

HOUSE BILL 401

Introduced by D. Brown

1/25	Introduced
1/25	Referred to Natural Resources
1/26	Fiscal Note Requested
1/26	First Reading
1/31	Fiscal Note Received
2/04	Hearing
2/18	Tabled in Committee

1 House BILL NO. 401
 2 INTRODUCED BY Jan Brown
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD
 6 OF LAND COMMISSIONERS TO IMPLEMENT A PROGRAM ALLOWING
 7 RECREATIONAL ACCESS TO STATE LANDS; AUTHORIZING THE FISH AND
 8 GAME COMMISSION TO INCREASE CONSERVATION LICENSE FEES BY UP
 9 TO \$2 TO FUND PUBLIC ACCESS TO STATE LANDS FOR RECREATIONAL
 10 PURPOSES; AND AMENDING SECTIONS 17-3-1003, 18-2-107,
 11 20-9-341, 20-25-422, AND 87-2-202, MCA."

12
 13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because
 15 [section 1(4)] requires the board of land commissioners to
 16 adopt rules to implement the provisions of the recreational
 17 access program established by this bill. The rulemaking
 18 authority must be applied in the following manner:

19 (1) [Section 1(4)(a)] authorizes the board to adopt
 20 rules providing for compensation to other lessees. It is the
 21 intent of the legislature that these rules establish a
 22 system to compensate grazing, agricultural, and other
 23 lessees for damages to their improvements and for increased
 24 management activities that result from recreational use of
 25 the state land that they lease. It is intended that the

1 compensation extend to destruction of crops.

2 (2) [Section 1(4)(b)] authorizes the board to adopt
 3 rules providing for regulation of access onto state lands
 4 and the prohibition of trespass from state land onto
 5 adjoining private property. It is the intent of the
 6 legislature that these rules prohibit entry onto state land
 7 where private entry is not available and prohibit knowing
 8 entry onto private land from state land without permission
 9 of the private landowner.

10 (3) [Section 1(4)(c)] authorizes the board to adopt
 11 rules for weed control activities. It is the intent of the
 12 legislature that the board establish a procedure whereby
 13 weed infestations on state lands that are attributable to
 14 recreational access are controlled or eradicated. Examples
 15 of programs that fulfill this intent include:

16 (a) a departmental weed control program;
 17 (b) payments to lessees for weed control activities;
 18 and
 19 (c) payments to county weed boards.

20 (4) [Section 1(4)(d)] authorizes the board to adopt
 21 rules for restrictions on recreational use of state land. It
 22 is the intent of the legislature that these rules protect
 23 the land and the health and safety of state lessees and
 24 persons occupying land adjacent to the state land. Examples
 25 of rules that fulfill this intent include:

- 1 (a) off-road vehicle restrictions; and
- 2 (b) restrictions on the discharge of firearms in the
- 3 vicinity of dwellings.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 NEW SECTION. **Section 1. Recreational use program.** (1)

7 On state lands classified under 77-1-401, the board may:

- 8 (a) enter into recreational leases on lands classified
- 9 as class 2 and class 4; and
- 10 (b) issue recreational use licenses on lands classified
- 11 as class 1 and class 3.

12 (2) The board may enter into general surface use leases

13 authorizing the lessee to use the land for its classified

14 use and for recreational purposes.

15 (3) The board may enter into an agreement with the

16 department of fish, wildlife, and parks to allow for public

17 access to designated state lands for specified recreational

18 uses.

19 (4) Before entering into a lease or agreement under

20 this section, the board shall adopt rules providing for:

21 (a) compensation to other lessees for damages to their

22 improvements and for increased management activities that

23 result from recreational use of the state land that they

24 lease;

25 (b) regulation of access onto state land and

1 prohibition of trespass from state land onto adjoining

2 private land;

3 (c) weed control activities necessitated by

4 recreational access; and

5 (d) restrictions on recreational use of land.

6 NEW SECTION. **Section 2. Penalty.** (1) A person who

7 violates a rule adopted pursuant to [section 1(4)(b) or

8 (4)(d)] is subject to payment of a civil penalty of up to

9 \$1,000 for each violation.

10 (2) The penalty established in this section is

11 collectible in an action by the department in the district

12 court of the first judicial district in and for the county

13 of Lewis and Clark or in the district court of the county

14 where the alleged violation occurred.

15 NEW SECTION. **Section 3. Use of recreational use**

16 **program funds.** (1) Up to 25% of revenue generated from

17 leases and agreements entered into pursuant to [section 1(1)

18 and (3)] and 10% of the revenue generated from leases issued

19 pursuant to [section 1(2)] may be expended by the department

20 for:

21 (a) damage compensation paid in accordance with rules

22 adopted under [section 1(4)(a)];

23 (b) payments for weed control, including payments to

24 weed control districts, in accordance with rules adopted

25 under [section 1(4)(c)]; and

1 (c) administration of the department's recreational use
2 program.

3 (2) The remainder of the revenue must be distributed to
4 beneficiaries of the respective trusts as provided by law.

5 **NEW SECTION. Section 4. Limitation on liability for**
6 **recreational use of state land.** A person who makes
7 recreational use of state land under a recreational program
8 instituted by an agreement entered into under [section 1(3)]
9 does so without any assurance from the state or the state's
10 lessee that the state land is safe for any purpose. The
11 state and the state's lessee owe no duty of care with
12 respect to the condition of the property; however:

13 (1) the state is liable for any injury to person or
14 property for an act or omission that constitutes willful or
15 wanton misconduct; and

16 (2) the state's lessee is liable for an act or omission
17 that constitutes willful or wanton misconduct.

18 **Section 5.** Section 17-3-1003, MCA, is amended to read:

19 "17-3-1003. Support of state institutions. (1) For the
20 support and endowment of each state institution, there is
21 annually and perpetually appropriated the income from all
22 permanent endowments therefor and from all land grants as
23 provided by law after any deductions made under [section 3]
24 and Title 77, chapter 1, part 6. All moneys received or
25 collected in connection with such endowments by all higher

1 educational institutions, reformatory, custodial and penal
2 institutions, state hospitals, and sanitariums, for any
3 purpose whatever, except revenues pledged to secure the
4 payment of principal and interest of obligations incurred
5 for the purchase, construction, equipment, or improvement of
6 facilities at units of the Montana university system and for
7 the refunding of such obligations or moneys which may
8 constitute temporary deposits, all or part of which may be
9 subject to withdrawal or repayment, shall be paid over to
10 the state treasurer who shall deposit the same to the credit
11 of the proper fund.

12 (2) All moneys received from the investment of grants
13 of a state institution and all money received from the
14 leasing of lands granted to a state institution shall be
15 deposited with the state treasurer of Montana for each of
16 such institutions, to the credit of the state special
17 revenue fund."

18 **Section 6.** Section 18-2-107, MCA, is amended to read:

19 "18-2-107. Deposit of capitol building grant revenues.

20 (1) The state treasurer is hereby authorized and instructed
21 to deposit in a capital projects fund all revenue from the
22 capitol building land grant after any deductions made under
23 [section 3] and Title 77, chapter 1, part 6.

24 (2) The funds so accumulated shall be held and
25 dedicated for the purpose of constructing capitol buildings

1 or additions thereto in accordance with the provisions of
2 section 12 of The Enabling Act."

3 **Section 7.** Section 20-9-341, MCA, is amended to read:

4 "20-9-341. Definition of interest and income moneys.

5 (1) As used in this title, the term "interest and income
6 moneys" means the total of the following revenues, as
7 provided for by Article X, section 5, of the 1972 Montana
8 constitution:

9 (a) 95% of the interest received from the investment of
10 the public school fund;

11 (b) 95% of the interest received from the investment of
12 any other school funds held in trust by the state board of
13 land commissioners;

14 (c) 95% of the income received from the leasing of
15 state school lands after any deductions that may be made
16 under the provisions of Title 77, chapter 1, part 6, and
17 [section 3]; and

18 (d) 95% of any other income derived from any other
19 covenant affecting the use of state school lands.

20 (2) The remaining 5% of such revenues shall be annually
21 credited to the public school fund."

22 **Section 8.** Section 20-25-422, MCA, is amended to read:

23 "20-25-422. Support of university of Montana. (1) For
24 the support and endowment of the university there is
25 annually and perpetually appropriated:

1 (a) the university fund income and all other sums of
2 money appropriated by law thereto, after any deductions made
3 under [section 3] and Title 77, chapter 1, part 6;

4 (b) all tuition and matriculation fees; and

5 (c) all contributions derived from public or private
6 bounty.

7 (2) The entire income of all such funds shall be placed
8 at the disposal of the regents by transfer to its treasurer
9 and shall be kept separate and distinct from all other
10 funds. The income shall be used solely for the support of
11 the colleges and departments of the university or those
12 connected therewith.

13 (3) All means derived from other public or private
14 bounty shall be exclusively devoted to the specific objects
15 for which they shall have been designated by the donor."

16 **Section 9.** Section 87-2-202, MCA, is amended to read:

17 "87-2-202. Application -- stamp attachment -- fee --
18 expiration. (1) A wildlife conservation license shall be
19 sold upon written application. The application shall contain
20 the applicant's name, age, occupation, place of residence,
21 post-office address, and length of time in the state of
22 Montana; state whether the applicant is a citizen of the
23 United States or an alien; and be subscribed by the
24 applicant. The applicant shall present a driver's license or
25 other identification to substantiate the information.

1 (2) Hunting, fishing, or trapping licenses in the form
2 of tags or stamps issued to a holder of a wildlife
3 conservation license must be affixed to or recorded on the
4 wildlife conservation license according to such rules as the
5 department may prescribe.

6 (3) Resident and nonresident wildlife conservation
7 licenses may be purchased for a fee of \$2. The commission
8 may by rule increase the fee by up to \$2 to generate revenue
9 to provide public access to designated state lands under
10 agreements entered into under [section 1(3)].

11 (4) Licenses issued shall be void after the last day of
12 February next succeeding their issuance."

13 NEW SECTION. Section 10. Codification instruction.
14 [Sections 1 through 4] are intended to be codified as an
15 integral part of Title 77, chapter 1, part 2, and the
16 provisions of Title 77, chapter 1, part 2, apply to
17 [sections 1 through 4].

18 NEW SECTION. Section 11. Severability. If a part of
19 [this act] is invalid, all valid parts that are severable
20 from the invalid part remain in effect. If a part of [this
21 act] is invalid in one or more of its applications, the part
22 remains in effect in all valid applications that are
23 severable from the invalid applications.

-End-

FISCAL IMPACT:

Department of State Lands

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	0.00	14.00	14.00	0.00	14.00	14.00
Personal Services	0	363,108	363,108	0	363,108	363,108
Operating Costs	0	44,500	44,500	0	44,500	44,500
Equipment	0	114,000	114,000	0	0	0
Weed Control	0	50,000	50,000	0	50,000	50,000
Damage Compensations	0	<u>25,000</u>	<u>25,000</u>	0	<u>25,000</u>	<u>25,000</u>
Total	0	596,608	596,608	0	482,608	482,608
<u>Funding:</u>						
Trust Revenues (02)	0	596,608	596,608	0	482,608	482,608
Department of Fish, Wildlife, and Parks :						
<u>Expenditures:</u>						
FTE	0.00	1.00	1.00	0.00	1.00	1.00
Personal Services	0	27,337	27,337	0	27,337	27,337
Operating Costs	0	<u>10,500</u>	<u>10,500</u>	0	<u>10,500</u>	<u>10,500</u>
Total	0	37,837	37,837	0	37,837	37,837
<u>Funding:</u>						
General License Acct. (02)	0	37,837	37,837	0	37,837	37,837
<u>Revenues:</u>						
Conservation Licenses	840,000	1,680,000	840,000	840,000	1,680,000	840,000
Other Leases and License	0	<u>3,160,000</u>	<u>3,160,000</u>	0	<u>3,160,000</u>	<u>3,160,000</u>
Total New Trust Income	840,000	4,840,000	4,000,000	840,000	4,840,000	4,000,000

TECHNICAL NOTES:

There are three potential legal conflicts presented by this proposed bill.

1. The director of the Legal Division of the Legislative Council issued an opinion entitled "Land Grant Trust Administration" (December 1990) which concluded that the deduction of administrative costs from trust income is unconstitutional.
2. In a letter dated September 18, 1984, from the attorney general to the legislative fiscal analyst, the attorney general stated, "The Legislature may not appropriate, by bill, revenue generated from sources pledged to cover university system revenue bond requirements..." The bond indentures of the university system specifically pledge the land grant trust income to the bond indentures.

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3. Revenue generated from the increase in the conservation license fee can only be used to provide access for hunters and fisherman. If the conservation license revenues were used to finance non-sportsman access, the Department of Fish, Wildlife and Parks could be in violation of federal diversion laws and could lose \$7 million in federal wildlife and fisheries funds.
4. If the use of revenue for administrative costs is found to be unconstitutional, and severed from the bill, these costs must then be appropriated from other state funds.

Also the bill could provide less recreational access to trust land than currently exists. If the recreational lease or use license is purchased by a private individual, those lease holders could have the exclusive recreational rights to those lands and exclude other potential recreationalists from using the lands.

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