and say how bad our sportsmen are, but it is not all true.

Toby Day spoke of a certain hunting area that has been in his family for years, which after the last legislature was taken from them because no one was certain who this land belonged to and therefore they could not ask for permission. It was very hard to figure these maps out because they were so terribly written. This made it hard to determine which property you were on. No one explained that he had trespassed on private property and that he could be fined for this. When that bill was passed, it prevented friends from out-of-state who had gained residency in Montana from sharing this hunting area because of the risk of being cited for trespassing on uncertain private land.

Opponents' Testimony:

Written testimony was received from **Bob Brastrup**, **EXHIBIT (ags15a03) Phillips County Livestock Association**, **EXHIBIT (ags15a04)** and **Phillips County Commissioners**. **EXHIBIT (ags15a05)**

John Bloomquist, Montana Stockgrowers Association, Montana Wool Growers and the Montana Association of State Grazing Districts, stated the bill is repealing an entire section 87-3-304. There has been a lot of discussion about what was done in the 1999 Legislature. Prior to that point if someone were hunting big game they would need permission. What this bill does is go beyond anything that was established by the 1999 Legislature. It would also repeal the requirement to have permission for big game hunting, which was part of the law since 1965. This does not just undo what the proponents are concerned with, what happened in the 1999 session, it allows somebody to hunt big game without permission. He said, "We are talking big game hunting, we are not talking about an activity that does not have some hazard with it." That hazard of course could be with high-powered rifles and there is a certain safety concern here that needs to be considered. Permission in sportsmen-landowner relations is probably the best thing that could happen, in terms of having sportsmen and landowners actually sit down and talk. "You know maybe you should go over here and hunt; maybe you should go over there and hunt; maybe you shouldn't hunt today at all." There is certainly time when a landowner may or may not want hunting to occur on their property. He encouraged the committee to look at what is really being done. The repeal of permission for all forms of hunting.

Ken Mesaros, a former Senator and rancher, said he carried the bill last session that was referred to. It was to create consistency in the statutes, and to address the age old problem of identifying landownership. It creates consistency, increases communication between the sportsman and landowners and allows the coordination of the landowner for management of business practices, and management of daily ranch operations. He explained that in the fall, the ranching industry is commonly busy with livestock. Communication is very important at this time to manage land and livestock. By requiring permission this certainly allows the communications so a landowner can coordinate sending the sportsmen to certain areas and preserve certain areas, or to ensure the safety of their livestock. **Mr. Mesaros** said he has neighbors who had guinea hens shot right in their yard, 50 yards from where their children were playing. "If the hunters would have asked for permission, that would not have been allowed."

His wife's aunt farms on the Fairfield Bench. They have had their dining room window shot out twice by shotgun blasts and could not allow children to play in the yard. Again by asking permission, they could direct where the proper hunting activity could be, and he is sure that would not be in their back yard. This legislation is not conducive to including landowners-sportsmen relations. It would eliminate the need for asking and there are those that simply will look at that as an opportunity. It will certainly enhance the complexity which is not in anybody's best interest. The proper decision is to table this bill and concentrate on enhancing the landowner-sportsmen relations. After last session, part of the legislation was a mapping system that was mandated by that Legislature. That bill provides an enhanced mapping identification of land and landownership, and that created the "Access Montana Program" that addresses an age old problem as far as identifying land. Mapping systems are now available and communication needs to be increased to avoid conflict.

Carol Lambert, Women Involved in Farm Economics stated if this bill passes, it is clearly an invasion of privacy. It would be far easier for the people who want you to hunt their land, to post it "hunters welcome". In the area where she lives, there are huge tracts of land. Some of these tracts of land could be as much as a 15 miles square. It doesn't hurt anybody to ask permission. If a hunter stopped at her neighbors place, they would be directed to where she lives. If there are no clearly marked maps available, then the problem is with the Fish and Game, it is not with the ranchers.

Page Dringmun, Montana Landowners Alliance stated there are no adequate mapping systems. She pulled off the Internet from a site called Hunt Montana, some maps and there are more maps under construction for Montana. It is just a general hunting site, but it has maps for all the western states and they are working on some more Montana maps. The big complaint was that it subjects sportsmen to criminal trespass, so the bill was amended to say that the first offense is a \$25 fine. It is not criminal trespass, it is not a felony, which would impose a \$500 fine or six months in jail or both. Those are concerns they tried addressing. What **SEN. BISHOP** has done, he has repealed the fine, he has kept in place the mapping, because it was found in another part of the code. He is repealed the prohibition against hunting big game without permission, which as **Mr. Bloomquist** has said has existed for a long time. In the next bill, he is dramatically changed criminal trespass laws to make it that much harder for a landowner to protect his property. Some of the proponents of this bill stood up here and said that hunting for young people is going to be eliminated or destroyed if we keep on the books the requirement that permission be sought for hunting on private

property. He suggested to the committee that hunting will continue in this state and young people will continue to hunt only if there is a cordial relations between landowners and sportsmen. The legislation that was passed in 1999 is the best mechanism to show landowners that you respect private property rights. Many of them allow public hunting and go out of their way to help people with boundaries if they are asked. This bill erodes some basic principals of common decency and common courtesy.

Jim Almond, presented written testimony **EXHIBIT (ags15a06)**

SEN. BILL TASH stated he disagreed with **SEN. BISHOP'S** statement that absentee landowners generally do not care. More and more we have absentee landowners acquiring these ranch properties. They acquire them for that distinct purpose, for their exclusive use, which denies the opportunity for general public hunters to come in. Whether it be for birds, wildlife, or big game they are denied that opportunity. And these types of legislation destroy that relationship we have had for a good number of years. We need to promote that semblance of common courtesy as **Page** testified. It is a Montana tradition to ask permission. There are questions sometimes where property lines end and begin and what property you are on, but you still have a duty as a hunter to know where you are. This is a responsibility for any responsible hunter or recreationist to know where they are.

John Swanz, presented written testimony. **EXHIBIT (ags15a07)**

Chuck Rein, presented written testimony. **EXHIBIT (ags15a08)**

John Semple, Montana Cattle Women, concurred with the previous opposition testimony that was heard and urged a do not pass for this bill.

Vicki Olson Presented written testimony **EXHIBIT (ags15a09)** she also submitted testimony from **Betty Oxart. EXHIBIT (ags15a10)**

SEN. BILL CRISMORE, SD 41, said last year was the best year people have had, because there were no problems. People were happy to come and ask. If there are any people wanting to get out on private lands and have their own little hunting club, if this passes there is going to be a lot of opportunities.

Mike Murphy, Montana Water Resources Association rose in opposition to this legislation on behalf of the private property rights of our membership, and also as an individual landowner, and also on behalf of himself and other members of his family who are hunters. We believe that current law offers an opportunity

for hunters to develop relationships with landowners and it is always been our practice to get out there ahead of time and meet with the landowners and find out where their land boundaries are. Make that effort ahead of time rather than waiting until the day before or night before the season.

John Youngberg, Montana Farm Bureau and Montana Farmers Union stated he just found one thing ironic, soon, a bill will be heard SB 197 that will require permission to wildcraft on private property. Wildcrafting means to harvest herbs. People will be required to have permission to go on to your land, armed only with a spade and a snipper, yet it is not be required to have permission to go onto private property with a firearm?

Bob Stephens, Montana Grain Growers Association rose in opposition to the bill. He said he has a farm north of Great Falls where he has never refused a hunter permission to hunt. He lets them know they cannot hunt near buildings, that goes for every farmer and rancher in the country. But what is happening now, is people from cities, are wanting to buy the hunting rights. He said he has had a half a dozen offers this fall to sell the hunting rights and group the hunters right next to him, and that will happen it this bill passes.

Darrell Olson, a rancher from Phillips County agreed with the previous statements and also opposed SB 95.

James Hanson, Sweetgrass County Farm Bureau, presented written testimony.

Tack Van Cleve, a rancher from Sweetgrass County, agreed with many of **SEN. BISHOP's,** beliefs, but his perennial vendetta against private property rights is not one of them. Because of the way my Great Grandfather and Grandfather put together their ranch starting 120 years ago. He finds himself in the unenviable position of having in the vicinity of 95 miles of common border between public land and himself. It would be virtually impossible for him to post it as this bill would require. He disagrees with SB 95 as well. It is pure and simple an abdication of private property rights. He stated he has never turned a hunter away when they have asked for permission. If someone is going to hunt on his land, he would like them to go to the trouble of asking permission.

Pachy Burns, a rancher, a landowner, and a hunter said he has probably been at this for a heck of a lot longer than anybody else around here. Somebody mentioned 28 years. He said he has been hunting and watching hunters come onto his land for more than 50 years. He said there are much better relations between

hunters and landowners than there was 35 years ago. Secondly, hunters have license to use very powerful weapons. They should have very special responsibilities, and far as knowing where they are, there is global positioning. You can get within five feet of any spot on earth and know exactly where you are. Loggers have to use it, and Lord help them if they cut a log off the Forest Service.

Cliff Cox, a landowner from western Montana stated as a supervisor of his local conservation district, he informed the committee that the conservation districts' in his area have available landownership maps which are printed by the state at the conservation districts request and are for sale. Those maps are updated every time the district asks for a reprint. They are as accurate as the state is able to make them. The hunters can determine landownership. Secondly, being a private landowner, some of the finest relationships developed over the years are with the hunters who have asked permission to hunt. That permission has developed a relationship that was so strong that this summer, when he was burned out by the Buck Snort fire, half of the people who came and offered to help were the hunters who knew whose property it was.

William Duffield, Fallon County Commissioner, spoke on behalf of the private property owners in Fallon County who opposed SB 95. He also, on behalf of himself, a struggling alternative livestock rancher, opposed the bill.

Elaine Allestad, Sweetgrass County Commissioner, stated she was not speaking for the commission, but opposed 95 as well, on behalf of herself.

Questions from Committee Members and Responses:

SEN. ZOOK asked if you had a cow or bull or a few of them get out on a neighbors property, would you ask your neighbor if it was all right if you went in on horse back, to get them back or would you just go.

Mr. Mesaros said certainly, it is common courtesy whenever you go on anybody's property, and that is the whole issue at this point.

SEN. ZOOK asked would that be true even if you had grown up together, life-long neighbors?

Mr. Mesaros said certainly, "I do not go on any of my neighbors' property without asking permission, and I am third generation on our ranch. It is just common courtesy and makes for good neighborly relations."

SEN. ZOOK asked do not you think a bill like this could really have unintended consequences.

Mr. Mesaros said, "I do, and I expressed that in my testimony. I am really concerned about this huge wedge that's been driven between landowners and sportsmen. We are talking about private property. It is our back yard. We just happen to make a business in our back yard, so we need the opportunity to manage the recreational and hunting activities in that back yard. That's only appropriate we allow hunting. We have for years, we continue to do so to those that appreciate and respect it, and haven't had any trouble with those hunters."

SEN. STAPLETON questioned the geographic information system, GIS. It is part of the Department of Administration's Montana data base cadastral project. It is with taxpayer money; \$160,000 a year or so. land parcel in the entire state of Montana to be accessed, pulled up on a computer instantly, with the name, the owner of that land, etc. If people were able to either point and click to a general area, or find a place that they'd like to go and be able to access pretty easily who owned that land and find out what the private property owners desire for this type of land. If it was government land, it seems that with a phone number listed and points of contact that maybe we could bridge the gap between opponents and proponents of this bill. It is hard to find landowners, it is difficult to ascertain where property limits were. My question is, could there be some way to find a solution and satisfy both the private property owners and the needs of users?

SEN. BISHOP stated anything of that nature would be a help of course, what he is trying to do here is not to take away any property rights. Take a look at it from our perspective. We are giving the ranchers and farmer back the rights they have. The state took away their private property rights 35 years ago when the state posted every acre of land in Montana to big game hunting. All you have to do is buy a 99 cent can of red paint, take a couple of hours and go out and spray paint 50 square inches of fluorescent orange paint, and that would take care of it. Hunters mostly ask permission. We are talking about people that inadvertently are trespassing. They are not deliberate trespassers, because they do not know where the property lines are. They are not marked, so it has nothing to do with knowing. They may, if they could have a map that showed them precisely where the property lines are and they had a GPS, they might be able to figure out. But that is requiring quite a bit of a hunter, to buy a global positioning system for hunting, and have all the hardware and the software and whatever it is you computer people have. It would help surely.

SEN. STAPLETON said he thought there is help on the way that may alleviate this. He just wanted to ask if it was possible in a short amount of time to get that permission? You do not need GPS because it would be provided by this computer the state's paying for. Would this bill become obsolete, if it were easy enough to put the onus back on the hunter to just simply get permission?

SEN. BISHOP said if every hunter had a global positioning system, a hand unit and a good map, it probably would not be necessary.

SEN. NELSON asked **SEN. BISHOP** in his opening statement, he alluded to the fact that this was needed because too many people have been charged. She asked if he had numbers or if numbers are available for the current hunting season.

SEN. BISHOP stated he did not have the numbers. Every single issue of that Gazette, they post the names of some poor sucker who got picked up for trespassing without permission. Those people are not hardened criminals. They are people that made a simple mistake. There way too many, and in prior years before this 1999 fiasco there were hardly any.

SEN. HALLIGAN questioned where the maps are. Two years ago in 1999, when we made the deal on this bill, part of it was that the maps would be available so the hunters would know where they were. So tell me exactly where the maps are.

Michael Downey, Public Land Access Co-ordinator for Fish, Wildlife, and Parks. SB 171 actually directed the department to work together to put together a directory of maps. There was a some confusion when the bill was first passed in that there was some press that came out that said the department was actually going to be producing maps. If you look at that bill actually, we are not producing maps, but we are working with the cadastral data base and the work their doing at the Department of Administration. We are also working with the Forest Service and with the BLM. Working to try to get them to update their maps. Currently, they have 22 counties that are up and on the web, where you can go and point and click to determine landownership for an area that you want to use. There is a target for completion of that project in 2003, when they will have the entire state done. Although there are problems such as no phone numbers or business names. That information in turn is probably available through the Secretary of State's office. You have to do some digging, but by the same token we are in a lot better position now than we were just a few years ago. Now you can do you digging sitting there at your desk, at your home, on your computer, as opposed to going down and pouring through records in the courthouse. Things are improving, but we are not there yet.

SEN. HALLIGAN asked, "As you picked the counties, hopefully you did not pick Missoula County where there would not be hunting too often in the urban area of Missoula. How did you pick the counties? We need to make sure we are dealing with the checkerboard ownership issues where people and I assume even the cadastral project does not tell you where the boundary is. The boundaries aren't marked between public ownership and private ownership usually in the checkerboard situations out in the forest. Is not that true? The cadastral project is not going to change that."

Mr. Downey stated the cadastral project is certainly not going to change anything on the ground. It will give you coordinates. It actually shows you on the screen, the lot lines. Those lot lines are distinguished. In terms of translating that from the screen, things are going to look very different when you're on the ground and in the field. It is going to take somebody that's got quite a bit of technical savvy with respect to having a GPS unit. It is going to be more than we could reasonably ask that all hunters be that well-equipped and that well-trained to be able to translate what they are getting off of a computer to their experience on the ground. We are not getting away from the problem of knowing landownership boundaries on the ground.

SEN. HALLIGAN asked if anyone was working on changing or updating maps, other than perhaps an isolated conservation district. He asked, "There is nobody working on updating maps so we know where land ownerships are?"

Mr. Downey stated there is not one single entity that is looking to update all the landownership maps for the state. Often counties will produce landownership maps, conservation districts will produce maps. Those are typically the entities that are producing these maps. Now with the information in the cadastral system, that's a lot easier to do than it was before.

SEN. HALLIGAN clarified that he brought up the conservation district maps, and they were produced under a data base at the state. The maps are requested by the conservation districts and resold to the public. Several conservation districts have these available which means if the maps are produced by the state then anybody should be able to access those.

SEN. BISHOP stated he called the regional, Fish and Game headquarters asking if he could get a map that he thought they had. This office did not have the map and said he would have to go to the BLM office to buy a map which they did not know when would be available.

Closing by Sponsor:

SEN. BISHOP stated the bill was not intended to take away, but to give landowners back the rights they had. They had the right to either post their property or not post it. The state posted their property for them. He stated, from experience, most hunters are not deliberate trespassers, and they are not shooting indiscriminately. When he was Fish and Game Commissioner, back in 1977 through 1981, they heard reports about how many cattle are shot. He made it a point every time he heard of a report of a cow or cattle being shot, he sent a warden out to investigate. This bill is not taking anything away from anybody. They have a perfect right to post their property and that is the way it ought to be. They know where the boundaries are, we do not. Every person knows where the boundaries of his or her property are. Just post it; we will respect your posting. Nobody is going to trespass, go past an orange post or an orange sign, or a "No Trespassing" sign. For you who are strong private property rights people, get the state off the backs of both the landowners and the sportsmen.

HEARING ON SB 15

Sponsor: SEN. AL BISHOP

Proponents: John Gibson, Billings Rod and Gun Club
Tony Shoonen, Skyline Sportsmen Association, Public
Lands Access Association, State Lands Coalition
Jeff Barber, Montana Wildlife Association
Fred Easy, Prickly Pear Sportsmen Association
Bill Orsello, Montana Wildlife Federation
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REP. KEITH BALES, HD 1, OTTER
Bob Brastrup, Representing himself

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, Billings stated SB 15 is kind of a related bill. He found there were mistakes in the bill and they need extensive amending to do what we want to do. He asked **Greg Petesch** to explain the amendments **SB001501.agp EXHIBIT (ags15a12)** and that will pretty much explain what the bill does.

Mr. Petesch explained that what Amendment 4 does, is provides that the fencing and enclosing requirements of sub-section 4 (C), which is the optional way, where a right of way is passing through unfenced land, does not apply to the railroad right of way.

Proponents' Testimony:

John Gibson, Billings Gun and Rod Club said what the bill says is that if you have land that abuts legally accessible public land you must mark it some way. You are obligated to mark it if you enforce criminal trespass on that land. If you do not you can still go out and say, get off my land. You do not have to say "No Trespassing, No Hunting, No Trapping." You simply have to say by a marker, either orange paint or with a sign, "private land boundary." It has no requirement for marking on public road, other than possibly entering the private land. It has no requirements on stream access. The bill is intended to reduce unintentional trespass. The landowner has an obligation to those people who are legally on public land, to know where that private land boundary is. Law enforcement would be on really shaky ground if they tried to kick off someone who has trespassed across an undefined boundary. That would be asking for a lawsuit when in fact neither the hunter, the warden, and sometimes, not even the landowner knows the exact location of that boundary. He suggested the use of a recreational activity boundary in this case. It would not require a formal survey, but a good faith effort to identify the boundary so it can be marked. He read a document that says that last year the government distributed a record \$28 billion in direct payment to agriculture. In eight states including Montana this says, government assistance equals 100% of overall farm income. Our numbers are declining as resident sportsmen. Your numbers are declining as agriculturalists. It is time we tried to work together.

Tony Shoonen. Public Lands Access Association, State Lands

Coalition and also Skyline Sportsmen wanted to relate a couple of instances dealing with state land. He hired a GPS person to come down, one that was skilled with the system. The landowner was not sure of his boundaries. The GPS system was used and he said the road we are on right now is not anywhere near that state land. But when they fired the thing up, they walked about four or five feet and there was the peg, right in the middle of the road. They were right on the section of state land. Then another instance, recreationalists were given trespass tickets for going onto a person's private property elk hunting, and so he had the Forest Service and the BLM and maybe the State Land person up there. We went through the boundaries and the GPS system was also used at that time. On one portion of the fence the boundary was off fifteen feet on the Forest Service property and then a little bit further on, it was 15 feet off on the private landowners property so they called it a draw. These situations do exist, and they are not too unreasonable. We came to the legislature, in about 1995, requesting that state land would be posted. At that time the hue and cry was, they did not know where their boundaries were. But there is enough of a problem out there that some reasonable effort on the part of the landowner is required. If you are going on state land, those little yellow signs could be put every quarter of a mile. A reasonable way that land could be posted, would prevent people from getting in trouble.

Jeff Barber, Montana Wildlife Federation stated one extreme was last session's SB 171 which required permission in all instances. The other extreme might be SB 15 which does not require permission in any instance. But SB 95 may be a starting point for the solution. Amendments were prepared for this bill as well **EXHIBIT (ags15a13)**. The intent with these amendments were to put the term "legally accessible" in front of public lands, take out the fencing requirement and leave in a marking requirement. It was decided a fencing requirement, in instances such as someone who has 95 miles of property adjoining public land would be too expensive. Therefore, it was changed to a marking requirement instead. If someone wants to trespass, they will. What the bills are intended to do is to solve the problem of accidental trespass and as we testified in the previous bill sometimes you just cannot tell where you are. **SEN. STAPLETON** is hitting on what maybe the beginnings of the answer. Until we can put an LCD display on our rifle or shotgun and coordinate with the GPS system, which tells where a person is at any time, and whose property they are on, problems will remain. The system as it exists now will help identify landowners. It is not too much to ask for landowners to mark their property if they do not want anyone on it. In all instances, sportsman should have permission to go onto private land.

Fred Easy, President, Prickley Pear Sportsmen's Association. If you look around this room you see some courteous signs put up in front of all you elected representatives, telling us that you are **SEN. TOM ZOOK, SEN. PEASE, SEN. JERGENSON.** You look over the rooms you see some health and safety and fire code signs that say exit. They are required and codified, and if you are looking to go to the bathroom in this building they are marked Men and Women. Simple signage is just courteous communication. He heartily supported signing public land.

Bill Orsello stated one of his concerns was, how is this done in other areas around us. We decided that Montana had the most draconian and onerous law on trespass of all of this region. Theodore Roosevelt, a good staunch Republican, made the observation that private property rights were a creation of the public. He suggested taking a regional look whether there is a fair and balanced approach towards private property rights, public rights and everybody's best interest. The law as it is currently written does not do that. It needs to be amended to bring more balance.

L.F. Thomas said, "let's make it fair, and fair for both sides; the sportsmen and the landowner."

Darrell Baker an Anaconda Sportsman supports SB 15 as amended.

David Ditloff, Conservation Director, Montana Wildlife Federation spoke on behalf of himself, this bill as amended changes one thing. It changes the fact that sportsmen who inadvertently cross private property that is unmarked aren't labeled criminal. It still requires permission to get on private property and it allows private property owners to kick people off their land. We feel that there is a communication problem. The requirement to mark the land in order to obtain a criminal trespass violation we feel is a common sense. We are looking for a way we can create a situation amenable to both sides. The repeal of the law all together, obviously was not amenable to all sides. The current law provides for youth in particular to take up the sport of bird hunting. It is tough enough, especially in a family where you do not have parents that hunt, particularly bird hunt to get the money, to get the training, to get the ideas. The idea that someone could be labeled a criminal trespasser is an added disincentive. We are facing a situation where Fish, Wildlife and Parks budgets are decreasing, where the numbers and demographics of the hunting community are changing drastically. The department needs new blood. Discouraging young folks from getting into bird hunting is not the way to approach the budgetary problems the department will face in future years.

Toby Day stated that he personally does not want to drive a wedge between sportsmen and landowners. He respects landowners and the fact that they think good sportsmen should ask for permission. That is true. In some aspects you cannot ask for permission because there are not people there to ask. Yes, there is a computer system that is set up. There is the GPS system. As a hunter, the last thing he wants to do is carry more technology than is required. It is unfair for hunters when landowners have 80 acres that are unmarked. It is the responsibility of all landowners to mark their property. He understands that some of these properties are large. There needs to be a way to get this property marked so that people are not at odds.

Opponents' Testimony:

Carol Lambert, W.I.F.E. Women Involved In Farm Economics, speaking for herself, a 5th generation landowner and rancher, from southeastern Montana. In this part of Montana, land parcels are more than 80 acres. Many times the private land is not fenced from the public land. They do not know where the line is exactly, nor can they afford to have it mapped out and fenced. There are huge areas of both types of land. It is unreasonable to expect landowners to put up a sign every 250 feet that says "No Hunting," or "you can hunt here." This bill says clearly visible from the last sign. She lives in a county where 250 feet is not going to be clearly visible from the last 250 feet. She said, she thinks it is a clear invasion of private property rights. She wondered if some of the people testifying from Helena have their back yard marked, and if they would expect someone to ask to go into their back yard without knowing whose it was. This is a common courtesy, to ask. She stated, when you come to her ranch, come and ask her if it is all right to hunt. If we are going to teach our children common courtesy, this is not going to keep them from hunting. Teach them to be courteous. This is only another bill that will drive a bigger wedge between the landowner and the hunter.

John Bloomquist, Montana Stockgrowers Association, unsure of what the bill does with the amendments, explained his understanding of the bill and amendments as removing the fencing requirement. If your property would have been fenced, then it would have been posted and you would have to get permission. He is sure there was an unintended result out of the fencing requirement. If you have pulled out the fencing requirement, you have taken a lot of the really onerous provisions out of the bill. The fencing requirements as this bill was introduced were fairly ridiculous. In terms of post between private land and public he was not sure what the amendments do. The previous opponent, made a good point, about signs being posted about every 250 feet. On a section, that

is 25 signs minimum that would have to be put up. There are a lot of places in Montana, where you have miles and miles of private property adjacent to public land. If we are going to throw state school trust land as well, in the definition of public land, we have even more signage. Signing is not necessarily the silver bullet here. He asked why the obligation was going to be put on the landowners. If the public is so confused about where the public land is then maybe the public should be the ones to look into paying for these signs. It is a matter of common sense. If we are going to post private lands, and if the public and the legislature think it is important then I am not sure why we are asking the landowners to purchase those public land signs. Signs do not stay up. Signs get knocked down. Signs are great targets. He hunts and fishes all over this state. Simple responsibility to know a little bit about where you are is not unacceptable. He presented written testimony for **John Swans. EXHIBIT(1)**

Ken Mesaros stated there has been questions raised not only in this bill, but the other bill, needs some clarification **SEN. HALLIGAN** and **SEN. STAPLETON** referred to maps that were mandated through SB 171 of last session. We have been discussing, the age old problem of marking land, physically marking land through out the state. It is a problem, but through this legislation, or through legislation from last session, we have an agency that was mandated to develop maps that show boundaries. He asked, what do counties do to identify their boundaries from county to county through the land scape? It is on maps. State and Park boundaries are the same way. The mapping that is mandated is certainly a good step in the right direction. As far as physically marking the land; it is very difficult. We mark with orange paint. Some of it lasts, some of it does not. Why should this burden be on the private property owner, when it is not the burden of other land agencies or land managers? He also noted the amendment last session made by **SEN. HALLIGAN** to make felonies of criminal which he supports. It is a \$25 fine if you inadvertently trespass. It is not a criminal trespass and it is not a huge fine.

Vicki Olson, presented written testimony. **EXHIBIT(ags15a14)**

Chuck Rein, presented written testimony. **EXHIBIT(ags15a15)**

Darrell Olson, a rancher from Phillips County said that it looked like there are two types of hunters here, the ones that want to come and ask permission to hunt and those that want to go hunting where ever they want to. They do not want to do anything but have their own way on this. For this reason he opposed SB 15.

Mike Murphy representing himself as a landowner and a hunter, and the interests of his family. He sees this as being very

counterproductive and oppose this legislation from the stand point of a hunter and sportsman. We are going to see a lot more signs out there and ultimately that would result in a lot less opportunities for the hunters as well as other sportsmen. We oppose this legislation.

John Youngberg, Montana Farm Bureau and Montana Farmers Union, opposed the bill for reasons already discussed. He suggested tabling the bill.

James Hansen representing himself and Sweetgrass Farm Bureau said he doubted if anybody said anything about the actual cost of posting this land. The minimum cost would be \$100.00 a mile. This is pretty temporary posting, using steel posts. Steel posts do not survive very well by themselves with livestock around. And also like somebody else mentioned, the signs do not survive very well either. They make pretty good targets. Who is going to pay for it?. He puts up orange paint as well as his neighbors, so, how are people supposed to know whose land it is? It marks a boundary, but what boundary?**EXHIBIT (ags15a11)**

Page Dringmun, Montana Landowners Alliance shared the same concerns. If sportsmen are trying to gain more access, is a requirement that landowners have to post their land every 250 is going to make them very amiable to allowing hunters to hunt on their property? It is a self defeating proposal and is not beneficial to long term relations between sportsmen and landowners.

Bob Stevens, Montana Grain Growers Association stated he opposed the bill.

John Semple, Montana Cattle Women said they were concurrence with the previous oppositions testimony and certainly do urge a do not pass.

Jim Almond, strongly supported the arguments and comments in opposition to the bill and urged the Committee to oppose. He presented written testimony **EXHIBIT (ags15a16)**

REP. KEITH BALES, HD 1, which is Powder River, Carter, Fallon and Wibaux Counties, rose in opposition to this bill. For one thing, there is a lot of BLM in that area, which the ownership pattern is varied. It is patchwork. His ranch has a strip of BLM right up the middle of him, which is not fenced on either side for the largest portion of it. There is private land on each side of it. To go through and try to set up posts every 250 feet would almost be prohibitive and almost impossible. His situation is not unique in that part of the state, and therefore this is an undue burden

upon the landowners. The ranchers are having a tough time making it work as it is.

Tack Van Cleve, Sweetgrass County stated any legislation which imposes an unreasonable demand on him erodes his private property rights. Private property is the bedrock and the bulwark of our democracy.

Questions from Committee Members and Responses:

SEN. HALLIGAN said a couple of years ago when we were talking about the initial bill, one of the concerns was, if you are going to make it criminal trespass and land is not marked, and you are on checkerboard public lands, there might be a process violation. The court declared the reasonable and prudent to be unconstitutional, because it was too vague. We know that the court is sensitive to that issue. Have the attorneys looked at that issue in those areas where the boundaries are not defined?

Mr. Lane said yes, that is something the department looks at through its enforcement division and with the county attorneys under those individual circumstances. That maybe a factual issue that the county attorney would rule on as whether to prosecute or not, based on the situation. Our statues require "knowingly and purposely" on a violation including permission that's needed to hunt on private land. Those circumstances are taken into consideration. But you do raise a policy issue here about how you deal with these situations when these boundaries are not clear.

Bob Plaine, Legal Council, Department for Fish, Wildlife, and Parks said **Beate Galda** the administer of the enforcement division is here and she supervises the wardens and they are the primary department officials that deal with the trespass issue. She may have something in addition to say.

SEN. HALLIGAN questioned enforcement on the undefined boundary issues.

Beate Galda Chief of the Enforcement Division at Fish, Wildlife and Parks stated in the case of a trespass violation where it is not a hunting situation but another kind of recreational trespass, if the person did not have actual notice and if the property were not posted as required under the law, then we would not file charges. If, on the other hand there was actual notice or if there was legal posting, then it would be appropriate to charge criminal trespass.

Mr. Brastrup presented testimony from **Phillips County Livestock Association, Phillips County Commissioners** and also for himself.
EXHIBIT (ags15a17) EXHIBIT (ags15a18) EXHIBIT (ags15a19)

ADJOURNMENT

Adjournment: 6:00 P.M.

SEN. RIC HOLDEN, Chairman

LARAMIE CUMLEY, Secretary

RH/LC

EXHIBIT (ags15aad)