

HOUSE BILL NO. 642  
INTRODUCED BY M. MILBURN

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW RELATED TO EASEMENTS AT COUNTY ROAD BRIDGE CROSSINGS; DESCRIBING THE WIDTH AND SCOPE OF EASEMENTS FOR COUNTY ROADS AT BRIDGES; PROVIDING FOR AN EASEMENT FOR THE INSPECTION, MAINTENANCE, REPAIR, AND REPLACEMENT OF COUNTY ROAD BRIDGES; PROVIDING FOR THE USE OF COUNTY ROAD BRIDGES FOR RECREATIONAL ACCESS TO SURFACE WATERS UNDER CERTAIN CONDITIONS; REVISING THE PROCESS AND REQUIREMENTS FOR COOPERATIVE AGREEMENTS FOR PUBLIC FISHING ACCESS AT COUNTY ROAD BRIDGE CROSSINGS; INCLUDING ASSISTANCE WITH FENCING AT COUNTY ROAD BRIDGE CROSSINGS AS A LANDOWNER BENEFIT FOR PARTICIPATION IN THE FISHING ACCESS ENHANCEMENT PROGRAM; AMENDING SECTIONS 7-14-2112, 7-14-2134, 23-2-302, 23-2-322, 87-1-285, AND 87-1-286, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 7-14-2112, MCA, is amended to read:

**"7-14-2112. Width of roads and width and scope of bridge easements.** (1) The width of all county roads, except bridges, alleys, or lanes, must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least 20 feet.

(3) The width of any easement for a county road at a bridge is limited to the width of the travelway of the bridge and its abutments. An easement of up to 60 feet exists at a bridge for the purposes of inspection, maintenance, repair, and replacement of the bridge by authorized county and state officials, employees, and agents. Other public uses of easements of county roads at bridges are not authorized unless the uses are:

(a) expressly stated in a petition or dedication;

(b) acquired by condemnation for the purposes enumerated in 70-30-102;

(c) expressly authorized by the adjacent landowner, as applicable; or

(d) acquired through an agreement for access pursuant to 87-1-285(4).

~~(3)(4) Nothing in this~~ This section shall may not be construed as increasing or decreasing the width of ~~either kind of a private~~ highway or county road established or used as ~~such a highway or road~~ prior to December

31, 1966."

**Section 2.** Section 7-14-2134, MCA, is amended to read:

**"7-14-2134. Removal of highway encroachment.** (1) ~~If~~ Except as provided in subsection (4), if any highway is encroached upon by a fence; or a building, or otherwise, the road supervisor or county surveyor of the district ~~must~~ shall give notice to the adjoining landowner, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor ~~must~~ shall immediately remove the ~~same encroachment~~.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) A legal fence, as defined in 81-4-101, may be attached to bridge abutments on a county road bridge and may not be considered an encroachment."

**Section 3.** Section 23-2-302, MCA, is amended to read:

**"23-2-302. Recreational use permitted -- limitations -- exceptions.** (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;

(d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other

objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

(g) use of a streambed as a right-of-way for any purpose when water is not flowing ~~therein~~ in the streambed.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

- (a) big game hunting;
- (b) overnight camping;
- (c) the placement or creation of any seasonal object; or
- (d) other activities ~~which~~ that are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property or to use county road bridges, unless access is provided pursuant to 87-1-285(4) or by an owner of the property adjacent to the bridge, in order to use ~~such~~ surface waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

- (a) the establishment of procedures by which any person may request an order from the commission:
  - (i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water;or
  - (ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;
- (b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and
- (c) a procedure for the identification of streams within class II waters ~~which~~ that are not capable of recreational use or are capable of limited recreational use; and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of ~~such~~ school trust lands."

**Section 4.** Section 23-2-322, MCA, is amended to read:

**"23-2-322. Prescriptive easement not acquired by recreational use of surface waters.** (1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:

(a) recreational use of surface waters, including:

(i) the streambeds underlying ~~them~~ surface waters;

(ii) the banks up to the ordinary high-water mark; or

(iii) any portage over and around barriers; ~~or~~

(b) the entering or crossing of private property to reach surface waters; or

(c) the entering of surface waters across private property at county road bridges."

**Section 5.** Section 87-1-285, MCA, is amended to read:

**"87-1-285. Fishing access enhancement program created -- private landowner assistance to promote public fishing access -- rules.** (1) The department may establish programs of landowner assistance that encourage public access to and across private lands for purposes of fishing and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives for private landowners who voluntarily allow public fishing access on or across their lands; where legal access does not presently exist. Participation in the fishing access enhancement program is established through a cooperative agreement between a landowner and the department, including other resource management agencies when appropriate, that allows access for public fishing with certain restrictions or use rules.

(2) The department may also develop similar voluntary programs that are designed to promote public access across private lands for fishing purposes.

(3) Participation in a program established under subsection (1) is voluntary. Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for fishing access to private land that is enrolled in the program or who does not provide reasonable public fishing access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners.

(4) Funds from the account established pursuant to 87-1-605 may be used to enter cooperative agreements with landowners, including the purchase or lease of public fishing access at county road bridge crossings from willing landowners, or for necessary parking facilities, trails, or ramps to facilitate fishing access to public waters at bridge crossings as determined by the commission to be necessary for reasonable and safe

public access and to avoid traffic and other public safety hazards and as approved by the board of county commissioners in the county where the county road bridge crossing is located."

**Section 6.** Section 87-1-286, MCA, is amended to read:

**"87-1-286. Fishing access enhancement program -- benefits for providing fishing access -- cooperative agreement -- factors for determining benefits earned -- restriction on landowner liability. (1)**

As provided in 87-1-285, the department may establish and administer a voluntary program to enhance fishing access. The program must be designed to provide tangible benefits to participating private landowners who grant access to or across their land for public fishing.

(2) A contract for participation in the fishing access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable and safe access for public fishing, which may include leases, easements, or rights-of-way to rivers, streams, ponds, or lakes on the landowner's property and leases or easements for access along the banks or shorelines of rivers, streams, ponds, or lakes and at county road bridges on the property. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

(a) fishing access management, which may include off-road parking, foot trails, and vehicle access roads as determined to be necessary for reasonable and safe public access and to avoid traffic and other public safety hazards and as approved by the board of county commissioners in the county where a county road bridge crossing is located, pursuant to 87-2-285(4);

(b) services to be provided to the public;

(c) landowner property rules and other restrictions;

(d) any other management information to be gathered, which must be made available to the public; and

(e) notice to adjacent landowners.

(3) If the department determines that the plan referred to in subsection (2) may adversely influence fish management decisions or fishing habitat on public lands, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding fish populations and habitat use must be considered in developing the plan.

(4) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public fishing access. Benefits will be provided to offset potential impacts associated with public

fishing access, including but not limited to those associated with general property maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Program priority must be given to properties that provide the greatest fishing access for the lowest costs. Factors used in determining benefits may include but are not limited to:

- (a) the number of days of public fishing provided by a participating landowner;
- (b) fish habitat provided; and
- (c) access provided to adjacent public lands.

(5) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

- (a) A landowner may receive direct monetary compensation for providing fishing access.
- (b) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.
- (c) A landowner may direct fire protection payments to be made directly to the local fire district or the county where the landowner resides or may elect to receive payments directly.
- (d) A landowner may receive direct payment to offset insurance costs incurred for allowing public fishing access.
- (e) The department may provide assistance in the construction and maintenance of roads, fencing, gates, other fence crossing devices, and parking facilities and in the signing of property.
- (6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the fishing access enhancement program."

**NEW SECTION.** **Section 7. Effective date.** [This act] is effective on passage and approval.

- END -