

HOUSE BILL NO. 778

INTRODUCED BY D. BROWN, BIANCHI, RANEY, STRIZICH,
LYNCH, DRISCOLL, DARKO, MENAHAN, HARPER, STANG,
COHEN, SQUIRES, MCCULLOCH, SCOTT, MANNING, DOHERTY,
SVRCEK, DAILY, FRANKLIN, JACOBSON, VAN VALKENBURG,
PAVLOVICH, MCCARTHY, QUILICI, REAM, WYATT,
J. BROWN, HARRINGTON, CONNELLY

IN THE HOUSE

FEBRUARY 12, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FEBRUARY 13, 1991 FIRST READING.

MARCH 21, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 23, 1991 PRINTING REPORT.

APRIL 2, 1991 SECOND READING, DO PASS AS AMENDED.

APRIL 3, 1991 ENGROSSING REPORT.

APRIL 4, 1991 THIRD READING, PASSED.
AYES, 65; NOES, 32.

TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

APRIL 11, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 15, 1991 SECOND READING, CONCURRED IN.

APRIL 16, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 17, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *778*
 2 INTRODUCED BY *Dave Brown*
 3 *Special Representative*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
 5 RELATING TO USE OF STATE LANDS; PROVIDING THAT ALLOWABLE USE
 6 OF STATE LANDS INCLUDES RECREATIONAL USE BY THE PUBLIC;
 7 REQUIRING SURFACE LEASES FOR GRAZING, AGRICULTURAL, OR
 8 LOGGING PURPOSES TO ALLOW PUBLIC RECREATIONAL USE UNLESS
 9 CERTAIN CONDITIONS ARE MET; REQUIRING THE BOARD OF LAND
 10 COMMISSIONERS TO OPEN UP EXISTING LEASES TO PUBLIC
 11 RECREATIONAL USE WITH CERTAIN EXCEPTIONS; REQUIRING PURCHASE
 12 AND POSSESSION OF A WILDLIFE CONSERVATION LICENSE BY PERSONS
 13 12 YEARS OF AGE OR OLDER FOR THE RECREATIONAL USE OF STATE
 14 LANDS; PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT
 15 BY THE WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND
 16 PARKS; INCREASING THE FEE FOR WILDLIFE CONSERVATION
 17 LICENSES; PROVIDING PENALTIES; PROVIDING FOR DISPOSITION OF
 18 THE LICENSE FEES AND PENALTIES; AND AMENDING SECTIONS
 19 19-8-504, 77-1-202, 77-1-203, 77-1-204, 77-1-402, 87-1-102,
 20 87-1-502, 87-1-601, 87-2-103, 87-2-109, 87-2-202, AND
 21 87-2-204, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because 77-1-203(3) requires the board of land commissioners to



1 adopt rules closing existing leases of state lands to public
2 recreational use in certain instances and because [section
3 14] requires the board to adopt rules governing recreational
4 use of state lands. It is intended that public recreational
5 use of state lands be accomplished to the fullest extent
6 possible.

7 It is also intended that the board adopt rules governing
8 the actions of the recreational user of state lands. The
9 rules must require the user to make a reasonable effort to
10 present the conservation license to any tenant living on the
11 property and inform the tenant of the type and extent of
12 recreational use to be made. The rules must require the
13 recreational user not to litter or otherwise degrade the
14 leased property and to comply with any reasonable requests
15 of the tenant regarding such matters as avoidance of
16 livestock or crops and closing of gates.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 19-8-504, MCA, is amended to read:
20 "19-8-504. State's contribution. Each month the state
21 treasurer shall pay to the account, out of the department of
22 fish, wildlife, and parks moneys, a sum equal to 7.15% of
23 the total of all members' salaries, and out of the moneys
24 collected as fines and forfeited bonds under the provisions
25 of 87-1-601(1) through (5) or moneys distributed under

-2- INTRODUCED BILL
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1 3-10-601(4), all such collections are statutorily
 2 appropriated to the account until the unfunded liability in
 3 the account is solvent and a verification statement to that
 4 effect is given to the state treasurer by the board."

5 **Section 2.** Section 77-1-202, MCA, is amended to read:

6 "77-1-202. Powers and duties of board. (1) The board
 7 shall exercise general authority, direction, and control
 8 over the care, management, and disposition of state lands
 9 and, subject to the investment authority of the board of
 10 investments, the funds arising from the leasing, use, sale,
 11 and disposition of those lands or otherwise coming under its
 12 administration. In the exercise of these powers, the guiding
 13 rule and principle is that these lands and funds are held in
 14 trust for the support of education and for the attainment of
 15 other worthy objects helpful to the well-being of the people
 16 of this state. The board shall administer this trust to
 17 secure the largest measure of legitimate and reasonable
 18 advantage to the state.

19 (2) When acquiring land for the state, the board shall
 20 determine the value thereof after an appraisal by a
 21 qualified land appraiser.

22 (3) For purposes of subsection (1), the following
 23 definitions apply:

24 (a) "Other worthy objects helpful to the well-being of
 25 the people of this state" includes the right of the people

1 to use state lands for recreational purposes.

2 (b) "Legitimate and reasonable advantage to the state"
 3 includes the intangible nonmonetary advantages of public
 4 recreational use of state lands and is not limited solely to
 5 monetary terms."

6 **Section 3.** Section 77-1-203, MCA, is amended to read:

7 "77-1-203. Multiple-use management -- public use for
 8 recreational purposes -- lease requirements. (1) The board
 9 shall manage state lands under the multiple-use management
 10 concept defined as the management of all the various
 11 resources of the state lands so that:

12 (a) they are utilized in that combination best meeting
 13 the needs of the people and the beneficiaries of the trust,
 14 making the most judicious use of the land for some or all of
 15 those resources or related services over areas large enough
 16 to provide sufficient latitude for periodic adjustments in
 17 use to conform to changing needs and conditions and
 18 realizing that some land may be used for less than all of
 19 the resources; and

20 (b) harmonious and coordinated management of the
 21 various resources, each with the other, will result without
 22 impairment of the productivity of the land, with
 23 consideration being given to the relative values of the
 24 various resources; and

25 (c) the full right of the public to use state public

1 lands for uses including recreational purposes, including
 2 those lands that are leased primarily for other purposes, is
 3 accomplished as long as the lands are otherwise legally
 4 accessible, except when the board finds after a hearing, by
 5 clear and convincing evidence, that:

6 (i) with respect to a specific lease there is a
 7 compelling need to restrict or close public access; or

8 (ii) there is a compelling need to close access in a
 9 specific category of use because public access would be
 10 inconsistent with a different use of predominating
 11 importance.

12 (2) The board shall include in all surface leases for
 13 grazing, agricultural, or logging purposes a provision
 14 requiring the lease to be open for public recreational use,
 15 except when public use would interfere with growing crops or
 16 would be barred under subsection (1)(c)(i) or (1)(c)(ii).

17 (3) The board shall by rule prevent public recreational
 18 use of public lands that are subject to existing surface
 19 leases for grazing, agricultural, or logging purposes, as
 20 provided in subsection (1)(c)(i) or (1)(c)(ii).

21 (4) If a parcel of state land in one class has other
 22 multiple uses or resource values which are of such
 23 significance that they do not warrant classification for the
 24 value, the land shall, nevertheless, be managed insofar as
 25 is possible to maintain or enhance these multiple-use

1 values."

2 **Section 4.** Section 77-1-204, MCA, is amended to read:

3 "77-1-204. Power to sell, lease, or exchange certain
 4 state lands. (1) The board is authorized to lease state
 5 lands for uses other than agriculture, grazing, timber
 6 harvest, or mineral production under such terms and
 7 conditions which best meet the duties of the board as
 8 specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for
 9 such leases, except for power and school site leases, may
 10 not be for longer than 40 years.

11 (2) The board shall have full power and authority to
 12 sell, exchange or lease lands under its jurisdiction by
 13 virtue of 77-1-214 when, in its judgment, it is advantageous
 14 to the state to do so in the highest orderly development and
 15 management of state forests and state parks. Said sale,
 16 lease, or exchange shall not be contrary to the terms of any
 17 contract which it has entered into."

18 **Section 5.** Section 77-1-402, MCA, is amended to read:

19 "77-1-402. Basis for classification or
 20 reclassification. (1) The classification or reclassification
 21 shall be so made as to place state land in the class which
 22 best accomplishes the powers and duties of the board as
 23 specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are
 24 classified or reclassified in accordance with these duties
 25 and responsibilities, special attention shall be paid to the

1 capability of the land to support an actual or proposed land
2 use authorized by each classification.

3 (2) It is the duty of the department to classify or
4 reclassify state lands so that no state land will be sold,
5 leased, or used under a different classification from that
6 to which it actually belongs."

7 **Section 6.** Section 87-1-102, MCA, is amended to read:

8 **"87-1-102. Penalties.** (1) A person violating any
9 provision of this title, any other state law pertaining to
10 fish and game, or the orders or rules of the commission or
11 department is, unless a different punishment is expressly
12 provided by law for the violation, guilty of a misdemeanor
13 and shall be fined not less than \$50 or more than \$500,
14 imprisoned in the county jail for not more than 6 months, or
15 both. In addition, the person shall be subject to forfeiture
16 of his license and the privilege to hunt, fish, or trap
17 within this state or to use state lands, as defined in
18 77-1-101, for recreational purposes for a period of not less
19 than 24 months from the date of conviction.

20 (2) (a) A person convicted of unlawfully taking,
21 killing, possessing, transporting, or wasting of a bighorn
22 sheep, moose, wild bison, caribou, mountain goat, or grizzly
23 bear or any part of these animals shall be fined not less
24 than \$500 or more than \$1,000, imprisoned in the county jail
25 for not more than 6 months, or both. In addition, that

1 person shall forfeit any current hunting, fishing, or
2 trapping license issued by this state and the privilege to
3 hunt, fish, or trap in this state for not less than 30
4 months from the date of conviction.

5 (b) A person convicted of unlawfully taking, killing,
6 possessing, or transporting a deer, antelope, elk, mountain
7 lion, or black bear or any part of these animals or wasting
8 a deer, antelope, or elk shall be fined not less than \$300
9 or more than \$1,000, imprisoned in the county jail for not
10 more than 6 months, or both. In addition, that person shall
11 forfeit any current hunting, fishing, or trapping license
12 issued by this state and the privilege to hunt, fish, or
13 trap in this state for not less than 24 months from the date
14 of conviction.

15 (c) A person convicted of unlawfully attempting to
16 trap, take, shoot, or kill a game animal shall be fined not
17 less than \$200 or more than \$600, imprisoned in the county
18 jail for not more than 60 days, or both.

19 (d) A person convicted of unlawfully taking, killing,
20 possessing, transporting, shipping, labeling, packaging, or
21 wasting or unlawfully attempting to take, kill, or possess
22 any game bird, wild turkey, or fish or any part of any such
23 bird or fish or of failure to tag a game animal or game bird
24 as prescribed by law shall be fined not less than \$50 or
25 more than \$200 or imprisoned in the county jail for not more

1 than 30 days, or both.

2 (e) A person convicted of purposely or knowingly
3 taking, killing, possessing, transporting, shipping,
4 labeling, or packaging a fur-bearing animal or pelt of a
5 fur-bearing animal in violation of any provision of this
6 title shall be fined not less than \$50 or more than \$1,000
7 or imprisoned in the county jail for not more than 6 months,
8 or both. In addition, that person shall forfeit any current
9 license and the privilege to hunt, fish, or trap for not
10 less than 24 months from the date of conviction and any
11 pelts possessed unlawfully must be confiscated.

12 (f) A person convicted of hunting, fishing, or trapping
13 while his license is forfeited or his privilege denied shall
14 be imprisoned in the county jail for not less than 5 days or
15 more than 6 months. In addition, that person may be fined
16 not less than \$500 or more than \$1,000.

17 (3) A person convicted or who has forfeited bond or
18 bail under subsection (2) and who has been ordered to pay
19 restitution under the provisions of 87-1-111 may not apply
20 for any special license under Title 87, chapter 2, part 7,
21 or enter any drawing for a special license or permit for a
22 period of 5 years following the date of conviction or
23 restoration of license privileges, whichever is later.

24 (4) Notwithstanding the provision of subsection (1),
25 the penalties provided by this section shall be in addition

1 to any penalties provided in Title 37, chapter 47, and Title
2 87, chapter 4, part 2."

3 **Section 7.** Section 87-1-502, MCA, is amended to read:

4 ***87-1-502. Qualifications, powers, and duties.** (1)
5 Wardens shall be qualified by their experience, training,
6 and skill in protection, conservation, and propagation of
7 wildlife, game, fur-bearing animals, fish, and game birds
8 and interested in this work. They shall devote all of their
9 time for which they are appointed to their official duties.

10 (2) They shall enforce the laws of this state and the
11 rules of the department with reference to the protection,
12 preservation, and propagation of game and fur-bearing
13 animals, fish, and game birds.

14 (3) They shall see that persons who hunt, fish, or take
15 game or fur-bearing animals, game birds, or fish and those
16 persons who make recreational use of state lands, as defined
17 in 77-1-101, have necessary licenses.

18 (4) They shall assist in the protection, conservation,
19 and propagation of fish, game, fur-bearing animals, and game
20 and nongame birds and assist in the planting, distributing,
21 feeding, and care of fish, game, fur-bearing animals, and
22 game and nongame birds. They shall, when ordered by the
23 department, assist in the destruction of predatory animals,
24 birds, and rodents. They shall perform all other duties
25 prescribed by the department and make a monthly report to

1 the department correctly informing the department of their
 2 activities on each day of the preceding month with regard to
 3 the enforcement of the fish and game laws, showing where
 4 their duties called them and what they did. The reports
 5 shall contain any pertinent recommendations the wardens may
 6 see fit to make.

7 (5) A warden may not compromise or settle violations of
 8 fish and game laws out of court.

9 (6) A warden has the authority to inspect any and all
 10 fish, game and nongame birds, waterfowl, game animals, and
 11 fur-bearing animals at reasonable times and at any location
 12 other than a residence or dwelling. Upon request therefor,
 13 all persons having in their possession any fish, game and
 14 nongame birds, waterfowl, game animals, and fur-bearing
 15 animals shall exhibit the same and all thereof to the warden
 16 for such inspection."

17 **Section 8.** Section 87-1-601, MCA, is amended to read:

18 "87-1-601. Use of fish and game money. (1) Except as
 19 provided in this section and in 87-2-204, all All money
 20 collected or received from the sale of hunting and fishing
 21 licenses or permits, from the sale of seized game or hides,
 22 or from damages collected for violations of the fish and
 23 game laws of this state, from appropriations, or received by
 24 the department from any other state source shall be turned
 25 over to the state treasurer and placed by him in the state

1 special revenue fund to the credit of the department. Any
 2 money received from federal sources shall be deposited in
 3 the federal special revenue fund to the credit of the
 4 department.

5 (2) That money shall be exclusively set apart and made
 6 available for the payment of all salaries, per diem, fees,
 7 expenses, and expenditures authorized to be made by the
 8 department under the terms of this title. That money shall
 9 be spent for those purposes by the department, subject to
 10 appropriation by the legislature.

11 (3) Any reference to the fish and game fund in this
 12 code means fish and game money in the state special revenue
 13 fund and the federal special revenue fund.

14 (4) Except as provided in subsection (6), all All money
 15 collected or received from fines and forfeited bonds, except
 16 money collected or received by a justice's court, relating
 17 to violations of state fish and game laws under Title 87
 18 shall be deposited by the state treasurer and credited to
 19 the department of fish, wildlife, and parks in a state
 20 special revenue fund account for this purpose. Out of any
 21 fine imposed by a court for the violation of the fish and
 22 game laws, the costs of prosecution shall be paid to the
 23 county where the trial was held in any case where the fine
 24 is not imposed in addition to the costs of prosecution.

25 (5) Money received by the department from the sale of

1 surplus real property; exploration or development of oil,
 2 gas, or mineral deposits from lands acquired by the
 3 department except royalties or other compensation based on
 4 production; and from leases of interests in department real
 5 property not contemplated at the time of acquisition shall
 6 be deposited in an account within the nonexpendable trust
 7 fund of the state treasury. The interest derived therefrom,
 8 but not the principal, may be used only for the purpose of
 9 operation, development, and maintenance of real property of
 10 the department, and only upon appropriation by the
 11 legislature. If the use of money as set forth herein would
 12 result in violation of applicable federal laws or state
 13 statutes specifically naming the department or money
 14 received by the department, then the use of this money must
 15 be limited in the manner, method, and amount to those uses
 16 that do not result in such violation.

17 (6) All money collected or received from fines or
 18 forfeited bonds, except money collected or received in a
 19 justice's court, for the violation of 87-2-103 or 87-2-109,
 20 or both, by the recreational use of state lands without a
 21 wildlife conservation license, must be deposited as follows:

22 (a) 50% in an account in the state special revenue fund
 23 for use by the department for the enforcement of 87-2-103
 24 and 87-2-109; and

25 (b) 50% in the account in the special revenue fund

1 authorized pursuant to 87-2-204(2) for use by the department
 2 of state lands in the management of state lands."

3 **Section 9.** Section 87-2-103, MCA, is amended to read:

4 ***87-2-103. License required.** It is unlawful for any
 5 person to:

6 (1) pursue, hunt, trap, take, shoot, or kill or attempt
 7 to trap, take, shoot, or kill any game animal, any game
 8 bird, or any fur-bearing animal or take, kill, trap, or fish
 9 for any fish within this state or have, keep, or possess
 10 within this state any game animal, game bird, fur-bearing
 11 animal, game fish, or parts thereof, except as herein
 12 provided or as provided by the department; or

13 (2) pursue, hunt, trap, take, shoot, or kill or attempt
 14 to trap, take, shoot, or kill any game animal, game bird, or
 15 fur-bearing animal or take, kill, trap, or fish for any
 16 fish, except at the places and during the periods and in the
 17 manner herein defined or as defined by the department; or

18 (3) pursue, hunt, trap, take, shoot, or kill or attempt
 19 to trap, take, shoot, or kill any game animal, game bird, or
 20 fur-bearing animal or take, kill, trap, or fish for any fish
 21 within this state or have, keep, possess, sell, purchase,
 22 ship, or reship any imported or other fur-bearing animal or
 23 parts thereof without first having obtained a proper license
 24 or permit from the department to do so; or

25 (4) trap or snare or attempt to trap or snare predatory

1 animals or nongame wildlife without a license as prescribed
2 in 87-2-603 if that person is not a resident as defined in
3 87-2-102; or

4 (5) use state lands, as defined in 77-1-101, for a
5 recreational purpose without a wildlife conservation
6 license."

7 **Section 10.** Section 87-2-109, MCA, is amended to read:

8 "87-2-109. Carrying and exhibiting license. (1) It is
9 unlawful for any person to whom a license or permit has been
10 issued to fish for or take any fish, or to pursue, hunt,
11 shoot, kill, or take any game bird or game animal, or to
12 attempt to trap, trap, or take any fur-bearing animal in
13 this state, or to use any state lands, as defined in
14 77-1-101, for a recreational purpose unless he has the
15 license, licenses, or permit in his possession at the time.

16 (2) It is unlawful to refuse to exhibit a license or
17 permit for inspection to a warden or other officer
18 requesting to see it."

19 **Section 11.** Section 87-2-202, MCA, is amended to read:

20 "87-2-202. Application -- stamp attachment -- fee --
21 expiration. (1) A wildlife conservation license shall be
22 sold upon written application. The application shall contain
23 the applicant's name, age, occupation, place of residence,
24 post-office address, and length of time in the state of
25 Montana; state whether the applicant is a citizen of the

1 United States or an alien; and be subscribed by the
2 applicant. The applicant shall present a driver's license or
3 other identification to substantiate the information.

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

9 (3) Resident and nonresident wildlife conservation
10 licenses may be purchased for a fee of \$2 \$3.

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

13 **Section 12.** Section 87-2-204, MCA, is amended to read:

14 "87-2-204. Disposition of wildlife conservation license
15 fees. (1) Except as provided in subsection (2), the The fees
16 from the wildlife conservation license shall be delivered to
17 the state treasurer and deposited by him in the state
18 special revenue fund to the credit of the department in
19 accordance with the provisions of 87-1-601.

20 (2) Of the fee for a wildlife conservation license, \$1
21 must be credited as follows:

22 (a) 50% to an account in the state special revenue fund
23 for use by the department of state lands in the management
24 of state lands as defined in 77-1-101; and

25 (b) 50% to the public school fund created by Article X,

1 section 2, of the Montana constitution."

2 NEW SECTION. Section 13. Recreational use of state
3 lands by minors under 12 years of age. Resident and
4 nonresident minors under 12 years of age may use state lands
5 as defined in 77-1-101 for any recreational purpose without
6 a wildlife conservation license.

7 NEW SECTION. Section 14. Board to prescribe rules for
8 recreational use of state lands. The board shall adopt rules
9 governing the recreational use of state lands allowed under
10 77-1-203. The rules must be adopted in accordance with the
11 rulemaking provisions of the Montana Administrative
12 Procedure Act. A violation of the rules adopted by the board
13 is a misdemeanor.

14 NEW SECTION. Section 15. Liability of lessee. The
15 provisions of 70-16-302 limiting the liability of a tenant
16 for the recreational use of property leased by that tenant
17 apply to any tenant of state lands used for recreational
18 purposes.

19 NEW SECTION. Section 16. Codification instruction.
20 [Sections 14 and 15] are intended to be codified as an
21 integral part of Title 77, chapter 1, part 2, and the
22 provisions of Title 77, chapter 1, part 2, apply to
23 [sections 14 and 15].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0778, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) revises the laws relating to use of state lands; 2) provides that allowable use of state lands includes recreational use by the public; 3) requires surface leases for grazing, agricultural or logging purposes to allow public recreational use unless certain conditions are met; 4) requires the Board of Land Commissions to open up existing leases to public recreational use with certain exceptions; 5) requires purchase and possession of a wildlife conservation license by persons 12 years of age or older for the recreational use of state lands; 6) provides for enforcement of the license requirement by the wardens of the Department of Fish, Wildlife and Parks; and 7) increases the fee for wildlife conservation licenses from \$2 to \$3 and earmarks 50% of the increase in the conservation license for the Department of State Lands and 50% for the public school fund.

ASSUMPTIONS:


Department of Fish, Wildlife & Parks:

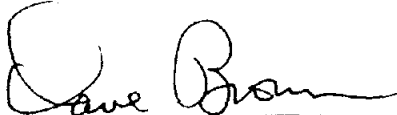
1. Current law requires a conservation license as a prerequisite for an individual "purchasing a fishing, hunting, or trapping license". The proposed bill would make it "...unlawful for any person to use state lands...for a recreational purpose without a wildlife conservation license." Therefore, the scope of a conservation license will be expanded beyond hunting and fishing and include all types of recreational activities on state trust land.
2. This will have a substantial but unknown workload impact on the Enforcement Division of the Department of Fish, Wildlife and Parks.
3. Currently, 420,000 conservation licenses are sold annually (based on historic information). There is no estimate of the additional conservation licenses that would be sold to recreationists who are not hunters or anglers but who would utilize trust lands.

Department of State Lands:

4. The 420,000 conservation licenses sold annually by the Department of Fish, Wildlife and Parks will generate \$420,000 per year from the \$1 increase in the cost of the license for transfer to DSL.
5. DSL management costs of the recreational use program would be funded first from 50% of the increased income from conservation licenses, which will be \$210,000 per year. The second funding source for recreational use of trust lands will be fines and forfeitures and the balance will be general fund.

(continued on next page)


ROD SUNDSTED, BUDGET DIRECTOR 2-16-91 DATE
Office of Budget and Program Planning


DAVE BROWN, PRIMARY SPONSOR 2/18/91 DATE

Fiscal Note for HB0778, as introduced

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6. Assume \$11,250 would be generated from fines and forfeiture bonds resulting from recreational use of state trust lands. One-half or \$5,625 per year would be available for DSL recreational use management costs. This is based on the assumption that the number of citations issued by Fish, Wildlife and Parks would increase by 225 per year. At an average fine of \$50 per citation, the revenue would be \$11,250.
7. DSL administration of this recreational program would require close coordination with existing surface lessees, the Department of Fish, Wildlife and Parks, and the recreational users. Appropriate restrictions, closures, Fish, Wildlife and Parks management plans, damage settlements, hearings and other issues will require planning, implementation, monitoring and enforcement by DSL.
8. The proposed bill will require 6.00 FTE land use specialists (one in each area land office), grade 13; 1.00 FTE land management program specialist, grade 14, located in the Helena office; and 0.50 FTE clerical staff, grade 10.
9. Operating expenses of \$48,500 each fiscal year would include travel, communications, rent and basic supplies.
10. Start-up capital expenditures of \$98,000 in FY92 only include six (6) field vehicles @ \$14,500 each (one for each area office) one personal computer for the program coordinator and office equipment for the new staff.

FISCAL IMPACT:

Department of Fish, Wildlife & Parks:

	F '92			F '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Transfers	0	420,000	420,000	0	420,000	420,000
<u>Funding:</u>						
State Special	0	420,000	420,000	0	420,000	420,000
<u>Revenues:</u>						
Conservation License Revenue	840,000	1,260,000	420,000	840,000	1,260,000	420,000

Department of State Lands:

F.T.E.	0.00	7.50	7.50	0.00	7.50	7.50
Personal Services	0	204,086	204,086	0	205,086	205,086
Operating Costs	0	23,500	23,500	0	23,500	23,500
Capital Outlay	0	98,000	98,000	0	0	0
Total	0	325,586	325,586	0	228,586	228,586
<u>Funding:</u>						
General Fund	0	109,961	109,961	0	12,961	12,961
State Special	0	215,625	215,625	0	215,625	215,625
Total	0	325,586	325,586	0	228,586	228,586

Revenue:

Conservation Licenses (02)	0	210,000	210,000	0	210,000	210,000
Fines (02)	0	5,625	5,625	0	5,625	5,625
Public School Fund	0	210,000	210,000	0	210,000	210,000
Total	0	425,625	425,625	0	425,625	425,625

TECHNICAL NOTES:

Department of State Lands:

1. Trust lands administered by the Department of State Lands are subject to the Montana Enabling Act. Under Section 11 of that act, no interest in trust land may be disposed of (sold, leased, or licensed) unless full market value is obtained. Court cases interpret this provision to require monetary compensation to the trust beneficiaries, which are the school system, certain units of the university system, and certain other institutions. Several portions of HB0778 may violate Section 11 of the Enabling Act:
 - a) Section 2(3) - This section authorizes the Board of Land Commissioners to manage lands for non-monetary benefits.
 - b) Section 2(3) - This section authorizes and may require the Board of Land Commissioners to manage lands for the benefit of non-beneficiaries to the detriment of the beneficiaries.
 - c) Section 3(1)(c) and Section 12(a) - To the extent that recreational access is an interest in state lands, the trusts must receive full market value for that access. If 50 cents per conservation license holder is below full market value, the granting of public access violates the Enabling Act.
2. The Montana Constitution, Article X, Section 11, provides that trust lands must be held and disposed of for the purposes for which they were granted and may not be disposed of (sold, leased, or licensed) at less than full market value. Thus, the defects discussed in (1)(b) and (c) above are also constitutional defects.
3. The Pittman-Robinson and Dingell-Johnson Acts, under which the Department of Fish, Wildlife and Parks receives federal fish and wildlife monies, restrict use of conservation license monies to hunting and fishing use. The bill may violate these restrictions and jeopardize federal funds by paying for other types of recreational access.
4. Section 3(1)(c) authorizes the public to "use state public lands for uses including recreational purposes..." Thus, "use" is not limited to recreational use and, if taken literally, authorizes the public to engage in all uses of state land.
5. Section 3(1)(c) requires a hearing before the Board of Land Commissioners. The language should be clarified as to whether this is a legislative-type hearing or an adjudicatory contested case hearing under the Montana Administrative Procedure Act.
6. The Statement of Intent and section 3(2) refer to logging leases. The Department of State Lands does not issue logging leases. It sells timber on its forested lands.
7. Section 4 appears to conflict with the remainder of the bill. Section 4 presumably authorizes the Board of Land Commissioners to engage in multiple use leasing, probably for recreational purposes. Section 3 would open state lands to public use for recreational purposes to the general public. Therefore, recreational leasing could not be implemented.

Department of Fish, Wildlife & Parks:

8. Language is needed to clarify that revenues from the conservation license can only be used for the benefit of sport hunters and anglers. If conservation license revenues were used to finance non-hunter or non-angler access, the department would be in violation of federal diversion laws and could lose \$7 million in federal wildlife and fisheries restoration funds.
9. Effective date of this legislation should be March 1, 1992 (beginning of the license year).

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HBO778, third reading, as amended.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill revises the laws relating to use of state lands; provides that allowable use of state lands includes general recreational use by the public; requires the Board of Land Commissioners to adopt rules to authorize and govern the recreational use and closure of state lands; requires purchasing and possessing a recreational use license by persons 12 years of age or older for the general recreational use on state lands; provides for enforcement of the recreational use license requirement by Department of Fish, Wildlife, and Parks wardens; provides for the statutory appropriation of the license fees and penalties; and provides compensation for damage to a lessee's improvements, growing crops and livestock.

ASSUMPTIONS:Department of State Lands:

1. The bill creates a \$5.00 recreational use license and allocates \$3.00 of the fee to the land trusts and \$2.00 to a state lands recreational use account for the administrative costs of providing recreational access to state lands.
2. The recreational use account must be used by the Department of State Lands for compensation for damages to the improvements of leases that has been proved to be caused by recreational users; assistance in weed control; protection of the resource value of the trust assets and administration and management for the implementation of recreational use of state lands, which includes \$0.50 from each recreational license sold to the license agent.
3. The effective date of the program is March 1, 1992; therefore, the FY92 revenues reflect a partial year amount.
4. Rule making will occur during FY92 with the deadline date for implementation being March 1, 1992.
5. The Department of State Lands (DSL) estimates that 15,000 recreational licenses will be sold in FY92 and 75,000 in FY93 producing \$75,000 in FY92 and \$375,000 in FY93. The revenue would be distributed as follows:

	<u>FY92</u>	<u>FY93</u>
Trust accounts	\$45,000	\$225,000
License Agents	7,500	37,500
DSL Administration	<u>22,500</u>	<u>112,500</u>
Total	\$75,000	\$375,000

6. The assumed number of citations issued by the Department of Fish, Wildlife and Parks would increase by 225 per year as a result of this legislation. The average fine per citation is \$50 of fine revenues or \$11.250 per year. Fifty percent of the fine revenue will be deposited in the trust account and 50% in the general license account for the Department of Fish, Wildlife and Parks costs associated with additional warden responsibilities.
7. It is estimated that 50 civil penalties will be assessed per year at \$200 a penalty for revenues of \$10,000 per year.
8. There will be no damage compensation settlements required during the initial four months of the program in FY92.
9. The damage compensation settlement may amount to as much as \$25,000 during FY93.
10. The first claims for assistance with noxious weed control will not occur until the end of FY93 and actual expenditures will not occur until FY94.

(continued on next page)

Rod Sundsted 4/13
 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning

4/13/91
 DATE

Dave Brown
 DAVE BROWN, PRIMARY SPONSOR

4/15/91
 DATE

Fiscal Note for HBO/78, third reading copy as amended

HB 778-#2

11. To administer recreational access to state lands the Department of State Lands will need 2.00 FTE land uses specialists, 0.25 FTE attorney and related operating and equipment expenses.

Department of Fish, Wildlife, and Parks:

12. The additional effort to sell recreational use license through department regional offices would be absorbed within the current budget.

13. The additional effort to track the sales of the recreational use licenses by the license agents would be absorbed within the current budget.

14. The financial impact on the department's Enforcement Division is not determined at this time.

FISCAL IMPACT:

Department of State Lands:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	1.08	1.08	0.00	2.25	2.25
Personal Services	0	31,070	31,070	0	61,399	61,399
Operating Costs	0	38,990	38,990	0	42,250	42,250
Equipment	0	20,750	20,750	0	0	0
License Agent Commission	0	7,500	7,500	0	37,500	37,500
Total	0	98,310	98,310	0	141,149	141,149
<u>Funding:</u>						
General Fund	0	63,102	63,102	0	0	0
Rec. Use Fee and Fines (02)	0	35,208	35,208	0	141,149	141,149
Total	0	98,310	98,310	0	141,149	141,149
<u>Revenues:</u>						
Recreational Fees	0	75,000	75,000	0	375,000	375,000
Fines	0	3,750	3,750	0	11,250	11,250
Civil Penalties	0	3,333	3,333	0	10,000	10,000
Total	0	82,083	82,083	0	396,250	396,250
<u>Distribution of Revenues:</u>						
Trust Accounts	0	45,000	45,000	0	225,000	225,000
License Agents Commissions	0	7,500	7,500	0	37,500	37,500
License Account (DFWP)	0	1,875	1,875	0	5,625	5,625
State Lands Rec Use Acct.	0	27,708	27,708	0	128,125	128,125
Total	0	82,083	82,083	0	396,250	396,250

Impact to General Fund (decrease)

(63,102)

0

TECHNICAL NOTES:

If the Board of Land Commissioners determines that the only compatible activities for state lands is hunting and fishing, the recreational use license is in fact a hunting and fishing license and the Department of Fish, Wildlife and Parks would be in violation of federal diversion laws and could lose \$7 million in federal wildlife and fisheries restoration funds per year. A legal opinion from the federal solicitor of the Department of Interior to clarify this matter is likely to be necessary.

HB 778. #2

STATE OF MONTANA - FISCAL NOTE

Form BD 15

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(continued on next page)

Rod Sundsted 4/13
 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning

4/13/91
 DATE

Dave Brown
 DAVE BROWN, PRIMARY SPONSOR

4/15/91
 DATE

Fiscal Note for HB0778, third reading copy as amended**HB 778-42**

11. To administer recreational access to state lands the Department of State Lands will need 2.00 FTE land uses specialists, 0.25 FTE attorney and related operating and equipment expenses.

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HB 778. H2

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 778
 2 INTRODUCED BY D. BROWN, BIANCHI, RANEY, STRIZICH,
 3 LYNCH, DRISCOLL, DARKO, MENAHAN, HARPER, STANG,
 4 COHEN, SQUIRES, MCCULLOCH, SCOTT, MANNING, DOHERTY,
 5 SVRCEK, DAILY, FRANKLIN, JACOBSON, VAN VALKENBURG,
 6 PAVLOVICH, MCCARTHY, QUILICI, REAM, WYATT,
 7 J. BROWN, HARRINGTON, CONNELLY

8
 9 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
 10 RELATING TO USE OF STATE LANDS; PROVIDING THAT ALLOWABLE USE
 11 OF LEASED STATE LANDS INCLUDES GENERAL RECREATIONAL USE BY
 12 THE PUBLIC; ~~REQUIRING---SURFACE---LEASES---FOR---GRASSING,~~
 13 ~~AGRICULTURAL,---OR---LOGGING---PURPOSES---TO---ALLOW---PUBLIC~~
 14 ~~RECREATIONAL---USE---UNLESS---CERTAIN---CONDITIONS---ARE---MET;~~
 15 REQUIRING THE BOARD OF LAND COMMISSIONERS TO OPEN--UP
 16 ~~EXISTING---LEASES---TO---PUBLIC---RECREATIONAL---USE---WITH---CERTAIN~~
 17 EXCEPTIONS ADOPT RULES TO AUTHORIZE AND GOVERN THE
 18 RECREATIONAL USE AND CLOSURE OF LEASED STATE LANDS;
 19 REQUIRING PURCHASE AND POSSESSION OF A ~~WILDLIFE-CONSERVATION~~
 20 LICENSE BY PERSONS 12 YEARS OF AGE OR OLDER FOR THE GENERAL
 21 RECREATIONAL USE OF LEASED STATE LANDS; PROVIDING FOR
 22 ENFORCEMENT OF THE LICENSE REQUIREMENT BY THE WARDENS OF THE
 23 DEPARTMENT OF FISH, WILDLIFE, AND PARKS; ~~INCREASING-THE-FEE~~
 24 ~~FOR-WILDLIFE-CONSERVATION-LICENSES;~~ PROVIDING PENALTIES;
 25 PROVIDING FOR ~~DISPOSITION~~ THE STATUTORY APPROPRIATION OF THE

1 LICENSE FEES AND PENALTIES; AND PROVIDING COMPENSATION FOR
 2 DAMAGE TO A LESSEE'S IMPROVEMENTS, GROWING CROPS, AND
 3 LIVESTOCK; PROVIDING AN APPROPRIATION; AMENDING SECTIONS
 4 17-7-502, 19-8-504, 77-1-101, 77-1-202, 77-1-203, 77-1-204,
 5 77-1-402, 87-1-102, 87-1-502, 87-1-504, AND 87-1-601,
 6 87-2-103,---87-2-109,---87-2-202,---AND---87-2-204; MCA; AND
 7 PROVIDING A DELAYED EFFECTIVE DATE."
 8

9 STATEMENT OF INTENT
 10 ~~A-statement-of-intent-is-required-for-this-bill--because~~
 11 ~~77-1-203(3)--requires--the--board--of--land-commissioners-to~~
 12 ~~adopt-rules-closing-existing-leases-of-state-lands-to-public~~
 13 ~~recreational-use-in-certain-instances-and--because--(section~~
 14 ~~14)--requires-the-board-to-adopt-rules-governing-recreational~~
 15 ~~use--of-state-lands--It-is-intended-that-public-recreational~~
 16 ~~use-of-state-lands-be-accomplished--to--the--fullest--extent~~
 17 ~~possible.~~
 18 ~~It-is-also-intended-that-the-board-adopt-rules-governing~~
 19 ~~the--actions--of--the--recreational-user-of-state-lands--The~~
 20 ~~rules-must-require-the-user-to-make-a-reasonable--effort--to~~
 21 ~~present-the-conservation-license-to-any-tenant-living-on-the~~
 22 ~~property--and--inform--the--tenant-of-the-type-and-extent-of~~
 23 ~~recreational-use-to-be-made--The--rules--must--require--the~~
 24 ~~recreational-user--not--to--litter-or-otherwise-degrade-the~~
 25 ~~leased-property-and-to-comply-with-any--reasonable--requests~~



1 ~~of the tenant regarding such matters as avoidance of~~
 2 ~~livestock or crops and closing of gates.~~ A STATEMENT OF
 3 INTENT IS REQUIRED FOR THIS BILL BECAUSE [SECTION 13]
 4 REQUIRES THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES TO
 5 IMPLEMENT THE PROVISIONS FOR GENERAL RECREATIONAL USE OF
 6 LEASED STATE LANDS ESTABLISHED BY THIS BILL. CONSISTENT WITH
 7 THE PROVISIONS OF THIS BILL, THE LEGISLATURE RECOGNIZES THE
 8 PUBLIC'S RIGHT TO GENERAL RECREATIONAL USE OF STATE LANDS,
 9 AND IT IS THE INTENT OF THE LEGISLATURE THAT PUBLIC
 10 RECREATIONAL USE OF STATE LANDS BE ACCOMPLISHED TO THE
 11 FULLEST EXTENT POSSIBLE. IT IS ACKNOWLEDGED THAT CERTAIN
 12 LEASED STATE LANDS WILL MERIT CLOSURE TO PUBLIC RECREATIONAL
 13 USE DUE TO CERTAIN CONSIDERATIONS, INCLUDING BUT NOT LIMITED
 14 TO THE PRESENCE OF GROWING CROPS AND LIVESTOCK AND THE
 15 PROXIMITY OF DWELLINGS AND AGRICULTURAL BUILDINGS. NOTHING
 16 IN THIS BILL AUTHORIZES OR PURPORTS TO AUTHORIZE TRESPASS ON
 17 PRIVATE LANDS TO REACH STATE LANDS.

18 THIS BILL REQUIRES THE BOARD TO ADOPT RULES GOVERNING
 19 THE GENERAL RECREATIONAL USE OF LEASED STATE LANDS. THESE
 20 RULES MUST ADDRESS THE COMPENSATION FOR DAMAGE TO
 21 IMPROVEMENTS, CRITERIA FOR CLOSURE, RESTRICTIONS UPON
 22 CERTAIN RECREATIONAL ACTIVITIES, AND, WHEN REQUESTED BY ANY
 23 SURFACE LESSEE, PROVISION FOR THE RECREATIONAL USER TO MAKE
 24 A REASONABLE EFFORT TO PROVIDE PRIOR NOTICE OF THE TYPE AND
 25 EXTENT OF THE RECREATIONAL USE CONTEMPLATED.

1 [SECTION 18] AUTHORIZES THE BOARD TO ADOPT RULES FOR
 2 WEED CONTROL ACTIVITIES. IT IS THE INTENT OF THE LEGISLATURE
 3 THAT THE BOARD ESTABLISH A PROCEDURE WHEREBY WEED
 4 INFESTATIONS ON LEASED STATE LANDS THAT ARE ATTRIBUTABLE TO
 5 RECREATIONAL ACCESS ARE CONTROLLED OR ERADICATED. EXAMPLES
 6 OF PROCEDURES THAT FULFILL THIS INTENT INCLUDE:

- 7 (1) A DEPARTMENTAL WEED CONTROL PROGRAM;
- 8 (2) PAYMENTS FOR WEED CONTROL ACTIVITIES; AND
- 9 (3) PAYMENTS TO COUNTY WEED BOARDS.

10 IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD
 11 EVALUATE THE IMPLEMENTATION OF THIS BILL, DEVELOP
 12 RECOMMENDATIONS TO ADDRESS PROBLEMS, IF ANY, THAT ARISE
 13 THROUGH THE COURSE OF RULEMAKING AND IMPLEMENTATION, AND
 14 REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 53RD
 15 LEGISLATURE.

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 (Refer to Introduced Bill)

19 Strike everything after the enacting clause and insert:

20 **Section 1.** Section 19-8-504, MCA, is amended to read:

21 "19-8-504. State's contribution. Each month the state
 22 treasurer shall pay to the account, out of the department of
 23 fish, wildlife, and parks moneys, a sum equal to 7.15% of
 24 the total of all members' salaries, and out of the moneys
 25 collected as fines and forfeited bonds under the provisions

1 of 87-1-601(1) through (5) or moneys distributed under
 2 3-10-601(4), all such collections are statutorily
 3 appropriated to the account until the unfunded liability in
 4 the account is solvent and a verification statement to that
 5 effect is given to the state treasurer by the board."

6 **Section 2.** Section 77-1-101, MCA, is amended to read:

7 "77-1-101. Definitions. Unless the context requires
 8 otherwise and except for the definition of state land in
 9 77-1-701, in this title the following definitions apply:

10 (1) "Department" means the department of state lands
 11 provided for in Title 2, chapter 15, part 32.

12 (2) "Board" means the board of land commissioners
 13 provided for in Article X, section 4, of the constitution of
 14 this state.

15 (3) "Commissioner" means the commissioner of state
 16 lands provided for in 2-15-3202.

17 (4) "State land" or "lands" means lands granted to the
 18 state by the United States for any purpose, either directly
 19 or through exchange for other lands; lands deeded or devised
 20 to the state from any person; and lands that are the
 21 property of the state through the operation of law. The term
 22 does not include lands the state conveys through the
 23 issuance of patent; lands used for building sites, campus
 24 grounds, or experimental purposes by any state institution
 25 that are the property of that institution; or lands acquired

1 through foreclosure of any investments purchased under the
 2 provisions of 17-6-211.

3 (5) "Commercial or concentrated recreational use" means
 4 any recreational use that is organized, developed, or
 5 coordinated, whether for profit or otherwise. Commercial or
 6 concentrated recreational use includes all outfitting
 7 activity and all activities not included within the
 8 definition of general recreational use.

9 (6) "General recreational use" includes noncommercial
 10 and nonconcentrated hunting, fishing, swimming, boating,
 11 rafting, tubing, camping, picnicking, hiking, nature study,
 12 photography, bird watching, waterskiing, horseback riding,
 13 winter sports, viewing or enjoying historical or scenic
 14 sites, and other activities determined by the board to be
 15 compatible with the use of state lands. General recreational
 16 use does not include the use of streams and rivers by the
 17 public under the stream access laws provided in Title 23,
 18 chapter 2, part 3.

19 (7) "Legally accessible state lands" means state lands
 20 that can be accessed by public road, right-of-way, or
 21 easement; by public waters; by adjacent federal, state,
 22 county, or municipal land if the land is open to public use;
 23 or by adjacent private land if permission to cross the land
 24 has been secured from the landowner. The granting of
 25 permission by a private landowner to cross private property

1 in a particular instance does not subject the state land
 2 that is accessed to general recreational use by members of
 3 the public other than those granted permission.

4 (8) "Leased state lands" means state lands that have
 5 been leased for agricultural, grazing, timber, or other
 6 purposes."

7 **Section 3.** Section 77-1-202, MCA, is amended to read:

8 "77-1-202. Powers and duties of board. (1) The board
 9 shall exercise general authority, direction, and control
 10 over the care, management, and disposition of state lands
 11 and, subject to the investment authority of the board of
 12 investments, the funds arising from the leasing, use, sale,
 13 and disposition of those lands or otherwise coming under its
 14 administration. In the exercise of these powers, the guiding
 15 rule and principle is that these lands and funds are held in
 16 trust for the support of education and for the attainment of
 17 other worthy objects helpful to the well-being of the people
 18 of this state. The board shall administer this trust to
 19 secure the largest measure of legitimate and reasonable
 20 advantage to the state.

21 (2) It is consistent with the powers and duties of the
 22 board in subsection (1) that the people of this state are
 23 entitled to general recreational use of state lands.

24 ~~(2)~~(3) When acquiring land for the state, the board
 25 shall determine the value thereof after an appraisal by a

1 qualified land appraiser."

2 **Section 4.** Section 77-1-203, MCA, is amended to read:

3 "77-1-203. Multiple-use management. (1) The board shall
 4 manage state lands under the multiple-use management concept
 5 defined as the management of all the various resources of
 6 the state lands so that:

7 (a) they are utilized in that combination best meeting
 8 the needs of the people and the beneficiaries of the trust,
 9 making the most judicious use of the land for some or all of
 10 those resources or related services over areas large enough
 11 to provide sufficient latitude for periodic adjustments in
 12 use to conform to changing needs and conditions and
 13 realizing that some land may be used for less than all of
 14 the resources; and

15 (b) harmonious and coordinated management of the
 16 various resources, each with the other, will result without
 17 impairment of the productivity of the land, with
 18 consideration being given to the relative values of the
 19 various resources.

20 (2) If a parcel of state land in one class has other
 21 multiple uses or resource values which are of such
 22 significance that they do not warrant classification for the
 23 value, the land shall, nevertheless, be managed insofar as
 24 is possible to maintain or enhance these multiple-use
 25 values.

1 (3) Multiple-use management of state lands, including
 2 those lands that are leased primarily for other purposes,
 3 includes general recreational use as defined in 77-1-101.
 4 General recreational use is limited to legally accessible
 5 state lands, as defined in 77-1-101, that have not been
 6 closed to some or all recreational uses in accordance with
 7 rules promulgated under [section 13].

8 (4) The department shall include in all new or renewal
 9 leases and licenses a provision that leased lands may not be
 10 closed at any time to the public for general recreational
 11 purposes without the advanced written permission of the
 12 department."

13 **Section 5.** Section 77-1-204, MCA, is amended to read:

14 "77-1-204. Power to sell, lease, or exchange certain
 15 state lands. (1) The board is authorized to lease state
 16 lands for uses other than agriculture, grazing, timber
 17 harvest, or mineral production under such terms and
 18 conditions which best meet the duties of the board as
 19 specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for
 20 such leases, except for power and school site leases, may
 21 not be for longer than 40 years.

22 (2) The board shall have full power and authority to
 23 sell, exchange or lease lands under its jurisdiction by
 24 virtue of 77-1-214 when, in its judgment, it is advantageous
 25 to the state to do so in the highest orderly development and

1 management of state forests and state parks. Said sale,
 2 lease, or exchange shall not be contrary to the terms of any
 3 contract which it has entered into."

4 **Section 6.** Section 77-1-402, MCA, is amended to read:

5 "77-1-402. Basis for classification or
 6 reclassification. (1) The classification or reclassification
 7 shall be so made as to place state land in the class which
 8 best accomplishes the powers and duties of the board as
 9 specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are
 10 classified or reclassified in accordance with these duties
 11 and responsibilities, special attention shall be paid to the
 12 capability of the land to support an actual or proposed land
 13 use authorized by each classification.

14 (2) It is the duty of the department to classify or
 15 reclassify state lands so that no state land will be sold,
 16 leased, or used under a different classification from that
 17 to which it actually belongs."

18 **Section 7.** Section 87-1-102, MCA, is amended to read:

19 "87-1-102. Penalties. (1) A person violating any
 20 provision of this title, any other state law pertaining to
 21 fish and game, or the orders or rules of the commission or
 22 department is, unless a different punishment is expressly
 23 provided by law for the violation, guilty of a misdemeanor
 24 and shall be fined not less than \$50 or more than \$500,
 25 imprisoned in the county jail for not more than 6 months, or

1 both. In addition, the person shall be subject to forfeiture
 2 of his license and the privilege to hunt, fish, or trap
 3 within this state or to use leased state lands for general
 4 recreational purposes for a period of not less than 24
 5 months from the date of conviction.

6 (2) (a) A person convicted of unlawfully taking,
 7 killing, possessing, transporting, or wasting of a bighorn
 8 sheep, moose, wild bison, caribou, mountain goat, or grizzly
 9 bear or any part of these animals shall be fined not less
 10 than \$500 or more than \$1,000, imprisoned in the county jail
 11 for not more than 6 months, or both. In addition, that
 12 person shall forfeit any current hunting, fishing, or
 13 trapping license issued by this state and the privilege to
 14 hunt, fish, or trap in this state for not less than 30
 15 months from the date of conviction.

16 (b) A person convicted of unlawfully taking, killing,
 17 possessing, or transporting a deer, antelope, elk, mountain
 18 lion, or black bear or any part of these animals or wasting
 19 a deer, antelope, or elk shall be fined not less than \$300
 20 or more than \$1,000, imprisoned in the county jail for not
 21 more than 6 months, or both. In addition, that person shall
 22 forfeit any current hunting, fishing, or trapping license
 23 issued by this state and the privilege to hunt, fish, or
 24 trap in this state for not less than 24 months from the date
 25 of conviction.

1 (c) A person convicted of unlawfully attempting to
 2 trap, take, shoot, or kill a game animal shall be fined not
 3 less than \$200 or more than \$600, imprisoned in the county
 4 jail for not more than 60 days, or both.

5 (d) A person convicted of unlawfully taking, killing,
 6 possessing, transporting, shipping, labeling, packaging, or
 7 wasting or unlawfully attempting to take, kill, or possess
 8 any game bird, wild turkey, or fish or any part of any such
 9 bird or fish or of failure to tag a game animal or game bird
 10 as prescribed by law shall be fined not less than \$50 or
 11 more than \$200 or imprisoned in the county jail for not more
 12 than 30 days, or both.

13 (e) A person convicted of purposely or knowingly
 14 taking, killing, possessing, transporting, shipping,
 15 labeling, or packaging a fur-bearing animal or pelt of a
 16 fur-bearing animal in violation of any provision of this
 17 title shall be fined not less than \$50 or more than \$1,000
 18 or imprisoned in the county jail for not more than 6 months,
 19 or both. In addition, that person shall forfeit any current
 20 license and the privilege to hunt, fish, or trap for not
 21 less than 24 months from the date of conviction and any
 22 pelts possessed unlawfully must be confiscated.

23 (f) A person convicted of hunting, fishing, or trapping
 24 while his license is forfeited or his privilege denied shall
 25 be imprisoned in the county jail for not less than 5 days or

1 more than 6 months. In addition, that person may be fined
2 not less than \$500 or more than \$1,000.

3 (3) A person convicted or who has forfeited bond or
4 bail under subsection (2) and who has been ordered to pay
5 restitution under the provisions of 87-1-111 may not apply
6 for any special license under Title 87, chapter 2, part 7,
7 or enter any drawing for a special license or permit for a
8 period of 5 years following the date of conviction or
9 restoration of license privileges, whichever is later.

10 (4) Notwithstanding the provision of subsection (1),
11 the penalties provided by this section shall be in addition
12 to any penalties provided in Title 37, chapter 47, and Title
13 87, chapter 4, part 2."

14 **Section 8.** Section 87-1-502, MCA, is amended to read:

15 **"87-1-502. Qualifications, powers, and duties.** (1)
16 Wardens shall be qualified by their experience, training,
17 and skill in protection, conservation, and propagation of
18 wildlife, game, fur-bearing animals, fish, and game birds
19 and interested in this work. They shall devote all of their
20 time for which they are appointed to their official duties.

21 (2) They shall enforce the laws of this state and the
22 rules of the department with reference to the protection,
23 preservation, and propagation of game and fur-bearing
24 animals, fish, and game birds.

25 (3) They shall see that persons who hunt, fish, or take

1 game or fur-bearing animals, game birds, or fish and that
2 those persons who make recreational use of leased state
3 lands for hunting and fishing, have the necessary licenses.

4 (4) They shall assist in the protection, conservation,
5 and propagation of fish, game, fur-bearing animals, and game
6 and nongame birds and assist in the planting, distributing,
7 feeding, and care of fish, game, fur-bearing animals, and
8 game and nongame birds. They shall, when ordered by the
9 department, assist in the destruction of predatory animals,
10 birds, and rodents. They shall perform all other duties
11 prescribed by the department and make a monthly report to
12 the department correctly informing the department of their
13 activities on each day of the preceding month with regard to
14 the enforcement of the fish and game laws, showing where
15 their duties called them and what they did. The reports
16 shall contain any pertinent recommendations the wardens may
17 see fit to make.

18 (5) A warden may not compromise or settle violations of
19 fish and game laws out of court.

20 (6) A warden has the authority to inspect any and all
21 fish, game and nongame birds, waterfowl, game animals, and
22 fur-bearing animals at reasonable times and at any location
23 other than a residence or dwelling. Upon request therefor,
24 all persons having in their possession any fish, game and
25 nongame birds, waterfowl, game animals, and fur-bearing

1 animals shall exhibit the same and all thereof to the warden
2 for such inspection."

3 **Section 9.** Section 87-1-504, MCA, is amended to read:

4 **"87-1-504. Protection of private property -- duty of**
5 **wardens as-ex-officio-firewardens.** (1) It shall be the duty
6 of wardens (state conservation officers) to enforce the
7 provisions of 45-6-101, 45-6-203, and 75-10-212(2), [section
8 11], [section 15], and rules adopted under [section 13] on
9 private and leased state lands being used for the
10 recreational purposes of hunting and fishing and to act as
11 ex officio firewardens as provided by 77-5-104.

12 (2) As used in this section, "recreational purposes"
13 means recreational purposes as defined in 70-16-301."

14 **Section 10.** Section 87-1-601, MCA, is amended to read:

15 **"87-1-601. Use of fish and game money.** (1) All Except
16 as provided in subsection (6), all money collected or
17 received from the sale of hunting and fishing licenses or
18 permits, from the sale of seized game or hides, or from
19 damages collected for violations of the fish and game laws
20 of this state, from appropriations, or received by the
21 department from any other state source shall be turned over
22 to the state treasurer and placed by him in the state
23 special revenue fund to the credit of the department. Any
24 money received from federal sources shall be deposited in
25 the federal special revenue fund to the credit of the

1 department.

2 (2) That money shall be exclusively set apart and made
3 available for the payment of all salaries, per diem, fees,
4 expenses, and expenditures authorized to be made by the
5 department under the terms of this title. That money shall
6 be spent for those purposes by the department, subject to
7 appropriation by the legislature.

8 (3) Any reference to the fish and game fund in this
9 code means fish and game money in the state special revenue
10 fund and the federal special revenue fund.

11 (4) All Except as provided in subsection (6), all money
12 collected or received from fines and forfeited bonds, except
13 money collected or received by a justice's court, relating
14 to violations of state fish and game laws under Title 87
15 shall be deposited by the state treasurer and credited to
16 the department ~~of--fishy--wildlife,--and--parks~~ in a state
17 special revenue fund account for this purpose. Out of any
18 fine imposed by a court for the violation of the fish and
19 game laws, the costs of prosecution shall be paid to the
20 county where the trial was held in any case where the fine
21 is not imposed in addition to the costs of prosecution.

22 (5) Money received by the department from the sale of
23 surplus real property; exploration or development of oil,
24 gas, or mineral deposits from lands acquired by the
25 department except royalties or other compensation based on

1 production; and from leases of interests in department real
 2 property not contemplated at the time of acquisition shall
 3 be deposited in an account within the nonexpendable trust
 4 fund of the state treasury. The interest derived therefrom,
 5 but not the principal, may be used only for the purpose of
 6 operation, development, and maintenance of real property of
 7 the department, and only upon appropriation by the
 8 legislature. IF the use of money as set forth herein would
 9 result in violation of applicable federal laws or state
 10 statutes specifically naming the department or money
 11 received by the department, then the use of this money must
 12 be limited in the manner, method, and amount to those uses
 13 that do not result in such violation.

14 (6) Money collected or received from fines or forfeited
 15 bonds for the violation of [section 11], [section 15], or
 16 rules adopted under [section 13] must be deposited as
 17 follows:

18 (a) 50% in an account for use by the department for the
 19 enforcement of [section 11], [section 15], and rules adopted
 20 under [section 13]; and

21 (b) 50% in the state lands lessee compensation account
 22 established by [section 16] for use by the department of
 23 state lands in compensating lessees of state land for
 24 damages to improvements, growing crops, or livestock that
 25 result from general recreational use."

1 NEW SECTION. Section 11. License required for general
 2 recreational use of leased state lands -- penalty. (1) A
 3 person 12 years of age or older shall obtain an annual
 4 license pursuant to [section 12] to use leased state lands
 5 for general recreational purposes.

6 (2) A person shall, upon the request of a peace officer
 7 or fish and game warden, present for inspection his
 8 recreational use license.

9 (3) A violator of subsection (1) or (2) is guilty of a
 10 misdemeanor and shall be fined not less than \$50 or more
 11 than \$500, imprisoned in the county jail for not more than 6
 12 months, or both.

13 NEW SECTION. Section 12. License fee. (1) Until March
 14 1, 1993, the fee for a license for the general recreational
 15 use of leased state lands is \$5, and thereafter the amount
 16 of the fee must be determined by the board based upon the
 17 cost of administering the state lands lessee compensation
 18 account provided for in [section 16].

19 (2) The department may contract with the department of
 20 fish, wildlife, and parks for the distribution and sale of
 21 licenses required under [section 11] through the license
 22 agents appointed by and the administrative offices of the
 23 department of fish, wildlife, and parks and in accordance
 24 with the provisions of Title 87, chapter 2, part 9.

25 NEW SECTION. Section 13. Board to prescribe rules for

1 general recreational use of leased state lands. (1) The
 2 board shall adopt rules authorizing and governing the
 3 general recreational use of leased state lands allowed under
 4 77-1-203.

5 (2) Rules adopted under this section must address the
 6 circumstances under which the board may close leased state
 7 lands to general recreational use. Such action by the board
 8 may be taken upon its own initiative or upon petition by an
 9 individual, organization, corporation, or governmental
 10 agency. Closures may be of an emergency, seasonal,
 11 temporary, or permanent nature. Leased state lands may be
 12 closed by the board only after public notice and opportunity
 13 for public hearing, except when the department is acting
 14 under rules adopted by the board for an emergency closure.
 15 Closed lands must be posted by the lessee at customary
 16 access points with signs provided or authorized by the
 17 department.

18 (3) Closure rules adopted pursuant to subsection (2)
 19 may categorically close leased state lands whose use or
 20 status is incompatible with recreational use. Categorical or
 21 blanket closures may be imposed on leased state lands due
 22 to:

- 23 (a) cabinsite and homesite leases and licenses;
- 24 (b) the seasonal presence of growing crops; and
- 25 (c) active military, commercial, or mineral leases.

1 (4) The board shall adopt rules providing an
 2 opportunity for any individual, organization, or
 3 governmental agency to petition the board for purposes of
 4 excluding a specified portion of leased state land from a
 5 categorical closure that has been imposed under subsection
 6 (3).

7 (5) Under rules adopted by the board, leased state
 8 lands may be closed on a case-by-case basis for certain
 9 reasons, including but not limited to:

- 10 (a) damage attributable to recreational use that
 11 diminishes the income-generating potential of leased state
 12 lands;
- 13 (b) repeated damage to surface improvements of the
 14 lessee;
- 15 (c) the presence of threatened, endangered, or
 16 sensitive species or plant communities;
- 17 (d) the presence of unique or special natural or
 18 cultural features;
- 19 (e) wildlife protection;
- 20 (f) noxious weed control; or
- 21 (g) the presence of buildings, structures, and
 22 facilities.

23 (6) Rules adopted under this section may impose
 24 restrictions upon general recreational activities, including
 25 the discharge of weapons, camping, open fires, vehicle use,

1 and any use that will interfere with the presence of
 2 livestock. The board may also by rule restrict access on
 3 leased state lands in accordance with a block management
 4 program administered by the department of fish, wildlife,
 5 and parks. Motorized vehicle use by recreationists on leased
 6 state lands is restricted to federal, state, and county
 7 roads and those roads and trails designated by the
 8 department to be open to motorized vehicle use.

9 (7) The board shall adopt rules providing for the
 10 issuance of a special use license for commercial or
 11 concentrated general recreational use of leased state lands.
 12 Commercial or concentrated general recreational use must be
 13 prohibited on leased state lands unless it occurs under the
 14 provisions of a special use license.

15 (8) For a violation of rules adopted by the board
 16 pursuant to this section, the department may assess a civil
 17 penalty of up to \$1,000 for each day of violation. The board
 18 shall adopt rules providing for notice and opportunity for
 19 hearing in accordance with Title 2, chapter 4, part 6. Civil
 20 penalties collected under this subsection must be deposited
 21 as provided in [section 10(6)].

22 NEW SECTION. Section 14. Liability of state and
 23 lessee. (1) The provisions of 70-16-302 that limit the
 24 liability of a landowner or his tenant for the recreational
 25 use of property apply to the state and any lessee of state

1 lands used for general recreational purposes.

2 (2) The lessee is not responsible for the suppression
 3 of, or damages resulting from, a fire on his leased land
 4 caused by a general recreational user, except that a lessee
 5 that observes a fire caused by a general recreational user
 6 shall make reasonable efforts to suppress the fire or report
 7 it to the proper fire fighting authority.

8 NEW SECTION. Section 15. Prior notification to lessee
 9 of recreational use -- trespass -- penalty. (1) If a lessee
 10 of state lands under [sections 11 through 18] desires to be
 11 notified prior to anyone entering upon his leasehold, the
 12 lessee shall post, at customary access points, signs
 13 provided or authorized by the department. The signs must set
 14 forth the lessee's or his agent's name, address, and
 15 telephone number. When leased state land is posted,
 16 recreational users shall make a reasonable effort to contact
 17 and identify themselves to the lessee or his agent for the
 18 purposes of minimizing impact upon the leasehold interest
 19 and learning the specific boundaries of adjacent unfenced
 20 private property.

21 (2) When property is posted in accordance with
 22 subsection (1) and adjacent private property is owned by the
 23 lessee of state lands, each recreational user must have
 24 obtained permission of the lessee or his agent before
 25 entering the adjacent private property owned by the lessee.

1 Entry without permission is an absolute liability offense
 2 punishable as a misdemeanor. A violator of this subsection
 3 is guilty of a misdemeanor and shall be fined not less than
 4 \$50 or more than \$500, imprisoned in the county jail for not
 5 more than 6 months, or both.

6 (3) A person may be found guilty of the offense
 7 described in subsection (2) regardless of the absence of
 8 fencing or failure to post a notice in accordance with
 9 45-6-201.

10 **NEW SECTION. Section 16. State lands lessee**
 11 **compensation account.** (1) There is a state lands lessee
 12 compensation account in the state special revenue fund
 13 provided for in 17-2-102.

14 (2) There must be deposited in the account:

15 (a) all revenue received from the license established
 16 by [section 12];

17 (b) all revenue received from the imposition of fines
 18 under [sections 11 and 15] and from civil penalties imposed
 19 pursuant to [section 13]; and

20 (c) money received by the department in the form of
 21 legislative appropriations, reimbursements, gifts, federal
 22 funds, or appropriations from any source intended to be used
 23 for the purposes of this account.

24 (3) Money deposited in the account is statutorily
 25 appropriated, as provided in 17-7-502, and must be used by

1 the department for the following purposes:

2 (a) compensation for damage to the improvements,
 3 growing crops, or livestock of a state land lessee, which
 4 has been proved to be caused by recreational users pursuant
 5 to [section 17]; and

6 (b) assistance in weed control management necessary as
 7 a result of general recreational use of leased state lands.

8 (4) A maximum of \$100,000 may be deposited into the
 9 account. Additional revenue must be apportioned on a pro
 10 rata basis to the land trusts in proportion to the
 11 respective trust's percentage contribution to the total
 12 acreage of all state land trusts.

13 **NEW SECTION. Section 17. Compensation for damage to**
 14 **improvements, growing crops, or livestock.** A lessee may
 15 apply to the department for reimbursement of documented
 16 costs of repair to or replacement of improvements, growing
 17 crops, or livestock damaged by recreational users of leased
 18 state lands. The application must include an affidavit by
 19 the applicant setting forth the nature of the loss,
 20 allegations and reasonable proof supporting the involvement
 21 of recreational users, and documentation of repair or
 22 replacement costs. Upon review of the application and
 23 supporting proof and upon additional investigation as
 24 required, the department shall either grant, modify, or deny
 25 the claim. The department, by reason of payment to the

1 lessee for damage to improvements, is entitled to be
 2 subrogated to the rights of the lessee to recover the amount
 3 paid from the party causing the damage. Payments under this
 4 section must be made from the state lands lessee
 5 compensation account established by [section 16], and the
 6 liability of the department for damage payments is limited
 7 to the existing balance of the account. Claim applications
 8 are to be considered in the order they are received.

9 **NEW SECTION. Section 18. Weed control management.** (1)
 10 The department shall establish a weed control management
 11 program for the control of noxious weeds reasonably proved
 12 to be caused by the recreational use of leased state lands.
 13 The department may by rule establish a noxious weed
 14 management program that may include direct compensation for
 15 noxious weed control activities or participation in district
 16 and county weed control projects or department-initiated
 17 weed control activities.

18 (2) Funding for this program must come from the state
 19 lands lessee compensation account pursuant to [section 16].

20 **Section 19.** Section 17-7-502, MCA, is amended to read:

21 "17-7-502. Statutory appropriations -- definition --
 22 requisites for validity. (1) A statutory appropriation is an
 23 appropriation made by permanent law that authorizes spending
 24 by a state agency without the need for a biennial
 25 legislative appropriation or budget amendment.

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

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

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

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

24 (4) There is a statutory appropriation to pay the
 25 principal, interest, premiums, and costs of issuing, paying,

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

12 NEW SECTION. Section 20. Appropriation. There is
 13 appropriated from the general fund to the land trusts
 14 \$20,000 for fiscal year 1992 and \$20,000 for fiscal year
 15 1993. The purpose of the appropriation is to compensate the
 16 land trusts for general recreational use of state lands. The
 17 appropriation must be apportioned on a pro rata basis to the
 18 land trusts in proportion to the respective trust's
 19 percentage contribution to the total acreage of all state
 20 land trusts.

21 NEW SECTION. Section 21. Codification instruction.
 22 [Sections 11 through 18] are intended to be codified as an
 23 integral part of Title 77, and the provisions of Title 77
 24 apply to [sections 11 through 18].

25 NEW SECTION. Section 22. Severability. If a part of

1 [this act] is invalid, all valid parts that are severable
 2 from the invalid part remain in effect. If a part of [this
 3 act] is invalid in one or more of its applications, the part
 4 remains in effect in all valid applications that are
 5 severable from the invalid applications.

6 NEW SECTION. Section 23. Applicability. Upon passage
 7 and approval of [this act], the board of land commissioners
 8 may commence proceedings to adopt rules to be effective
 9 March 1, 1992. The department of state lands and the
 10 department of fish, wildlife, and parks may commence
 11 proceedings and arrangements necessary to establish a
 12 license required under [section 11], to be effective March
 13 1, 1992.

14 NEW SECTION. Section 24. Effective date. [This act] is
 15 effective March 1, 1992.

-End-

HOUSE BILL NO. 778

INTRODUCED BY D. BROWN, BIANCHI, RANEY, STRIZICH, LYNCH, DRISCOLL, DARKO, MENAHAN, HARPER, STANG, COHEN, SQUIRES, MCCULLOCH, SCOTT, MANNING, DOHERTY, SVRCEK, DAILY, FRANKLIN, JACOBSON, VAN VALKENBURG, PAVLOVICH, MCCARTHY, QUILICI, REAM, WYATT, J. BROWN, HARRINGTON, CONNELLY

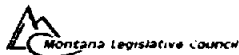
A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO USE OF STATE LANDS; PROVIDING THAT ALLOWABLE USE OF LEASED STATE LANDS INCLUDES GENERAL RECREATIONAL USE BY THE PUBLIC; REQUIRING SURFACE LEASES FOR GRASSING, AGRICULTURAL, OR LOGGING PURPOSES TO ALLOW PUBLIC RECREATIONAL USE UNLESS CERTAIN CONDITIONS ARE MET; REQUIRING THE BOARD OF LAND COMMISSIONERS TO OPEN UP EXISTING LEASES TO PUBLIC RECREATIONAL USE WITH CERTAIN EXCEPTIONS ADOPT RULES TO AUTHORIZE AND GOVERN THE RECREATIONAL USE AND CLOSURE OF LEASED STATE LANDS; REQUIRING PURCHASE AND POSSESSION OF A WILDLIFE CONSERVATION RECREATIONAL USE LICENSE BY PERSONS 12 YEARS OF AGE OR OLDER FOR THE GENERAL RECREATIONAL USE OF LEASED STATE LANDS; PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT BY THE WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; INCREASING THE FEE FOR WILDLIFE CONSERVATION LICENSES; PROVIDING PENALTIES; PROVIDING FOR DISPOSITION THE STATUTORY

APPROPRIATION OF THE LICENSE FEES AND PENALTIES; AND PROVIDING COMPENSATION FOR DAMAGE TO A LESSEE'S IMPROVEMENTS, GROWING CROPS, AND LIVESTOCK; PROVIDING AN APPROPRIATION, AMENDING SECTIONS 17-7-502, 19-8-504, 77-1-101, 77-1-202, 77-1-203, 77-1-204, 77-1-402, 87-1-102, 87-1-502, 87-1-504, AND 87-1-601, 87-2-103, 87-2-109, 87-2-202, AND 87-2-204, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because 77-1-203(3) requires the board of land commissioners to adopt rules closing existing leases of state lands to public recreational use in certain instances and because section 14 requires the board to adopt rules governing recreational use of state lands. It is intended that public recreational use of state lands be accomplished to the fullest extent possible.

It is also intended that the board adopt rules governing the actions of the recreational user of state lands. The rules must require the user to make a reasonable effort to present the conservation license to any tenant living on the property and inform the tenant of the type and extent of recreational use to be made. The rules must require the recreational user not to litter or otherwise degrade the



1 leased property and to comply with any reasonable requests
2 of the tenant regarding such matters as avoidance of
3 livestock or crops and closing of gates.

4 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
5 {SECTION 13} REQUIRES THE BOARD OF LAND COMMISSIONERS TO
6 ADOPT RULES TO IMPLEMENT THE PROVISIONS FOR GENERAL
7 RECREATIONAL USE OF LEASED STATE LANDS ESTABLISHED BY THIS
8 BILL CONSISTENT WITH THE PROVISIONS OF THIS BILL THE
9 LEGISLATURE RECOGNIZES THE PUBLIC'S RIGHT TO GENERAL
10 RECREATIONAL USE OF STATE LANDS AND IT IS THE INTENT OF THE
11 LEGISLATURE THAT PUBLIC RECREATIONAL USE OF STATE LANDS BE
12 ACCOMPLISHED TO THE FULLEST EXTENT POSSIBLE IT IS
13 ACKNOWLEDGED THAT CERTAIN LEASED STATE LANDS WILL MERIT
14 CLOSURE TO PUBLIC RECREATIONAL USE DUE TO CERTAIN
15 CONSIDERATIONS INCLUDING BUT NOT LIMITED TO THE PRESENCE OF
16 GROWING CROPS AND LIVESTOCK AND THE PROXIMITY OF DWELLINGS
17 AND AGRICULTURAL BUILDINGS NOTHING IN THIS BILL AUTHORIZES
18 OR PURPORTS TO AUTHORIZE TRESPASS ON PRIVATE LANDS TO REACH
19 STATE LANDS.

20 THIS BILL REQUIRES THE BOARD TO ADOPT RULES GOVERNING
21 THE GENERAL RECREATIONAL USE OF LEASED STATE LANDS THESE
22 RULES MUST ADDRESS THE COMPENSATION FOR DAMAGE TO
23 IMPROVEMENTS CRITERIA FOR CLOSURE RESTRICTIONS UPON
24 CERTAIN RECREATIONAL ACTIVITIES AND WHEN REQUESTED BY ANY
25 SURFACE LESSEE PROVISION FOR THE RECREATIONAL USER TO MAKE

1 A REASONABLE EFFORT TO PROVIDE PRIOR NOTICE OF THE TYPE AND
2 EXTENT OF THE RECREATIONAL USE CONTEMPLATED.

3 {SECTION 10} AUTHORIZES THE BOARD TO ADOPT RULES FOR
4 WEED CONTROL ACTIVITIES IT IS THE INTENT OF THE LEGISLATURE
5 THAT THE BOARD ESTABLISH A PROCEDURE WHEREBY WEED
6 INFESTATIONS ON LEASED STATE LANDS THAT ARE ATTRIBUTABLE TO
7 RECREATIONAL ACCESS ARE CONTROLLED OR ERADICATED EXAMPLES
8 OF PROCEDURES THAT FULFILL THIS INTENT INCLUDE:

- 9 {1} A DEPARTMENTAL WEED CONTROL PROGRAM,
10 {2} PAYMENTS FOR WEED CONTROL ACTIVITIES AND
11 {3} PAYMENTS TO COUNTY WEED BOARDS.

12 IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD
13 EVALUATE THE IMPLEMENTATION OF THIS BILL DEVELOP
14 RECOMMENDATIONS TO ADDRESS PROBLEMS IF ANY THAT ARISE
15 THROUGH THE COURSE OF RULEMAKING AND IMPLEMENTATION AND
16 REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 53RD
17 LEGISLATURE.

18 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
19 {SECTION 13} REQUIRES THE BOARD OF LAND COMMISSIONERS TO
20 ADOPT RULES TO IMPLEMENT THE PROVISIONS FOR RECREATIONAL USE
21 OF STATE LANDS ESTABLISHED BY THIS BILL. CONSISTENT WITH THE
22 PROVISIONS OF THIS BILL, IT IS INTENDED THAT PUBLIC
23 RECREATIONAL USE OF STATE LANDS BE ACCOMPLISHED TO THE
24 FULLEST EXTENT POSSIBLE. IT IS ACKNOWLEDGED THAT CERTAIN
25 STATE LANDS WILL MERIT CLOSURE FROM PUBLIC RECREATIONAL USE

1 DUE TO CERTAIN CONSIDERATIONS, INCLUDING BUT NOT LIMITED TO
 2 THE PRESENCE OF GROWING CROPS AND LIVESTOCK AND THE
 3 PROXIMITY OF DWELLINGS AND AGRICULTURAL BUILDINGS. NOTHING
 4 IN THIS BILL AUTHORIZES OR PURPORTS TO AUTHORIZE TRESPASS ON
 5 PRIVATE LANDS TO REACH STATE LANDS.

6 THIS BILL REQUIRES THE BOARD TO ADOPT RULES GOVERNING
 7 THE ACTIONS OF THE RECREATIONAL USER OF STATE LANDS. THESE
 8 RULES MUST ADDRESS PROTECTION OF THE RESOURCE VALUE,
 9 COMPENSATION FOR DAMAGE TO IMPROVEMENTS, CRITERIA FOR
 10 CLOSURE, RESTRICTIONS UPON CERTAIN RECREATIONAL ACTIVITIES,
 11 AND, WHEN STATE LAND IS POSTED, PROVISION FOR THE
 12 RECREATIONAL USER TO CONTACT THE LESSEE OR HIS AGENT TO
 13 PROVIDE PRIOR NOTICE OF THE TYPE AND EXTENT OF THE
 14 RECREATIONAL USE CONTEMPLATED.

15 [SECTION 18] AUTHORIZES THE DEPARTMENT TO ADOPT RULES
 16 FOR WEED CONTROL ACTIVITIES. IT IS THE INTENT OF THE
 17 LEGISLATURE THAT THE BOARD ESTABLISH A PROCEDURE WHEREBY
 18 WEED INFESTATIONS ON STATE LANDS THAT ARE ATTRIBUTABLE TO
 19 RECREATIONAL ACCESS ARE CONTROLLED OR ERADICATED. EXAMPLES
 20 OF PROCEDURES THAT FULFILL THIS INTENT INCLUDE:

- 21 (1) A DEPARTMENTAL WEED CONTROL PROGRAM;
- 22 (2) PAYMENTS FOR WEED CONTROL ACTIVITIES; AND
- 23 (3) PAYMENTS TO COUNTY WEED BOARDS.

24 IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD
 25 EVALUATE THE IMPLEMENTATION OF THIS BILL, DEVELOP

1 RECOMMENDATIONS TO ADDRESS PROBLEMS, IF ANY, THAT ARISE
 2 THROUGH THE COURSE OF RULEMAKING AND IMPLEMENTATION, AND
 3 REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 53RD
 4 LEGISLATURE.

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

7 (Refer to Introduced Bill)

8 Strike everything after the enacting clause and insert:

9 (Refer to Second Reading Copy)

10 Strike everything after the enacting clause and insert:

11 **Section 1.** Section 19-8-504, MCA, is amended to read:

12 "19-8-504. State's contribution. Each month the state
 13 treasurer shall pay to the account, out of the department of
 14 fish, wildlife, and parks moneys, a sum equal to 7.15% of
 15 the total of all members' salaries, and out of the moneys
 16 collected as fines and forfeited bonds under the provisions
 17 of 87-1-601(1) through (5) or moneys distributed under
 18 3-10-601(4), all such collections are statutorily
 19 appropriated to the account until the unfunded liability in
 20 the account is solvent and a verification statement to that
 21 effect is given to the state treasurer by the board."

22 **Section 2.** Section 77-1-101, MCA, is amended to read:

23 "77-1-101. Definitions. Unless the context requires
 24 otherwise and except for the definition of state land in
 25 77-1-701, in this title the following definitions apply:

1 (1) "Department" means the department of state lands
2 provided for in Title 2, chapter 15, part 32.

3 (2) "Board" means the board of land commissioners
4 provided for in Article X, section 4, of the constitution of
5 this state.

6 (3) "Commissioner" means the commissioner of state
7 lands provided for in 2-15-3202.

8 (4) "State land" or "lands" means lands granted to the
9 state by the United States for any purpose, either directly
10 or through exchange for other lands; lands deeded or devised
11 to the state from any person; and lands that are the
12 property of the state through the operation of law. The term
13 does not include lands the state conveys through the
14 issuance of patent; lands used for building sites, campus
15 grounds, or experimental purposes by any state institution
16 that are the property of that institution; or lands acquired
17 through foreclosure of any investments purchased under the
18 provisions of 17-6-211.

19 (5) "Commercial or concentrated recreational use" means
20 any recreational use that is organized, developed, or
21 coordinated, whether for profit or otherwise. Commercial or
22 concentrated recreational use includes all outfitting
23 activity and all activities not included within the
24 definition of general recreational use.

25 (6) "General recreational use" includes noncommercial

1 and nonconcentrated hunting, fishing, and other activities
2 determined by the board to be compatible with the use of
3 state lands. General recreational use does not include the
4 use of streams and rivers by the public under the stream
5 access laws provided in Title 23, chapter 2, part 3.

6 (7) "Legally accessible state lands" means state lands
7 that can be accessed by dedicated public road, right-of-way,
8 or easement; by public waters; by adjacent federal, state,
9 county, or municipal land if the land is open to public use;
10 or by adjacent contiguous private land if permission to
11 cross the land has been secured from the landowner. The
12 granting of permission by a private landowner to cross
13 private property in a particular instance does not subject
14 the state land that is accessed to general recreational use
15 by members of the public other than those granted
16 permission."

17 **Section 3.** Section 77-1-202, MCA, is amended to read:

18 "77-1-202. Powers and duties of board. (1) The board
19 shall exercise general authority, direction, and control
20 over the care, management, and disposition of state lands
21 and, subject to the investment authority of the board of
22 investments, the funds arising from the leasing, use, sale,
23 and disposition of those lands or otherwise coming under its
24 administration. In the exercise of these powers, the guiding
25 rule and principle is that these lands and funds are held in

1 trust for the support of education and for the attainment of
 2 other worthy objects helpful to the well-being of the people
 3 of this state. The board shall administer this trust to
 4 secure the largest measure of legitimate and reasonable
 5 advantage to the state.

6 (2) It is consistent with the powers and duties
 7 provided in subsection (1) that the people are entitled to
 8 general recreational use of state lands to the extent that
 9 the trusts are compensated for the value of the recreation.

10 ~~(2)~~(3) When acquiring land for the state, the board
 11 shall determine the value thereof after an appraisal by a
 12 qualified land appraiser."

13 **Section 4.** Section 77-1-203, MCA, is amended to read:

14 **"77-1-203. Multiple-use management.** (1) The board shall
 15 manage state lands under the multiple-use management concept
 16 defined as the management of all the various resources of
 17 the state lands so that:

18 (a) they are utilized in that combination best meeting
 19 the needs of the people and the beneficiaries of the trust,
 20 making the most judicious use of the land for some or all of
 21 those resources or related services over areas large enough
 22 to provide sufficient latitude for periodic adjustments in
 23 use to conform to changing needs and conditions and
 24 realizing that some land may be used for less than all of
 25 the resources; and

1 (b) harmonious and coordinated management of the
 2 various resources, each with the other, will result without
 3 impairment of the productivity of the land, with
 4 consideration being given to the relative values of the
 5 various resources.

6 (2) If a parcel of state land in one class has other
 7 multiple uses or resource values which are of such
 8 significance that they do not warrant classification for the
 9 value, the land shall, nevertheless, be managed insofar as
 10 is possible to maintain or enhance these multiple-use
 11 values.

12 (3) State lands, including those lands that are leased
 13 primarily for other purposes, are open to general
 14 recreational use subject to legal access and to closures and
 15 restrictions pursuant to rules adopted under [section 13].

16 (4) The department shall include in all new or renewal
 17 leases and licenses a provision that leased lands may not be
 18 closed at any time to the public for general recreational
 19 purposes without the advanced written permission of the
 20 department."

21 **Section 5.** Section 77-1-204, MCA, is amended to read:

22 **"77-1-204. Power to sell, lease, or exchange certain**
 23 **state lands.** (1) The board is authorized to lease state
 24 lands for uses other than agriculture, grazing, timber
 25 harvest, or mineral production under such terms and

1 conditions which best meet the duties of the board as
2 specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for
3 such leases, except for power and school site leases, may
4 not be for longer than 40 years.

5 (2) The board shall have full power and authority to
6 sell, exchange or lease lands under its jurisdiction by
7 virtue of 77-1-214 when, in its judgment, it is advantageous
8 to the state to do so in the highest orderly development and
9 management of state forests and state parks. Said sale,
10 lease, or exchange shall not be contrary to the terms of any
11 contract which it has entered into."

12 **Section 6.** Section 77-1-402, MCA, is amended to read:

13 "77-1-402. **Basis for classification or**
14 **reclassification.** (1) The classification or reclassification
15 shall be so made as to place state land in the class which
16 best accomplishes the powers and duties of the board as
17 specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are
18 classified or reclassified in accordance with these duties
19 and responsibilities, special attention shall be paid to the
20 capability of the land to support an actual or proposed land
21 use authorized by each classification.

22 (2) It is the duty of the department to classify or
23 reclassify state lands so that no state land will be sold,
24 leased, or used under a different classification from that
25 to which it actually belongs."

1 **Section 7.** Section 87-1-102, MCA, is amended to read:

2 "87-1-102. **Penalties.** (1) A person violating any
3 provision of this title, any other state law pertaining to
4 fish and game, or the orders or rules of the commission or
5 department is, unless a different punishment is expressly
6 provided by law for the violation, guilty of a misdemeanor
7 and shall be fined not less than \$50 or more than \$500,
8 imprisoned in the county jail for not more than 6 months, or
9 both. In addition, the person shall be subject to forfeiture
10 of his license and the privilege to hunt, fish, or trap
11 within this state or to use state lands, as defined in
12 77-1-101, for recreational purposes for a period of not less
13 than 24 months from the date of conviction.

14 (2) (a) A person convicted of unlawfully taking,
15 killing, possessing, transporting, or wasting of a bighorn
16 sheep, moose, wild bison, caribou, mountain goat, or grizzly
17 bear or any part of these animals shall be fined not less
18 than \$500 or more than \$1,000, imprisoned in the county jail
19 for not more than 6 months, or both. In addition, that
20 person shall forfeit any current hunting, fishing,
21 recreational use, or trapping license issued by this state
22 and the privilege to hunt, fish, or trap in this state for
23 not less than 30 months from the date of conviction.

24 (b) A person convicted of unlawfully taking, killing,
25 possessing, or transporting a deer, antelope, elk, mountain

1 lion, or black bear or any part of these animals or wasting
 2 a deer, antelope, or elk shall be fined not less than \$300
 3 or more than \$1,000, imprisoned in the county jail for not
 4 more than 6 months, or both. In addition, that person shall
 5 forfeit any current hunting, fishing, or trapping license
 6 issued by this state and the privilege to hunt, fish, or
 7 trap in this state for not less than 24 months from the date
 8 of conviction.

9 (c) A person convicted of unlawfully attempting to
 10 trap, take, shoot, or kill a game animal shall be fined not
 11 less than \$200 or more than \$600, imprisoned in the county
 12 jail for not more than 60 days, or both.

13 (d) A person convicted of unlawfully taking, killing,
 14 possessing, transporting, shipping, labeling, packaging, or
 15 wasting or unlawfully attempting to take, kill, or possess
 16 any game bird, wild turkey, or fish or any part of any such
 17 bird or fish or of failure to tag a game animal or game bird
 18 as prescribed by law shall be fined not less than \$50 or
 19 more than \$200 or imprisoned in the county jail for not more
 20 than 30 days, or both.

21 (e) A person convicted of purposely or knowingly
 22 taking, killing, possessing, transporting, shipping,
 23 labeling, or packaging a fur-bearing animal or pelt of a
 24 fur-bearing animal in violation of any provision of this
 25 title shall be fined not less than \$50 or more than \$1,000

1 or imprisoned in the county jail for not more than 6 months,
 2 or both. In addition, that person shall forfeit any current
 3 license and the privilege to hunt, fish, or trap for not
 4 less than 24 months from the date of conviction and any
 5 pelts possessed unlawfully must be confiscated.

6 (f) A person convicted of hunting, fishing, or trapping
 7 while his license is forfeited or his privilege denied shall
 8 be imprisoned in the county jail for not less than 5 days or
 9 more than 6 months. In addition, that person may be fined
 10 not less than \$500 or more than \$1,000.

11 (3) A person convicted or who has forfeited bond or
 12 bail under subsection (2) and who has been ordered to pay
 13 restitution under the provisions of 87-1-111 may not apply
 14 for any special license under Title 87, chapter 2, part 7,
 15 or enter any drawing for a special license or permit for a
 16 period of 5 years following the date of conviction or
 17 restoration of license privileges, whichever is later.

18 (4) Notwithstanding the provision of subsection (1),
 19 the penalties provided by this section shall be in addition
 20 to any penalties provided in Title 37, chapter 47, and Title
 21 87, chapter 4, part 2."

22 **Section 8.** Section 87-1-502, MCA, is amended to read:

23 "87-1-502. Qualifications, powers, and duties. (1)
 24 Wardens shall be qualified by their experience, training,
 25 and skill in protection, conservation, and propagation of

1 wildlife, game, fur-bearing animals, fish, and game birds
2 and interested in this work. They shall devote all of their
3 time for which they are appointed to their official duties.

4 (2) They shall enforce the laws of this state and the
5 rules of the department with reference to the protection,
6 preservation, and propagation of game and fur-bearing
7 animals, fish, and game birds.

8 (3) They shall see that persons who hunt, fish, or take
9 game or fur-bearing animals, game birds, or fish and that
10 those persons who make recreational use of state lands, as
11 defined in 77-1-101, for hunting and fishing, have the
12 necessary licenses.

13 (4) They shall assist in the protection, conservation,
14 and propagation of fish, game, fur-bearing animals, and game
15 and nongame birds and assist in the planting, distributing,
16 feeding, and care of fish, game, fur-bearing animals, and
17 game and nongame birds. They shall, when ordered by the
18 department, assist in the destruction of predatory animals,
19 birds, and rodents. They shall perform all other duties
20 prescribed by the department and make a monthly report to
21 the department correctly informing the department of their
22 activities on each day of the preceding month with regard to
23 the enforcement of the fish and game laws, showing where
24 their duties called them and what they did. The reports
25 shall contain any pertinent recommendations the wardens may

1 see fit to make.

2 (5) A warden may not compromise or settle violations of
3 fish and game laws out of court.

4 (6) A warden has the authority to inspect any and all
5 fish, game and nongame birds, waterfowl, game animals, and
6 fur-bearing animals at reasonable times and at any location
7 other than a residence or dwelling. Upon request therefor,
8 all persons having in their possession any fish, game and
9 nongame birds, waterfowl, game animals, and fur-bearing
10 animals shall exhibit the same and all thereof to the warden
11 for such inspection."

12 **Section 9.** Section 87-1-504, MCA, is amended to read:

13 **"87-1-504. Protection of private property -- duty of**
14 **wardens as-ex-officio-firewardens.** (1) It shall be the duty
15 of wardens (state conservation officers) to enforce the
16 provisions of 45-6-101, 45-6-203, and 75-10-212(2), [section
17 11], [section 15], and rules adopted under [section 13] on
18 private and state lands being used for the recreational
19 purposes of hunting and fishing and to act as ex officio
20 firewardens as provided by 77-5-104.

21 (2) As used in this section, "recreational purposes"
22 means recreational purposes as defined in 70-16-301."

23 **Section 10.** Section 87-1-601, MCA, is amended to read:

24 **"87-1-601. Use of fish and game money.** (1) All Except
25 as provided in subsection (6), all money collected or

1 received from the sale of hunting and fishing licenses or
 2 permits, from the sale of seized game or hides, or from
 3 damages collected for violations of the fish and game laws
 4 of this state, from appropriations, or received by the
 5 department from any other state source shall be turned over
 6 to the state treasurer and placed by him in the state
 7 special revenue fund to the credit of the department. Any
 8 money received from federal sources shall be deposited in
 9 the federal special revenue fund to the credit of the
 10 department.

11 (2) That money shall be exclusively set apart and made
 12 available for the payment of all salaries, per diem, fees,
 13 expenses, and expenditures authorized to be made by the
 14 department under the terms of this title. That money shall
 15 be spent for those purposes by the department, subject to
 16 appropriation by the legislature.

17 (3) Any reference to the fish and game fund in this
 18 code means fish and game money in the state special revenue
 19 fund and the federal special revenue fund.

20 (4) All Except as provided in subsection (6), all money
 21 collected or received from fines and forfeited bonds, except
 22 money collected or received by a justice's court, relating
 23 to violations of state fish and game laws under Title 87
 24 shall be deposited by the state treasurer and credited to
 25 the department ~~of fish, wildlife, and parks~~ in a state

1 special revenue fund account for this purpose. Out of any
 2 fine imposed by a court for the violation of the fish and
 3 game laws, the costs of prosecution shall be paid to the
 4 county where the trial was held in any case where the fine
 5 is not imposed in addition to the costs of prosecution.

6 (5) Money received by the department from the sale of
 7 surplus real property; exploration or development of oil,
 8 gas, or mineral deposits from lands acquired by the
 9 department except royalties or other compensation based on
 10 production; and from leases of interests in department real
 11 property not contemplated at the time of acquisition shall
 12 be deposited in an account within the nonexpendable trust
 13 fund of the state treasury. The interest derived therefrom,
 14 but not the principal, may be used only for the purpose of
 15 operation, development, and maintenance of real property of
 16 the department, and only upon appropriation by the
 17 legislature. If the use of money as set forth herein would
 18 result in violation of applicable federal laws or state
 19 statutes specifically naming the department or money
 20 received by the department, then the use of this money must
 21 be limited in the manner, method, and amount to those uses
 22 that do not result in such violation.

23 (6) Money collected or received from fines or forfeited
 24 bonds for the violation of [section 11], [section 15], or
 25 rules adopted under [section 13] must be deposited as

1 follows:

2 (a) 50% in an account for use by the department for the
3 enforcement of [section 11], [section 15], and rules adopted
4 under [section 13]; and

5 (b) 50% in the state lands recreational use account
6 established by [section 16] for use by the department of
7 state lands in the management of state lands."

8 **NEW SECTION. Section 11. Recreational use license**
9 **required to use state lands for general recreational**
10 **purposes -- penalty.** (1) A person 12 years of age or older
11 shall obtain an annual recreational use license pursuant to
12 [section 12] to use state lands, as defined in 77-1-101, for
13 general recreational purposes.

14 (2) A person shall, upon the request of a peace officer
15 or fish and game warden, present for inspection his
16 recreational use license.

17 (3) A violator of subsection (1) or (2) is guilty of a
18 misdemeanor and shall be fined not less than \$50 or more
19 than \$500, imprisoned in the county jail for not more than 6
20 months, or both.

21 **NEW SECTION. Section 12. Recreational use license --**
22 **fee.** (1) The fee for a recreational use license is \$5. The
23 fee is based upon:

24 (a) a \$3 charge as the value of 1 year of recreational
25 use of state lands; and

1 (b) a \$2 surcharge for the administrative costs of
2 providing recreational access to state lands and the
3 maintenance of a state lands recreational use account
4 pursuant to [section 16].

5 (2) Money received by the department from the sale of
6 recreational use licenses must be credited as follows:

7 (a) proceeds collected under subsection (1)(a) must be
8 apportioned on a pro rata basis to the land trusts, in
9 proportion to the respective trust's percentage contribution
10 to the total acreage of all state land trusts; and

11 (b) proceeds collected under the surcharge of
12 subsection (1)(b), less 50 cents for each license to be
13 returned as a commission to license dealers, must be
14 deposited in the state lands recreational use account
15 established by [section 16] for use by the department in the
16 management of state lands open to general recreational use.

17 (3) The department may contract with the department of
18 fish, wildlife, and parks for the distribution and sale of
19 recreational use licenses through the license agents
20 appointed by and the administrative offices of the
21 department of fish, wildlife, and parks and in accordance
22 with the provisions of Title 87, chapter 2, part 9.

23 **NEW SECTION. Section 13. Rules for recreational use of**
24 **state lands -- penalty.** (1) The board shall adopt rules
25 authorizing and governing the recreational use of state

1 lands allowed under 77-1-203. The board shall use local
2 offices of the department to administer this program
3 whenever practical.

4 (2) Rules adopted under this section must address the
5 circumstances under which the board may close legally
6 accessible state lands to recreational use. Such action by
7 the board may be taken upon its own initiative or upon
8 petition by an individual, organization, corporation, or
9 governmental agency. Closures may be of an emergency,
10 seasonal, temporary, or permanent nature. State lands may be
11 closed by the board only after public notice and opportunity
12 for public hearing in the area of the proposed closure,
13 except when the department is acting under rules adopted by
14 the board for an emergency closure. Closed lands must be
15 posted by the lessee at customary access points, with signs
16 provided or authorized by the department.

17 (3) Closure rules adopted pursuant to subsection (2)
18 may categorically close state lands whose use or status is
19 incompatible with recreational use. Categorical or blanket
20 closures may be imposed on state lands due to:

- 21 (a) cabinsite and homesite leases and licenses;
- 22 (b) the seasonal presence of growing crops; and
- 23 (c) active military, commercial, or mineral leases.

24 (4) The board shall adopt rules that provide an
25 opportunity for any individual, organization, or

1 governmental agency to petition the board for purposes of
2 excluding a specified portion of state land from a
3 categorical closure that has been imposed under subsection
4 (3).

5 (5) Under rules adopted by the board, state lands may
6 be closed on a case-by-case basis for certain reasons,
7 including but not limited to:

- 8 (a) damage attributable to recreational use that
9 diminishes the income-generating potential of the state
10 lands;
- 11 (b) damage to surface improvements of the lessee;
- 12 (c) the presence of threatened, endangered, or
13 sensitive species or plant communities;
- 14 (d) the presence of unique or special natural or
15 cultural features;
- 16 (e) wildlife protection;
- 17 (f) noxious weed control; or
- 18 (g) the presence of buildings, structures, and
19 facilities.

20 (6) Rules adopted under this section may impose
21 restrictions upon general recreational activities, including
22 the discharge of weapons, camping, open fires, vehicle use,
23 and any use that will interfere with the presence of
24 livestock. The board may also by rule restrict access on
25 state lands in accordance with a block management program

1 administered by the department of fish, wildlife, and parks.
 2 Motorized vehicle use by recreationists on state lands is
 3 restricted to federal, state, and dedicated county roads and
 4 to those roads designated by the department to be open to
 5 motorized vehicle use.

6 (7) The board shall adopt rules providing for the
 7 issuance of a recreational special use license. Commercial
 8 or concentrated recreational use, as defined in 77-1-101, is
 9 prohibited on state lands unless it occurs under the
 10 provisions of a recreational special use license. The board
 11 may also adopt rules requiring a recreational special use
 12 license for recreational use that is not commercial,
 13 concentrated, or within the definition of general
 14 recreational use.

15 (8) For a violation of rules adopted by the board
 16 pursuant to this section, the department may assess a civil
 17 penalty of up to \$1,000 for each day of violation. The board
 18 shall adopt rules providing for notice and opportunity for
 19 hearing in accordance with Title 2, chapter 4, part 6. Civil
 20 penalties collected under this subsection must be deposited
 21 as provided in 87-1-601(6).

22 NEW SECTION. **Section 14.** Liability of state and
 23 lessee. (1) The provisions of 70-16-302 that limit the
 24 liability of a landowner or his tenant for the recreational
 25 use of property apply to the state and any lessee of state

1 lands used for general recreational purposes.

2 (2) The lessee is not responsible for the suppression
 3 of or for damages resulting from a fire on his leased land
 4 caused by a general recreational user, except that a lessee
 5 who observes a fire caused by a general recreational user
 6 shall make reasonable efforts to suppress the fire or report
 7 it to the proper firefighting authority.

8 NEW SECTION. **Section 15.** Prior notification to lessee
 9 of recreational use -- trespass -- penalty. (1) If a lessee
 10 of state lands under [sections 11 through 18] desires to be
 11 notified prior to anyone entering upon his leasehold, the
 12 lessee shall post, at customary access points, signs
 13 provided or authorized by the department. The signs must set
 14 forth the lessee's or his agent's name, address, telephone
 15 number, and method of notification. The lessee or his agent
 16 shall make himself available to receive notice from
 17 recreational users or provide an alternative means for
 18 notice as prescribed by rule. When state land is posted,
 19 recreational users shall contact and identify themselves to
 20 the lessee or his agent for the purposes of minimizing
 21 impact upon the leasehold interest and learning the specific
 22 boundaries of adjacent unfenced private property.

23 (2) Each recreational user of state lands shall obtain
 24 permission of the lessee or his agent before entering the
 25 adjacent private property owned by the lessee. Entry to

1 private property from adjacent state lands without
 2 permission of the landowner or his agent is an absolute
 3 liability offense. A violator of this subsection is guilty
 4 of a misdemeanor and shall be fined not less than \$50 or
 5 more than \$500, imprisoned in the county jail for not more
 6 than 6 months, or both.

7 (3) A person may be found guilty of the offense
 8 described in subsection (2) regardless of the absence of
 9 fencing or failure to post a notice in accordance with
 10 45-6-201.

11 **NEW SECTION. Section 16.** State lands recreational use
 12 account. (1) There is a state lands recreational use account
 13 in the state special revenue fund provided for in 17-2-102.

14 (2) There must be deposited in the account:

15 (a) all revenue received from the recreational use
 16 license established by [section 12];

17 (b) all revenue received from the imposition of fines
 18 under [sections 11 and 15] and from civil penalties imposed
 19 pursuant to [section 13]; and

20 (c) money received by the department in the form of
 21 legislative appropriations, reimbursements, gifts, federal
 22 funds, or appropriations from any source intended to be used
 23 for the purposes of this account.

24 (3) Money deposited in the state lands recreational use
 25 account is statutorily appropriated, as provided in

1 17-7-502, and must be used by the department for the
 2 following purposes:

3 (a) compensation pursuant to [section 17] for damage to
 4 the improvements of leases that has been proved to be caused
 5 by recreational users;

6 (b) assistance in weed control management necessary as
 7 a result of recreational use of state lands;

8 (c) protection of the resource value of the trust
 9 assets; and

10 (d) administration and management for the
 11 implementation of recreational use of state lands.

12 **NEW SECTION. Section 17.** Compensation for damage to
 13 improvements, growing crops, or livestock. A lessee may
 14 apply to the department for reimbursement of documented
 15 costs of repair to or replacement of improvements, growing
 16 crops, or livestock damaged by recreational users of state
 17 lands. The application must include an affidavit by the
 18 applicant setting forth the nature of the loss, allegations
 19 and reasonable proof supporting the involvement of
 20 recreational users, and documentation of repair or
 21 replacement costs. Upon review of the application and
 22 supporting proof and upon additional investigation as
 23 required, the department shall either grant, modify, or deny
 24 the claim. The department, by reason of payment to the
 25 lessee for damage to improvements, is entitled to be

1 subrogated to the rights of the lessee to recover the amount
 2 paid from the party causing the damage. Payments under this
 3 section must be made from the state lands recreational use
 4 account established by [section 16], and the liability of
 5 the department for damage payments is limited to the
 6 existing balance of the account. Claim applications are to
 7 be considered in the order they are received.

8 **NEW SECTION. Section 18. Weed control management.** (1)
 9 The department shall establish a weed control management
 10 program for the control of noxious weeds reasonably proved
 11 to be caused by the recreational use of state lands. The
 12 department may by rule establish a noxious weed management
 13 program that may include direct compensation for noxious
 14 weed control activities or participation in district and
 15 county weed control projects or department-initiated weed
 16 control activities.

17 (2) Funding for this program must come from the state
 18 lands recreational use account pursuant to [section 16].

19 **Section 19.** Section 17-7-502, MCA, is amended to read:

20 "17-7-502. Statutory appropriations -- definition --
 21 requisites for validity. (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
 2 of the following provisions:

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

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

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

23 (4) There is a statutory appropriation to pay the
 24 principal, interest, premiums, and costs of issuing, paying,
 25 and securing all bonds, notes, or other obligations, as due,

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

11 NEW SECTION. Section 20. Codification instruction.
 12 [Sections 11 through 18] are intended to be codified as an
 13 integral part of Title 77, and the provisions of Title 77
 14 apply to [sections 11 through 18].

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

21 NEW SECTION. Section 22. Applicability. On passage and
 22 approval of [this act], the board of land commissioners
 23 shall commence proceedings to adopt rules to be effective
 24 March 1, 1992. The department of state lands and the
 25 department of fish, wildlife, and parks shall commence

1 proceedings and arrangements necessary to establish a
 2 recreational use license to be effective March 1, 1992.

3 NEW SECTION. Section 23. Effective date. [This act] is
 4 effective March 1, 1992.

-End-

HOUSE BILL NO. 778

INTRODUCED BY D. BROWN, BIANCHI, RANEY, STRIZICH,
 LYNCH, DRISCOLL, DARKO, MENAHAN, HARPER, STANG,
 COHEN, SQUIRES, MCCULLOCH, SCOTT, MANNING, DOHERTY,
 SVRCEK, DAILY, FRANKLIN, JACOBSON, VAN VALKENBURG,
 PAVLOVICH, MCCARTHY, QUILICI, REAM, WYATT,
 J. BROWN, HARRINGTON, CONNELLY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
 RELATING TO USE OF STATE LANDS; PROVIDING THAT ALLOWABLE USE
 OF LEASED STATE LANDS INCLUDES GENERAL RECREATIONAL USE BY
 THE PUBLIC; ~~REQUIRING---SURFACE---LEASES---FOR---GRASING,~~
~~AGRICULTURAL,---OR---LOGGING---PURPOSES---TO---ALLOW---PUBLIC~~
~~RECREATIONAL---USE---UNLESS---CERTAIN---CONDITIONS---ARE---MET,~~
 REQUIRING THE BOARD OF LAND COMMISSIONERS TO OPEN--UP
 EXISTING--LEASES--TO--PUBLIC--RECREATIONAL--USE--WITH--CERTAIN
 EXCEPTIONS ADOPT RULES TO AUTHORIZE AND GOVERN THE
RECREATIONAL USE AND CLOSURE OF LEASED STATE LANDS;
 REQUIRING PURCHASE AND POSSESSION OF A ~~WILDLIFE-CONSERVATION~~
RECREATIONAL USE LICENSE BY PERSONS 12 YEARS OF AGE OR OLDER
 FOR THE GENERAL RECREATIONAL USE OF LEASED STATE LANDS;
 PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT BY THE
 WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS;
 INCREASING--THE--FEE--FOR--WILDLIFE--CONSERVATION--LICENSES;
 PROVIDING PENALTIES; PROVIDING FOR ~~DISPOSITION~~ THE STATUTORY

APPROPRIATION OF THE LICENSE FEES AND PENALTIES; AND
PROVIDING COMPENSATION FOR DAMAGE TO A LESSEE'S
IMPROVEMENTS, GROWING CROPS, AND LIVESTOCK; PROVIDING-AN
APPROPRIATION, AMENDING SECTIONS 17-7-502, 19-8-504,
77-1-101, 77-1-202, 77-1-203, 77-1-204, 77-1-402, 87-1-102,
 87-1-502, 87-1-504, AND 87-1-601, ~~87-2-103,--87-2-109,~~
~~87-2-202,--AND--87-2-204,~~ MCA; AND PROVIDING A DELAYED
EFFECTIVE DATE."

STATEMENT OF INTENT

~~A--statement-of-intent-is-required-for-this-bill-because~~
~~77-1-203(3)-requires-the-board-of-land-commissioners-to~~
~~adopt-rules-closing-existing-leases-of-state-lands-to-public~~
~~recreational-use-in-certain-instances-and-because-section~~
~~14-requires-the-board-to-adopt-rules-governing-recreational~~
~~use-of-state-lands-it-is-intended-that-public-recreational~~
~~use-of-state-lands-be-accomplished-to-the-fullest-extent~~
~~possible.~~

~~it-is-also-intended-that-the-board-adopt-rules-governing~~
~~the-actions-of-the-recreational-user-of-state-lands--The~~
~~rules--must--require-the-user-to-make-a-reasonable-effort-to~~
~~present-the-conservation-license-to-any-tenant-living-on-the~~
~~property-and-inform-the-tenant-of-the-type-and-extent-of~~
~~recreational-use-to-be-made--The-rules-must-require-the~~
~~recreational-user-not-to-litter--or--otherwise--degrade--the~~

1 leased--property--and-to-comply-with-any-reasonable-requests
2 of--the--tenant--regarding--such--matters--as--avoidance--of
3 livestock-or-crops-and-closing-of-gates:

4 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
5 {SECTION 13} REQUIRES THE BOARD OF LAND COMMISSIONERS TO
6 ADOPT RULES TO IMPLEMENT THE PROVISIONS FOR GENERAL
7 RECREATIONAL USE OF LEASED STATE LANDS ESTABLISHED BY THIS
8 BILL CONSISTENT WITH THE PROVISIONS OF THIS BILL, THE
9 LEGISLATURE RECOGNIZES THE PUBLIC'S RIGHT TO GENERAL
10 RECREATIONAL USE OF STATE LANDS, AND IT IS THE INTENT OF THE
11 LEGISLATURE THAT PUBLIC RECREATIONAL USE OF STATE LANDS BE
12 ACCOMPLISHED TO THE FULLEST EXTENT POSSIBLE, IT IS
13 ACKNOWLEDGED THAT CERTAIN LEASED STATE LANDS WILL MERIT
14 CLOSURE TO PUBLIC RECREATIONAL USE DUE TO CERTAIN
15 CONSIDERATIONS, INCLUDING BUT NOT LIMITED TO THE PRESENCE OF
16 GROWING CROPS AND LIVESTOCK AND THE PROXIMITY OF DWELLINGS
17 AND AGRICULTURAL BUILDINGS, NOTHING IN THIS BILL AUTHORIZES
18 OR PURPORTS TO AUTHORIZE TRESPASS ON PRIVATE LANDS TO REACH
19 STATE LANDS.

20 THIS BILL REQUIRES THE BOARD TO ADOPT RULES GOVERNING
21 THE GENERAL RECREATIONAL USE OF LEASED STATE LANDS. THESE
22 RULES MUST ADDRESS THE COMPENSATION FOR DAMAGE TO
23 IMPROVEMENTS, CRITERIA FOR CLOSURE, RESTRICTIONS UPON
24 CERTAIN RECREATIONAL ACTIVITIES, AND WHEN REQUESTED BY ANY
25 SURFACE LESSEE, PROVISION FOR THE RECREATIONAL USER TO MAKE

1 A REASONABLE EFFORT TO PROVIDE PRIOR NOTICE OF THE TYPE AND
2 EXTENT OF THE RECREATIONAL USE CONTEMPLATED:

3 {SECTION 16} AUTHORIZES THE BOARD TO ADOPT RULES FOR
4 WEED CONTROL ACTIVITIES. IT IS THE INTENT OF THE LEGISLATURE
5 THAT THE BOARD ESTABLISH A PROCEDURE WHEREBY WEED
6 INFESTATIONS ON LEASED STATE LANDS THAT ARE ATTRIBUTABLE TO
7 RECREATIONAL ACCESS ARE CONTROLLED OR ERADICATED, EXAMPLES
8 OF PROCEDURES THAT FULFILL THIS INTENT INCLUDE:

- 9 {1} A DEPARTMENTAL WEED CONTROL PROGRAM;
- 10 {2} PAYMENTS FOR WEED CONTROL ACTIVITIES; AND
- 11 {3} PAYMENTS TO COUNTY WEED BOARDS.

12 IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD
13 EVALUATE THE IMPLEMENTATION OF THIS BILL, DEVELOP
14 RECOMMENDATIONS TO ADDRESS PROBLEMS, IF ANY, THAT ARISE
15 THROUGH THE COURSE OF RULEMAKING AND IMPLEMENTATION, AND
16 REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE SENATE
17 LEGISLATURE.

18 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
19 {SECTION 13} REQUIRES THE BOARD OF LAND COMMISSIONERS TO
20 ADOPT RULES TO IMPLEMENT THE PROVISIONS FOR RECREATIONAL USE
21 OF STATE LANDS ESTABLISHED BY THIS BILL. CONSISTENT WITH THE
22 PROVISIONS OF THIS BILL, IT IS INTENDED THAT PUBLIC
23 RECREATIONAL USE OF STATE LANDS BE ACCOMPLISHED TO THE
24 FULLEST EXTENT POSSIBLE. IT IS ACKNOWLEDGED THAT CERTAIN
25 STATE LANDS WILL MERIT CLOSURE FROM PUBLIC RECREATIONAL USE

1 DUE TO CERTAIN CONSIDERATIONS, INCLUDING BUT NOT LIMITED TO
2 THE PRESENCE OF GROWING CROPS AND LIVESTOCK AND THE
3 PROXIMITY OF DWELLINGS AND AGRICULTURAL BUILDINGS. NOTHING
4 IN THIS BILL AUTHORIZES OR PURPORTS TO AUTHORIZE TRESPASS ON
5 PRIVATE LANDS TO REACH STATE LANDS.

6 THIS BILL REQUIRES THE BOARD TO ADOPT RULES GOVERNING
7 THE ACTIONS OF THE RECREATIONAL USER OF STATE LANDS. THESE
8 RULES MUST ADDRESS PROTECTION OF THE RESOURCE VALUE,
9 COMPENSATION FOR DAMAGE TO IMPROVEMENTS, CRITERIA FOR
10 CLOSURE, RESTRICTIONS UPON CERTAIN RECREATIONAL ACTIVITIES,
11 AND, WHEN STATE LAND IS POSTED, PROVISION FOR THE
12 RECREATIONAL USER TO CONTACT THE LESSEE OR HIS AGENT TO
13 PROVIDE PRIOR NOTICE OF THE TYPE AND EXTENT OF THE
14 RECREATIONAL USE CONTEMPLATED.

15 {SECTION 18} AUTHORIZES THE DEPARTMENT TO ADOPT RULES
16 FOR WEED CONTROL ACTIVITIES. IT IS THE INTENT OF THE
17 LEGISLATURE THAT THE BOARD ESTABLISH A PROCEDURE WHEREBY
18 WEED INFESTATIONS ON STATE LANDS THAT ARE ATTRIBUTABLE TO
19 RECREATIONAL ACCESS ARE CONTROLLED OR ERADICATED. EXAMPLES
20 OF PROCEDURES THAT FULFILL THIS INTENT INCLUDE:

- 21 (1) A DEPARTMENTAL WEED CONTROL PROGRAM;
- 22 (2) PAYMENTS FOR WEED CONTROL ACTIVITIES; AND
- 23 (3) PAYMENTS TO COUNTY WEED BOARDS.

24 IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD
25 EVALUATE THE IMPLEMENTATION OF THIS BILL, DEVELOP

1 RECOMMENDATIONS TO ADDRESS PROBLEMS, IF ANY, THAT ARISE
2 THROUGH THE COURSE OF RULEMAKING AND IMPLEMENTATION, AND
3 REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 53RD
4 LEGISLATURE.

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

7 (Refer to Introduced Bill)

8 Strike everything after the enacting clause and insert:

9 (Refer to Second Reading Copy)

10 Strike everything after the enacting clause and insert:

11 **Section 1.** Section 19-8-504, MCA, is amended to read:

12 "19-8-504. State's contribution. Each month the state
13 treasurer shall pay to the account, out of the department of
14 fish, wildlife, and parks moneys, a sum equal to 7.15% of
15 the total of all members' salaries, and out of the moneys
16 collected as fines and forfeited bonds under the provisions
17 of 87-1-601(1) through (5) or moneys distributed under
18 3-10-601(4), all such collections are statutorily
19 appropriated to the account until the unfunded liability in
20 the account is solvent and a verification statement to that
21 effect is given to the state treasurer by the board."

22 **Section 2.** Section 77-1-101, MCA, is amended to read:

23 "77-1-101. Definitions. Unless the context requires
24 otherwise and except for the definition of state land in
25 77-1-701, in this title the following definitions apply:

1 (1) "Department" means the department of state lands
2 provided for in Title 2, chapter 15, part 32.

3 (2) "Board" means the board of land commissioners
4 provided for in Article X, section 4, of the constitution of
5 this state.

6 (3) "Commissioner" means the commissioner of state
7 lands provided for in 2-15-3202.

8 (4) "State land" or "lands" means lands granted to the
9 state by the United States for any purpose, either directly
10 or through exchange for other lands; lands deeded or devised
11 to the state from any person; and lands that are the
12 property of the state through the operation of law. The term
13 does not include lands the state conveys through the
14 issuance of patent; lands used for building sites, campus
15 grounds, or experimental purposes by any state institution
16 that are the property of that institution; or lands acquired
17 through foreclosure of any investments purchased under the
18 provisions of 17-6-211.

19 (5) "Commercial or concentrated recreational use" means
20 any recreational use that is organized, developed, or
21 coordinated, whether for profit or otherwise. Commercial or
22 concentrated recreational use includes all outfitting
23 activity and all activities not included within the
24 definition of general recreational use.

25 (6) "General recreational use" includes noncommercial

1 and nonconcentrated hunting, fishing, and other activities
2 determined by the board to be compatible with the use of
3 state lands. General recreational use does not include the
4 use of streams and rivers by the public under the stream
5 access laws provided in Title 23, chapter 2, part 3.

6 (7) "Legally accessible state lands" means state lands
7 that can be accessed by dedicated public road, right-of-way,
8 or easement; by public waters; by adjacent federal, state,
9 county, or municipal land if the land is open to public use;
10 or by adjacent contiguous private land if permission to
11 cross the land has been secured from the landowner. The
12 granting of permission by a private landowner to cross
13 private property in a particular instance does not subject
14 the state land that is accessed to general recreational use
15 by members of the public other than those granted
16 permission."

17 **Section 3.** Section 77-1-202, MCA, is amended to read:

18 **"77-1-202. Powers and duties of board.** (1) The board
19 shall exercise general authority, direction, and control
20 over the care, management, and disposition of state lands
21 and, subject to the investment authority of the board of
22 investments, the funds arising from the leasing, use, sale,
23 and disposition of those lands or otherwise coming under its
24 administration. In the exercise of these powers, the guiding
25 rule and principle is that these lands and funds are held in

1 trust for the support of education and for the attainment of
 2 other worthy objects helpful to the well-being of the people
 3 of this state. The board shall administer this trust to
 4 secure the largest measure of legitimate and reasonable
 5 advantage to the state.

6 (2) It is consistent with the powers and duties
 7 provided in subsection (1) that the people are entitled to
 8 general recreational use of state lands to the extent that
 9 the trusts are compensated for the value of the recreation.

10 ~~(2)~~(3) When acquiring land for the state, the board
 11 shall determine the value thereof after an appraisal by a
 12 qualified land appraiser."

13 **Section 4.** Section 77-1-203, MCA, is amended to read:

14 "77-1-203. **Multiple-use management.** (1) The board shall
 15 manage state lands under the multiple-use management concept
 16 defined as the management of all the various resources of
 17 the state lands so that:

18 (a) they are utilized in that combination best meeting
 19 the needs of the people and the beneficiaries of the trust,
 20 making the most judicious use of the land for some or all of
 21 those resources or related services over areas large enough
 22 to provide sufficient latitude for periodic adjustments in
 23 use to conform to changing needs and conditions and
 24 realizing that some land may be used for less than all of
 25 the resources; and

1 (b) harmonious and coordinated management of the
 2 various resources, each with the other, will result without
 3 impairment of the productivity of the land, with
 4 consideration being given to the relative values of the
 5 various resources.

6 (2) If a parcel of state land in one class has other
 7 multiple uses or resource values which are of such
 8 significance that they do not warrant classification for the
 9 value, the land shall, nevertheless, be managed insofar as
 10 is possible to maintain or enhance these multiple-use
 11 values.

12 (3) State lands, including those lands that are leased
 13 primarily for other purposes, are open to general
 14 recreational use subject to legal access and to closures and
 15 restrictions pursuant to rules adopted under [section 13].

16 (4) The department shall include in all new or renewal
 17 leases and licenses a provision that leased lands may not be
 18 closed at any time to the public for general recreational
 19 purposes without the advanced written permission of the
 20 department."

21 **Section 5.** Section 77-1-204, MCA, is amended to read:

22 "77-1-204. **Power to sell, lease, or exchange certain**
 23 **state lands.** (1) The board is authorized to lease state
 24 lands for uses other than agriculture, grazing, timber
 25 harvest, or mineral production under such terms and

1 conditions which best meet the duties of the board as
 2 specified in 77-1-202 and 77-1-203(†). The lease period for
 3 such leases, except for power and school site leases, may
 4 not be for longer than 40 years.

5 (2) The board shall have full power and authority to
 6 sell, exchange or lease lands under its jurisdiction by
 7 virtue of 77-1-214 when, in its judgment, it is advantageous
 8 to the state to do so in the highest orderly development and
 9 management of state forests and state parks. Said sale,
 10 lease, or exchange shall not be contrary to the terms of any
 11 contract which it has entered into."

12 **Section 6.** Section 77-1-402, MCA, is amended to read:

13 "77-1-402. Basis for classification or
 14 reclassification. (1) The classification or reclassification
 15 shall be so made as to place state land in the class which
 16 best accomplishes the powers and duties of the board as
 17 specified in 77-1-202 and 77-1-203(†). When state lands are
 18 classified or reclassified in accordance with these duties
 19 and responsibilities, special attention shall be paid to the
 20 capability of the land to support an actual or proposed land
 21 use authorized by each classification.

22 (2) It is the duty of the department to classify or
 23 reclassify state lands so that no state land will be sold,
 24 leased, or used under a different classification from that
 25 to which it actually belongs."

1 **Section 7.** Section 87-1-102, MCA, is amended to read:

2 "87-1-102. Penalties. (1) A person violating any
 3 provision of this title, any other state law pertaining to
 4 fish and game, or the orders or rules of the commission or
 5 department is, unless a different punishment is expressly
 6 provided by law for the violation, guilty of a misdemeanor
 7 and shall be fined not less than \$50 or more than \$500,
 8 imprisoned in the county jail for not more than 6 months, or
 9 both. In addition, the person shall be subject to forfeiture
 10 of his license and the privilege to hunt, fish, or trap
 11 within this state or to use state lands, as defined in
 12 77-1-101, for recreational purposes for a period of not less
 13 than 24 months from the date of conviction.

14 (2) (a) A person convicted of unlawfully taking,
 15 killing, possessing, transporting, or wasting of a bighorn
 16 sheep, moose, wild bison, caribou, mountain goat, or grizzly
 17 bear or any part of these animals shall be fined not less
 18 than \$500 or more than \$1,000, imprisoned in the county jail
 19 for not more than 6 months, or both. In addition, that
 20 person shall forfeit any current hunting, fishing,
 21 recreational use, or trapping license issued by this state
 22 and the privilege to hunt, fish, or trap in this state for
 23 not less than 30 months from the date of conviction.

24 (b) A person convicted of unlawfully taking, killing,
 25 possessing, or transporting a deer, antelope, elk, mountain

1 lion, or black bear or any part of these animals or wasting
 2 a deer, antelope, or elk shall be fined not less than \$300
 3 or more than \$1,000, imprisoned in the county jail for not
 4 more than 6 months, or both. In addition, that person shall
 5 forfeit any current hunting, fishing, or trapping license
 6 issued by this state and the privilege to hunt, fish, or
 7 trap in this state for not less than 24 months from the date
 8 of conviction.

9 (c) A person convicted of unlawfully attempting to
 10 trap, take, shoot, or kill a game animal shall be fined not
 11 less than \$200 or more than \$600, imprisoned in the county
 12 jail for not more than 60 days, or both.

13 (d) A person convicted of unlawfully taking, killing,
 14 possessing, transporting, shipping, labeling, packaging, or
 15 wasting or unlawfully attempting to take, kill, or possess
 16 any game bird, wild turkey, or fish or any part of any such
 17 bird or fish or of failure to tag a game animal or game bird
 18 as prescribed by law shall be fined not less than \$50 or
 19 more than \$200 or imprisoned in the county jail for not more
 20 than 30 days, or both.

21 (e) A person convicted of purposely or knowingly
 22 taking, killing, possessing, transporting, shipping,
 23 labeling, or packaging a fur-bearing animal or pelt of a
 24 fur-bearing animal in violation of any provision of this
 25 title shall be fined not less than \$50 or more than \$1,000

1 or imprisoned in the county jail for not more than 6 months,
 2 or both. In addition, that person shall forfeit any current
 3 license and the privilege to hunt, fish, or trap for not
 4 less than 24 months from the date of conviction and any
 5 pelts possessed unlawfully must be confiscated.

6 (f) A person convicted of hunting, fishing, or trapping
 7 while his license is forfeited or his privilege denied shall
 8 be imprisoned in the county jail for not less than 5 days or
 9 more than 6 months. In addition, that person may be fined
 10 not less than \$500 or more than \$1,000.

11 (3) A person convicted or who has forfeited bond or
 12 bail under subsection (2) and who has been ordered to pay
 13 restitution under the provisions of 87-1-111 may not apply
 14 for any special license under Title 87, chapter 2, part 7,
 15 or enter any drawing for a special license or permit for a
 16 period of 5 years following the date of conviction or
 17 restoration of license privileges, whichever is later.

18 (4) Notwithstanding the provision of subsection (1),
 19 the penalties provided by this section shall be in addition
 20 to any penalties provided in Title 37, chapter 47, and Title
 21 87, chapter 4, part 2."

22 **Section 8.** Section 87-1-502, MCA, is amended to read:
 23 **"87-1-502. Qualifications, powers, and duties.** (1)
 24 Wardens shall be qualified by their experience, training,
 25 and skill in protection, conservation, and propagation of

1 wildlife, game, fur-bearing animals, fish, and game birds
2 and interested in this work. They shall devote all of their
3 time for which they are appointed to their official duties.

4 (2) They shall enforce the laws of this state and the
5 rules of the department with reference to the protection,
6 preservation, and propagation of game and fur-bearing
7 animals, fish, and game birds.

8 (3) They shall see that persons who hunt, fish, or take
9 game or fur-bearing animals, game birds, or fish and that
10 those persons who make recreational use of state lands, as
11 defined in 77-1-101, for hunting and fishing, have the
12 necessary licenses.

13 (4) They shall assist in the protection, conservation,
14 and propagation of fish, game, fur-bearing animals, and game
15 and nongame birds and assist in the planting, distributing,
16 feeding, and care of fish, game, fur-bearing animals, and
17 game and nongame birds. They shall, when ordered by the
18 department, assist in the destruction of predatory animals,
19 birds, and rodents. They shall perform all other duties
20 prescribed by the department and make a monthly report to
21 the department correctly informing the department of their
22 activities on each day of the preceding month with regard to
23 the enforcement of the fish and game laws, showing where
24 their duties called them and what they did. The reports
25 shall contain any pertinent recommendations the wardens may

1 see fit to make.

2 (5) A warden may not compromise or settle violations of
3 fish and game laws out of court.

4 (6) A warden has the authority to inspect any and all
5 fish, game and nongame birds, waterfowl, game animals, and
6 fur-bearing animals at reasonable times and at any location
7 other than a residence or dwelling. Upon request therefor,
8 all persons having in their possession any fish, game and
9 nongame birds, waterfowl, game animals, and fur-bearing
10 animals shall exhibit the same and all thereof to the warden
11 for such inspection."

12 **Section 9.** Section 87-1-504, MCA, is amended to read:

13 "87-1-504. Protection of private property -- duty of
14 wardens as-ex-officio-firewardens. (1) It shall be the duty
15 of wardens (state conservation officers) to enforce the
16 provisions of 45-6-101, 45-6-203, and 75-10-212(2), [section
17 11], [section 15], and rules adopted under [section 13] on
18 private and state lands being used for the recreational
19 purposes of hunting and fishing and to act as ex officio
20 firewardens as provided by 77-5-104.

21 (2) As used in this section, "recreational purposes"
22 means recreational purposes as defined in 70-16-301."

23 **Section 10.** Section 87-1-601, MCA, is amended to read:

24 "87-1-601. Use of fish and game money. (1) All Except
25 as provided in subsection (6), all money collected or

1 received from the sale of hunting and fishing licenses or
 2 permits, from the sale of seized game or hides, or from
 3 damages collected for violations of the fish and game laws
 4 of this state, from appropriations, or received by the
 5 department from any other state source shall be turned over
 6 to the state treasurer and placed by him in the state
 7 special revenue fund to the credit of the department. Any
 8 money received from federal sources shall be deposited in
 9 the federal special revenue fund to the credit of the
 10 department.

11 (2) That money shall be exclusively set apart and made
 12 available for the payment of all salaries, per diem, fees,
 13 expenses, and expenditures authorized to be made by the
 14 department under the terms of this title. That money shall
 15 be spent for those purposes by the department, subject to
 16 appropriation by the legislature.

17 (3) Any reference to the fish and game fund in this
 18 code means fish and game money in the state special revenue
 19 fund and the federal special revenue fund.

20 (4) All Except as provided in subsection (6), all money
 21 collected or received from fines and forfeited bonds, except
 22 money collected or received by a justice's court, relating
 23 to violations of state fish and game laws under Title 87
 24 shall be deposited by the state treasurer and credited to
 25 the department ~~of fish,--wildlife,--and--parks~~ in a state

1 special revenue fund account for this purpose. Out of any
 2 fine imposed by a court for the violation of the fish and
 3 game laws, the costs of prosecution shall be paid to the
 4 county where the trial was held in any case where the fine
 5 is not imposed in addition to the costs of prosecution.

6 (5) Money received by the department from the sale of
 7 surplus real property; exploration or development of oil,
 8 gas, or mineral deposits from lands acquired by the
 9 department except royalties or other compensation based on
 10 production; and from leases of interests in department real
 11 property not contemplated at the time of acquisition shall
 12 be deposited in an account within the nonexpendable trust
 13 fund of the state treasury. The interest derived therefrom,
 14 but not the principal, may be used only for the purpose of
 15 operation, development, and maintenance of real property of
 16 the department, and only upon appropriation by the
 17 legislature. If the use of money as set forth herein would
 18 result in violation of applicable federal laws or state
 19 statutes specifically naming the department or money
 20 received by the department, then the use of this money must
 21 be limited in the manner, method, and amount to those uses
 22 that do not result in such violation.

23 (6) Money collected or received from fines or forfeited
 24 bonds for the violation of [section 11], [section 15], or
 25 rules adopted under [section 13] must be deposited as

1 follows:

2 (a) 50% in an account for use by the department for the
3 enforcement of [section 11], [section 15], and rules adopted
4 under [section 13]; and

5 (b) 50% in the state lands recreational use account
6 established by [section 16] for use by the department of
7 state lands in the management of state lands."

8 **NEW SECTION. Section 11.** Recreational use license
9 required to use state lands for general recreational
10 purposes -- penalty. (1) A person 12 years of age or older
11 shall obtain an annual recreational use license pursuant to
12 [section 12] to use state lands, as defined in 77-1-101, for
13 general recreational purposes.

14 (2) A person shall, upon the request of a peace officer
15 or fish and game warden, present for inspection his
16 recreational use license.

17 (3) A violator of subsection (1) or (2) is guilty of a
18 misdemeanor and shall be fined not less than \$50 or more
19 than \$500, imprisoned in the county jail for not more than 6
20 months, or both.

21 **NEW SECTION. Section 12.** Recreational use license --
22 fee. (1) The fee for a recreational use license is \$5. The
23 fee is based upon:

24 (a) a \$3 charge as the value of 1 year of recreational
25 use of state lands; and

1 (b) a \$2 surcharge for the administrative costs of
2 providing recreational access to state lands and the
3 maintenance of a state lands recreational use account
4 pursuant to [section 16].

5 (2) Money received by the department from the sale of
6 recreational use licenses must be credited as follows:

7 (a) proceeds collected under subsection (1)(a) must be
8 apportioned on a pro rata basis to the land trusts, in
9 proportion to the respective trust's percentage contribution
10 to the total acreage of all state land trusts; and

11 (b) proceeds collected under the surcharge of
12 subsection (1)(b), less 50 cents for each license to be
13 returned as a commission to license dealers, must be
14 deposited in the state lands recreational use account
15 established by [section 16] for use by the department in the
16 management of state lands open to general recreational use.

17 (3) The department may contract with the department of
18 fish, wildlife, and parks for the distribution and sale of
19 recreational use licenses through the license agents
20 appointed by and the administrative offices of the
21 department of fish, wildlife, and parks and in accordance
22 with the provisions of Title 87, chapter 2, part 9.

23 **NEW SECTION. Section 13.** Rules for recreational use of
24 state lands -- penalty. (1) The board shall adopt rules
25 authorizing and governing the recreational use of state

1 lands allowed under 77-1-203. The board shall use local
 2 offices of the department to administer this program
 3 whenever practical.

4 (2) Rules adopted under this section must address the
 5 circumstances under which the board may close legally
 6 accessible state lands to recreational use. Such action by
 7 the board may be taken upon its own initiative or upon
 8 petition by an individual, organization, corporation, or
 9 governmental agency. Closures may be of an emergency,
 10 seasonal, temporary, or permanent nature. State lands may be
 11 closed by the board only after public notice and opportunity
 12 for public hearing in the area of the proposed closure,
 13 except when the department is acting under rules adopted by
 14 the board for an emergency closure. Closed lands must be
 15 posted by the lessee at customary access points, with signs
 16 provided or authorized by the department.

17 (3) Closure rules adopted pursuant to subsection (2)
 18 may categorically close state lands whose use or status is
 19 incompatible with recreational use. Categorical or blanket
 20 closures may be imposed on state lands due to:

- 21 (a) cabinsite and homesite leases and licenses;
- 22 (b) the seasonal presence of growing crops; and
- 23 (c) active military, commercial, or mineral leases.

24 (4) The board shall adopt rules that provide an
 25 opportunity for any individual, organization, or

1 governmental agency to petition the board for purposes of
 2 excluding a specified portion of state land from a
 3 categorical closure that has been imposed under subsection
 4 (3).

5 (5) Under rules adopted by the board, state lands may
 6 be closed on a case-by-case basis for certain reasons,
 7 including but not limited to:

- 8 (a) damage attributable to recreational use that
 9 diminishes the income-generating potential of the state
 10 lands;
- 11 (b) damage to surface improvements of the lessee;
- 12 (c) the presence of threatened, endangered, or
 13 sensitive species or plant communities;
- 14 (d) the presence of unique or special natural or
 15 cultural features;
- 16 (e) wildlife protection;
- 17 (f) noxious weed control; or
- 18 (g) the presence of buildings, structures, and
 19 facilities.

20 (6) Rules adopted under this section may impose
 21 restrictions upon general recreational activities, including
 22 the discharge of weapons, camping, open fires, vehicle use,
 23 and any use that will interfere with the presence of
 24 livestock. The board may also by rule restrict access on
 25 state lands in accordance with a block management program

1 administered by the department of fish, wildlife, and parks.
 2 Motorized vehicle use by recreationists on state lands is
 3 restricted to federal, state, and dedicated county roads and
 4 to those roads designated by the department to be open to
 5 motorized vehicle use.

6 (7) The board shall adopt rules providing for the
 7 issuance of a recreational special use license. Commercial
 8 or concentrated recreational use, as defined in 77-1-101, is
 9 prohibited on state lands unless it occurs under the
 10 provisions of a recreational special use license. The board
 11 may also adopt rules requiring a recreational special use
 12 license for recreational use that is not commercial,
 13 concentrated, or within the definition of general
 14 recreational use.

15 (8) For a violation of rules adopted by the board
 16 pursuant to this section, the department may assess a civil
 17 penalty of up to \$1,000 for each day of violation. The board
 18 shall adopt rules providing for notice and opportunity for
 19 hearing in accordance with Title 2, chapter 4, part 6. Civil
 20 penalties collected under this subsection must be deposited
 21 as provided in 87-1-601(6).

22 **NEW SECTION. Section 14. Liability of state and**
 23 **lessee.** (1) The provisions of 70-16-302 that limit the
 24 liability of a landowner or his tenant for the recreational
 25 use of property apply to the state and any lessee of state

1 lands used for general recreational purposes.

2 (2) The lessee is not responsible for the suppression
 3 of or for damages resulting from a fire on his leased land
 4 caused by a general recreational user, except that a lessee
 5 who observes a fire caused by a general recreational user
 6 shall make reasonable efforts to suppress the fire or report
 7 it to the proper firefighting authority.

8 **NEW SECTION. Section 15. Prior notification to lessee**
 9 **of recreational use -- trespass -- penalty.** (1) If a lessee
 10 of state lands under [sections 11 through 18] desires to be
 11 notified prior to anyone entering upon his leasehold, the
 12 lessee shall post, at customary access points, signs
 13 provided or authorized by the department. The signs must set
 14 forth the lessee's or his agent's name, address, telephone
 15 number, and method of notification. The lessee or his agent
 16 shall make himself available to receive notice from
 17 recreational users or provide an alternative means for
 18 notice as prescribed by rule. When state land is posted,
 19 recreational users shall contact and identify themselves to
 20 the lessee or his agent for the purposes of minimizing
 21 impact upon the leasehold interest and learning the specific
 22 boundaries of adjacent unfenced private property.

23 (2) Each recreational user of state lands shall obtain
 24 permission of the lessee or his agent before entering the
 25 adjacent private property owned by the lessee. Entry to

1 private property from adjacent state lands without
 2 permission of the landowner or his agent is an absolute
 3 liability offense. A violator of this subsection is guilty
 4 of a misdemeanor and shall be fined not less than \$50 or
 5 more than \$500, imprisoned in the county jail for not more
 6 than 6 months, or both.

7 (3) A person may be found guilty of the offense
 8 described in subsection (2) regardless of the absence of
 9 fencing or failure to post a notice in accordance with
 10 45-6-201.

11 **NEW SECTION. Section 16. State lands recreational use**
 12 **account.** (1) There is a state lands recreational use account
 13 in the state special revenue fund provided for in 17-2-102.

14 (2) There must be deposited in the account:

15 (a) all revenue received from the recreational use
 16 license established by [section 12];

17 (b) all revenue received from the imposition of fines
 18 under [sections 11 and 15] and from civil penalties imposed
 19 pursuant to [section 13]; and

20 (c) money received by the department in the form of
 21 legislative appropriations, reimbursements, gifts, federal
 22 funds, or appropriations from any source intended to be used
 23 for the purposes of this account.

24 (3) Money deposited in the state lands recreational use
 25 account is statutorily appropriated, as provided in

1 17-7-502, and must be used by the department for the
 2 following purposes:

3 (a) compensation pursuant to [section 17] for damage to
 4 the improvements of leases that has been proved to be caused
 5 by recreational users;

6 (b) assistance in weed control management necessary as
 7 a result of recreational use of state lands;

8 (c) protection of the resource value of the trust
 9 assets; and

10 (d) administration and management for the
 11 implementation of recreational use of state lands.

12 **NEW SECTION. Section 17. Compensation for damage to**
 13 **improvements, growing crops, or livestock.** A lessee may
 14 apply to the department for reimbursement of documented
 15 costs of repair to or replacement of improvements, growing
 16 crops, or livestock damaged by recreational users of state
 17 lands. The application must include an affidavit by the
 18 applicant setting forth the nature of the loss, allegations
 19 and reasonable proof supporting the involvement of
 20 recreational users, and documentation of repair or
 21 replacement costs. Upon review of the application and
 22 supporting proof and upon additional investigation as
 23 required, the department shall either grant, modify, or deny
 24 the claim. The department, by reason of payment to the
 25 lessee for damage to improvements, is entitled to be

1 subrogated to the rights of the lessee to recover the amount
 2 paid from the party causing the damage. Payments under this
 3 section must be made from the state lands recreational use
 4 account established by [section 16], and the liability of
 5 the department for damage payments is limited to the
 6 existing balance of the account. Claim applications are to
 7 be considered in the order they are received.

8 **NEW SECTION. Section 18. Weed control management.** (1)
 9 The department shall establish a weed control management
 10 program for the control of noxious weeds reasonably proved
 11 to be caused by the recreational use of state lands. The
 12 department may by rule establish a noxious weed management
 13 program that may include direct compensation for noxious
 14 weed control activities or participation in district and
 15 county weed control projects or department-initiated weed
 16 control activities.

17 (2) Funding for this program must come from the state
 18 lands recreational use account pursuant to [section 16].

19 **Section 19.** Section 17-7-502, MCA, is amended to read:
 20 "17-7-502. Statutory appropriations -- definition --
 21 requisites for validity. (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
 2 of the following provisions:

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

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

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

23 (4) There is a statutory appropriation to pay the
 24 principal, interest, premiums, and costs of issuing, paying,
 25 and securing all bonds, notes, or other obligations, as due,

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

11 NEW SECTION. Section 20. Codification instruction.
 12 [Sections 11 through 18] are intended to be codified as an
 13 integral part of Title 77, and the provisions of Title 77
 14 apply to [sections 11 through 18].

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

21 NEW SECTION. Section 22. Applicability. On passage and
 22 approval of [this act], the board of land commissioners
 23 shall commence proceedings to adopt rules to be effective
 24 March 1, 1992. The department of state lands and the
 25 department of fish, wildlife, and parks shall commence

1 proceedings and arrangements necessary to establish a
 2 recreational use license to be effective March 1, 1992.

3 NEW SECTION. Section 23. Effective date. [This act] is
 4 effective March 1, 1992.

-End-