

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



JOHN WALSH
LT. GOVERNOR

May 6, 2013

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby deliver to you House Bill 5 (HB 5) "AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2015; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE" which, except for one line-item veto, I have signed into law.

HB 5, an appropriations bill which is introduced every legislative session, provides money for capital projects, capital improvements, and land acquisitions, including the Habitat Montana Program (established by sections 87-1-241 and 87-1-242, MCA, and implemented through section 87-1-209, MCA).

The Habitat Montana program has been an extremely effective and popular program, using license dollars paid by hunters to secure important wildlife habitat. Pursuant to authorizing statutes, the Montana Department of Fish, Wildlife and Parks and the Fish, Wildlife and Parks Commission, with the approval of the Board of Land Commissioners, have acquired wildlife habitat by fee title, conservation easement, easement, and lease. While not without controversy, these acquisitions have generally served Montanans well, helping to preserve our world-famous wildlife heritage for future generations to enjoy.

Unfortunately, the Legislature has attempted to use HB 5 as a vehicle for unraveling this important statutory authority, by inserting a "rider" to make a substantive law change unrelated to this appropriations bill. Specifically, in Section 4(1) of HB 5, the Legislature has inserted the following limitation on the Habitat Montana program:

When considering the acquisition of habitat in accordance with 87-1-241, the Department of Fish, Wildlife and Parks may consider only term agreements.

Remarkably, this language is directly at odds with the preceding sentence in Section 4(1), which authorizes the expenditure of funds for the full range of land acquisition options authorized by

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statute. Looking back at this legislative session, I can only conclude that attempting to pass such a limitation in a separate single-subject bill would have been extremely controversial and difficult. However, attempting to insert a rider to accomplish this same end is not only prohibited by statute (section 17-8-103(2), MCA) but is unconstitutional (Article V, Section 11(4)).

As Governor, I may line-item veto the following items in an appropriations bill: (1) a specific appropriation contained in the bill; (2) a condition that limits the use to which an appropriation may be put but only if the appropriation to which it is attached is vetoed as well; and (3) a rider. The language set forth above from Section 4(1) of HB 5 is a substantive piece of separate legislation, and has no bearing on the appropriations contained in HB 5 for this biennium. Therefore, under Cobb v. Schweitzer, 2006 Mont. Dist. LEXIS 257 and Cobb v. Schweitzer, 2006 Mont. Dist. LEXIS 892, this provision is subject to line-item veto.

For these reasons, I sign HB 5 into law with the exception of the second sentence of Section 4(1).

Sincerely,



STEVE BULLOCK

Governor

cc: Legislative Services Division
Mark Blasdel, Speaker of the House
Jeff Essmann, President of the Senate