

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN KENNETH "KEN" MESAROS, on January 15, 1997, at 1:12 p.m., in Room 413/415.

#### ROLL CALL

##### Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)  
Sen. Ric Holden, Vice Chairman (R)  
Sen. Gerry Devlin (R)  
Sen. Don Hargrove (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Walter L. McNutt (R)  
Sen. Linda J. Nelson (D)  
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: Sen. Thomas A. "Tom" Beck

Staff Present: Doug Sternberg, Legislative Services Division  
Angie Koehler, Committee Secretary

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

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 132, 01/09/97  
Executive Action: SB 43

CHAIRMAN MESAROS: Turned the gavel over to VICE CHAIRMAN RIC HOLDEN.

#### HEARING ON SB 132

Sponsor: SENATOR KEN MESAROS, SD 25, CASCADE

Proponents: Larry Brown, Agricultural Preservation Association  
Donald Ross, MT Stockgrowers Association  
John Youngberg, MT Farm Bureau  
Candace Torgerson, Women Involved in Farm Economics  
Les Graham, MT Woolgrowers Association, MT Cattlemen  
Association and MT Dairy Association  
Jim Peterson, MT Stockgrowers Association  
George Paul, MT Farmers Union  
Nancy Espy, Powder River County  
SENATOR LINDA NELSON, SD 49, MEDICINE LAKE

Opponents: Jim Richard, MT Wildlife Federation  
James W. Kehr, DDS  
Robert C. Lucas, Big Sky Upland Bird Association and  
Missoula Wildlife Association  
Tony Schoonen, Anaconda Sportsman Association  
Bill Holdorf, Skyline Sportsmen Association, Butte  
David Brown, MT Bow Hunters Association  
Bob Bugni, Prickly Pear Sportsmen  
Sam Babich, MT Action for Access  
Jim Brown, Missoula  
Jack Puckett, Big Sky Upland Bird Association  
Stan Frasier, Helena  
Bill Fairhurst, Public Land Access Association, Inc.  
Pat Graham, Department of Fish, Wildlife and Parks

Opening Statement by Sponsor:

SENATOR KEN MESAROS, SD 25, CASCADE: I present SB 132 for your consideration. I would like to remind the Committee that this bill specifically addresses private land. The bill simply changes the hunting on private land to permission for all hunting. Currently it is the landowner's responsibility to post the land for closure to public access. This bill will require permission whether or not the land is posted. It will be the responsibility of the individual to get permission to enter private land.

The definition of private in the dictionary regarding property belonging to or concerning an individual person, company or interest. You must have permission for some hunting on private land, although failure to post may leave it open for other hunting. This bill would clarify and create consistency within the statutes and also clarify the enforcement activity surrounding that. This bill is aimed at avoiding conflicts. Through management considerations and otherwise, landowners are liable for many of the activities on their land. It creates some conflicts. This trespass statute is aimed at protection for both the rural and urban sectors. With the trespass statute now in effect, even in urban areas, failure to post your private property or failing to notify people entering the property gives them the right to enter that property. This is a private property rights issue that is aimed at clarifying the statutes, increasing the interaction and actually enhancing the landowner and sportsman relationship so we can avoid conflict. I turn it over for further testimony and reserve the right close.

Proponents' Testimony:

Larry Brown, Agricultural Preservation Association: I am here on behalf of the Association and am also representing myself. I appreciate what SEN. MESAROS is doing in terms of bringing this bill forward. The common courtesy that needs to be extended by the general public to the private landowner is of utmost importance. The wildlife populations are at all time highs

across the United States for a number of reasons. Not only from the standpoint of regulations, but also the land stewardship by private and public landowners. Many private landowners have taken the time to develop their lands in a manner that is productive and has proved stewardship of the land. Private land management improvements regarding water and range management extend forward to the very basics of what this bill is trying to do. I would like to stress that private property rights need to be honored and common courtesy should be extended by sportsmen.

**Donald Ross, MT Stockgrowers Association:** The MT Stockgrowers Association is in favor of this legislation. I am also the immediate past president of the North Central Stockgrowers and I also speak as a rancher from south of Chinook. The North Central Stockgrowers have had a resolution on the books for about seven years addressing this very issue. Our membership, about 200 ranchers, feels that permission should be required for all hunting. My family has been in the Bearpaws and south Chinook area for over 100 years and we've been open to all hunting on a first come, first serve basis for as long as I can remember. I can safely say that I have a wealth of interaction with sportsmen.

Nothing irritates me more than someone jumping out of a vehicle to shoot birds just because the law says they don't have to have permission. It also bothers me to find someone driving around on my ranch trails and not know who they are. I may have other parties in there because we try to regulate the number of hunters so they can have a better experience. It takes time away from my job of taking care of cattle or managing my ranch. From a common courtesy standpoint, this legislation is needed. I know that if I were to drive down a street in urban Montana and pick out a nice lawn, get out my blanket and picnic hamper, people would not be very pleased with me. I would hope that sportsmen would treat my land with the same respect they would like me to give their backyard.

**John Youngberg, MT Farm Bureau:** We also support this bill. I taught shooting education for a number of years to hundreds of kids. I've always been under the impression that requiring people to notify you before they access your property was law. As **Mr. Ross** brought up, it really is a matter of fairness. We don't require anybody in town to post their property, yet they would be very upset if they came home and found you picnicking on their patio. Perhaps you come home someday and find somebody looking around in your garage. That's not acceptable, but we don't require people to post their property to that point. I think it's only fair that people treat property with the respect that it deserves.

**Candace Torgerson, Women Involved In Farm Economics:** We certainly support this bill. We see it as a private property rights bill. I live in Helena and there have been deer and partridges in my front yard. HB 175 has been proposed and would

repeal the prohibition against deer hunting within the city limits. If that bill passes, under current law, do I have to post my front yard to keep people from bird hunting in it? Is there a difference between my front yard because I live in a city and SEN. MESAROS'S place because he lives 50 miles out of town?

**Les Graham, MT Woolgrowers Association, MT Cattlewomens Association and the MT Dairy Association:** As a matter of common courtesy, I agree with what's been said. We support this bill.

**Jim Peterson, MT Stockgrowers Association:** I am also a rancher from central Montana. I will second what has already been said and add that what really makes a successful relationship between landowners and sportsmen is communication. I allow hunting on my ranch. All this bill is asking for is up-front communication. Most landowners are very receptive to that kind of an approach. What landowners don't like is surprises, finding people on their land and not knowing who they are and why they're there. The other thing you might hear from the opponents is that ranchers don't want to be bothered by folks asking permission. I know a lot of ranchers and most would like to know who's on their land. We request that you support this bill and pass SB 132. We think it is a very good common courtesy bill.

**George Paul, MT Farmers Union:** It's unfortunate that we have to have this kind of a bill. We clearly support the bill and recognize that the days of common courtesy and good judgement may be of days gone by.

*{Tape: 1; Side: A; Approx. Time Count: 1:25 p.m.}*

**Nancy Espy, Powder River County:** I would like to support the statements that have been made and add, as a rancher, that nothing is more gratifying than to have somebody come to your door, introduce themselves and ask for permission. There is nothing that makes us more angry than to go out, with our grandchildren, and come upon someone with a gun. We didn't know they were there, they didn't know we were there. I do recommend that you pass this bill.

**SEN. LINDA NELSON:** I would like to be listed as a proponent to this bill.

#### Opponents' Testimony:

**Jim Richard, Wildlife Federation:** You'll find that my opposition is a bit muted because there are several of our affiliate clubs that are not opposed to the bill. Most sportsmen do respect private property rights. I think you'll find that reflected by other people that are going to speak as opponents. Contrary to comments made by proponents saying that we've lost common courtesy and communication, many of us feel, in Montana at least, we haven't lost that common courtesy. Most sportsmen do try to get permission, but finding the landowner can be very difficult.

Sometimes it is impossible to get permission from an absentee landowner. What about bird hunting when you're floating rivers? You can find yourself in a situation where it's not feasible to get permission from a landowner. I mention these only as practical difficulties that occur when people are actually out in the field. There is no need to legislate the common courtesy and respect that this bill attempts to do.

**James W. Kehr, DDS:** I am an avid bird hunter. I encourage you to look very carefully at this bill because, in my opinion, we have much more important things than this non-issue. Nothing makes a hunter more uncomfortable than to have a landowner say, "What are you doing on my property?". I hunt birds 30-40 days a year and always ask permission. I think that's the rule rather than the exception. If you were to ask the head of the Fish and Game Enforcement Division, who is sitting in this room today, how many complaints have been made regarding this problem, you're going to find there have been less than what you can count on one hand. At our local sportsmen club last week, I asked the warden, "How many times has this been brought up in your presence?". He said, "Never since I've been a warden."

We do want to be good sportsmen, but it is a problem when we go to a place and can't find the landowner. I would ask the landowners to extend to us the courtesy of posting the land if they want permission. You can buy a can of paint for \$1.50 and spray your fenceposts. This very explicitly says, "We do not want you on this property without our permission." It's not a problem, people are not complaining about it. I would like to think that your time is going to be better spent debating and arguing budgets, corrections, and things that are much more important to the average citizen in the state of Montana.

**Bob Lucas, Big Sky Upland Bird Association and Missoula Wildlife Association:** Submitted written testimony. (EXHIBIT 1)

*{Tape: 1; Side: A; Approx. Time Count: 1:40 p.m.}*

**Tony Schoonen, Anaconda Sportsmen Association:** Submitted written testimony. (EXHIBIT 2)

**Bill Holdorf, Skyline Sportsmen Association:** An area that bothers me is that you do not have to post your land. That can bring up entrapment. A person can actually be on private property and not know it. I was in a predicament in Beaverhead County on two different properties. One of them ended up in the courts. I had a map showing I was on Bureau of Land Management (BLM) land when an individual told me I was on his private property. There was no fence line going through. Should something like this occur, people will end up in the courts. I know I would demand a survey. A survey would be done at tremendous expense to the landowner in order to prove whether I was on public or private land. I have certified 1,935 people to hunt and fish in Montana and have tried to teach them ethics.

**David Brown, MT Bow Hunters Association:** We all know we need permission so we oppose the legislation as written. It will take away opportunity for sportsmen for all the reasons stated by the other opponents. A lot of sportsmen break into a cold sweat if they think they're going to be faced with a criminal trespass charge when they really can't help it. We are concerned that some people just won't hunt. The logical outcome of that may be that the Fish & Game would cut back on licenses. A lot of land has been leased so there is a gradual erosion of opportunity. It is not good for sportsmen from that perspective. Sportsmen and landowners have made great progress working together.

I suggest we look at this legislation and try to make it more palatable to all. Compared to all the work we've done over the last 20 years on sportsmen/landowner relationships, this is a slap in the face. Something else that occurs quite often is land exchanges. For example, Plum Creek, Champion, BLM and Forest Service lands are being exchanged with private people. These exchanges are not on maps or anywhere. It goes with the entrapment issue. You pick up a map and it's dated 1990. You say, "I'm on BLM land." and then you get a criminal trespass charge. It has taken 100 years to get to where we're at now. It seems wrong for it to end cold. I think it needs to have some sunset or something. I urge your opposition to this bill.

**Bob Bugni, Prickly Pear Sportsmen Association:** Submitted written testimony. (EXHIBIT 3)

{Tape: 1; Side: A; Approx. Time Count: 1:48; Comments: End of tape.}

**Sam Babich, MT Action for Access, Butte:** This is a moot point. We all know that the sportsmen of Montana are respectful of other people's rights. We go out of our way many times to help the rancher or farmer when we find cattle that are out, fences down or things like this. If you don't want people on your land, you buy a small sign, tack it to the fence post and it says stay out. Trying to locate landowners is very difficult. There is an area outside of Butte that I've hunted for many years. It was sold and now it's closed. To get to this area, I can drive eight miles and hunt. To get to the landowner, I have to drive a round trip of 130 miles. If he doesn't want the land hunted, all he has to do is put up a little sign that says, "No Hunting, No Trespassing". These laws are already in effect and they take care of the problem. Thank you.

**Jim Brown, Missoula:** I've been a bird hunter and lived in Montana over 30 years. In places like western Montana, Fairfield Bench, etc. it would be difficult and awkward for this bill to work. Fragmented ownerships, small farms and a lot of absentee owners make it very difficult to keep from unknowingly trespassing. You could spend up to half a day trying to locate owners. Most hunters are courteous, careful and ask permission. Unfortunately some don't, but this is like making the whole class

stay after school because one or two kids act up. There has to be a better way to solve this problem than the current bill.

**Jack Puckett, Big Sky Upland Bird Association:** Submitted written testimony. (EXHIBIT 4)

**Stan Frasier, Helena:** My objection to this bill is that it is incomplete. If you're going to require permission, we have to know where the boundaries are. We had testimony in the landmark hearings over the recreational access to state lands about this very thing. There were a lot of concerns about trespass in conjunction with using state lands for recreation. I suggested that ranchers mark their boundaries. "Oh no, we can't do that." Then I suggested that the Department of State Lands mark the boundaries so we knew where the state sections were. They said, "Well, we don't know where the boundaries are." They don't know, don't want to know, don't want to mark them and don't want to survey them. If you're going to hold people responsible for knowing where they are, whether on private or public land, then somebody has to mark the boundaries. It will have to be the ranchers or the Department of State Lands. Survey those sections and mark them so people know where they're at. Thank you.

**Bill Fairhurst, 105 3rd Ave. E., Three Forks, MT; President, Public Land Access Association, Inc.:** We would like to go on record as opposing SB 132. My family has owned a homestead south of Three Forks for a number of years. At present time, I lease land east of Three Forks. There is a bass pond on it and though we don't post the land, we feel we're fully protected by existing laws. If the land was posted and a person entered, they would be cited for trespassing. If it's not posted and we find a person there that we think might harm the land or the property, we can inform them that they are on private property. At that point they have to leave or they will be cited for a trespass. The existing laws do work.

We feel this will be a further barrier between the sportsmen and the landowner. Many state and federal agencies, landowners and sportsmen groups have worked hard over the past years for good relationships. SB 132 will diminish this. There should be equal responsibility between both the landowners and the sportsmen. The sportsman should know where he's hunting, but at times this is impossible. The landowner should be able to mark his boundaries. What we're finding is that there are many state, BLM and Forest Service lands adjacent to private lands that are not fenced and not marked. This sets up a situation where a person could, very innocently, be on private land and be cited for a trespass. We recommend a do not pass on SB 132.

**Pat Graham, Department of Fish, Wildlife and Parks:** The Department supports and encourages hunters, anglers and other recreationists to ask first. It is promoted through public notices, bumper stickers, billboards and hunter/aquatic education programs. People who enter private land should seek permission

when possible. It makes for good relations as previously discussed by proponents and opponents. I, personally, do not hunt or fish on private lands unless I do have permission. Our concern over SB 132 is that no distinction is made between a person who knowingly trespasses because the land has been posted and those who inadvertently do so because it has not been posted or otherwise identified. This is a significant change in the current law which requires posting of land.

It seems we have a dilemma, where in some parts of the state, hunting use and other activities are such that it causes concern for landowners and they're seeking to remedy that through this particular legislation. In other parts of the state landowners tire of the amount of time it takes to meet, talk and direct recreationists on their property. This was part of the motivation for the creation of the block management program. To require all users to contact landowners will increase that problem for those landowners. We have landowners as well as hunters, anglers and other persons who are on both sides of this issue. Under current law, each landowner can set their own terms without imposing those terms on their neighbor. Thank you.

Proponents' Written Testimony:

Birdtail Ranch Angus, Russ & Barb Pepper (EXHIBIT 6)  
LeVeque Ranch, Dale & Lilly LeVeque (EXHIBIT 7)  
Michael A. Sherrard, Co-Chairman, North Marias Landowner  
Sportsman Organization (EXHIBIT 8)  
Fred, Margaret & Greg Preble (EXHIBIT 9)  
Robert & Dolores Standley (EXHIBIT 10)

Opponents' Written Testimony:

David Dittloff, Montana Audubon Legislative Fund (EXHIBIT 5)

Questions From Committee Members and Responses:

SEN. GERRY DEVLIN: Mr. Graham, I know that you've done some work on this "ask first" program. It does not sink in to your own department people. I find them on my ranch and they haven't asked. Evidently it isn't working. Do you want to comment on that?

Mr. Graham: I don't have a comment on that. I'm not aware of a problem. This is the first time I've heard that. If it's a problem, we will certainly look into it.

SEN. DEVLIN: I appreciate that. We'll get together with some names. Mr. Schoonen, do you guide and outfit?

Mr. Schoonen: I guide fisherman primarily on the Big Hole and Jefferson.

SEN. DEVLIN: Not game?



**Mr. Schoonen:** No. I've never guided big game hunters.

**SEN. DEVLIN:** There was talk about the difficulty in finding the landowner. How are you going to find those little birds if you can't find a landowner?

**Mr. Lucas:** My hunting dogs can't identify the landowner. Most landowners when we reach them have been very gracious, and getting permission is not the big problem. There is a big problem in finding the landowner. For example, there were a bunch of snow geese in a stubble grain field. There were four houses very close to it and nobody was home. Finally, a truck came by, we flagged the guy down and it turned out that none of them owned it. The landowner was a couple of miles away, he was home and we got permission. We want to ask permission, but need to know where to ask. I'm sure it looks different depending on whether you're sitting on the landowner side or the sportsmen side.

**SEN. DEVLIN:** I might add that I have never refused anybody in my life. I have run a couple guys off. I do know it's different in the west.

*{Tape: 1; Side: B; Approx. Time Count: 2:03 p.m.}*

**SEN. REINY JABS:** Does it have to be the landowner or can the occupant of the place give you permission?

**SEN. MESAROS:** I believe it's the landowner or the landowner's authorized agent.

**SEN. JABS:** Could permission be given by telephone?

**SEN. MESAROS:** I was very careful and surely did not want to legislate specific means of contact. That is up to the individual property owner.

**SEN. JABS:** That could address some of the problems associated with hard to find landowners.

**SEN. MESAROS:** I would think that, many times, a simple telephone call would handle it.

**SEN. JABS:** Is it also possible to get a yearly permit? People come to me and ask if they can fish and hunt. I say yes and you have permission every time you come. You don't have to come ask me every time.

**SEN. MESAROS:** I've done that myself. I would imagine that would suffice.

**SEN. DON HARGROVE:** I'm not familiar enough with the rules on block management. I guess they're specific enough that this doesn't have any application to those areas.

**SEN. MESAROS:** Not that I'm aware of. Block management is an agreement with landowners in cooperation with the Department of Fish, Wildlife and Parks where access is administered in cooperation with the Department.

**SEN. GREG JERGESON:** What would constitute an authorized person? You might assume that the manager of the ranch would be the authorized agent, but the owner is gone on vacation. Is the cowhand who's actually out there and the only one around the authorized agent?

**SEN. MESAROS:** Authorized agent is existing language. The landowner would have to specify someone, in their absence, to be the authorized agent.

**SEN. JERGESON:** I realize that language is current law. I'm trying to see if we have a problem there. Could a fine be given in the event that a sportsman asks permission and is told yes by the cowhand who hasn't been designated by the landowner as an authorized agent? He says to the sportsman, "Go ahead, go hunting. They've been letting other people hunt so you go ahead." So the sportsman goes hunting and gets a citation. Does the cowhand get fired or does the sportsman get fined?

**SEN. MESAROS:** I think that's entirely up to the management of that particular piece of property. I think any responsible manager has a designated person in his absence. There are many "what if" situations that could exist on this.

**SEN. JERGESON:** I think we recognize that the landowner in every case is not the owner of agricultural land. Maybe it's a workload situation, but why do we have this bill in this Committee instead of Fish and Game Committee?

**SEN. MESAROS:** My response is that it directly affects private property and the use of agricultural land. Most of the hunting in the state of Montana is on private property.

**SEN. JERGESON:** Farmers and ranchers are not the only owners of private property.

**SEN. MESAROS:** It directly affects the agricultural community and they have a major role in it.

**VICE CHAIRMAN HOLDEN:** Mr. Lucas mentioned that asking permission is a problem and a hassle for landowners. There is a block management program on my ranch because we had a lot of problem with deer this year. My wife asked me why I did that because she was tired of handing out permission slips and was looking forward to relaxing a little bit. There are landowners, probably our wives to a great extent, that have to put up with all the permissions. What would be your rebuttal to that?

**Mr. Peterson:** It's my understanding that there are a number of ways to handle the block management program. As far as I know, the Department of Fish, Wildlife and Parks has been pretty flexible in how they deal with permission slips. There are ways, if a landowner doesn't want to deal with it, to designate somebody to do that on your behalf. I might add that it is hard to get hold of a landowner. A lot of sportsmen I know don't have any difficulty using the telephone and can plan ahead. With some planning and communication this is not a problem. The difficulty comes when hunters are driving down the road and see a covey of birds off in the brush somewhere and it's too inconvenient or takes too much time to find the landowner. The point we're making is that a little planning can alleviate that. We have plenty of communication vehicles and ways of designating representatives on our ranches to deal with this. Once again, this would create one common rule concerning permission for hunting and lessen the confusion.

**VICE CHAIRMAN HOLDEN:** If I understand this right, **Mr. Graham**, you can hunt on somebody's land for birds unless it's posted. We would have to rethink the way we post our land. Rather than post our land to keep people out, we could post it to let people on if we do not want to be bothered with people asking for permission.

**Mr. Graham:** If you don't want to be bothered with that, you would have to find a way to notice them that doesn't comply with this law.

**VICE CHAIRMAN HOLDEN:** I've seen signs that say, "Hunt - Don't Ask". If you put a sign like that on your gatepost around these areas, wouldn't that be legal?

**Mr. Graham:** I think it would be.

**SEN. JERGESON:** Statute says that after the season is over and you need a special hunt to control the deer population from getting in your haystacks, that remedy is available to those who have permitted public hunting on their land. Is that a restriction?

**Mr. Graham:** For general game damage, statutes limit us to providing help to those people that have provided reasonable public hunting on their property.

**SEN. JERGESON:** When a landowner asks for that assistance or that remedy, how do you determine that they have complied with the statute requiring reasonable access to the public?

**Mr. Graham:** Basically, we rely on the knowledge of our local warden or biologist or evidence the landowner provides that public hunting has been allowed on that property.

**SEN. JERGESON:** If a landowner can exclude public hunting without posting his property, how will he prove to you that he allowed

reasonable access? The presumption could be that, without posting it for permission granted, it was closed. They would have to prove somehow that they did not close the property.

**Mr. Graham:** Presently, if your land isn't posted, the presumption is that you're not restricting access in any way. You wouldn't have to meet any requirement or provide additional information. Under SB 132, we would have to determine some way, either through knowledge the warden or biologist had that public hunting was allowed there or permission slips. The landowner would have to give us something to indicate that public hunting, had been taking place on the property.

{Tape: 1; Side: B; Approx. Time Count: 2:16 p.m.}

Closing by Sponsor:

**SEN. MESAROS:** I fully respect all the conscientious citizens and sportsmen that testified. In no way shape or form is this to stop the hunting community. Most of the ranchers I know allow a lot of access for hunting on their property. I'm an avid hunter myself. This is aimed at improving the rapport between landowners and sportsmen. If you enhance that rapport, have better communication and know where it's proper to hunt it will alleviate a lot of problems. I'm not totally enamored of bringing this legislation to the State Senate, but if there wasn't a problem I wouldn't be bringing it. I think this legislation will decrease the amount of conflict.

Most people I've talked to can't imagine why this legislation doesn't exist today. We're talking about private property. As far as the responsibility of getting permission, what this bill directs is not any different than what it mandates right now for big game. This is not aimed at taking away any opportunity. If we can improve relationships between landowner and sportsmen it will create more opportunity. Somehow this was identified as an anti-hunting or anti-bird hunting bill. That is not the case. It has to do with management of private property. The statements of "what is it going to hurt to walk across land" can be answered by the fact that a landowner is responsible for that land. There are times when hunting occurs during dry periods and fire danger is high. There may be animals in a field that are not very fond of people. There are a number of issues that could come up. Wardens in my area have indicated that it would be much easier to enforce and would reduce the amount of conflict in their area.

Most sportsmen are very conscientious about asking and I applaud their effort. Of course, there are a number that do not play by all the rules. I think this is a progressive bill to identify and enhance the hunting activities. I am surprised, since we are talking about hunting on private property, that we have a government agency opposing this. We need to continue the good working relationship between hunters and private property owners. This bill will simply enhance that.

**VICE CHAIRMAN HOLDEN:** This will conclude the hearing on SB 132. I will turn the gavel over to **SEN. MESAROS**.

**CHAIRMAN MESAROS:** We will not take Executive Action on SB 132 today.

*{Tape: 2; Side: A; Approx. Time Count: 2:20 p.m.}*

**EXECUTIVE ACTION ON SB 43**

**Amendments:**

**Doug Sternberg:** The amendments will clarify that the owner of adjoining land has the burden of building and maintaining legal partition fences in equal shares. The way the language is stated in the bill now, it refers to an occupant. The amended bill will clarify that it's the owner rather than the occupant that will be required to build and maintain those fences. As it serves the word "legal", in legal partition fences there is a statute definition of what constitutes a legal fence. **VICE CHAIRMAN HOLDEN** is requesting that we clarify that not only does the partition fence have to be built and maintained, but it has to be legal. The only other change was to strike Section 2 in its entirety. That is amendment number 8. That will leave Section 81-4-201 in its present statutory form.

**Motion:**

**VICE CHAIRMAN HOLDEN:** MOTION THAT AMENDMENT NUMBER SB0043.ADS DATED 01/13/97 DO PASS. (EXHIBIT 11)

**Discussion:**

**VICE CHAIRMAN HOLDEN:** In part 8 of the amendments, when **Doug Sternberg** talks about striking it in its entirety, that's not saying we're going to strike 201 off the books. It means the underlined part added to this bill will be taken off. The existing statute will stay the same. **SEN. JABS** had some amendments regarding occupants. It would probably be more consistent that owners be included, rather than occupants, so it would coincide with other fencing statutes throughout that section of the book. There was concern that you may have to build a buffalo fence. That was never intended and I've erased that idea just by inserting the word "legal". Anyone that read the statutes would know what kind of a fence we're talking about and legal fence is defined in current statute.

**SEN. DEVLIN:** What is a legal fence?

**Doug Sternberg:** A legal fence can be any of the following, if not less than 44 inches or more than 48 inches in height, can be constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than 15 inches or more than 18 inches from the ground securely fastened with near

as equal distance as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts. Corral fences which are used exclusively for the purposes of enclosing stacks which are situated outside of any lawful enclosure must be not less than 16 feet from the stack and be substantially built with posts not more than eight feet distant from each other and not less than five strands of well-stretched barbed wire and shall not be less than five feet or more than six feet high. Any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

SEN. DEVLIN: What fence are we talking about here?

Doug Sternberg: A legal fence could be any of these.

SEN. DEVLIN: On whose demand would you determine that?

Doug Sternberg: The person who is building the fence could determine what kind of fence they wanted to put up as long as it fit within the parameters of one of these definitions. It would then be considered a legal fence.

SEN. DEVLIN: Have you had these amendments approved by all the people that opposed this bill?

VICE CHAIRMAN HOLDEN: Yes. I talked to John Bloomquist and notified him of the amendments that had been drafted. I asked him to present any changes, that he may want, into executive session or to contact me if he had any further questions.

SEN. DEVLIN: Marc Bridges, Larry Brown, Don Allen, Tim Reardon, etc. You ran it by all those people?

VICE CHAIRMAN HOLDEN: I talked to Larry Brown and he had no great concern. Tim Reardon had no further input into the bill as long as we had this statute on the book, in current form, that exempts an owner of idle land from building fence. Don Allen had no concerns. He was just sitting in.

*{Tape: 2; Side: B; Approx. Time Count: 2:31 p.m.}*

SEN. HARGROVE: With this amendment, two neighbors each have to maintain and/or build half the fence, is that it?

VICE CHAIRMAN HOLDEN: Essentially that would be it unless one of those neighbors chooses to let his land lie idle and then he would be specifically referred to 70-16-210.

SEN. HARGROVE: What if half the land was timber land or mining land? It's used and occupied, but there is no livestock on it.

**VICE CHAIRMAN HOLDEN:** Letting your land lie idle could be one of those things. Not letting your land lie idle would mean you would be using it as pasture. As soon as you use your land as pasture and have livestock there, then you have to be in compliance with building your half of the fence. That is current statute.

**SEN. HARGROVE:** One side is timberland and it's being used, but the timberland owner doesn't own any animal so that means he doesn't have any responsibility for the fence. Is that how I interpret that?

**VICE CHAIRMAN HOLDEN:** Yes. I would refer you to 70-16-205, part B. It refers to the owner deciding to use his land as pasture for grazing.

**SEN. HARGROVE:** Regarding fencing, there are a variety of different possibilities. One person could have a different fence halfway down the fence line. I guess that's up to them.

**VICE CHAIRMAN HOLDEN:** That's a problem that is being erased now with the insertion of the word "legal". We've heard the description of legal fences and that's been on our statutes for quite some time. Those are the parameters that those of us in the livestock industry use when we fence our property.

**SEN. HARGROVE:** There could be a variety of legal fences.

**VICE CHAIRMAN HOLDEN:** It would depend on whether you're running sheep or cattle as to which legal fence you would be using.

**SEN. NELSON:** I would like for the sponsor of the bill to be able to tell me why this is the better way to go.

**VICE CHAIRMAN HOLDEN:** The reason why is that it closes an 1895 loophole to people who don't care to fence. They're using this section of the law, where we're talking about enclosed lands, as a way out of doing their part. There are some people that do not totally enclose all of their property. They may put up an electric fence during the summer to partition off a part of their property to run cattle or livestock. Then, in the fall, they roll up that electric fence and their property is no longer totally enclosed. They have shifted the entire burden of maintaining that fence onto the owner of the other side.

**SEN. JERGESON:** Now that I'm no longer operating, I can tell what happened to me. I operated next to a neighbor who quit the livestock business. He had some crop land that he put into Crop Rotation Program (CRP). Along the county road, which would have effectively caused that CRP to be an enclosure, he went along and lifted all three wires to the top of the fenceposts. He claimed it was not an enclosed area and never put a single staple into the fence between us. When my cows wandered into his CRP from his half of the fence, he made threatening phone calls to me.

There is a problem, but I don't know if this bill fixes that. On the other hand, I question changing occupant to owner because I was the occupant. The owner lived in Bozeman. If we change occupant to owner, I'm afraid we're going to make a lady in a rest home in Bozeman liable instead of me, who is operating it. In regards to letting land lie idle, when the guy signed the CRP contract, it was probably agreed that he would keep livestock off that CRP land. In some respects I agree with what you're trying to do, but I'm not sure we're getting it done here.

**VICE CHAIRMAN HOLDEN:** On the occupant/owner aspect of the amendment, we know that ultimately the owner should be responsible for his fences. When he leases his property, as part of the lease agreement, he can make the occupant responsible for the fences. In a practical sense, the old lady in the rest home is not going to fence. She is going to tell the person who rents the land that it is their responsibility to take care of the fences. That is my case on some property I rent. The Board of Livestock testified that the word "occupants", in the law, has never been a problem in Montana's history for a 100 years that they know of. Your example of a person using this as a loophole to get out of their obligation is good because that is exactly what people are doing.

**SEN. JERGESON:** I agree we ought to try to close the loophole, but I'm not sure we are doing that.

*{Tape: 1; Side: B; Approx. Time Count: 2:40 p.m.}*

**SEN. HARGROVE:** What brought this up in the first place? Where I am there are a lot of 20 acre knapweed farms and a lot of folks moving. I would expect it to be a problem, but haven't heard that it is. I'm not sure that we're ever going to be able to set rules or laws that will make it so people don't have to talk to each other, shake hands and get things done.

**VICE CHAIRMAN HOLDEN:** The Dairy Association could comment on that because it was a problem to them.

**CHAIRMAN MESAROS:** I don't want to open up testimony. We're in Executive Action.

**VICE CHAIRMAN HOLDEN:** I will address it then. The problem was brought to me because I live in an area that is becoming more urbanized. Those of us that farm and ranch along the Yellowstone River drainages and similar areas are starting to experience the impacts of urbanization to our agricultural property. You can't solve all the problems, but if we can address at least one issue, maybe it will make it better for us in the agricultural industry.

**CHAIRMAN MESAROS:** We will delay Executive Action on SB 73. I heard you had a lot of people contacting you from the Gallatin Valley. I would like to clarify one thing that **SEN. DEVLIN** questioned. We had opponents of **Mr. Bloomquist, Mr. Brown, Mr.**



**Bridges, Mr. Allen and Mr. Reardon.** Have you contacted them, heard from them or have they reviewed this and said, "Okay, this fixes it and we now support the bill."

**VICE CHAIRMAN HOLDEN:** I talked to **Mr. Bloomquist** this morning. If he had any problems with these amendments he was to be here for Executive Action. **Mr. Brown** and **Mr. Allen** had no problem when I met with them. They were mainly here to monitor the bill.

**SEN. DEVLIN:** I'm inclined if you want to amend it. If you amend this today, I'm not going to favor the bill because I haven't had time to fit this in and make sure we're not wrecking something. Fencing has been very contentious. I was here when **REP. MARIAN HANSON'S** fence bill came through. You might be opening a can of worms and not even know it. I have no problem with putting the amendments on, but if the amendments go on today I will make a motion to table the bill as amended.

**VICE CHAIRMAN HOLDEN:** I would ask if the stockgrowers brought the amendments that they have been talking about. It has been four or five days now.

**Mr. Peterson:** **Mr. Bloomquist** showed me the amendments that **SEN. HOLDEN** presented to him this morning. Our overall perception is that the amendments don't necessarily answer the questions we had related to the bill. This bill might create more problems than it could solve. It doesn't take two people to make the agreement the way we read the bill. One half can make the agreement and force the other half to comply. Another concern is open range because it mandates that you fence cattle out.

**VICE CHAIRMAN HOLDEN:** It appears the Stockgrowers will not have any amendments to bring in. Is that correct?

**CHAIRMAN MESAROS:** I think you are responsible for the amendments to your bill. If you wish, we will delay Executive Action on it.

**VICE CHAIRMAN HOLDEN:** I didn't get a clear understanding. I would be willing to let this bill lie if there were amendments, but if there are none to bring in, we should proceed.

**CHAIRMAN MESAROS:** There is a motion to adopt the amendments as presented.

**Vote:** MOTION CARRIES. AMENDMENTS DO PASS. (EXHIBIT 11)

**Motion:**

**SEN. DEVLIN:** MOTION TO TABLE SB 43 AS AMENDED. We can pull it off at any time by majority vote and look at it.

**Vote:** MOTION FAILS.

**CHAIRMAN MESAROS:** We will delay Executive Action on SB 43.

ADJOURNMENT

Adjournment: 2:55 p.m.

  
SEN. KEN MESAROS, Chairman

  
ANGIE KOEHLER, Secretary

KM/AK