

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **SUBCOMMITTEE ON NATURAL RESOURCES: RECREATIONAL ACCESS TO STATE LANDS**

**Call to Order:** By BEN COHEN, on March 15, 1991, at 11:30 AM

#### **ROLL CALL**

**Members Present:**

Ben Cohen (D)  
Orval Ellison (R)  
Russell Fagg (R)

**Members Excused:**

Bob Ream (D)  
Ed Dolezal (D)

**Staff Present:** Gail Kuntz, Environmental Quality Council  
Paul Sihler, Environmental Quality Council  
Julia Tonkovich, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Mr. Sihler** discussed substitute bill draft. License structure has not yet been changed. Some numerical changes are still necessary, and some language will change in the editing process. Subsection 6, page 17, deals with the department's authority to set rules defining restrictions. "Any use that will interfere with the presence of livestock" is now included. The board will decide exactly what "interfere" means. Recreational users are also required to make a reasonable attempt to identify themselves to the lessee or agent as well as contact them, as stated on page 19.

**Susan Brooke, Montana Stockgrowers' Association**, said in the interest of the state school trust, the stockgrowers would like to have an Environmental Impact Study (EIS) included in the bill, or would like the fee raised to \$10.

**REP. BROWN** said he is more concerned with economic impact to the lessee and the recreational user than with an EIS.

**Pat Graham, Fish, Wildlife and Parks Department**, recommended licenses or stamps for recreational users (1 for holder, 1 for agent, and 1 to be remitted to the agency) should be contracted through the Fish, Wildlife and Parks Department, since the license-selling mechanism is already in place. License agent

commissions will be 30 cents in 1991, 40 cents in 1992, and 50 cents in 1993; forms will cost 10 cents/form, and distribution will be approximately 18 cents/license. First year costs will be approximately 60 cents, second year costs will be 63 cents, and third year costs will be 73 cents. If the licenses are not sold through license agents, the 30 to 50 cents commission will be saved. The department could absorb some of the administrative costs of selling the licenses, although this would be complicated. The department could also make some type of cash contribution to the damage or weed control fund in lieu of prorating the licenses.

**Dennis Casey, Department of State Lands (DSL)**, discussed the effective date. Rules will be made by the Board of Land Commissioners. The current effective date is October 1. If rules are not adopted by that time, the bill would become effective anyway. Two days ago, the department was asked if rules could be adopted by October 1, and responded positively. However, there are potential pitfalls to that schedule and there is a chance that the date will not be met. DSL will begin the rulemaking on May 1. On June 5, DSL will take the proposed rules to the Governor's office, where they will be reviewed. On June 13, the proposed rules will be submitted to the Land Board, and on June 20, the Land Board will be asked to approve them. If they do so, the proposed rules will be published on July 11, and we will have a 30-day comment period, which will include hearings (approximately eight hearings are to be held around the state). On August 12, the comment period will close; at that time, DSL will summarize comments and prepare proposed responses and amendments resulting from those comments. On September 9, the department will send the final rules to the Land Board for their approval on September 16. Upon board approval, rules will become effective on September 27.

**Mr. Casey** said on May 1, DSL will already be behind in many duties due to the legislative session. Because of vacations, the offices will often be short-staffed during the summer period. Field officers are also very busy in the summer, which is also the fire season; the department will, if necessary, recruit staff to fight fires. If the department can follow this schedule, and rules are adopted on September 27, that allows no time for lessees to use the closure request process. DSL has tried to involve public interest groups and citizens in the initial process, and such a tight schedule may prevent the department from doing so. However, the Land Board may require such a process before they review the rules.

**Tony Schoonen, Coalition for Appropriate Management of State Lands**, said many sportspeople will be disappointed if the deadline is not met; some of the work can probably be incorporated into existing DSL tasks.

**REP. ELLISON** asked what would happen if the rules deadline is not met and the bill goes into effect. **Mr. North** said state lands

will be open on October 1; since the only way restrictions or closures can be put on is through the rulemaking process, all state lands will be open if no rules are effected. **REP. COHEN** asked whether a provision could be included in the bill saying that state lands will not be opened until the rules are approved. **Mr. Schoonen** said this should be considered carefully, since such a provision will not provide the department incentive to get the rules drafted and approved. **Mr. Casey** agreed.

**Marc Racicot, Attorney General**, said the October 1 deadline may be too early; he would be more comfortable with a March 1 deadline. DSL should be given adequate time and resources to draft rules carefully, since corrections will be difficult and possibly costly. Public expectation can lead to public disappointment; if the department does not meet this deadline, it will have to answer to the public for its failure. It is better to have too much time than not enough.

**REP. BROWN** said the effective date for the bill should remain October 1, but language should be added allowing the rules to be delayed until December 31. **Mr. Casey** said this would allow the department adequate time even in poor working circumstances.

**Mr. Graham** said if there is a gap between the bill's effective date and the date the rules will be implemented, temporary licenses will probably have to be issued for the period between October 1 and December 31. **REP. BROWN, Mr. Schoonen and Mr. Racicot** agreed that March 1 is an acceptable effective date for both the bill and the rules.

**Mr. Casey** presented the fiscal note, which was prepared by **Jeff Hagen, Randy Mosley and John North (DSL)**. The costs during the first two years of the program will be greater than in subsequent years, since most of the hearing and closure process will be accomplished during that time. No income from the proposed fee structure was anticipated in the drafting of the fiscal note. Moneys derived from fees will probably reduce the cost, especially if there is a high demand for access to state lands.

**REP. COHEN** noted that the rulemaking process itself, according to the fiscal note, will cost \$29,250. **Mr. Casey** said those costs include travel involved in hearings, and publication, copying and mailing of the comment/response form to approximately 13,000 lessees.

**REP. BROWN** asked why DSL needed to add 6 FTEs. **Mr. Casey** said an additional employee will be necessary for each of the field offices during the initiation of the program; not only to answer inquiries, but to inspect lands requested for closure, write reports and make recommendations on those lands. For each of the closures, a hearing in one of the area offices is required, and a report on the results of the hearing must be written. Additionally, each time there is a damage claim, the damaged property will have to be inspected and a report filed. **Mr.**

**Mosley** said during the first few years, many field offices will be expected to resolve differences between lessees and recreationalists. It is a major new process, and initially there will be a high conflict potential; the department's field officers must try to resolve those conflicts.

**REP. BROWN** asked how many officers are currently in the field offices, and what their specific duties are. Appropriations might question the need for additional FTEs. If all these costs are involved, and the department cannot estimate how much they will receive from access fees, it could be problematic. **Mr. Casey** said the fiscal proposal may be refined; however, the program will be expensive to implement.

**Mr. Schoonen** said he couldn't agree with the cost of the program. Wyoming implemented a similar program at very little additional cost. There is too much work duplication in this proposal.

**REP. ELLISON** asked how inaccessible lands will be identified. **Mr. Casey** said the inventory of accessible and inaccessible lands will be determined by field inspections and possibly legal research.

**REP. DOLEZAL** asked how realistic the fiscal note is, and whether there is a need for a new subdivision, since several of the specified tasks (land inspection, etc.) are already performed within the existing division. The fiscal note anticipates many problems with the transition, when according to testimony, other states have had little trouble with the shift. **Mr. Casey** said the department is only required to appraise/inspect grazing and agricultural properties once every 10 years.

**Mr. Racicot** said DSL has tried to match reality to expectation, and to account for and be able to respond to every possible problem. It is difficult to provide new services while maintaining flexibility. **Mr. Casey** said the delay in the effective date may be helpful in reducing the initial cost of the program.

**Glenn Marx, Governor's Office**, said some sort of environmental report, if not a full EIS, will be useful for the legislature and for the public. Environmental impact, potential lease devaluing due to increased access-related use, and specific fees should be discussed further.

**REP. COHEN** said the University of Montana Forestry School has been developing programs for determining the dollar value of specific recreational activities to both the recreationalists themselves and the communities in which the recreation takes place. These studies may be helpful in determining a recreational access fee.

**Mr. Jacobson** said the bill addresses both recreational and agricultural/livestock interests. The cost of the program should

be studied more closely, but the bill should be moved through committee.

**Madalyn Quinlan, Office of Public Instruction (OPI)**, noted that the lands involved are school trust lands, which the federal government has given to the state to generate income for schools and other institutions. There is a constitutional obligation to charge a fee if recreational values are identified; if any users are charged, all users should be charged. A \$5 fee will probably generate more income than a \$10 fee, since more users will be apt to pay a smaller fee. Group usage of state lands should also be addressed, and an impact analysis is necessary.

**George Schunk, Department of Justice**, said the access license should be prepared and sold separately from the wildlife conservation licenses. The access question itself is a legislative problem, and this has been the correct way to deal with both recreational access and school trust funding. Recreation does have value, but to ensure the program's success as well as minimize conflicts, public education is necessary, as is an economic study.

**Lorna Frank, Montana Farm Bureau**, said the bureau would prefer a full EIS to answer all questions that have been raised during the process. **REP. DOLEZAL** said the EIS will have to be done separately if the bill is to pass through the committee and the House.

**REP. BROWN** said the bill is a livable one, and its practical application should have little or no impact on 97% of the people involved.

**REP. ELLISON** said the members of the committee should try to ensure that no major changes take place in the bill once it gets to the Senate.

**ADJOURNMENT**

**Adjournment:** 12:50 PM

  
BEN COHEN, Chair

  
JULIA TONKOVICH, Secretary

EXHIBIT 1  
DATE 3/15/91  
HB Subcomm.  
On State Lands  
Access  
LCaccess

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\*\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of \*\*\*\*\*

A Bill for an Act entitled: "An Act ; and providing an effective date."

### STATEMENT OF INTENT

(1) A statement of intent is required for this bill because [section 14] requires the board of land commissioners to adopt rules to implement the provisions for recreational use of state lands established by this bill. Consistent with the provisions of this bill, it is intended that public recreational use of state lands be accomplished to the fullest extent possible. It is acknowledged that certain state lands will merit closure from public recreational use due to considerations including, but not limited to the presence of growing crops and livestock, and the proximity of dwellings and agricultural buildings. Nothing in the bill authorizes or purports to authorize trespass on private lands to reach state lands.

(2) This bill requires the board to adopt rules governing the actions of the recreational user of state lands. These rules will address protection of the resource value, compensation for damage to improvements, criteria of closure, restrictions upon certain recreational activities, and where requested by any surface lessee, provision for the recreational user to make

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reasonable effort to provide prior notice of the type and extent of the recreational use contemplated.

(3) [Section 19] authorizes the board to adopt rules for weed control activities. It is the intent of the legislature that the board establish a procedure whereby weed infestations on state lands that are attributable to recreational access are controlled or eradicated. Examples of programs that fulfill this intent include:

- (a) a departmental weed control program;
- (b) payments for weed control activities; and
- (c) payments to county weed boards.

Be it enacted by the Legislature of the State of Montana:

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

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

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

**"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land in 77-1-

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701, in this title the following definitions apply:

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

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

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

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

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

(6) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, nature study, photography, bird watching, water skiing, horseback riding, winter sports,



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viewing or enjoying historical or scenic sites, and such other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access law, Title 23, chapter 2, part 3.

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

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

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

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

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

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

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

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

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

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land

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shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) Multiple-use management of state lands, including those lands that are leased primarily for other purposes, includes general recreational use as defined in 77-1-101. General recreational use is limited to legally accessible state lands, as defined in 77-1-101, that have not been closed to some or all recreational uses in accordance with rules promulgated under [section 14].

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

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

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

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not

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be contrary to the terms of any contract which it has entered into."

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

**"77-1-402. Basis for classification or reclassification.**

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

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

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

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

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

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

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

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as

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prescribed by law shall be fined not less than \$50 or more than \$200 or imprisoned in the county jail for not more than 30 days, or both.

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

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

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

(4) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter

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4, part 2."

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

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

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

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

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports

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appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal special revenue fund to the credit of the department.

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

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

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

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



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shall contain any pertinent recommendations the wardens may see fit to make.

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

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

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

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

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

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

"87-1-601. Use of fish and game money. (1) Except as provided in subsection (6), all ~~All~~ money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from

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

(6) All money collected or received from fines or forfeited bonds for the violation of [section 13], [section 16], or 87-2-109 must be deposited as follows:

(a) 50% in an account for use by the department of fish, wildlife, and parks for the enforcement of [section 13], [section 16], and 87-2-109; and

(b) 50% in the state lands recreational use fund established by [section 17] for use by the department of state lands in the management of state lands."

Section 11. Section 87-2-201, MCA, is amended to read:

"87-2-201. Wildlife conservation license prerequisite for other licenses. Except as provided in 87-2-803(5), it is unlawful

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for any person or persons to purchase any hunting, fishing, recreational use, or trapping license without first having obtained a wildlife conservation license as hereinafter provided."

**Section 12.** Section 87-2-202, MCA, is amended to read:

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

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

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

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

**NEW SECTION. Section 13. Recreational use license required to use state lands for general recreational purposes - Penalty.**

(1) A person 12 years of age or older shall obtain an

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annual recreational use license pursuant to 87-2-202 to use state lands as defined in 77-1-101 for general recreational purposes.

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

(3) A violator of subsections (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50.00, or more than \$500.00, imprisoned in the county jail for not more than 6 months, or both.

## NEW SECTION. Section 14. Recreational use license -- fee.

(1) The fee for a recreational use license is \$5. The fee is based upon:

(a) a \$3 charge as the value of one years' recreational use of state lands; and

(b) a \$2 surcharge for the administrative costs of providing recreational access to state lands and the maintenance of a state lands recreational use fund pursuant to [Section 18].

(2) All money received by the department of fish, wildlife, and parks from the sale of recreational use licenses must be credited as follows:

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

(b) proceeds collected under the surcharge of subsection (1)(b), less \$.50 per license to be returned as a commission to license dealers, must be deposited in the state lands

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recreational use fund established by [section 17] for use by the department of state lands in the management of state lands open to recreational use.

**NEW SECTION.**    **Section 15. Board to prescribe rules for recreational use of state lands.**    (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203.

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

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

- (a) cabin site and home site leases and licenses;
- (b) the seasonal presence of growing crops; and
- (c) active military, commercial, or mineral leases.
- (4) The board shall adopt rules providing an opportunity

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for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

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

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) repeated damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control; or

(g) the presence of buildings, structures and facilities.

(6) Rules adopted under this section may impose restrictions upon recreational activities including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands shall be restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

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(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in [section 20], must be prohibited on state lands unless it occurs under the provisions of a recreational special use license.

(8) For the violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with 2-4-6. Civil penalties collected under this subsection are to be deposited as provided in [Section 9, subsection 6].

**NEW SECTION.** Section 16. Liability of the State of Montana and the lessee. (1) The provisions of 70-16-302 that limit the liability of a landowner or his tenant for the recreational use of property apply to the state of Montana and any lessee of state lands used for general recreational purposes.

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

**NEW SECTION.** Section 17. Prior notification to the lessee of recreational use - Trespass - Penalty.

(1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon the respective leasehold, the lessee shall post, at customary access points,

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signs provided, or authorized, by the department. The sign shall set forth the lessee's name, or agent, address, and telephone number. Where state land is so posted recreational users shall make reasonable effort to contact and identify themselves to the lessee or agent for purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Where property is posted in accordance with subsection (1), and adjacent private property is owned by the lessee of state lands, every recreational user of state lands must have obtained permission of the lessee, or agent, before entering the adjacent private property owned by the lessee. Entry without such permission is an absolute liability offense punishable as a misdemeanor. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than \$50.00, or more than \$500.00, imprisoned in the county jail for not more than 6 months, or both.

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

## NEW SECTION. Section 18. State Lands Recreational Use Fund.

(1) There is created a state special revenue account designated the state lands recreational use account. Money received from the recreational use surcharge established by [Section 13], the imposition of fines under [Sections 9, 13 and 16], and from civil penalties imposed pursuant to [Section 14] must be deposited into the account.



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(2) Money deposited in the state lands recreational use account are statutorily appropriated, as provided in 17-7-502, and must be used by the department of state lands for the following purposes:

(a) compensation for the damage to the improvements of leases which has been proven to be caused by recreational users pursuant to [Section 18];

(b) assistance in weed control management necessitated by the provision of recreational use of state lands;

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

(d) to administer and manage the implementation of recreational use of state lands.

NEW SECTION. Section 19. Compensation for damage to improvements, growing crops, or livestock.

A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. Such application must include an affidavit by the applicant-lessee setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair costs. Upon review of the application, supporting proof, and additional investigation as required, the department shall either grant, modify or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid

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from the party causing the damage. Payments under this section shall be made from the State Land Recreational Use Fund established by [Section 17] and the liability of the department for damage payments is limited to the existing balance of the fund. Claim applications are to be considered in the order they are received.

## NEW SECTION. Section 20. Weed Control Management.

(1) The department shall establish a weed control management program for the control of noxious weeds reasonably proven to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program which may include direct compensation for noxious weed control activities, or participation in district and county weed control projects, or department-initiated weed control activities.

(2) Funding for this program shall come from moneys deposited in the State Lands Recreational Use Fund pursuant to [Section 17].

Section 21. Section 17-7-502, MCA, is amended to read:

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

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

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

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

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

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation

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authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

NEW SECTION. Section 22. {standard} Codification instruction. [Sections 13 through 20] are intended to be codified as an integral part of Title 77, and the provisions of Title 77, apply to [sections 13 through 20].

NEW SECTION. Section 23. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 24. {standard} Effective date. [Sections 14 and 23] are effective upon passage and approval. All other sections are effective October 1, 1991.

-END-

Exhibit 2

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Draft analysis of DSL Administrative Costs for the proposed compromise bill providing recreational access to State lands.

The Fiscal note previously developed for HB 778 is a good assessment of the envisioned administrative costs of the Compromise bill with a few changes. These additional FTEs, operating costs and equipment expenditures will be necessary to coordinate the recreational use program. These persons will be responsible for the field review and processing of closure requests, damage complaints, new recreational use license requests, and all other complaints and requests from lessee, recreationists and the general public. The current staffing levels of the DSL can not absorb all of these anticipated new duties and responsibilities, without dropping some of the current duties and responsibilities.

The Revenues projected under HB 778 are not applicable to the compromise bill. There is no way to estimate the number of permits that will be sold in accordance with the compromise bill. Therefore, there is no way to estimate annual rentals. Also, there is no way to estimate the funds that will be available for administrative costs. There will be no way that the DSL can implement the program immediately after the effective date unless initial start-up moneys are available from some source other than the recreational stamp.

With the inclusion of civil penalties and consequent hearings, rulemaking responsibilities, and for public consultation, there will be additional legal costs to the DSL. These costs will include a .33 FTE attorney position (\$12,540), deposition costs (\$4,000), travel and communication costs for the attorney (\$1,250), and Attorney General Hearing Officer costs (\$5,000). Total additional legal costs are estimated at \$29,250. These costs are based on the assumption that there will be 25-30 hearings per year.

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DRAFT

Fiscal Note analysis for  
COMPROMISE BILL PROVIDING ACCESS TO STATE LANDS

Estimated effect on Revenue:

<u>Source</u>	<u>FY92</u>	<u>FY93</u>
Recreation fees	unknown	unknown
Fines by FW&P	5,625	5,625
Civil Penalties	10,000	10,000
TOTAL REVENUE	unknown	unknown

Estimated Expenditures:

Personal Services	196,626	196,626
Operating Expenses	70,500	33,750
Capital Outlay	98,333	0
Damages and Weed Cont.	75,000	75,000
TOTAL EXPENDITURES	440,459	305,376

ASSUMPTIONS:

1. There is no way to estimate how many State Land Recreational permits will be sold. Therefore, there is no way to estimate revenues from this source.
2. It is assumed that \$11,250 would be generated from fines and forfeiture of bonds resulting from recreational use of state lands. \$5,625 (50% of the total) would be available for use by the DSL in the management of state lands. It is assumed that the number of citations issued by FW&P would increase by 225 per year as a result of this legislation. The average fine per citation is \$50. Therefore,  $50 \times 225$  citations = \$11,250.
3. It is assumed that 50 civil penalties will be assessed per year as a result of this legislation.  $50$  citations  $\times$  \$200/citation = \$10,000.

DERIVATION OF ESTIMATES:

DSL Administration of this recreational program would require close coordination with the existing lessees, the DFW&P, recreational users and the general public. The DSL will require additional personnel to deal with public education of the program; closure requests (long-term, seasonal and emergency); damage settlements; hearings (departmental and public); additional license requests for commercial and concentrated recreational uses; lessee and recreationist complaints; and management to avoid conflicts between users. All of these responsibilities will require planning, implementation, monitoring and enforcement by DSL. The DSL estimates the following expenditures to administer this recreational use program:

1. Personal Services

- |   |           |
|---|-----------|
| a) Six (6) Grade 13, Land Use Specialist FTE's.   | \$155,982 |
| One Specialist would be located in each of the six Area Offices.  |           |
| b) One (1), Grade 14, Land Management Program Specialist FTE. This position would be a staff level coordinator located in the Helena office. This position will be particularly responsible for program consistency, accounting of and distribution of funds. | \$ 28,104 |
| c) .33 FTE attorney position.   | \$ 12,540 |
| d) TOTAL of 7.33 FTE.   | \$196,626 |

2. Operating Expenses (FY92 and FY93)

- |   |           |
|---|-----------|
| a) Seven (7) times \$2,500/specialist   | \$ 17,500 |
| This figure includes travel, communications and basic supplies at a level equivalent to current expenditures by existing specialists. |           |
| b) One (1) times 1,250 of the above expenses for the attorney position.   | \$ 1,250  |
| c) Legal costs for hearings; including depositions.   | \$ 4,000  |
| d) Contracted services for an Attorney General Hearings Officer.  | \$ 5,000  |
| e) Additional rent at the Area Offices  | \$ 6,000  |
| f) TOTAL annual operating expenses  | \$ 33,750 |

3. Additional Operating Expenses (FY92 only)

These costs will be incurred by the Rulemaking process

- |  |          |
|--|----------|
| a) Travel to and costs associated directly with public hearings. | \$ 5,000 |
|--|----------|

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b) Proposed rules publication, copying and mailing.	\$ 10,000
c) Comment response printing and mailing	\$ 1,750
d) Finalized rules publication, copying and mailing.	\$ 20,000

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e) TOTAL Rulemaking costs	\$ 36,750
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4. Capital expenditures (FY92 only)

a) Six (6) vehicles @14,500 One vehicle for each Area Office. Based on recent purchases.	\$ 87,000
b) One (1) personal computer for the program coordinator. Based on recent purchases.	\$ 4,000
c) Office Equipment (desk, chair, file cabinet). \$1000 per FTE.	\$ 7,333

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d) TOTAL Capital Expenditures	\$ 98,333
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5. GRAND TOTAL EXPENDITURES

a) FY92	\$ 365,459
b) FY93	\$ 230,376

6. FURTHER ADDITIONAL EXPENDITURES anticipated from the program will be:

a) Damage Compensation	\$ 25,000
b) Weed Control	\$ 50,000