

HOUSE BILL NO. 414

INTRODUCED BY Z. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ENHANCEMENT OF ACCESS TO SURFACE WATERS CAPABLE OF RECREATIONAL USE DURING DEPARTMENT OF TRANSPORTATION CONSTRUCTION PROJECTS; REQUIRING A FIELD REVIEW; PROVIDING GUIDELINES; ESTABLISHING AN ACCESS ENHANCEMENT ADVISORY COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Enhancement of access to surface waters capable of recreational use

-- **legislative intent.** (1) It is the legislature's intent that the department consider the state's public trust responsibilities to provide public access to state streams and rivers when performing construction work near surface waters that are capable of recreational use pursuant to Title 23, chapter 2, part 3.

(2) When undertaking a construction project that intersects surface waters that are capable of recreational use, the department shall:

(a) establish the nature of the property interest at the bridge or project location; and

(b) conduct a preliminary field review in consultation with the department of fish, wildlife, and parks. The department shall invite local government officials to participate in the review, during which the department shall:

(i) assess the existing condition of any access to surface waters, fencing, parking, and other features at the bridge or project site;

(ii) conduct an engineering review; and

(iii) identify what, if any, additional right-of-way is needed for the bridge or project with enhancements to public access encouraged.

(3) After the preliminary field review is conducted pursuant to subsection (2):

(a) if no additional right-of-way is required or needed for the construction project, the department shall construct access to surface waters similar to that which existed prior to the proposed construction project. If the right-of-way is owned in fee, the department shall replace any fencing with similar fencing, except that a pedestrian passage or top rail glide may be installed for access to the high-water mark of the stream, assuming no safety or constructability issues preclude the access. The fencing must be sufficient to control livestock, if

1 appropriate.

2 (b) (i) if additional or new right-of-way is required for the construction project, the department shall, when
3 acquiring the right-of-way, attempt to provide access to surface waters similar to what existed prior to
4 construction. The department may not use condemnation for any enhancement of existing public access that is
5 not related to use for highway purposes. Where appropriate, pedestrian passageways and top rail glides may be
6 installed and all fencing must be sufficient to control livestock.

7 (ii) If an off-system bridge replacement right-of-way is acquired by easement with a county, the
8 department shall attempt to preserve any existing access to surface waters under the terms of the easement. If
9 there are no limitations to access within the recorded easement, the department shall attempt to provide access
10 similar to that which existed prior to the construction project, assuming no safety or constructability issues
11 preclude the access.

12 (4) Enhancements to public access to surface waters are encouraged at any bridge or project site
13 reviewed pursuant to this section. The department may enter into an agreement with another state agency or a
14 local government to provide enhancements, such as parking areas, ramps, or other facilities. An agreement must
15 assign responsibility for design, plans, maintenance, and funding of the enhancements.

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17 **NEW SECTION. Section 2. Access enhancement advisory council.** (1) There is an access
18 enhancement advisory council consisting of the following:

19 (a) a member of the transportation commission established in 2-15-2502 or the member's designee, who
20 serves as the presiding officer;

21 (b) a representative of the department of transportation;

22 (c) a representative of the department of fish, wildlife, and parks;

23 (d) a county commissioner designated by the Montana association of counties; and

24 (e) a member of the public informed or interested and experienced in the subjects of fish, wildlife, and
25 recreation, who is appointed by the director of fish, wildlife, and parks.

26 (2) By July 1, 2018, the access enhancement advisory council shall recommend to the department sites
27 where public access to surface waters that are capable of recreational use pursuant to Title 23, chapter 2, part
28 3, is needed. In making its recommendations, the advisory council shall establish criteria to rank sites, including
29 but not limited to:

30 (a) distance from the nearest public access;

- 1 (b) potential for conflict with surrounding landowners;
2 (c) popularity of the water for recreation; and
3 (d) suitability of the site for access when considering safety and potential conflicts with other right-of-way
4 users.

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6 **NEW SECTION. Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an
7 integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 2, chapter 15, part 25, and the
9 provisions of Title 2, chapter 15, part 25, apply to [section 2].

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11 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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