

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON FISH, WILDLIFE AND PARKS**

Call to Order: By **CHAIRMAN DANIEL FUCHS**, on February 6, 2001 at
3 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Daniel Fuchs, Chairman (R)
Rep. Joe Balyeat, Vice Chairman (R)
Rep. George Golie, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Debby Barrett (R)
Rep. Paul Clark (D)
Rep. Ronald Devlin (R)
Rep. Tom Facey (D)
Rep. Nancy Fritz (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Larry Jent (D)
Rep. Jeff Laszloffy (R)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Allen Rome (R)
Rep. Jim Shockley (R)
Rep. Donald Steinbeisser (R)
Rep. Bill Thomas (R)
Rep. Brett Tramelli (D)

Members Excused: None.

Members Absent: None.

Staff Present: Linda Keim, Committee Secretary
Doug Sternberg, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 451, 2/2/2001; HB 454,
2/2/2001; HJ 16, 2/2/2001
Executive Action: HB 292

HEARING ON HB 454

Sponsor: REPRESENTATIVE PAUL CLARK, HD 72, TROUT CREEK

Proponents: Paul Sihler, Fish, Wildlife and Parks

Opponents: Jeff Barber, Montana Wildlife Federation
Jean Johnson, Montana Outfitters & Guides Assn.

Opening Statement by Sponsor: REP. PAUL CLARK, HD 72, TROUT CREEK

said that HB 454 is a new way of looking at the problem of managing elk populations and giving hunters access to public wildlife on private lands. When elk first appear in these areas, they are protected because of their novelty. Usually there is no elk hunting season, so the herd will build until both landowners and hunters agree they must be managed to limit game damage. When elk hunting is initiated, they are managed by limited entry permits, usually for bulls and antlerless elk. Access is generally limited to family and friends. Under this scenario, the herd develops into a trophy herd. The number of applicants for either sex permits grows until the chance of drawing a permit is quite low. In 1999, 1,435 hunters applied for 220 either sex permits in Region 7, making the odds 6.5 to 1. In contrast, 2,122 hunters applied for 1,255 R5 antlerless elk permits at odds of 1.7 to 1. In Region 7, current 15% landowner preference for either sex permits would provide landowners with only 33 permits. Landowners ask why they should let someone else on their land to hunt for trophy elk when they can't even draw a license. The Carroll Ranch near Ennis has a conservation easement they have acquired with the help of the Rocky Mountain Elk Foundation, but one of the out of state brothers couldn't even draw an elk tag. HB 454 is meant to be a permissive encouragement to landowners to allow them to partner with Fish, Wildlife and Parks (FWP) for management and with the general public for access. 1) HB 454 is an avenue for FWP to reach their management goals on private land 2) HB 454 increases public access to private land, but only with the permission of landowners, 3) HB 454 redefines reasonable public access, on an individual contractual agreement between FWP and individual landowners, 4) HB 454 offers landowners the option, at no cost, of an either sex elk tag. **REP. CLARK** asks consideration of HB 454 and distributes Amendment 01, **EXHIBIT(fih30a01)**, and fiscal note, **EXHIBIT(fih30a02)** to the committee.

Proponents' Testimony: Paul Sihler, Fish, Wildlife and Parks submitted written testimony, **EXHIBIT(fih30a03)**. A critical factor affecting FWP ability to manage wildlife is gaining access to populations of big game so they may be harvested. Some people who do not currently allow public access would do so if they

could get a permit for themselves, a family member or an employee to harvest an elk on their property.

Opponents' Testimony: Jeff Barber, Montana Wildlife Federation

said they have overcome several problems by speaking to the sponsor, but still have two reasons for opposition. 1) Don't know where the tags are coming from; it seems to be a creation of new tags to be given to landowners under the condition that they have to open their land to the public, 2) Not sure what "reasonable public access" will be. Would like to see the tags come out of the existing landowner pool, so that preference is given to existing landowners that have their land open to the public. If that change was made, they wouldn't have any problem with the Bill as it now is.

Informational Witnesses: Jean Johnson, Montana Outfitters and

Guides Association said they would also need more information as to where the tags are coming from before they could support this.

Questions from Committee Members and Responses:

REP. LASZLOFFY asked why we aren't allowing someone to get one of these tags every year? Refer to Page 2, Line 2; to be eligible for the permit the landowner may not be issued a permit pursuant to this section during the immediately preceding licensing year. **Paul Sihler, FWP** stated he would defer to **REP. CLARK**. This will be brought up during Executive Action.

REP. BARRETT asked about "reasonable public access" being defined differently in each case. Please address how each contract being different would fit FWP standards and guidelines. **Paul Sihler** said the criteria is not clear. If the legislature did not provide criteria, FWP would have to do this in the process of implementing it.

REP. BALYEAT asked if there are still a number of districts where we use branch antlers. **Paul Sihler** said yes. **REP. BALYEAT** refers to Page 1, Line 29 and on to Page 2 where it says they have to give reasonable public access for free public hunting on their land which must include public hunting by permit holders using both either-sex and antlerless licenses. Is there a reason we would leave out a district where there are no either-sex licenses but there are branch antler or antlered licenses? **Paul Sihler** said the intent was to make sure that whatever permits were available and going to the landowner would also be available and used by sportsmen. This may not be correct. **REP. CLARK** clarifies. The intention is that whatever is available to the landowner is also available to the general public, so the landowner can't say you can only come and hunt cows, because he

is managing for an outfitter who also comes and hunts trophy bulls. **REP. BALLYEAT** said if it was in a district that only had branch antlered permits, if the landowner opens his land for branch antlered permits, it sounds as if he would be prevented from participating in this program. **REP. CLARK** said that wasn't meant to be. The Bill's intent was that it would cover any of those situations; it was meant to be broader, not restrictive.

REP. BALES refers to #6 of the Amendments "be a cooperating landowner in the state hunter management program, hunting access enhancement program, or block management program". What is the state hunter management program? **Paul Sihler** said the statute that created the block management program really created the hunting access enhancement program. That program includes block management but also gives FWP the direction to do other things related to hunting access. That is a reference to HB 195 and the block management statute, but language is intended to include the reference to broader FWP authority related to access agreements, rather than specifically block management. **REP. BALES** said you alluded to opening up new country; how would you view this Amendment as it pertains to this Bill? **Paul Sihler** said he has not seen the Amendment before now and would have to look at it.

REP. FACEY asked that all different types of elk licenses that we have be made available to the committee. **Paul Sihler** said he would provide a detailed break down by hunting districts and what they apply to.

REP. BARRETT said your Bill assumes 1) that people provide this habitat willingly, and 2) that every property owner wants to hunt. Maybe that isn't the case. As a property owner, first you have wildlife depredation, then your only recourse is hunting to eliminate those animals, and then you might end up with noxious weeds. Instead of a hunting license, could there be compensation?

REP. CLARK said he recognizes that not all property owners are willing stewards. Basically wanted this Bill to be a goodwill gesture to landowners; wanted to recognize that landowners provide habitat for wildlife, whether willingly or not. Didn't assume that all were, just that some were. All this is just meant to be another tool you can take out if you need it. **REP.**

BARRETT has a concern that this along with block management is just for large owners, when it is the small property owners who can't afford the damage. In some states, they will let a group of small landowners enter into an agreement to harvest wildlife. Does your amendment address that? **REP. CLARK** said yes. After receiving some concerns, it is left open now; the 5,000 acres have been deleted.

REP. JENT asked what is, and who determines reasonable access? Could there be a contractual agreement between the landowner and FWP tailored to the individual, that once they sign the contract they would be eligible to get the permit? For example, biologists would say you have 1,000 acres of habitat and you have a herd of 50-80 elk. If you let so many elk hunters on during the season, we will issue you a license for a branch antlered elk as part of your contract. Would something like this work? **Paul Sihler** said you are correct, there needs to be some criteria; i.e., days or number of hunters. Given a particular ranch and the size of it, the population, and the access situation, the precise access requirements, and what is reasonable, may be different from one place to another. Some flexibility to deal with a particular situation with landowner access animal populations is desirable from FWP viewpoint. At the same time, having no guidelines results in random decisions, and we don't want that either. **REP. JENT** said he doesn't know how the Bill will fare if it is open-ended. Hopes to get input from FWP, **REP. CLARK** and any other persons with expertise in this area. Perhaps if there was an agreement between landowner and biologist; the agreement was signed and the landowner gets the permit, there could be an automatic renewal provision in it if everything went well. **Paul Sihler** said these are the right questions to be asking. This concept will provide a useful tool to use in some instances for landowners, FWP, and sportsmen. Would be happy to work with individuals or the committee if FWP input would be useful.

REP. CLARK advised that the tags are coming from a new batch of tags that will be available only when the management of a certain area dictates the need. Trying to address the lack of specifics, but sees being open-ended as a plus also. The landowner is complaining about the elk, and the biologist comes in and says we have another tool. They discuss that and set the parameters of the agreement just for that hunting season. Sub 7, Line 19 says "the department, through the commission, may authorize the issuance of permits under this section to a landowner who enters into a contractual public hunting access agreement with the department". Line 21 requires the agreement to define the areas that will be open to public hunting, and the number of public hunting days that will be allowed. It also requires definition of any other factors considered necessary for proper wildlife management on the landowner's property. This was intended to be completely separate from block management, and is designed for landowners who don't want to get into block management. To answer **REP. FACEY'S** question about elk licenses; there is information in statute in 87-2-501, if you want to look there.

Closing by Sponsor:

REP. CLARK closed by saying he feels this is workable and that he has left it open-ended enough to do so.

Close Hearing on HB 454.

HEARING ON HB 451

Sponsor: REP. GEORGE GOLIE, HD 44, South Central Great Falls

**Proponents: Rich Clough, Fish, Wildlife and Parks
Ralph Martin, Montana Access Outdoors
Scott Berkenbuell, Montana Access Outdoors
Wally Melcher, Coalition of Persons With Disabilities
Toby Day, Montana Wildlife Federation**

Opponents: None

Opening Statement by Sponsor: REP. GEORGE GOLIE, HD 44, SOUTH CENTRAL GREAT FALLS said view points from concerned individuals were considered when HB 451 was drafted. HB 451 addresses the inadvertent interpretation of legislation that was enacted during the 1999 session allowing a disabled hunter to hunt from a vehicle. Before 1999, 1200 to 1500 disabled hunters were allowed to hunt from a vehicle. That number shrank to 195 in year 2000. HB 451 puts in statute clearly defined conditions whereas a disabled hunter is entitled to hunt from a vehicle. They are: if a person is certified by a licensed physician to be dependent on an oxygen device, or dependent on a wheelchair or crutch or cane for mobility; if a person is an amputee above the wrist or ankle; if a person has a doctor certified disability or a performance based impairment considered by a voluntary board of review established to warrant issuance of a permit to hunt from a vehicle. Any and all disputes of whether a person meets the criteria will be resolved by this board of review. Of the 195 disabled hunters allowed to hunt from a vehicle in 2000, this legislation automatically allows them a permit to hunt from a vehicle for subsequent years if the criteria for obtaining a permit does not change.

Proponents' Testimony:

Rich Clough, Fish, Wildlife and Parks presented written testimony which he followed in his remarks to the committee, **EXHIBIT (fih30a04)**.

Ralph Martin, Montana Access Outdoors said the idea for performance based criteria came from the sense that each disabled

person has different capabilities. For example, there are even grey areas in the physical capabilities between two paraplegics. In the past, this has caused problems in determining who should be entitled to receive a permit to hunt from a vehicle. For this reason, they wanted to move strictly to performance based criteria. As a result of the last legislative session, a number of people lost their license and their ability to participate. Weren't able to address problems until this legislative session, and would like to be able to move faster. He addressed the commissioners in December and they did not want to be the ones to develop the criteria. They wanted it to come from the department's Crossing the Barriers Committee, disabled persons, as well as doctors and physical therapists. HB 451 provides very workable criteria, and if there are future problems, they will have a committee in place to address them.

Scott Berkenbuell, Montana Access Outdoors, said he is also a proponent of HB 451. In the Bill as written, it appears to give all these voluntary review boards the ability to develop their own criteria. This would not be fair to the review committee as well as the potential disabled sports persons who would come before them. The review groups need a framework to follow, and giving the commission and a citizen based group the authority to help set up the criteria is very important.

Wally Melcher, representing a Coalition of Persons With Disabilities Across Montana said they are in support of this Bill. They feel that people with disabilities should have access to recreational opportunities such as hunting, just like anyone else. When exception is made to a law, there are responsibilities that go along with it, and they support the performance based criteria of who should receive these permits. His foster son has multiple disabilities and ambulation problems. Despite that, they have not secured a parking permit, since he is capable of walking. Those types of exceptions should be reserved for people who truly need them, and persons with disabilities should act responsibly on the basis of their abilities. For that reason, they feel this Bill is worthy of the committee's consideration; and that people should be assessed on their abilities, not simply on their categories.

Toby Day, Montana Wildlife Federation said they support HB 451 and he personally knows **Ralph Martin**. Anything he is in support of, MWF will support also.

Questions from Committee Members and Responses:

REP. BALYEAT asked how this interplays with other aspects of the law with respect to disabled people. Understands disabled people

are eligible for a special pool of bull elk tags, and the odds if you are in that pool are better than in the general pool. Concerned about leaving grey area in the definition of who is and is not disabled. Is there anything in the Bill that relates as to who is eligible for those late tags? **REP. GOLIE** defers the question to **Scott Berkenbuell, MAO**. There are six white tail doe tags available around Fort Peck Dam. The elk tags are on the Gallatin Grange and the Yellowstone Grange. All but five of those are for youth/disabled. The youth hunters that can apply are for ages 12-14, as well as anybody who has a disabled conservation license. This Bill only addresses the shoot from a vehicle permit, which is for the most disabled of the disabled that get a disabled conservation license. For an outline of who those persons are, there is a whole paragraph longer listing which of the disabled can apply for a disabled conservation license. Of the tags available specifically for people who have the shoot from a vehicle permit, there are five tags available in the South half of District 314. They were also set up as a companion tag, so your able bodied companion would receive a cow tag to go along with the disabled individual's either sex tag. Disabled persons are required to have an able bodied companion with them on a shoot from the vehicle permit, to help in pursuing wounded game and retrieving the game to the vehicle.

{Tape : 1; Side : B;}

REP. BALYEAT stated by changing the definition of disabled, relating to shooting from the vehicle, does it also change the definition of being eligible for those other special tags? **Scott Berkenbuell** said only for those 5, all the rest fall under a different statute, and it decreases his odds of ever getting one.

REP. LASZLOFFY said in the current statute it says that for someone to be eligible for one of these tags, their injury must be permanent and substantial. How does this work for someone who broke their back and has temporary disability of around five years, would they be eligible? **Scott Berkenbuell** said there is no temporary disability license, probably because of possible abuse of these privileges.

Closing by Sponsor:

REP. GOLIE said there were 4200 disabled hunter licenses sold, but there aren't that many eligible for the hunting from a vehicle permit. There is a little discrepancy and we will have to work with the review board on that. Feels it is very important for everybody to have an opportunity to hunt. This will open it up for a lot more people.

Close Hearing on HB 451.

HEARING ON HB 16

Sponsor: REPRESENTATIVE DICK HAINES, HD 63, MISSOULA

Proponents: Rich Clough, Fish, Wildlife and Parks
Janet Ellis, Montana Audubon
John Wilson, Montana Trout Unlimited
Jeff Barber, American Fisheries Society
Robin Cunningham, Fishing Outfitters

Opponents: None

Informational Witnesses: Dr. Arnold Gertonson, Veterinarian
for the State of Montana

Opening Statement by Sponsor: REP. DICK HAINES, HD 63, MISSOULA states the purpose of HJ 16 is to put together an interim committee to work together on the importation and possession of nonnative wildlife that pose a threat to human health, public safety, domestic livestock or native wildlife such as fish. Want to put together a committee that will include: Department of Agriculture; Department of Livestock; Department of Human Services; Fish, Wildlife and Parks Department and other interested parties. The committee will make a report listing the various species that do pose a threat, those that don't and those that are in between that may be a threat if they aren't managed properly. Also recommend potential legislation to deal with this type of problem. Currently there is no way to deal with this, and if someone brings something in, it may cause all kinds of problems and disrupt the ecological balance. For example, the African Bee, noxious weeds, and the predatory Garr fish. Please give favorable consideration to HJ 16.

Proponents' Testimony:

Rich Clough, Fish, Wildlife and Parks presented written testimony which he followed in his remarks to the Committee, **EXHIBIT (fih30a05)**.

Janet Ellis, Montana Audubon said they support this legislation. They are concerned about the ecological concerns of an introduced species so we can prevent an animal from becoming like a knapweed. Several years ago Mute Swans from Europe were introduced at a ranch near Livingston. The landowner meant them to stay put on his ranch, but they out-compete our native Trumpeter Swans, and soon they were flying up and down the ranch just North of Yellowstone where our Trumpeter Swans are. Through

considerable negotiation with the landowner, the Mute Swans were replaced with Trumpeter Swans. This Bill will allow us to draw a line between the common species that are routinely dealt with and those that pose a threat. According to testimony from the 1997 Bill, The Department of Livestock can regulate importation, but it is not very comprehensive, it is for individual animals, but not whole species. The Department of Public Health and Human Services said at that time that they are concerned about diseases such as plague, rabies and tuberculosis, viruses such as Ebola.

John Wilson, Montana Trout Unlimited said Montana's fish are a tremendous asset to this state, both economically and as part of our fishing heritage. Montana manages our trout population in rivers and streams for wild trout, so we are a Mecca for trout fishermen from all over the world. History has shown that the wild trout are somewhat vulnerable. They need to be protected from introduced disease, from competition, and from predation. Other states have successfully done so, and we support the idea of studying it.

Jeff Barber, American Fisheries Society said they are concerned about alien species getting into the state intentionally or unintentionally, and creating havoc with aquatic systems. Things like Zebra Mussels, Mud Snails, Eurasian Milfoil, Eurasian Ruffle, and Rusty Crayfish, etc. can get into Montana through the aquarium trade of Bay Fish Industry or careless fishermen and boaters. These and other animals can damage Montana's sport fishery, so we think it is important this resolution passes.

Robin Cunningham, Fishing Outfitters Association said both **John Wilson** and **Jeff Barber** have pointed out the economic value of the fisheries in Montana. We are a small part of that economic benefit and we see no reason to not have it thrive. We support this legislation.

Opponents: None

Informational Witnesses:

Dr. Arnold Gertonson, State Veterinarian said the Department of Livestock is not opposed to HJ 16. They suggest that the USDA Animal and Plant Health Inspection Service (APHIS) and the US Fish and Wildlife be involved in this study.

Questions from Committee Members and Responses:

CHAIRMAN FUCHS asked about Page 2, Line 8 where it says they will convene a working group; how that will be developed? Normally an interim study group has someone who has been delegated to choose

who will be involved in that group. **REP. HAINES** said this directs FWP to be the lead agency, would imagine they will pick someone within their agency to be the Chair of the Committee.

RICH CLOUGH, FWP said they would be happy to make the correction.

CHAIRMAN FUCHS asked if that gives enough direction to put together the group? It looks vague. **RICH CLOUGH, FWP** said it does look vague; but they would certainly get representatives of these agencies and the two suggested by Department of Livestock, as well as from the public. Those are the most critical. They would take direction if you want to give it.

CHAIRMAN FUCHS asked if this suggestion is okay, as well as the amendment that might be offered? **REP. HAINES** said yes, as well as incorporating people from APHIS and the Federal Fish and Wildlife Service. The logic there is that the two Federal Agencies can help with the importation aspects that not under the control of the State of Montana.

REP. FACEY asked how this would be paid for. **REP. HAINES** said he is not sure, but money was set aside for interim committees at the end of the last session. This would probably be the same.

REP. FACEY said he would wait for Executive Action to discuss it.

Closing by Sponsor:

REP. HAINES said he is concerned because there are so many House Joint Resolutions. He hopes this one doesn't get lost in the shuffle, as this is one Montana can't afford not to do because the risk is so great. Is concerned about Mad cow disease, chronic wasting disease, whirling disease, or anything else, and we are baffled with how to handle them. We have to come to agreement with those that deal with this kind of resource and put up the gates, so to speak, and monitor what comes in and what doesn't come in. Please support this Bill.

Close Hearing on HJ 16.

EXECUTIVE ACTION ON HB 292

Allen Schallenberger from Sheridan, MT sent written testimony in support of HB 292 which was distributed to the Committee and entered into the record as **EXHIBIT(fih30a06)**.

Motion: REP. CLARK moved **AMENDMENT 01 TO HB 292**.

Discussion:

Legislative Staffer Doug Sternberg explained **REP. BARRETT'S** Amendment 01, **EXHIBIT(fih30a07)**. This addresses the financial aspect of HB 292. Amendment 02, **EXHIBIT(fih30a08)**, is significant in that it strikes Section 3 from the Bill. Amendment 03, **EXHIBIT(fih30a09)**, and Amendment 04, **EXHIBIT(fih30a10)** would place money in the account established pursuant to 87-1-605 which is an existing account in FWP. This is the recreational facility account used for the purchase, operation, maintenance, development of fishing accesses. The rationale is that there is no need to create another account when there is already one on the books.

REP. BARRETT said in the testimony brought by FWP they said there was no need for this Bill, they already have the authority and they have been collecting the money. For some years, they have been collecting \$1 from each resident fishing license and \$5 from nonresident license. For each biennium, this is \$630,000 that they already have. That was my Amendment, keep that amount from each resident and nonresident license and put it in an account with this. Also to ensure that the money that is supposed to go to the fishing access enhancement program does get spent up to the allowable \$630,000 per biennium.

CHAIRMAN FUCHS said he would consider this a friendly Amendment. It was testified in committee that money had already been raised to do this, but they have been a little slow in acting on it. The Amendment puts it into statute. Would encourage you vote for the Amendment.

REP. CLARK stated if we put this in an already existing account, does that mean the money can be spent in alternative ways? **REP. BARRETT** said this Amendment would take care of biennium set aside to private property for the fishing access sites. That is what the report says the money was set aside for.

REP. GALLUS said this is the same question. Asked about Page 4, Line 8, where it says the account proceeds may be used by the department only for the purposes of the fishing access enhancement program. If striking this language, will the department still be obligated to use those funds for the fishing access enhancement program? **Legislative Staffer Doug Sternberg** said the stated purposes in 87-1-605 are as follows: must be used for the purchase, operation, development and maintenance of fishing accesses, stream, river and lake frontages and land considered necessary to provide recreational use of fishing accesses and stream, river and lake frontages.

REP. GOLIE asked does this mean we have enough money with your Amendment that we don't have the increased fees for the

residents? **REP. BARRETT** said that is what she is proposing in this Amendment; that we don't have to raise revenue to \$2 and lower nonresident to \$4. We can keep it as it currently is, that way it is \$630,000 per biennium. **Legislative Staffer Doug Sternberg** said Amendment 01 does not address specifically the new funding source in Section 5, that was left intact. It does not address the fees.

Motion/Vote: **REP. CLARK** moved that **AMENDMENT 01 TO HB 292 DO PASS. Motion carried unanimously.**

Legislative Staffer Doug Sternberg went through Amendment 29203 by **REP. BARRETT**, Exhibit 9, in more detail. **REP. BARRETT** said most of the change was made to get it out of the block management language into fishing access enhancement and for the property owner's protection and clarification. **CHAIRMAN FUCHS** said these amendments improve the Bill and are good amendments.

REP. GOLIE asked if any of these amendments preclude having public access at any river or stream at a bridge crossing? **REP. BARRETT** said previously it mentioned another agency, and the Department Of Transportation could preclude public access, so this is to eliminate them. **REP. GOLIE** asked if the intent was to get other agencies out of it and just leave FWP in. **REP. BARRETT** said yes.

Motion: **REP. GALLUS** moved to **SEGREGATE #5 OF AMENDMENT 03 TO HB 292 and vote on #5 separately.**

Discussion:

REP. GALLUS stated that current construction projects around the state have led to a loss in the access with the widening of bridges and new bridges. Would like to see that language remain in the Amendment and vote on it separately.

REP. LASZLOFFY asked how we are losing stream access when they widen the bridge. **REP. GALLUS** said the loss of access comes from the type of construction that goes on and the type of bridge that is constructed. Losing access because of new bridge construction.

REP. FACEY would like to have the amendments segregated. When we strike the language that precludes the department from having easements at the bridge crossings, it will now be necessary to jump in the river to get down to the water when someone drives up and lets you off. Would like to see there be someplace to park. There may be an issue in the courts about this type of access.

REP. CLARK supports segregation of #5. Likes most of the Amendment. Doesn't like the idea of a permanent access facility at these sites as it might be contentious. Might be certain sites where a problematic access could be made a safer access, for example. Would agree with a temporary improvement.

REP. SHOCKLEY supports segregation of #5. Understands that MDT would have a concern, because they were expanding bridges and they were limiting access.

REP. BALES said this is more a subject of cost and changing the bid structure, rather than a question of whether or not to have an easement at that point on the bridge. Would vote not to segregate #5 out. It may be by leaving this in and placing additional emphasis on doing this at bridges, it might cost more to get a fishing access site at a bridge than it would at another location, which might be just as well. To single this out and say it has to be done at the bridge, is maybe the wrong attitude. Doesn't think this is the media or the Bill to discuss whether we should have access at bridges; that is a different issue. This is a general bill that addresses access to streams, whether at bridges or any other location. To say we want to emphasize access at bridges is wrong, and sends up a red flag.

CHAIRMAN FUCHS said that just for the record, there will always be on-going litigation on the access issue.

REP. GOLIE said he would support the segregation.

Motion/Vote: **REP. SHOCKLEY** moved to **SEGREGATE #5 OUT OF AMENDMENT 03 TO HB 292 DO PASS.** Motion carried 13-7 with Bales, Barrett, Devlin, Ripley, Rice, Steinbeisser, and Thomas voting no on a roll call vote.

Motion/Vote: **REP. GALLUS** moved to **SEGREGATE #7 OUT OF AMENDMENT 03 TO HB 292 DO PASS.** Motion carried 13-7 on a voice vote.

REP GALLUS said this is the same discussion we just had. Would like to vote on both #5 and #7.

REP RICE asked if you are removing the \$8,000 cap? **REP. BARRETT** said yes.

Motion: **REP. SHOCKLEY** moved that **AMENDMENT 03 TO HB 292 DO PASS.** Motion carried unanimously.

Motion: **REP. GALLUS** moved that **#5 AND #7 IN AMENDMENT 03 OF HB 292 DO PASS.**

Discussion:

REP. DEVLIN said if we leave this in and we are talking about public road crossings, this money will go to fishing access sites. Will Department Of Transportation be able to tap that revenue? **CHAIRMAN FUCHS** said he understood they could use the money to improve access, and if that were disputed, they could possibly tap the revenue.

Motion: **REP. CLARK** moved **SUBSTITUTE AMENDMENT TAKING OUT "PERMANENT" ON LINE 25, PAGE 1 OF HB 292.**

Discussion:

REP. CLARK said there are some situations where construction of access facility will provide safety, but would like to avoid using the word "permanent". Providing a concrete stairway off the bridge down to the water could be a contentious issue.

REP. SHOCKLEY said he is opposed to **REP. GALLUS'** Amendment. Part of what this Committee should be doing is trying to foster cooperation between the landowners and the fishermen. The language suggested is not required and offensive to the landowner. The access issue is still in litigation. Suggests the following wording on Line 25, Page 1: "emphasis should be placed on long term arrangements by leases, permanent easements or perpetual rights of way" and end it there. Don't raise the issue of any access at bridges, just leave that lie. **REP. GALLUS** said he is voting no, if you support his position, vote no.

REP. FACEY said he doesn't take rights he doesn't have and doesn't want to lose rights he thinks he has. Suggests postponing the vote, so we can look into this. People may be voting more on emotion than knowledge at this point.

REP. BALES said the Amendment was to do what **REP. SHOCKLEY** said, and he agrees with **REP. SHOCKLEY**. This is in litigation and it is a controversial issue. By putting it in, it's a slap in the face of the landowners. The same thing can be done in this Bill without that in there, because it authorizes FWP to build access facilities and get rights of way wherever they can get them. If it is legal at a bridge, this Bill still authorizes them without having it in there. All that is being done by putting this in is raising a red flag. You are also decreasing the chances of getting it through the House and the Senate. If we can get the Amendments that were originally put in there, I will probably support it. If we don't get them, I won't support it. You are raising your chances of losing the Bill by putting them in there, just to rub salt in a wound. Encourages a "yes" vote.

CHAIRMAN FUCHS reminds the Committee this is a consensus process; they will be putting something in statute that FWP has already said they had the authority to do. He may put this in subcommittee as he is not sure he wants to carry this on the House floor, or he will entertain a motion to Table this Bill.

Substitute Motion: **REP. FACEY** made a substitute motion **STRIKE LAST SENTENCE ON NEW SECTION 1, STARTING ON LINE 25 THRU LINE 27.**

Discussion:

REP. FACEY said that FWP can figure out where this should go, this is a cooperative between landowner and department; is hoping this might ease the red flag for everyone.

REP. CLARK withdrew his substitute motion.

Legislative Staffer Doug Sternberg clarifies **REP. FACEY'S** Substitute Motion: strike the last sentence on Line 25 beginning with "emphasis should be placed...." down to end of Line 27.

Substitute Motion/Vote: **REP. FACEY** made a substitute motion **STRIKE LAST SENTENCE ON LINE 25 THRU LINE 27 DO PASS. Substitute motion carried 15-4.**

Legislative Staffer Doug Sternberg said with the adoption of this Amendment there was no need to segregate #5. The only segregated Amendment left is #7. The question remains as to whether to strike the first sentence of subsection 4 on page 2.

Discussion:

REP. CLARK agrees with **REP. BALES** that this is a good Bill and hates to see the whole Bill go down because of one provision. Supports #7.

Motion/Vote: **REP. CLARK** moved that **#7 OF AMENDMENT 03 TO HB 292 DO PASS. Motion carried 16-3.**

Motion: **REP. BALES** moved that **AMENDMENT 04 TO HB 292 BE ADOPTED.**

Discussion:

Legislative Staffer Doug Sternberg said with AMENDMENT 04 Page 2, Lines 20 and 21, **REP. BALES** would strike subsection 2 of Section 2 and renumber subsequent subsections, refer to Exhibit 10.

REP. BALES explained that with subsection 2 for a ranch with several pieces if they wanted an easement across one portion, and wanted to have an outfitter or any commercial fishing on another part, FWP would not be able to talk to them about an easement. This would limit the department to the detriment of the fishermen from getting some access sites that might otherwise be available.

REP. BALYEAT said testimony indicates **REP. BALES** is addressing geographic selectivity. Giving access to a river, but not to a lake. Two other kinds of selectivity; date and time selectivity. Outfitted during early morning and evening and only let public use during mid-day, or date selectivity where the general public uses only on certain days, etc. Totally striking is problematic, but dealing with it in just geographic selectivity might be okay.

REP. GOLIE said you can't have it both ways. Can't support the amendment.

REP. DEVLIN said he supports the Amendment. Current language in the Bill says you lose total eligibility. With some of the selectivity conditions that came up, it would certainly reduce direct payment to the landowner but doesn't think they should be totally out.

REP. SHOCKLEY said he supports the Amendment. The department can see whether the situation is good for the sportsmen, and decide then, before they open it up and spend the money. If they see a situation where people like himself can go in and fish, and the landowner puts in some guides, doesn't have a problem with that. If the department feels the landowners are restricting the use too much, they don't have to put it in. If they put it in, they can make it with an agreement that will satisfy the department. The way to handle this is on a case by case basis.

Motion/Vote: **REP. BALES** moved that **AMENDMENT 04 TO HB 292 DO PASS. Motion carried 17-2 with Gallus and Golie voting no.**

Motion: **REP. BALYEAT** moved that **AMENDMENT 02 TO HB 292.**

Discussion:

Legislative Staffer Doug Sternberg explained Amendment 02. The way the fee is structured it is a mandatory fee attached to the first purchase of a conservation license. In this Amendment, **REP. BALYEAT** changed the fee to a voluntary fishing access enhancement endorsement. Provides that only a person who pays the voluntary enhancement can use the fishing access that is acquired thru the enhancement program. It makes the fee voluntary rather than mandatory, and allows \$8 for residents, \$10

for nonresidents who specifically wish to dedicate additional revenue to the fishing enhancement program. Refer to Exhibit 7.

REP. BALYEAT said everything with this Bill is already being done by FWP. If we are going to have it, we shouldn't raise the mandatory fees on fishermen. Would only support this Bill if no fee or if the voluntary purchase would be available.

REP. CLARK said he agrees this is probably the most important part. Landowners feel strongly about leasing their land to outfitters and leaving nothing for local sportsmen. Have to participate and support these programs for Montana's future or let them fade. Suggests we just deal with the money we have in the fund currently, about \$600,000; and cancel the fee increase, but not go to a stamp. That is bad policy.

REP. LASZLOFFY said it looks like we are creating a management headache. How do we know which sites are involved in the enhancement program, and now do we have to send enforcement officers around to make sure people are in the sites they are supposed to be in?

Substitute Motion: **REP. BALYEAT** made a substitute motion to **STRIKE FEE INCREASES ON AMENDMENT 02 TO HB 292.**

Discussion:

REP. BALYEAT said landowners want some resident fishermen participation and FWP is already using a portion of the fees collected by fishermen to do the things in this Bill. This Amendment was only drafted because he thought someone else would have an Amendment that would strike the fees entirely. Had these as a backup in case the Amendment to strike the fees entirely failed. Withdraws substitute motion to strike the fees.

CHAIRMAN FUCHS stated **REP. BALYEAT** is withdrawing his Amendment and offers a conceptual Amendment to strike the \$2 and the \$4 fees in the Bill.

Legislative Staffer Doug Sternberg said the way to do this would be to strike Section 5. This would leave the fees as they are now, and dedicate no additional revenue to the fishing access enhancement program than is already dedicated.

REP. CLARK said he supports the fee increase because he feels this is a very important program. Opportunities will arise for cooperative agreements with landowners. Landowners see sportsmen are ready to put their money where their mouth is, will see more opportunities for access agreements and hopefully better

relationships. Important in terms of where we are heading in the future, instead of back to privatization of everything we know as part of our heritage.

REP. BALES asked if there was another Bill coming to raise the fees, will this be additive? **REP. CLARK** said it is the block management bill, it runs parallel to this and is for hunting.

REP. BALES asked it will also add to the conservation license?

REP. CLARK said it basically adds to the cost of the tag when you buy that particular hunting tag. We noticed there could be a problem between the fishing and the hunting and didn't want to double up on that.

CHAIRMAN FUCHS said he speaks in favor of the Amendment because it can be re-addressed in two years if they need to raise it, and if sportsmen think this is a good idea.

Motion/Vote: **REP. LASZLOFFY** moved that **AMENDMENT 02 TO HB 292 DO PASS. Motion carried 17-2, with REP. CLARK and FACEY voting No.**

Motion/Vote: **REP. SHOCKLEY** moved that **HB 292 AS AMENDED DO PASS. Motion carried 17-2 with Golie and Jent voting no.**

ADJOURNMENT

Adjournment: 5:45 P.M.

REP. DANIEL FUCHS, Chairman

LINDA KEIM, Secretary

DF/LK

EXHIBIT (fih30aad)