

Senate BILL NO. 323

INTRODUCED BY Hertel

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PREFERENTIAL AND DISCRIMINATORY PRACTICES OR IMPAIRMENT OF ADJACENT LANDOWNER VESTED RIGHTS THROUGH FURTHERANCE OF PUBLIC VOLUNTARY EASEMENT, VOLUNTARY HUNTING ACCESS, AND OTHER LAND AND EASEMENT ACQUISITION PROGRAMS; AMENDING SECTIONS 76-6-203 AND 87-1-265, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 76-6-203, MCA, is amended to read:

"**76-6-203. Types of permissible easements.** ~~Easements (1)~~ Except as provided in subsections (2) and (3), easements or restrictions under this chapter may prohibit or limit any or all of the following:

~~(1)(a)~~ (a) structures--construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

~~(2)(b)~~ (b) landfill--dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

~~(3)(c)~~ (c) vegetation--removal or destruction of trees, shrubs, or other vegetation;

~~(4)(d)~~ (d) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

~~(5)(e)~~ (e) surface use--surface use except for ~~such~~ the purposes of permitting the land or water area to remain predominantly in its existing condition;

~~(6)(f)~~ (f) acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

~~(7)(g)~~ (g) subdivision of land--subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

~~(8)(h)~~ (h) other acts--other acts or uses detrimental to ~~such~~ the retention of land or water areas in their existing conditions.

(2) An easement, restriction, limitation, prohibition, or other land acquisition under this chapter or as provided for in Title 87 may not impact or impair the rights of adjacent or nearby landowners to the full

1 and peaceful enjoyment of vested rights in and to their adjacent or nearby property or adjacent or nearby  
2 federal lands, including the following rights:

3 (a) the right to engage in or permit others to engage in any lawful activities on the adjacent or  
4 nearby property;

5 (b) the right to access the adjacent or nearby property across any public access or private  
6 right-of-way to which the landowner has a right;

7 (c) the right to obtain and use a servitude for a utility, water ditch, or other improvement for the  
8 benefit of the adjacent or nearby property as provided in Title 70, chapters 17 and 30.

9 (3) An easement, restriction, limitation, prohibition, or other interest under this chapter or as  
10 provided in Title 87 to land in which there is a severed mineral estate may not impair the rights of the  
11 owner of a severed mineral interest. This subsection does not prevent an owner of a severed mineral  
12 interest from voluntarily conveying that severed mineral interest in whole or in part."

13  
14 **Section 2.** Section 87-1-265, MCA, is amended to read:

15 **"87-1-265. (Temporary) Hunter management and hunting access enhancement programs created**  
16 **-- private landowner assistance to promote public hunting access -- rules.** (1) The department may establish  
17 within the block management program established by administrative rule pursuant to authority contained  
18 in 87-1-301 and 87-1-303 programs of landowner assistance that encourage public access to private lands  
19 for purposes of hunting and may adopt rules to carry out program purposes. Rules may address but are not  
20 limited to incentives provided under:

21 (a) a hunter management program as set out in 87-1-266, consisting of a cooperative agreement  
22 between a landowner and the department and including other resource management agencies when  
23 appropriate, that allows public hunting with certain restrictions or use rules; and

24 (b) a hunting access enhancement program as set out in 87-1-267, consisting of incentives for  
25 private landowners who allow public hunting access on their lands.

26 (2) The department may also develop similar efforts outside the scope of the block management  
27 program that are designed to promote public access to private lands for hunting purposes.

28 (3) Participation in a program established under subsection (1) is voluntary. Programs may not be  
29 structured in a manner that provides assistance to a private landowner who charges a fee for hunting  
30 access to private land that is enrolled in the program or who does not provide reasonable public hunting

1 access to private land that is enrolled in the program. The commission shall develop criteria by which  
2 tangible benefits are allocated to participating landowners, and the department may distribute the benefits  
3 to participating landowners. The department may by rule limit the number of licenses that can be provided  
4 as incentives.

5 (4) In a management plan for access to lands acquired under Title 87, the department shall ensure  
6 by direct oversight that participating private landowners maintain reasonable free access to the public on  
7 a nonpreferential and nondiscriminatory basis. (Terminates October 1, 2001--sec. 18, Ch. 459, L. 1995.)"

8  
9 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

10 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0323, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

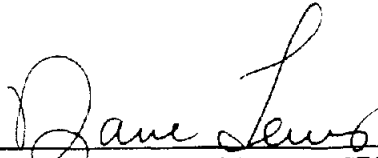
A bill for an act prohibiting preferential and discriminatory practices or impairment of adjacent landowner vested right through furtherance of public voluntary easement, voluntary hunting access, and other land and easement acquisition programs.

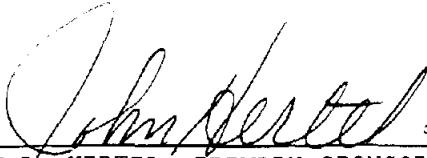
ASSUMPTIONS:

1. There would be no fiscal impact to the Departments of Fish, Wildlife and Parks or Natural Resources and Conservation as a result of passage of SB 323.

FISCAL IMPACT:

None

 2-17-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/18/97  
JOHN R. HERTEL, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0323, as introduced

**SB 323**