

HOUSE BILL 550

Introduced by Grady, et al.

2/01	Introduced
2/01	Referred to Taxation
2/02	First Reading
2/02	Fiscal Note Requested
2/07	Fiscal Note Received
2/07	Fiscal Note Printed
2/13	Hearing
3/28	Committee Report--Bill Passed as Amended
4/03	2nd Reading Passed
4/03	On Motion Rules Suspended to Place on 3rd Reading this Day
4/03	3rd Reading Passed
	Transmitted to Senate
4/04	First Reading
4/04	Referred to Taxation
4/08	Hearing
4/09	Committee Report--Bill Not Passed
4/09	Adverse Committee Report Adopted
4/10	Revised Fiscal Note Requested

1 HOUSE BILL NO. 550  
 2 INTRODUCED BY Grady Harding Wooding  
 3 Schuyler Benton Sullivan  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO FUND STATE PARKS  
 5 THROUGH ENACTMENT OF A TAX ON RENTAL CAR FEES; TO ESTABLISH  
 6 A TAX RATE; TO PROVIDE FOR COLLECTION AND ENFORCEMENT BY THE  
 7 DEPARTMENT OF REVENUE; TO PROVIDE THAT TAX PROCEEDS, AFTER  
 8 DEDUCTION FOR ADMINISTRATIVE AND COLLECTION COSTS, BE USED  
 9 BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS  
 10 STATE PARKS NEEDS; AND PROVIDING A DELAYED EFFECTIVE DATE  
 11 AND AN APPLICABILITY DATE."  
 12

13 WHEREAS, Montana's state parks provide an extremely  
 14 valuable resource for the enjoyment of both state residents  
 15 and nonresidents and are a legitimate part of Montana's  
 16 social and material infrastructure; and

17 WHEREAS, adequate funding of the state parks system is  
 18 an issue of concern to the Legislature and maintenance and  
 19 improvement of state parks is in the interest of all  
 20 Montanans; and

21 WHEREAS, the State Park Futures Committee, in its 1990  
 22 report, suggested a tax on rental car fees as a viable  
 23 funding option for state parks; and

24 WHEREAS, the Committee found that 80% to 100% of gross  
 25 annual earnings on short-term car rentals by the major

1 rental companies comes from rentals by nonresidents; and  
 2 WHEREAS, the Legislature finds it appropriate to enact a  
 3 tax on certain rental car fees to enhance the revenue  
 4 available for funding the state parks system and to help  
 5 curb the degradation of the system occurring due to current  
 6 funding levels.  
 7

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

9 NEW SECTION. Section 1. Definitions. As used in  
 10 [sections 1 through 6], the following definitions apply:

11 (1) "Department" means the department of revenue.

12 (2) "Rental car" means any motor vehicle supplied for a  
 13 fee by a rental car provider for temporary use by the  
 14 public.

15 (3) "Rental car fee" means the total fee charged by a  
 16 rental car provider for the use of a rental car and includes  
 17 any charge based on time or mileage, insurance, and  
 18 incidental fees or charges related to the rental.

19 (4) "Rental car provider" means an individual,  
 20 corporation, company, or partnership whose primary business  
 21 is the rental of motor vehicles for temporary contractual  
 22 use by the public. The term does not include a licensed  
 23 Montana motor vehicle dealership that provides rental cars  
 24 as an incidental part of the dealership business.

25 NEW SECTION. Section 2. Tax rate. There is imposed on



1 the user of a rental car a tax of 6% of the rental car fee.

2 NEW SECTION. Section 3. Collection and reporting of  
3 tax. (1) The rental car provider shall collect the tax  
4 imposed by [section 2].

5 (2) The rental car provider shall report to the  
6 department, at the end of each calendar quarter, the gross  
7 receipts collected during that quarter that are attributable  
8 to rental car fees. The report is due within 30 days  
9 following the end of the calendar quarter and must be  
10 accompanied by a payment in an amount equal to the tax  
11 required to be collected under subsection (1).

12 NEW SECTION. Section 4. Audits -- records -- revision  
13 of returns. (1) The department may audit the books and  
14 records of any rental car provider to ensure that the proper  
15 amount of tax imposed by [section 2] has been collected. An  
16 audit may be done on the premises of the rental car provider  
17 or at any other convenient location.

18 (2) The department may request the rental car provider  
19 to provide the department with books, ledgers, registers, or  
20 other documents necessary to verify the correct amount of  
21 tax.

22 (3) The rental car provider shall maintain and have  
23 available for inspection by the department books, ledgers,  
24 registers, or other documents showing the collection of  
25 rental car fees for the preceding 5 years.

1 (4) Except in the case of a person who, with intent to  
2 evade the tax, purposely or knowingly files a false or  
3 fraudulent return violating the provisions of [sections 1  
4 through 6], the amount of tax due under any return must be  
5 determined by the department within 5 years after the return  
6 is made. After that time, the department is barred from  
7 revising any return or recomputing the tax due. A proceeding  
8 in court for the collection of the tax may not be instituted  
9 unless notice of any additional tax is provided within the  
10 5-year period.

11 (5) An application for revision may be filed with the  
12 department by a rental car provider within 5 years from the  
13 original due date of the return.

14 NEW SECTION. Section 5. Failure to pay or file --  
15 penalty -- interest. (1) A rental car provider who fails to  
16 file a report as required by [section 3] must be assessed a  
17 penalty of 2% of the tax that should have been collected  
18 during the calendar quarter. Upon a showing of good cause,  
19 the department may waive the penalty.

20 (2) A rental car provider who fails to make payment or  
21 fails to report and make payment as required by [section 3]  
22 must be assessed a penalty of 2% of the amount that was not  
23 paid. Upon a showing of good cause, the department may waive  
24 the penalty.

25 (3) If a rental car provider fails to file the report

1 required by [section 3] or if the department determines that  
2 the report understates the amount of tax due, the department  
3 may determine the amount of tax due and assess that amount  
4 against the rental car provider.

5 (4) The amount required to be paid under [section 3]  
6 accrues interest at the rate of 1% a month or part of a  
7 month from delinquency until paid.

8 NEW SECTION. **Section 6.** Distribution of tax proceeds.

9 (1) Proceeds derived from the tax imposed under [section 2]  
10 must be deposited in the state treasury in a state special  
11 revenue fund to the credit of the department. The department  
12 may spend from that account an amount necessary to cover  
13 actual costs of collecting the tax and administering the  
14 provisions of [sections 1 through 6], but that amount may  
15 not exceed 5% of the total annual proceeds collected.

16 (2) The balance of the tax proceeds received each  
17 reporting period and not deducted pursuant to subsection (1)  
18 must be transferred to the state special revenue fund  
19 established in 23-1-105 for use by the department of fish,  
20 wildlife, and parks to fund operation, development, and  
21 maintenance of the state parks system.

22 NEW SECTION. **Section 7.** Codification instruction.

23 [Sections 1 through 6] are intended to be codified as an  
24 integral part of Title 15, and the provisions of Title 15  
25 apply to [sections 1 through 6].

1 NEW SECTION. **Section 8.** Effective date --  
2 applicability. [This act] is effective January 1, 1992, and  
3 applies to rental car fees collected on and after January 1,  
4 1992.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0550, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to fund state parks through enactment of a tax on rental car fees; to establish a tax rate; to provide for collection and enforcement by the Department of Revenue; and to provide that tax proceeds, after deduction for administrative and collection costs, be used by the Department of Fish, Wildlife and Parks to address state parks needs.

ASSUMPTIONS:

1. All vehicles are rented through a car rental establishment.
2. Gross receipts from car rental fees in Montana in 1987 were approximately \$13,500,000 (estimated from the 1987 Census of Service Industries, U.S. Bureau of the Census).
3. The average annual growth rate for vehicle rental gross receipts between 1977 and 1987 was about 9% per year.
4. Car rental gross receipts between 1987 and 1993 increased or will increase at a rate of 9% per year, yielding Calendar Year (CY) 1992 and 1993 estimates of \$19,575,000 and \$20,790,000 respectively.
5. Since the proposed legislation contains an effective date of January 1, 1992 and quarterly submission of tax collections within 30 days following the end of the quarter, only one quarterly payment would be received in FY92. Thus FY92 tax receipts would consist of collections for the first quarter of (CY) 1992; FY93 tax receipts would consist of collections for the last three quarters of CY 1992 and the first quarter of CY 1993.
6. The proposed legislation specifies a 6% tax rate on rental car fees (receipts).
7. No penalties and interest are collected in FY92 and FY93.
8. In FY92, 0.45 FTE staff would be required at the Department of Revenue (DoR) during the development stage; for FY93 and beyond, 0.25 FTE would handle DoR functions.

FISCAL IMPACT:Expenditures:

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
F.T.E.	0	0.45	0.45	0	0.25	0.25
Personal Services	0	23,427	23,427	0	3,898	3,898
Operating Expenses	0	2,185	2,185	0	1,155	1,155
Equipment	0	4,430	4,430	0	0	0
Total	0	30,042	30,042	0	5,053	5,053


Funding:

State Special	0	30,042	30,042	0	5,053	5,053
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Revenues:

Rental Car Tax	0	293,625	293,625	0	1,192,725	1,192,725
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 ROD SUNDSTED, BUDGET DIRECTOR  
 Office of Budget and Program Planning

DATE

  
 EDWARD J. (ED) GRADY, PRIMARY SPONSOR

DATE

Fiscal Note for HB0550, as introduced**HB 550**

Fiscal Note Request for HB0550, as introduced  
Form BD-15  
page 2

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Ongoing costs after FY93 would be approximately \$5,000 per year. Taxes received net of annual administrative costs (no more than 5% of tax collections per year) would be deposited in a special revenue fund for use by the Department of Fish, Wildlife and Parks to fund operation, development, and maintenance of the state parks system. The amount deposited for FY92 would be \$263,583. The amount deposited for FY93 and future years would be approximately \$1,187,672.

TECHNICAL NOTES:

1. It appears that the intent of the legislation is to exclude trucks from rental car tax. In order to clarify that intent, the words "passenger car and/or motorized recreational vehicle" could be substituted for "motor vehicle" on line 12 of page 2 of the bill, and similarly the plural of this phrase could be substituted for "motor vehicles" on line 21 of page 2.
2. In order to be consistent with other Department of Revenue due dates, lines 8-9 on p. 3 should be amended after the word due to read "on or before the last day of the month following the close of the quarter".

APPROVED BY COMMITTEE  
ON TAXATION

1 HOUSE BILL NO. 550  
2 INTRODUCED BY GRADY, HARDING, WEEDING, SCHYE,  
3 BENGTON, QUILICI  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO FUND STATE PARKS  
6 THROUGH ENACTMENT OF A TAX ON RENTAL CAR FEES; TO ESTABLISH  
7 A TAX RATE; TO PROVIDE FOR COLLECTION AND ENFORCEMENT BY THE  
8 DEPARTMENT OF REVENUE; TO PROVIDE THAT TAX PROCEEDS, AFTER  
9 DEDUCTION FOR ADMINISTRATIVE AND COLLECTION COSTS, BE USED  
10 BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS  
11 STATE PARKS NEEDS; TO PROVIDE A STATUTORY APPROPRIATION OF  
12 ADMINISTRATIVE FEES; AMENDING SECTION 17-7-502, MCA; AND  
13 PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY  
14 DATE."

15  
16 WHEREAS, Montana's state parks provide an extremely  
17 valuable resource for the enjoyment of both state residents  
18 and nonresidents and are a legitimate part of Montana's  
19 social and material infrastructure; and

20 WHEREAS, adequate funding of the state parks system is  
21 an issue of concern to the Legislature and maintenance and  
22 improvement of state parks is in the interest of all  
23 Montanans; and

24 WHEREAS, the State Park Futures Committee, in its 1990  
25 report, suggested a tax on rental car fees as a viable

1 funding option for state parks; and

2 WHEREAS, the Committee found that 80% to 100% of gross  
3 annual earnings on short-term car rentals by the major  
4 rental companies comes from rentals by nonresidents; and

5 WHEREAS, the Legislature finds it appropriate to enact a  
6 tax on certain rental car fees to enhance the revenue  
7 available for funding the state parks system and to help  
8 curb the degradation of the system occurring due to current  
9 funding levels.  
10

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

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13 [sections 1 through 6 ], the following definitions apply:

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- 15 (2) "Rental car" means any motor vehicle supplied for a  
16 fee by a rental car provider for temporary use by the  
17 public.
- 18 (3) "Rental car fee" means the total fee charged by a  
19 rental car provider for the use of a rental car and includes  
20 any charge based on time or mileage, insurance, and  
21 incidental fees or charges related to the rental.
- 22 (4) "Rental car provider" means an individual,  
23 corporation, company, or partnership whose primary business  
24 is INCLUDES the rental of motor vehicles for temporary  
25 contractual use by the public. The term does not include a

1 licensed Montana motor vehicle dealership that provides  
 2 rental cars as an--~~incidental~~--part LESS THAN 5% of the  
 3 ~~dealership-business~~ DEALERSHIP'S GROSS SALES.

4 NEW SECTION. Section 2. Tax rate. There is imposed on  
 5 the user of a rental car a tax of 6% of the rental car fee.

6 NEW SECTION. Section 3. Collection and reporting of  
 7 tax. (1) The rental car provider shall collect the tax  
 8 imposed by {section 2}.

9 (2) The rental car provider shall report to the  
 10 department, at the end of each calendar quarter, the gross  
 11 receipts collected during that quarter that are attributable  
 12 to rental car fees. The report is due ~~within-30-days~~ ON OR  
 13 BEFORE THE LAST DAY OF THE MONTH following the end of the  
 14 calendar quarter and must be accompanied by a payment in an  
 15 amount equal to the tax required to be collected under  
 16 subsection (1).

17 NEW SECTION. Section 4. Audits -- records -- revision  
 18 of returns -- STATUTE OF LIMITATIONS. (1) The department may  
 19 audit the books and records of any rental car provider to  
 20 ensure that the proper amount of tax imposed by {section 2}  
 21 has been collected. An audit may be done on the premises of  
 22 the rental car provider or at any other convenient location.

23 (2) The department may request the rental car provider  
 24 to provide the department with books, ledgers, registers, or  
 25 other documents necessary to verify the correct amount of

1 tax.

2 (3) The rental car provider shall maintain and have  
 3 available for inspection by the department books, ledgers,  
 4 registers, or other documents showing the collection of  
 5 rental car fees for the preceding 5 years.

6 ~~{4}--Except-in-the-case-of-a-person-who,-with-intent--to~~  
 7 ~~evade--the--tax,-purposely--or--knowingly--files-a-false-or~~  
 8 ~~fraudulent-return-violating-the-provisions--of--{sections--1~~  
 9 ~~through--6},--the-amount-of-tax-due-under-any-return-must-be~~  
 10 ~~determined-by-the-department-within-5-years-after-the-return~~  
 11 ~~is-made-After-that-time,-the--department--is--barred--from~~  
 12 ~~revising-any-return-or-recomputing-the-tax-due-A-proceeding~~  
 13 ~~in-court-for-the-collection-of-the-tax-may-not-be-instituted~~  
 14 ~~unless--notice--of-any-additional-tax-is-provided-within-the~~  
 15 ~~5-year-period.~~

16 ~~{5}--An-application-for-revision-may-be-filed--with--the~~  
 17 ~~department--by-a-rental-car-provider-within-5-years-from-the~~  
 18 ~~original-due-date-of-the-return.~~

19 (4) (A) IF THE DEPARTMENT DETERMINES THAT THE AMOUNT OF  
 20 TAXES DUE IS GREATER THAN THE AMOUNT REPORTED, IT SHALL MAIL  
 21 TO THE TAXPAYER A NOTICE OF THE ADDITIONAL TAXES PROPOSED TO  
 22 BE ASSESSED. WITHIN 30 DAYS AFTER MAILING OF THE NOTICE, THE  
 23 TAXPAYER MAY FILE WITH THE DEPARTMENT A WRITTEN PROTEST  
 24 AGAINST THE PROPOSED ADDITIONAL TAXES, SETTING FORTH THE  
 25 FOUNDATIONS UPON WHICH THE PROTEST IS BASED, AND MAY REQUEST IN



1 HIS PROTEST AN ORAL HEARING OR AN OPPORTUNITY TO PRESENT  
 2 ADDITIONAL EVIDENCE RELATING TO HIS ADDITIONAL LIABILITY. IF  
 3 A PROTEST IS NOT FILED, THE AMOUNT OF THE ADDITIONAL TAXES  
 4 PROPOSED TO BE ASSESSED BECOMES FINAL UPON EXPIRATION OF THE  
 5 30-DAY PERIOD. IF A PROTEST IS FILED, THE DEPARTMENT SHALL  
 6 RECONSIDER THE PROPOSED ASSESSMENT AND, IF THE TAXPAYER HAS  
 7 SO REQUESTED, SHALL GRANT THE TAXPAYER AN ORAL HEARING.  
 8 AFTER CONSIDERATION OF THE PROTEST AND THE EVIDENCE  
 9 PRESENTED AT AN ORAL HEARING, THE DEPARTMENT'S ACTION UPON  
 10 THE PROTEST IS FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO  
 11 THE TAXPAYER.

12 (B) WHEN A DEFICIENCY IS DETERMINED AND THE ADDITIONAL  
 13 TAXES BECOME FINAL, THE DEPARTMENT SHALL MAIL A NOTICE AND  
 14 DEMAND FOR PAYMENT TO THE TAXPAYER. THE TAXES ARE DUE AND  
 15 PAYABLE AT THE EXPIRATION OF 10 DAYS AFTER THE NOTICE AND  
 16 DEMAND WERE MAILED. INTEREST ON ANY DEFICIENCY ASSESSMENT  
 17 BEARS INTEREST FROM THE DATE SPECIFIED IN [SECTION 3]. A  
 18 CERTIFICATE BY THE DEPARTMENT OF THE MAILING OF THE NOTICES  
 19 REQUIRED BY SUBSECTION (4) IS PRIMA FACIE EVIDENCE OF THE  
 20 COMPUTATION AND LEVY OF THE DEFICIENCY IN THE TAXES AND OF  
 21 THE GIVING OF REQUIRED NOTICE.

22 (5) EXCEPT AS PROVIDED IN THIS SECTION, A DEFICIENCY  
 23 MAY NOT BE ASSESSED OR COLLECTED WITH RESPECT TO THE TAXABLE  
 24 PERIOD FOR WHICH A RETURN OR REPORT IS FILED UNLESS THE  
 25 NOTICE OF THE ADDITIONAL TAX PROPOSED TO BE ASSESSED IS

1 MAILED WITHIN 5 YEARS FROM THE DATE THE RETURN WAS FILED.  
 2 FOR PURPOSES OF THIS SECTION, A RETURN OR REPORT FILED  
 3 BEFORE THE LAST DAY PRESCRIBED FOR FILING IS CONSIDERED AS  
 4 FILED ON THE LAST DAY. IF THE TAXPAYER, BEFORE THE  
 5 EXPIRATION OF THE PERIOD PRESCRIBED FOR ASSESSMENT, CONSENTS  
 6 IN WRITING TO AN EXTENDED TIME, THE ASSESSMENT MAY BE MADE  
 7 AT ANY TIME PRIOR TO THE EXPIRATION OF THE PERIOD AGREED  
 8 UPON.

9 (6) A REFUND OR CREDIT MAY NOT BE ALLOWED OR PAID WITH  
 10 RESPECT TO THE YEAR FOR WHICH A RETURN OR REPORT IS FILED  
 11 AFTER 5 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE  
 12 RETURN OR REPORT OR AFTER 1 YEAR FROM THE DATE OF THE  
 13 OVERPAYMENT, WHICHEVER PERIOD EXPIRES LATER, UNLESS BEFORE  
 14 THE EXPIRATION OF THE PERIOD THE TAXPAYER FILES A CLAIM OR  
 15 THE DEPARTMENT DETERMINES THE EXISTENCE OF THE OVERPAYMENT  
 16 AND APPROVES THE REFUND OR CREDIT. IF THE TAXPAYER HAS  
 17 AGREED IN WRITING UNDER THE PROVISIONS OF SUBSECTION (5) TO  
 18 EXTEND THE TIME WITHIN WHICH THE DEPARTMENT MAY PROPOSE AN  
 19 ADDITIONAL ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR  
 20 REFUND OR CREDIT MAY BE FILED OR A REFUND OR CREDIT ALLOWED  
 21 IF NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

22 (7) IF A RETURN IS REQUIRED TO BE FILED AND THE  
 23 TAXPAYER FAILS TO FILE THE RETURN, THE TAX MAY BE ASSESSED  
 24 OR AN ACTION TO COLLECT THE TAX MAY BE BROUGHT AT ANY TIME.  
 25 IF A RETURN IS REQUIRED TO BE FILED AND THE TAXPAYER FILES A

1 FRAUDULENT RETURN, THE 5-YEAR PERIOD PROVIDED FOR IN  
 2 SUBSECTION (6) DOES NOT BEGIN UNTIL DISCOVERY OF THE FRAUD  
 3 BY THE DEPARTMENT.

4 NEW SECTION. Section 5. Failure to pay or file --  
 5 penalty -- interest. (1) A rental car provider who fails to  
 6 file a report as required by [section 3] must be assessed a  
 7 penalty of 2% ~~10%~~ of the tax that should have been collected  
 8 during the calendar quarter. Upon a showing of good cause,  
 9 the department may waive the penalty.

10 (2) A rental car provider who fails to make payment or  
 11 fails to report and make payment as required by [section 3]  
 12 must be assessed a penalty of 2% ~~10%~~ of the amount that was  
 13 not paid. Upon a showing of good cause, the department may  
 14 waive the penalty.

15 (3) If a rental car provider fails to file the report  
 16 required by [section 3] or if the department determines that  
 17 the report understates the amount of tax due, the department  
 18 may determine the amount of tax due and assess that amount  
 19 against the rental car provider.

20 (4) The amount required to be paid under [section 3]  
 21 accrues interest at the rate of 1% a month or part of a  
 22 month from delinquency until paid.

23 NEW SECTION. Section 6. Distribution of tax proceeds.  
 24 (1) Proceeds derived from the tax imposed under [section 2]  
 25 must be deposited in the state treasury in a state special

1 revenue fund to the credit of the department. The department  
 2 may spend from that account an amount necessary to cover  
 3 actual costs of collecting the tax and administering the  
 4 provisions of [sections 1 through 6 7], but that amount may  
 5 not exceed 5% of the total annual proceeds collected.

6 (2) The balance of the tax proceeds received each  
 7 reporting period and not deducted pursuant to subsection (1)  
 8 must be transferred to the state special revenue fund  
 9 established in 23-1-105 for use by the department of fish,  
 10 wildlife, and parks to fund operation, development, and  
 11 maintenance of the state parks system.

12 NEW SECTION. SECTION 7. SPECIAL REVENUE ACCOUNT. (1)  
 13 THERE IS A RENTAL CAR TAX ADMINISTRATION ACCOUNT IN THE  
 14 STATE SPECIAL REVENUE FUND.

15 (2) ALL ADMINISTRATIVE FEES COLLECTED UNDER [SECTION  
 16 6(1)] MUST BE DEPOSITED BY THE DEPARTMENT INTO THE RENTAL  
 17 CAR TAX ADMINISTRATION ACCOUNT.

18 (3) THE MONEY IN THE RENTAL CAR TAX ADMINISTRATION  
 19 ACCOUNT IS STATUTORILY APPROPRIATED, AS PROVIDED IN  
 20 17-7-502, TO THE DEPARTMENT TO ADMINISTER THE RENTAL CAR  
 21 TAX.

22 SECTION 8. SECTION 17-7-502, MCA, IS AMENDED TO READ:

23 "17-7-502. Statutory appropriations -- definition --  
 24 requisites for validity. (1) A statutory appropriation is an  
 25 appropriation made by permanent law that authorizes spending

1 by a state agency without the need for a biennial  
2 legislative appropriation or budget amendment.

3 (2) Except as provided in subsection (4), to be  
4 effective, a statutory appropriation must comply with both  
5 of the following provisions:

6 (a) The law containing the statutory authority must be  
7 listed in subsection (3).

8 (b) The law or portion of the law making a statutory  
9 appropriation must specifically state that a statutory  
10 appropriation is made as provided in this section.

11 (3) The following laws are the only laws containing  
12 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
13 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
14 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
15 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;  
16 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
17 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
18 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
19 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
20 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;  
21 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
22 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
23 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
24 [SECTION 7]; and section 13, House Bill No. 861, Laws of  
25 1985.

1 (4) There is a statutory appropriation to pay the  
2 principal, interest, premiums, and costs of issuing, paying,  
3 and securing all bonds, notes, or other obligations, as due,  
4 that have been authorized and issued pursuant to the laws of  
5 Montana. Agencies that have entered into agreements  
6 authorized by the laws of Montana to pay the state  
7 treasurer, for deposit in accordance with 17-2-101 through  
8 17-2-107, as determined by the state treasurer, an amount  
9 sufficient to pay the principal and interest as due on the  
10 bonds or notes have statutory appropriation authority for  
11 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
12 664, L. 1987, the inclusion of 39-71-2504 terminates June  
13 30, 1991.)"

14 NEW SECTION. SECTION 9. COORDINATION INSTRUCTION. IF  
15 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT  
16 INCLUDES A SECTION ADOPTING A UNIFORM TAX APPEAL PROCEDURE,  
17 THEN THE LANGUAGE CONTAINED IN [SECTION 4(4) THROUGH (7)] IS  
18 VOID AND THE PROVISIONS OF SENATE BILL NO. 445 GOVERN THE  
19 APPEAL PROCEDURES.

20 NEW SECTION. Section 10. Codification instruction.  
21 [Sections 1 through 6 7] are intended to be codified as an  
22 integral part of Title 15, and the provisions of Title 15  
23 apply to [sections 1 through 6 7].

24 NEW SECTION. Section 11. Effective date --  
25 applicability. [This act] is effective January 1, 1992, and

HB 0550/02

- 1 applies to rental car fees collected on and after January 1,
- 2 1992.

-End-

HOUSE BILL NO. 550

INTRODUCED BY GRADY, HARDING, WEEDING, SCHYE,  
BENGTSON, QUILICI

A BILL FOR AN ACT ENTITLED: "AN ACT TO FUND STATE PARKS THROUGH ENACTMENT OF A TAX ON RENTAL CAR FEES; TO ESTABLISH A TAX RATE; TO PROVIDE FOR COLLECTION AND ENFORCEMENT BY THE DEPARTMENT OF REVENUE; TO PROVIDE THAT TAX PROCEEDS, AFTER DEDUCTION FOR ADMINISTRATIVE AND COLLECTION COSTS, BE USED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS STATE PARKS NEEDS; TO PROVIDE A STATUTORY APPROPRIATION OF ADMINISTRATIVE FEES; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, Montana's state parks provide an extremely valuable resource for the enjoyment of both state residents and nonresidents and are a legitimate part of Montana's social and material infrastructure; and

WHEREAS, adequate funding of the state parks system is an issue of concern to the Legislature and maintenance and improvement of state parks is in the interest of all Montanans; and

WHEREAS, the State Park Futures Committee, in its 1990 report, suggested a tax on rental car fees as a viable

funding option for state parks; and

WHEREAS, the Committee found that 80% to 100% of gross annual earnings on short-term car rentals by the major rental companies comes from rentals by nonresidents; and

WHEREAS, the Legislature finds it appropriate to enact a tax on certain rental car fees to enhance the revenue available for funding the state parks system and to help curb the degradation of the system occurring due to current funding levels.

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 6 ], the following definitions apply:

- (1) "Department" means the department of revenue.
- (2) "Rental car" means any motor vehicle supplied for a fee by a rental car provider for temporary use by the public.
- (3) "Rental car fee" means the total fee charged by a rental car provider for the use of a rental car and includes any charge based on time or mileage, insurance, and incidental fees or charges related to the rental.
- (4) "Rental car provider" means an individual, corporation, company, or partnership whose primary business is INCLUDES the rental of motor vehicles for temporary contractual use by the public. The term does not include a



1 licensed Montana motor vehicle dealership that provides  
2 rental cars as an--incidental--part LESS THAN 5% of the  
3 dealership-business DEALERSHIP'S GROSS SALES.

4 NEW SECTION. Section 2. Tax rate. There is imposed on  
5 the user of a rental car a tax of 6% of the rental car fee.

6 NEW SECTION. Section 3. Collection and reporting of  
7 tax. (1) The rental car provider shall collect the tax  
8 imposed by [section 2].

9 (2) The rental car provider shall report to the  
10 department, at the end of each calendar quarter, the gross  
11 receipts collected during that quarter that are attributable  
12 to rental car fees. The report is due within-30-days ON OR  
13 BEFORE THE LAST DAY OF THE MONTH following the end of the  
14 calendar quarter and must be accompanied by a payment in an  
15 amount equal to the tax required to be collected under  
16 subsection (1).

17 NEW SECTION. Section 4. Audits -- records -- revision  
18 of returns -- STATUTE OF LIMITATIONS. (1) The department may  
19 audit the books and records of any rental car provider to  
20 ensure that the proper amount of tax imposed by [section 2]  
21 has been collected. An audit may be done on the premises of  
22 the rental car provider or at any other convenient location.

23 (2) The department may request the rental car provider  
24 to provide the department with books, ledgers, registers, or  
25 other documents necessary to verify the correct amount of

1 tax.

2 (3) The rental car provider shall maintain and have  
3 available for inspection by the department books, ledgers,  
4 registers, or other documents showing the collection of  
5 rental car fees for the preceding 5 years.

6 ~~(4)--Except-in-the-case-of-a-person-who,with-intent--to~~  
7 ~~evade--the--tax,--purposely--or--knowingly--files-a-false-or~~  
8 ~~fraudulent-return-violating-the-provisions--of--(sections--1~~  
9 ~~through--6);--the-amount-of-tax-due-under-any-return-must-be~~  
10 ~~determined-by-the-department-within-5-years-after-the-return~~  
11 ~~is-made--After-that-time,--the--department--is--barred--from~~  
12 ~~revising-any-return-or-recomputing-the-tax-due--A-proceeding~~  
13 ~~in-court-for-the-collection-of-the-tax-may-not-be-instituted~~  
14 ~~unless--notice--of-any-additional-tax-is-provided-within-the~~  
15 ~~5-year-period.~~

16 ~~(5)--An-application-for-revision-may-be-filed--with--the~~  
17 ~~department--by-a-rental-car-provider-within-5-years-from-the~~  
18 ~~original-due-date-of-the-return.~~

19 (4) (A) IF THE DEPARTMENT DETERMINES THAT THE AMOUNT OF  
20 TAXES DUE IS GREATER THAN THE AMOUNT REPORTED, IT SHALL MAIL  
21 TO THE TAXPAYER A NOTICE OF THE ADDITIONAL TAXES PROPOSED TO  
22 BE ASSESSED. WITHIN 30 DAYS AFTER MAILING OF THE NOTICE, THE  
23 TAXPAYER MAY FILE WITH THE DEPARTMENT A WRITTEN PROTEST  
24 AGAINST THE PROPOSED ADDITIONAL TAXES, SETTING FORTH THE  
25 GROUND UPON WHICH THE PROTEST IS BASED, AND MAY REQUEST IN

1 HIS PROTEST AN ORAL HEARING OR AN OPPORTUNITY TO PRESENT  
 2 ADDITIONAL EVIDENCE RELATING TO HIS ADDITIONAL LIABILITY. IF  
 3 A PROTEST IS NOT FILED, THE AMOUNT OF THE ADDITIONAL TAXES  
 4 PROPOSED TO BE ASSESSED BECOMES FINAL UPON EXPIRATION OF THE  
 5 30-DAY PERIOD. IF A PROTEST IS FILED, THE DEPARTMENT SHALL  
 6 RECONSIDER THE PROPOSED ASSESSMENT AND, IF THE TAXPAYER HAS  
 7 SO REQUESTED, SHALL GRANT THE TAXPAYER AN ORAL HEARING.  
 8 AFTER CONSIDERATION OF THE PROTEST AND THE EVIDENCE  
 9 PRESENTED AT AN ORAL HEARING, THE DEPARTMENT'S ACTION UPON  
 10 THE PROTEST IS FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO  
 11 THE TAXPAYER.

12 (B) WHEN A DEFICIENCY IS DETERMINED AND THE ADDITIONAL  
 13 TAXES BECOME FINAL, THE DEPARTMENT SHALL MAIL A NOTICE AND  
 14 DEMAND FOR PAYMENT TO THE TAXPAYER. THE TAXES ARE DUE AND  
 15 PAYABLE AT THE EXPIRATION OF 10 DAYS AFTER THE NOTICE AND  
 16 DEMAND WERE MAILED. INTEREST ON ANY DEFICIENCY ASSESSMENT  
 17 BEARS INTEREST FROM THE DATE SPECIFIED IN {SECTION 3}. A  
 18 CERTIFICATE BY THE DEPARTMENT OF THE MAILING OF THE NOTICES  
 19 REQUIRED BY SUBSECTION (4) IS PRIMA FACIE EVIDENCE OF THE  
 20 COMPUTATION AND LEVY OF THE DEFICIENCY IN THE TAXES AND OF  
 21 THE GIVING OF REQUIRED NOTICE.

22 (5) EXCEPT AS PROVIDED IN THIS SECTION, A DEFICIENCY  
 23 MAY NOT BE ASSESSED OR COLLECTED WITH RESPECT TO THE TAXABLE  
 24 PERIOD FOR WHICH A RETURN OR REPORT IS FILED UNLESS THE  
 25 NOTICE OF THE ADDITIONAL TAX PROPOSED TO BE ASSESSED IS

1 MAILED WITHIN 5 YEARS FROM THE DATE THE RETURN WAS FILED.  
 2 FOR PURPOSES OF THIS SECTION, A RETURN OR REPORT FILED  
 3 BEFORE THE LAST DAY PRESCRIBED FOR FILING IS CONSIDERED AS  
 4 FILED ON THE LAST DAY. IF THE TAXPAYER, BEFORE THE  
 5 EXPIRATION OF THE PERIOD PRESCRIBED FOR ASSESSMENT, CONSENTS  
 6 IN WRITING TO AN EXTENDED TIME, THE ASSESSMENT MAY BE MADE  
 7 AT ANY TIME PRIOR TO THE EXPIRATION OF THE PERIOD AGREED  
 8 UPON.

9 (6) A REFUND OR CREDIT MAY NOT BE ALLOWED OR PAID WITH  
 10 RESPECT TO THE YEAR FOR WHICH A RETURN OR REPORT IS FILED  
 11 AFTER 5 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE  
 12 RETURN OR REPORT OR AFTER 1 YEAR FROM THE DATE OF THE  
 13 OVERPAYMENT, WHICHEVER PERIOD EXPIRES LATER, UNLESS BEFORE  
 14 THE EXPIRATION OF THE PERIOD THE TAXPAYER FILES A CLAIM OR  
 15 THE DEPARTMENT DETERMINES THE EXISTENCE OF THE OVERPAYMENT  
 16 AND APPROVES THE REFUND OR CREDIT. IF THE TAXPAYER HAS  
 17 AGREED IN WRITING UNDER THE PROVISIONS OF SUBSECTION (5) TO  
 18 EXTEND THE TIME WITHIN WHICH THE DEPARTMENT MAY PROPOSE AN  
 19 ADDITIONAL ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR  
 20 REFUND OR CREDIT MAY BE FILED OR A REFUND OR CREDIT ALLOWED  
 21 IF NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

22 (7) IF A RETURN IS REQUIRED TO BE FILED AND THE  
 23 TAXPAYER FAILS TO FILE THE RETURN, THE TAX MAY BE ASSESSED  
 24 OR AN ACTION TO COLLECT THE TAX MAY BE BROUGHT AT ANY TIME.  
 25 IF A RETURN IS REQUIRED TO BE FILED AND THE TAXPAYER FILES A

1 FRAUDULENT RETURN, THE 5-YEAR PERIOD PROVIDED FOR IN  
 2 SUBSECTION (6) DOES NOT BEGIN UNTIL DISCOVERY OF THE FRAUD  
 3 BY THE DEPARTMENT.

4 NEW SECTION. Section 5. Failure to pay or file --  
 5 penalty -- interest. (1) A rental car provider who fails to  
 6 file a report as required by [section 3] must be assessed a  
 7 penalty of ~~2%~~ 10% of the tax that should have been collected  
 8 during the calendar quarter. Upon a showing of good cause,  
 9 the department may waive the penalty.

10 (2) A rental car provider who fails to make payment or  
 11 fails to report and make payment as required by [section 3]  
 12 must be assessed a penalty of ~~2%~~ 10% of the amount that was  
 13 not paid. Upon a showing of good cause, the department may  
 14 waive the penalty.

15 (3) If a rental car provider fails to file the report  
 16 required by [section 3] or if the department determines that  
 17 the report understates the amount of tax due, the department  
 18 may determine the amount of tax due and assess that amount  
 19 against the rental car provider.

20 (4) The amount required to be paid under [section 3]  
 21 accrues interest at the rate of 1% a month or part of a  
 22 month from delinquency until paid.

23 NEW SECTION. Section 6. Distribution of tax proceeds.

24 (1) Proceeds derived from the tax imposed under [section 2]  
 25 must be deposited in the state treasury in a state special

1 revenue fund to the credit of the department. The department  
 2 may spend from that account an amount necessary to cover  
 3 actual costs of collecting the tax and administering the  
 4 provisions of [sections 1 through 6 7], but that amount may  
 5 not exceed 5% of the total annual proceeds collected.

6 (2) The balance of the tax proceeds received each  
 7 reporting period and not deducted pursuant to subsection (1)  
 8 must be transferred to the state special revenue fund  
 9 established in 23-1-105 for use by the department of fish,  
 10 wildlife, and parks to fund operation, development, and  
 11 maintenance of the state parks system.

12 NEW SECTION. SECTION 7. SPECIAL REVENUE ACCOUNT. (1)  
 13 THERE IS A RENTAL CAR TAX ADMINISTRATION ACCOUNT IN THE  
 14 STATE SPECIAL REVENUE FUND.

15 (2) ALL ADMINISTRATIVE FEES COLLECTED UNDER [SECTION  
 16 6(1)] MUST BE DEPOSITED BY THE DEPARTMENT INTO THE RENTAL  
 17 CAR TAX ADMINISTRATION ACCOUNT.

18 (3) THE MONEY IN THE RENTAL CAR TAX ADMINISTRATION  
 19 ACCOUNT IS STATUTORILY APPROPRIATED, AS PROVIDED IN  
 20 17-7-502, TO THE DEPARTMENT TO ADMINISTER THE RENTAL CAR  
 21 TAX.

22 SECTION 8. SECTION 17-7-502, MCA, IS AMENDED TO READ:

23 "17-7-502. Statutory appropriations -- definition --  
 24 requisites for validity. (1) A statutory appropriation is an  
 25 appropriation made by permanent law that authorizes spending



1 by a state agency without the need for a biennial  
2 legislative appropriation or budget amendment.

3 (2) Except as provided in subsection (4), to be  
4 effective, a statutory appropriation must comply with both  
5 of the following provisions:

6 (a) The law containing the statutory authority must be  
7 listed in subsection (3).

8 (b) The law or portion of the law making a statutory  
9 appropriation must specifically state that a statutory  
10 appropriation is made as provided in this section.

11 (3) The following laws are the only laws containing  
12 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
13 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
14 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
15 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;  
16 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
17 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
18 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
19 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
20 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;  
21 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
22 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
23 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
24 [SECTION 7]; and section 13, House Bill No. 861, Laws of  
25 1985.

1 (4) There is a statutory appropriation to pay the  
2 principal, interest, premiums, and costs of issuing, paying,  
3 and securing all bonds, notes, or other obligations, as due,  
4 that have been authorized and issued pursuant to the laws of  
5 Montana. Agencies that have entered into agreements  
6 authorized by the laws of Montana to pay the state  
7 treasurer, for deposit in accordance with 17-2-101 through  
8 17-2-107, as determined by the state treasurer, an amount  
9 sufficient to pay the principal and interest as due on the  
10 bonds or notes have statutory appropriation authority for  
11 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
12 664, L. 1987, the inclusion of 39-71-2504 terminates June  
13 30, 1991.)"

14 NEW SECTION. SECTION 9. COORDINATION INSTRUCTION. IF  
15 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT  
16 INCLUDES A SECTION ADOPTING A UNIFORM TAX APPEAL PROCEDURE,  
17 THEN THE LANGUAGE CONTAINED IN [SECTION 4(4) THROUGH (7)] IS  
18 VOID AND THE PROVISIONS OF SENATE BILL NO. 445 GOVERN THE  
19 APPEAL PROCEDURES.

20 NEW SECTION. Section 10. Codification instruction.  
21 [Sections 1 through 6 7] are intended to be codified as an  
22 integral part of Title 15, and the provisions of Title 15  
23 apply to [sections 1 through 6 7].

24 NEW SECTION. Section 11. Effective date --  
25 applicability. [This act] is effective January 1, 1992, and

HB 0550/02

- 1 applies to rental car fees collected on and after January 1,
- 2 1992.

-End-