

## **MINUTES**

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

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN BOB RANEY**, on March 20, 1991, at  
3:00 p.m.

#### **ROLL CALL**

##### **Members Present:**

Bob Raney, Chairman (D)  
Mark O'Keefe, Vice-Chairman (D)  
Beverly Barnhart (D)  
Vivian Brooke (D)  
Ben Cohen (D)  
Ed Dolezal (D)  
Orval Ellison (R)  
Russell Fagg (R)  
Mike Foster (R)  
Bob Gilbert (R)  
David Hoffman (R)  
Dick Knox (R)  
Bruce Measure (D)  
Tom Nelson (R)  
Bob Ream (D)  
Jim Southworth (D)  
Howard Toole (D)  
Dave Wanzenried (D)

**Staff Present:** Gail Kuntz, Environmental Quality Council  
Paul Sihler, Environmental Quality Council  
Lisa Fairman, Committee Secretary

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

#### **EXECUTIVE ACTION ON HB 476**

**Motion:** REP. COHEN moved to amend HB 476. EXHIBIT 1

**Discussion:** REP. COHEN said the committee passed REP. MARY ELLEN CONNELLY's bill for a forestry extension program, but there wasn't enough money in the bill. It included a fee of 15 cents per 1,000 board-feet. The program needs a \$121,000 General Fund appropriation. HB 476 will produce the funding that is needed. The programs are identical in both bills.

Paul Sihler, Environmental Quality Council, said HB 476 originally was drafted from another bill with tax sections the Department of Revenue had not reviewed. The amendments add a series of standard sections the Department of Revenue puts in all

tax bills to ensure they properly and effectively collect tax.

Amendments 3-9 on Page 2 relate to timber that is to be taxed. Originally, a tax would not have been collected in cases when a landowner owned the timberland and the mill in which the timber was processed. This addresses the technical problem with the bill by putting the tax on the harvest. The remainder of the amendments add or revise sections. **EXHIBIT 1**

Vote: Motion to amend HB 476 carried unanimously.

Motion: REP. COHEN MOVED HB 476 DO PASS AS AMENDED.

Discussion: REP. COHEN said the bill is straightforward. It expands the extension forestry program. It doesn't appear there is enough money in the fee plus appropriations for the Appropriations Committee to move the bill. If this committee passes the bill, he would be willing to ask that the bill be held until the committee knows the results of REP. CONNELLY's bill.

REP. WANZENRIED said there was an amendment to HB 2 that earmarked money for the extension forestry program through the Cooperative Extension Service.

REP. COHEN asked REP. WANZENRIED if he were talking about the \$54,000 in federal funds or the \$121,000 in state General Fund money in REP. CONNELLY's bill. REP. WANZENRIED said he was talking about an amendment that was proposed for the Cooperative Extension budget. It was earmarked money. HB 476 can stand on its own. The other bill could be amended to remove the General Fund appropriation and be funded with money from the Cooperative Extension Service budget.

REP. COHEN said he isn't sure of the relevance of the fiscal information. The committee could either amend the severance tax from this bill into REP. REAM's bill, or HB 476 could be written, assuming REP. CONNELLY's bill passes, to ensure money is in appropriations for extension forestry. This money could be used for the productivity study. He urged the committee to pass HB 476 in its present form in case no other funding is available for extension forestry.

REP. REAM asked about the fiscal note. REP. COHEN said the Department felt the bill was unworkable as it was. It was assumed in the fiscal note that corrections would be made. He may be wrong. It may be better to postpone action on the bill to get an amended fiscal note.

CHAIRMAN RANEY said the bill may get into trouble if it is held. REP. COHEN said that if the bill is passed out of committee, the committee can get an amended fiscal note. The committee doesn't have to move the bill onto the board until after it is determined whether funding for extension forestry will be available in REP. CONNELLY's bill. He would be happy to request it if funding goes

through. One way or another, he wants to see the extension forestry program funded.

REP. GILBERT said the bill raises too much money. Based on the current fiscal note, there would be \$256,000 per year after 1993. People in the timber industry don't think that much money is needed.

REP. COHEN said the Legislature doesn't usually ask the people who are going to pay tax to approve the tax. When the new fiscal note is received, the bill could be amended on the floor to reduce the rate so that it is appropriate for the extension forestry program.

Vote: HB 476 DO PASS AS AMENDED. Motion failed 8-9. Rep. Toole did not vote. EXHIBIT 2

Motion/Vote: REP. O'KEEFE MOVED HB 476 BE TABLED. Motion carried unanimously.

#### EXECUTIVE ACTION ON HB 401 AND HB 778

Discussion: REP. COHEN said a group of concerned sportsmen and representatives from various departments met with REP. BROWN and crafted a bill, which was presented to the subcommittee. The subcommittee drafted a compromise bill, which was incorporated into HB 401. It includes a fee for general recreational use of state land and provides a contingency to deal with impacts from use of leased lands.

The subcommittee produced another proposal that was put in HB 778. HB 778 asserts that Montanans have a right to use all public lands. It requires the purchase of a permit to use leased lands. The Board of Land Commissioners will adjust the rate in case more money is generated than needed to deal with impacts.

Two questions have to be answered. One deals with the Enabling Act, in which the federal government presented public trust lands to the states. The act says states will use these lands to generate state revenue. This has been addressed in different ways by different states. California transfers the money between departments. Montana put in its legislation a similar transfer to address that question.

The other question involves the state constitution and a number of court cases. State attorneys believe the state constitution requires the state to maximize the return on public trust lands for the educational trust fund. This problem is not addressed in HB 778 but is addressed in HB 401. He presented proposed amendments to HB 401. EXHIBIT 3

CHAIRMAN RANEY said both bills are sponsored by REP. DAVE BROWN, HD 72 - Butte. He asked REP. BROWN to review the bills.

REP. BROWN said the subcommittee's recommended draft of HB 401 is a compromise, but not everyone is happy with everything in it. Stock growers and agriculture interests prefer not to deal with it at all. They would like to see an Environmental Impact Study (EIS) or an economic impact study done on recreational use. He believes this needs to be done for all use of state lands.

It was agreed that the subcommittee would move forward with compromise language on lands access and separately push the \$300,000 that is in the budget, until it could be decided how and where it should be used.

HB 401 sets the premise that all public lands are open to the public but they can be closed for certain purposes. The land board would take care of that through rules and public hearings, when necessary. It sets up an account to address weed control, damage to improvements, and other things that may happen to leaseholders. If this bill is passed, sportsmen will back off the lawsuit they filed against the Department. It will not affect state land leases in 98 percent of the cases. In remaining cases, the impact will be minor.

He submitted an amendment in response to legislators' questions regarding access to land already opened to the state. **EXHIBIT 4** The amendment limits use of state lands to fishing, hunting and other activities determined by the board. The second amendment allows the board to establish a fee, or whatever is needed. It removes minor areas that would be difficult to enforce and accommodates concerns of a number of people.

The chairman was interested in dropping the fees and putting in an appropriation. That could be done by striking sections of the bill that allow a fee and inserting the language "in an appropriation." REP. COHEN's bill is a major departure from the efforts of the compromise. He strongly opposes REP. COHEN's bill. He urged the committee to support the subcommittee's compromise bill of HB 401 and his proposed amendments.

CHAIRMAN RANEY asked REP. BROWN why he wanted to restrict the definition of recreational use to hunting and fishing, which may be a small part of the activity that would take place. REP. BROWN said approximately 175,000-180,000 acres of Montana's 500,000 acres of state forest land are leased for grazing. The piece of state forest land that has been open to public access but not grazing represents about 8 percent of Montana's state lands. Sportsmen want access. The most flack over the bill has come from picnickers, berry and mushroom pickers, and snowmobilers. The amendments leave existing access the way it is and open access to the other 92 percent of state lands, unless the board decides particular areas must be closed for certain reasons.

CHAIRMAN RANEY asked REP. BROWN if his amendment No. 2 would not be needed if someone offered an amendment to remove all fees and have it funded by the General Fund. REP. BROWN said the part

about the money wouldn't be needed, but the part about the rules would be. There may be some other use that the board would have to address. **CHAIRMAN RANEY** said amendment No. 2 doesn't address rules. It just says it may establish fees. **REP. BROWN** said OK.

**REP. GILBERT** asked if recreational fees would be charged on leased land only or on all state lands. **REP. BROWN** said all state lands, but the amendment would limit it to leased lands that may or may not be accessible now.

**REP. GILBERT** asked if a license would be needed to go on state forest land. **REP. BROWN** said hunters would need one. The state constitution requires the Legislature to reimburse the educational trust for use of those lands. A fee must be collected to reimburse the trust. Money also should be collected to manage those lands appropriately. His bill originally called for a fee of \$1. Stock growers wanted a fee of \$50. The state lands board's bill included a fee of up to \$2. Everyone settled on \$10 in the compromise bill. The subcommittee put it at \$5. By limiting this to fishing and hunting, the state may get into restrictions of federal acts that prohibit the state from tagging a smaller fee onto the conservation license. He cannot work that out in the time he has. A fee is needed, but it should be lower.

**REP. GILBERT** asked if this could set a precedent and encourage the U.S. Forest Service to start charging fees. **REP. BROWN** said he didn't think so, given the attitude in surrounding states. The federal government has been reluctant to do that.

**REP. GILBERT** said it seems the state would be discriminatory if it charged fees to only anglers and hunters. Others can impact the land. He asked if people are going to be told that they can't take pictures on state land unless they have these licenses. **REP. BROWN** said that is the bind the state is put in unless the state wants to allow free access.

**REP. GILBERT** said he disagrees somewhat with **REP. BROWN's** approach to the constitutional mandate. Montanans have been hunting and fishing on state land since the state was founded. No one has ever been charged. It would be a great disservice to the public to say this is public land but, because schools are supposed to get the money and the state has been lax for more than 100 years, people will now be charged for using it. That is ridiculous.

**REP. BROWN** told **REP. GILBERT** he is accurate about land in some areas, but most state land has not been accessible in the past. That is what prompted this bill and the pending lawsuit. **REP. GILBERT** said that historically, access has been granted in state land and forested areas accessible by public roads that are not expressly closed. The state is not setting a precedent. This is the way the state has done business.

**REP. BROWN** said the issue arose because the land board decided it

couldn't prevent access, access wasn't allowed without an EIS to determine impacts, and because of the constitutional nature of the trust fund. Although people may have been doing this for 50 years, they probably should have been charged for it. Nearly everyone expects sportsmen to win their lawsuit. If they do, activities will change in undesirable ways. Stockmen have a valid point when they say everyone should have to pay for state lands if they do.

**REP. COHEN** said **REP. GILBERT's** words echo what he said in the Conference Committee. Most citizens believe they have an inalienable right to state lands access. He referred to Section 11 on Page 8 of both bills. In HB 401, there is compromise language which is not a compromise of legislators, nor a compromise of the people. It was a compromise between attorneys and representatives of special interest groups.

He noted that HB 401 requires a license for recreational use of state lands. HB 778 requires a license for recreational use of leased state lands. That was what **REP. GILBERT** referred to. The statement of intent as amended in HB 778 says the public has a right to use state lands, but that the interest and improvements of leaseholders must be protected.

**REP. REAM** said it appears a stamp on a conservation license could be required instead of a restriction on hunting and fishing. **REP. BROWN** said that is possible, but he won't have time to figure it out before the matter gets to the floor.

**REP. REAM** said he would like one of the attorneys to address the constitutional issue. He wondered if the land board would turn around and put these activities back in through its rule-making authority. **REP. BROWN** said no. He worried about that too, but flexibility cannot be eliminated. Something may come up that the Legislature did not anticipate and the land board needs to address. It would be intolerable for the public to have to wait two years for the Legislature to come back and change the statute, when authority could be granted here. He suggested Assistant Attorney General George Schunk address the constitutional issue.

**CHAIRMAN RANEY** said he would rather hear from John North, Department of State Lands (DSL) Chief Legal Counsel, since DSL requested the bill.

**Mr. North** said leased lands cannot be separated from non-leased lands. The requirement is contained in the Enabling Act of the Montana Constitution for the State Land Board to obtain full market value for any interest in state lands that it conveys or gives the rights to. The question is whether the land board would be giving away something valuable. For a number of years, it could be argued that the right to hunt on land had no value in Montana. But over the last 20 years, the right to hunt has come to have value because people are paying for that right.

The constitutional full-market value requirement applies to all state lands. If there is no charge, there must be a determination that the right has no value. It has been DSL's opinion in the lawsuit that the right to hunt has value on at least some non-leased lands.

REP. ELLISON asked if DSL would be in a similar position if stockmen had filed suit instead of sportsmen. Mr. North said the opportunity to recreate on state land has become a valuable right in the last 25 years. It is at that point that the constitution and Enabling Act would require the State Land Board to begin receiving compensation to allow people to recreate.

**Motion:** REP. FAGG MOVED DO PASS ON THE AMENDED BILL AS PUT FORTH BY THE SUBCOMMITTEE, WHICH WAS REP. BROWN'S HB 401, AND MOVED THE TWO AMENDMENTS REP. BROWN SUGGESTED ON HB 401.

**Discussion:** REP. FAGG praised REP. BROWN, the State Land Board and the subcommittee for their work on the bill. HB 401 is a good compromise bill. He supports the bill with REP. BROWN's two amendments. Things are changing in Montana. The money raised through this bill will go to schools, which is as it should be. Everyone should be treated the same, that is why he opposes REP. COHEN's substitute amendments. It isn't proper to charge people to hunt on leased lands and not charge people who would hunt on state-owned forest land.

CHAIRMAN RANEY said he would like to strike all fees and assess a General Fund appropriation to reimburse the school trust and to appropriate money to address any damages. While it is true the fees would go to schools, it is also true that the committee would be changing one of the things that makes Montana what it is, and that is free public lands. It would no longer be free. People can argue that \$5 isn't much, but a different Legislature could raise the fee to exorbitant amounts. No one can say that won't happen. This would create a Sherwood Forest.

REP. COHEN spoke against REP. FAGG's motion. He said he appreciates the work that went into the bill. HB 401 puts into place the principle that has not been recognized by any state in the nation. That is a principle that says people can be assessed for the value of recreation. This is the political agenda of a small group. That is why he tried to parallel HB 778 to HB 401 in every way except that people would pay a fee to create a compensation account, instead of an access fee for leased land, so that any damage to leased land could be compensated.

CHAIRMAN RANEY said the committee has a "Do Pass" motion on HB 401 and the large set of amendments that make the new HB 401, EXHIBIT 3. He did not accept the motion to put on the small amendments. EXHIBIT 4

REP. GILBERT said the reason this problem got started was because sportsmen wanted access to lands that were leased by agriculture.

The people in agriculture said they were maintaining the fences, etc. That is true in some cases and not in others. Not all state land is being treated equally. The question was whether lessees should be compensated if sportsmen were allowed onto leased land. He has no problem with that, but this has become a question of whether everyone should be charged to go on state lands. The whole issue has been turned around because of greed, and that will anger Montanans. It is their land.

The issue is commercial versus recreational use. Fees should be charged if the land is used for commercial purposes. A citizen shouldn't be denied the right to go on public lands for enjoyment. A hunter walking up a trail to kill an elk isn't damaging the land or taking from it anything that should be compensated for. He predicted future legislative attempts to charge people for use of the state's waters. This is anti-Montanans. A compensation account for sportsmen to use leased land is a good idea. If the committee can't make these things work, then both bills should be scrapped and more time spent to come up with a real compromise.

REP. O'KEEFE said he agreed with REP. FAGG and the departments. Two years ago, there was a bill dealing with the sale of state leased land for cabin sites. He opposed that bill. It passed the Legislature. Some of the most profitable state land was turned loose to the private sector. He agrees with the interpretation of the constitution that it is the Legislature's responsibility to get the highest possible return on school trust lands for education.

There is a real problem in charging Montanans for a right they have always had, but the Legislature has done politically dumb things before and sometimes gets away with it. This is the right thing to do, even if it is politically dumb. He supports REP. FAGG's motion and will support whatever comes out of the committee. If the committee goes REP. COHEN's way, sportsmen may withdraw their suit, but stockmen may replace it. There is a valid point here.

REP. DOLEZAL said he understands the need to take care of leaseholders. There needs to be some way to compensate them. He asked REP. COHEN how the contingency fee would be implemented in his amendment. REP. COHEN said the question is how, under his amendments, the state would compensate leaseholders. People who want to use leased land would be asked to purchase a permit. The money would go into a lessee compensation account, which would be capped. Any additional fee revenue would go into the education trust fund. The Board of Land Commissioners would be asked to keep track of all of it. If more money is coming into the account than is necessary to compensate leaseholders, the board, by rule, could reduce the fee. If very little money is needed, the board could ask the Legislature for a yearly appropriation instead of a fee. The effective date for requiring these permits in either of these bills isn't until March 1, 1992. It would be simple to put



to the voters an amendment to the state constitution to recognize the inalienable right of the people to have access to state land. That could be on the ballot in November. He cannot image Montanans not voting for such a constitutional amendment. By the time the permit requirement becomes effective next March, the state constitutional problem could be addressed.

**Motion:** CHAIRMAN RANEY MADE A SUBSTITUTE MOTION TO AMEND THE AMENDMENTS OF REP. COHEN, WHICH ARE ACTUALLY REP. BROWN'S AMENDMENTS, TO STRIKE LANGUAGE THAT PROVIDES FOR FEES AND REPLACE IT WITH LANGUAGE THAT PROVIDES FOR \$50,000 TO BE APPROPRIATED FROM THE GENERAL FUND FOR THE DAMAGE COMPENSATION FUND.

REP. REAM said REP. FAGG made three motions. CHAIRMAN RANEY said he accepted only the "Do Pass" motion and the motion to take REP. BROWN's amendments. He made the third motion to amend the amendments. There can't be anymore motions other than to table the bill.

REP. REAM asked CHAIRMAN RANEY if his motion would delete what was proposed in the second amendment. CHAIRMAN RANEY said he wasn't addressing what was on the second sheet. He asked Mr. Sihler to identify the section of amendments he was attempting to amend. Mr. Sihler said he wasn't clear.

CHAIRMAN RANEY asked REP. COHEN if he could clarify what he was saying. REP. COHEN suggested the committee adopt amendments in EXHIBIT 3, then the committee could offer amendments to that and talk about HB 401. If and when the committee wants to discuss HB 778, the committee should initially amend all of this into HB 778. That way everyone has a hard copy of the bill. CHAIRMAN RANEY withdrew his amendment and returned to REP. FAGG's motion to accept REP. BROWN's amendments as requested by REP. COHEN, EXHIBIT 3.

**Vote:** Motion to amend HB 401 carried, with REP. GILBERT voting no.

**Motion/Vote:** CHAIRMAN RANEY moved to amend the bill as amended and to strike the language that provides for fees and replace it with a General Fund appropriation of \$50,000 to the Damage Compensation Fund.

**Discussion:** CHAIRMAN RANEY asked Mr. Sihler where this amendment would go in the bill. Mr. Sihler said Section 11-12 on Page 8 would be struck and a new section would be added to the end of the bill for a \$50,000 appropriation. He asked for the authority to do what is necessary to make it work.

REP. ELLISON told CHAIRMAN RANEY that he effectively negated everything that had been done in the last two weeks and put the state back into court. If the issue goes to court, neither side will win.

REP. COHEN said that while he isn't sure he likes CHAIRMAN RANEY's amendments, he likes them better than HB 401. He was concerned that a portion of the \$5 fee would go toward administrative costs of providing compensation, and none would go to the Department of Fish, Wildlife and Parks, which would be responsible for enforcing the law. After making that statement, REP. COHEN realized the matter was addressed and withdrew his objection.

REP. FAGG said the Department predicts 50,000-60,000 people will buy the \$5 license, which would raise between \$250,000 and \$300,000. If this is to be limited to hunting and fishing, it may be better to put a \$1 fee on the conservation license. About 400,000 conservation licenses are sold to hunters and anglers. That would raise about \$400,000. Either of those two plans are preferable to a General Fund appropriation because the people who would be using the land would be paying for it. He opposed CHAIRMAN RANEY's motion.

CHAIRMAN RANEY said he wouldn't mind withdrawing his motion to go to a conservation license fee.

REP. GILBERT said the committee needs to get back to what was intended and that was to set up a compensation account so that when the public used leased lands, the lessee would be compensated for any damage. He told CHAIRMAN RANEY that his amendment doesn't cover that. He envisioned an optional license for people who want to hunt on public land that is leased to someone else. If the public is going to be allowed on leased lands, some money should go toward paying for damage. It is corrupt and criminal to charge people for going onto every piece of state land.

REP. ELLISON said REP. DOROTHY BRADLEY, HD 79 - Bozeman, in 1975 or 1977 had a bill to use state school trust land for natural uses. The bill failed because the Legislature said that couldn't be done unless school funds are paid for that purpose. There is a long-standing policy that whoever uses school trust land pays market value. Until recently, people could hunt wherever they wanted to. There was no market value to it. The state might as well continue with the existing lawsuit than get into a new one.

CHAIRMAN RANEY said he would be open to new ideas.

**MOTION:** REP. GILBERT MADE A SUBSTITUTE MOTION TO AMEND THE COMPROMISE HB 401, WHICH HAS SECTION 11 AT THE TOP OF PAGE 8, TO INSERT THE WORD "LEASED" AFTER THE WORD "STATE" ON LINE 4 OF SECTION 11 ON PAGE 8.

**Discussion:** REP. GILBERT said his motion would take care of the problem that originally existed and gets the committee back to other work. Otherwise, the committee is charging everyone for everything. That wasn't the direction the committee was asked to go in. If there is leased land that a person wants to trespass

on, the person has to pay. If this amendment works, he will propose a compensation fund amendment.

REP. DOLEZAL spoke in favor of REP. GILBERT's motion. He said there should be a distinction between leased land and non-leased land.

REP. REAM asked if CHAIRMAN RANEY's motion was withdrawn. CHAIRMAN RANEY said no. REP. GILBERT's motion is a substitute motion. REP. REAM asked if that replaces his motion. CHAIRMAN RANEY said his motion is gone.

Mr. Sihler said REP. GILBERT's proposed amendment is essentially what REP. COHEN's bill does. Technically, if the committee wants to insert the word "leased," a number of other places may need to be changed as well. In many cases, this is incorporated into REP. COHEN's HB 778.

CHAIRMAN RANEY said that if the committee agrees with REP. GILBERT's motion, the smart thing to do would be to kill HB 401 and take up HB 778. He asked REP. BROWN if that were accurate. REP. BROWN said probably.

CHAIRMAN RANEY said the motion is to charge for access to leased land.

REP. BROWN said those who don't want to charge anything at all can't get away with that. Courts are sensitive to trust issues. They have already shown that they will not be any less sensitive with the education trust. If either of these bills is passed without differential, while he probably can change it on the House floor, the state will be back in court. If the committee wants to kill both bills, then the lawsuit that was delayed because sportsmen liked the compromise, will be won. The court will dictate how state lands are dealt with.

REP. ELLISON said that if the court decides the issue, market value will be charged. That may be what it costs to get onto private lands.

REP. REAM asked REP. BROWN to address the issue of not charging fees at all and separating out leased land from other state land. REP. BROWN said either state funds can be appropriated as compensation for the trust, or the public can be charged a fee. The question is, how much is enough. The new lands management account that helps protect the landowner also must be addressed. Legally, the committee could probably do either one. The question is whether the state can afford one over the other.

CHAIRMAN RANEY asked what would happen if the \$1 fee were put on the conservation license, half the money was appropriated to the school trust and half to the Department, and no one had to have the conservation license to be on state land. REP. BROWN said there is probably no control from the lessee's point of view. The

suggestion is a simple solution, but the effort to provide some protection to leaseholders is lost. This is not a tough issue to get around. The Legislature has to deal with it one way or another, or reject it and let the court settle it. If the matter is handled that way, the problem will not be solved.

**CHAIRMAN RANEY** said the motion is to amend the bill to have it apply to state leased land.

**Vote:** Motion to amend the bill carried 9-8. **EXHIBIT 5**

**Discussion:** **CHAIRMAN RANEY** said the issue before the committee is for fees on leased state lands.

**REP. GILBERT** said the committee is getting into what **Mr. Sihler** was talking about -- the difference between the two bills. The committee needs to set up the compensation account. Draft language does that in Section 10 on Page 8 of **EXHIBIT 6**.

**Motion:** **REP. GILBERT MOVED LANGUAGE IN SECTION 10, PAGE 8, BE INSERTED IN THE PROPER PLACE IN HB 401.**

**Discussion:** **CHAIRMAN RANEY** asked if the amendment approved by the committee and the amendment being proposed by **REP. GILBERT** equate to an amended HB 778. **REP. COHEN** said that if the committee approves the set of amendments he prepared for HB 778, the result would be exactly what **REP. GILBERT** is proposing.

**REP. COHEN** said it would be easier to table HB 401 and move the body of amendments to HB 778.

**REP. BROWN** asked if **REP. GILBERT** was referring to language in Subsection 6 (a) and (b). **REP. GILBERT** said yes. **REP. BROWN** said that deals with money collected from fines and how it is split.

**REP. GILBERT** said there is a solution to the problem.

**REP. COHEN** said the way to solve the problem is to table HB 401, move HB 778, and move the body of amendments to HB 778. The result would be exactly what **REP. GILBERT** wants -- a bill that only charges a fee to create a compensation account for access to leased lands. A person will have to contribute to that account if using leased lands.

**CHAIRMAN RANEY** said the committee can table HB 401 and take up HB 778, or pass consideration on HB 401.

**Motion:** **REP. GILBERT WITHDREW HIS MOTION AND MOVED TO PASS CONSIDERATION ON HB 401.**

**Discussion:** **REP. REAM** asked for clarification. **CHAIRMAN RANEY** said that if the committee approves the motion by **REP. GILBERT** to make the fee applicable to leased state land only, then it should take his second motion to provide the compensation fund. The

result would be HB 778.

REP. REAM said he would like to get a legal opinion on whether the committee is heading into constitutional problems. CHAIRMAN RANEY asked Mr. North whether REP. GILBERT's proposed amendments to HB 778 are constitutionally sound. Mr. North said there are two problems. The state would be allowing access for recreational purposes on certain lands without requiring compensation. That creates a grave constitutional problem that he doesn't believe he could overcome in court if sued. Revenues from leasing the lands must go to the school trust. There is some question about whether a portion of it can be diverted for administration. Greg Petesch, the Legislative Council's Attorney, is of the opinion that none can be diverted for any purpose. It must all go to the school trust. Mr. North said he believes some money can be diverted. But the bill is not talking about administration. It talks about compensating the lessee, which is a constitutional problem.

REP. COHEN said the Enabling Act is addressed in HB 778, Page 12, Section 20 of EXHIBIT 6. Presently, no one pays for recreational use of state land. HB 778 would keep track of people going onto these lands. The fee is strictly for compensating people. If the compensation fund builds over time, the money automatically goes into the education trust fund. The Board of Land Commissioners is authorized to adjust the fee. He believes both constitutional questions have been addressed.

Mr. Sihler said the bill includes a \$100,000 cap. Any revenue above \$100,000 goes to the trust. The \$5 fee would sunset in two years. After two years, the level of the fee would be determined by the board, based on the cost of administering the program.

REP. COHEN said the committee would only be requiring people who want to use leased lands to register and pay into the compensation fund.

CHAIRMAN RANEY asked Mr. North if he could provide committee members with a fact sheet on the bill and potential constitutional problems, before the bill gets to the floor, if the committee passes it in the form proposed by REP. GILBERT. Mr. North said yes. He thinks there is a constitutional question of using General Funds to compensate the trust. The Enabling Act says the state is to obtain money for the use of this land. In this bill, General Fund money that usually goes to the School Foundation program would be given to the education trust fund, which goes back to the Foundation program.

CHAIRMAN RANEY said REP. GILBERT's motion would insert compensation language from HB 778 into HB 401. Rather than do that and create a hassle for the bill drafter, the committee could pass consideration on HB 401, take up HB 778, put REP. COHEN's amendments on it, and move onto another issue.

REP. REAM said it may be better to pass consideration on both

bills to allow discussion at the next hearing. **CHAIRMAN RANEY** said there are more equally difficult issues to solve. The committee must make some hard decisions. There isn't time for other things. He asked committee members to raise their hands if they wanted to come in Saturday after the session to deal with the issue or take up the issue now. Six indicated they wanted to wait. Seven indicated they wanted to take action.

Motion/Vote: **REP. GILBERT MOVED TO PASS CONSIDERATION ON HB 401 AND TAKE UP HB 778.** Motion carried 12-6, with **REPS. HOFFMAN, NELSON, BARNHART, FAGG, ELLISON** and **TOOLE** voting no.

Motion: **REP. GILBERT MOVED HB 778 DO PASS.**

Motion: **REP. GILBERT MOVED TO APPROVE REP. COHEN'S AMENDMENTS TO HB 778. EXHIBIT 6**

Discussion: **REP. GILBERT** said HB 778 does what most of the committee intended to do. No one said anything about constitutional problems until sportsmen of the state decided they should be allowed to hunt on public land. The lawsuit was filed to force DSL to let some people on state land that leaseholders wouldn't let them on. All of a sudden there is a bill to charge everyone in the state for access. People in this state are the ones who support the constitution and told the Legislature how to write it. Anyone who thinks people will stand for paying for access to public lands is crazy. If this committee passes this bill, there will be a constitutional initiative or referendum to change it. It's foolish to even think about it. He suggested the bill be debated on the House floor.

**REP. O'KEEFE** said he doesn't like the bill. He believes it has constitutional problems. He took an oath to uphold the constitution in form and substance. He will vote to get the bill out of committee and will help **REP. BROWN** fix it on the House floor.

Vote: Motion to amend HB 778 carried 14-3. **EXHIBIT 7**

Motion/Vote: **REP. GILBERT MOVED HB 778 DO PASS AS AMENDED.** Motion carried 14-3, with **REPS. ELLISON, FAGG AND HOFFMAN** voting no.

#### EXECUTIVE ACTION ON HB 731

Motion: **REP. REAM MOVED HB 731 DO PASS.**

Discussion: **REP. REAM** asked if amendments were made to the bill. **CHAIRMAN RANEY** said yes. The bill was amended as requested. **REP. REAM** said the amendments are the result of a lot of hard work by the Montana Logging Association, Janet Ellison and Stan Bradshaw. They make the bill more workable and streamline the enforcement process. It costs much less than indicated on the fiscal note. This is a compromise bill.

**Vote:** HB 731 DO PASS. Motion carried 13-3, with REPS. GILBERT, HOFFMAN and FOSTER voting no. Reps. Knox and Ellison were absent.

**EXECUTIVE ACTION ON HB 844**

**Motion/Vote:** REP. WANZENRIED MOVED HB 844 BE TABLED. Motion carried 17-1, with REP. O'KEEFE voting no.

**EXECUTIVE ACTION ON HB 866**

**Discussion:** REP. BROOKE said three subcommittees looked at the agencies that would be affected by HB 866 under the reorganization plan. They spent one week with DSL, the Department of Health and Environmental Sciences (DHES), and the Department of Natural Resources and Conservation (DNRC). After that week, they met as a full group with eight of the 12 subcommittee members in attendance, department people and other interested parties.

A lot of concerns were raised. They were focused on motions and action by the subcommittee. The result of the subcommittee's action was to bring to the House Natural Resources Committee a recommendation that would take the full proposal as presented in HB 866 and pare it down to move the Reclamation Division out of DSL and into DHES. All other considerations in the proposal would be addressed in a two-year study through EQC.

REP. BROWN said the committee should consider whatever it believes is reasonable. This is an opportunity to get to one-stop permitting and do it in a reasonable fashion. He believes in the bill the way it is written. It is simple, rational and reasonable.

CHAIRMAN RANEY said he wanted to allow subcommittee members and department heads to comment.

REP. REAM asked if the Reclamation Division was being moved to a separate division. REP. BROOKE said yes.

CHAIRMAN RANEY asked department heads to comment on the movement of the division and the EQC study, and to indicate if they agree with the movement of the division, why it is a good idea, what goal it will accomplish and how it will accomplish it, considering existing law. He asked if Dennis Iverson, DHES Director, or Karen Barclay, DNRC Director, were in attendance. They were not.

He asked Art Wittich, Energy and Environmental Policy Adviser for the Governor's Office, what he thought about the subcommittee's recommendation to move reclamation from DSL to DHES and to study the remaining issues. He also asked how this would improve licensing, enforcement, etc. Mr. Wittich said this is a step in the right direction because it starts to combine some functions on at least mine permitting. He hoped the committee would take

the next step to continue reorganization. This, in effect, is part of the original plan. Instead of switching from DSL to DNRC, it was switched to DHES. This gets to the end point that was sought. It would be good if the committee could take the second step, which includes movement of environmental functions to DNRC. Some people are uncomfortable about this, but these ideas aren't new. They've been talked about for probably 10 years. The Governor's Office supports however far the committee goes with this.

**CHAIRMAN RANEY** said time was a problem. The bill came out late and the committee couldn't get to it because it had other work to do. No one was able to spend sufficient time on it. The committee is caught in a bind of trying to do all the things the governor wants to do. The committee can't take action without feeling comfortable with it.

**Mr. Wittich** said that if the committee can get the bill to the Senate and keep working on it, maybe by the 90th day there will be a lot more discussion and comfort about the bill, and it will be further along. **CHAIRMAN RANEY** told **Mr. Wittich** he had a good point about getting something over to the Senate so that work can continue.

**REP. TOOLE** said it was his motion in the subcommittee that ultimately prevailed. Discussion about the reorganization of the Department of Highways and Department of Commerce began in 1989. At that time, the agencies began consideration of how they might present an acceptable proposal to the 1991 Legislature. They prepared a feasibility study that represented the comments of staff members. Through that effort emerged the new Department of Transportation concept.

He was concerned that this process wasn't far enough along. It started about a year after the one for the Department of Transportation. He was disturbed by the lack of sufficient documentation. He sat on the Board of Health for eight years. During that time he developed a sense of DHES' expertise in the areas of water quality and air quality, which was proposed for transfer to DNRC by this bill. The lion's share of environmental regulation in the state was concentrated with DHES. The Environmental Sciences Division works closely with health experts, as needed, in regulating environmental matters.

The plan to divorce environmental sciences from health and to combine agencies that deal with water quality and quantity should be looked at in greater depth. Other considerations need to be addressed. There was no plan to move Environmental Sciences personnel from their quarters. Those things haven't been worked out, at least not to the extent that they were worked out for the Department of Transportation.

He thinks a study should be done. EQC could do it, or the agencies could do the study themselves. He doesn't feel



comfortable with the idea of chopping DHES in two in this way. He is concerned about the effects of that. One-step permitting has been the stated objective of the bill. That is an important objective. Hard-rock permitting could be done in one place. DSL is primarily focused on the land it administers.

Hard-rock mining is a thing unto itself and could be located in the department that deals with it the most. DNRC is a possibility, but the Water Quality Bureau is the agency closest to the mine permitting process. His proposal was to take the Hard-rock Mining Bureau and put it into Environmental Sciences. Maybe DNRC would be the most appropriate agency to house all of it. That step shouldn't be taken yet, but it is worth further study.

**Motion: REP. FOSTER MOVED TO ADOPT REP. TOOLE'S PROPOSAL TO MOVE THE DIVISION AS SUGGESTED, BUT TO HOLD OFF ON THE STUDY FOR NOW.**

**Discussion: REP. FOSTER** said the committee should take that step first and see if there is something else to discuss.

**CHAIRMAN RANEY** said the first thing that is needed is for someone to move the bill.

**Motion: REP. WANZENRIED MOVED HB 866 DO PASS.**

**Motion: REP. FOSTER MADE HIS MOTION.**

**CHAIRMAN RANEY** asked **REP. TOOLE** to repeat **REP. FOSTER's** motion. **REP. TOOLE** said the concept is to move the mine reclamation division to DHES.

**CHAIRMAN RANEY** asked what the action would improve in state government, how citizens and companies will fare better, and how reclamation will be improved. **Mr. Wittich** said there have been some permitting problems in the last couple of years. He cited the Pony mine project as an example. It would help to have unified staff concentrate efforts on a project and not have to work on budgets and other duties. All mine permitting could benefit. There also is overlap in facility siting functions of DNRC. It's good government to have people pulling from the same end of the rope.

**CHAIRMAN RANEY** asked what it means for employees, if it will mean all new people will be hired and put in various positions, or if the unit is being taken intact and bureau chiefs and other staff will remain in their jobs. **Mr. Wittich** said it would be stupid to get rid of the institutional knowledge in the departments. The same people would remain, but they would have different lines of authority to answer to. Mid-management and other employees would remain in their jobs. Additionally, employees will have more opportunities for advancement and cross-training.

**REP. O'KEEFE** said the committee has gone from a bill that totally

reorganizes four agencies to the moving of one division to an agency where it was not originally designed to be moved. He thinks it is a good idea to have one-stop permitting and have agencies tagged together in a more logical system than they are now.

A survey of his constituents revealed that 50 percent felt it was an OK idea, 30 percent didn't know and 20 percent said it was a bad idea. Nobody said it was a great idea. The subcommittees were supposed to turn the core into a great idea. He will vote against the motion to move the division, but will support the study so that in two years the committee can come back and reorganize the departments in a way that makes sense.

**REP. TOOLE** said he based his feelings on his own observations. It seems like a good idea to move the division. It would be cleaner to start with a concept, get a study going and be done with it two years from now.

**REP. BROOKE** said that of all the issues brought before the subcommittee, the most logical was to move the Reclamation Division out of DSL. DSL has a proprietary mission, whereas the Reclamation Division is more regulatory and permitting in scope. Reclamation could be better served in another department. Each of the subcommittees discussed the expense of the move. That is something this committee should look at. Perhaps the expense could be avoided. Along with moving expenses is a considerable upgrade. The Reclamation Division came in with considerable increases in FTEs. The committee has to decide whether it will focus on moving expenses only. These are expenses that may be outweighed by the benefit of the move. That should be looked at, considering what is happening in the Appropriations Committee.

**Mr. Iverson, DHES Director**, said there is approximately \$300,000 in HB 2 to help accommodate the move. The money in the bill probably isn't enough to do the whole thing, but no one knew how much it would cost. Last spring, DHES moved the Solid and Hazardous Waste Bureau, about 80 people, from the Cosgrove Building to a building downtown. The move, some equipment, and new dividers and internal renovations of the building cost approximately \$100,000. The amount in HB 2 is enough to do much of what is before the committee.

**CHAIRMAN RANEY** said the only thing the state is doing is moving reclamation. It won't cost anywhere near \$300,000. He asked what would happen to the excess money in HB 2. **Mr. Iverson** said an adjustment could be made in Conference Committee. If the adjustment is not made in HB 2, the money will revert at the end of two years.

**CHAIRMAN RANEY** said it appears the motion may pass, which would amend the bill so that the only thing that would take place would be the movement of Reclamation to DHES. He asked if the fiscal note for \$35,000 is accurate. **Mr. Iverson** said he couldn't say

because he didn't take part in discussions on the fiscal note.

**CHAIRMAN RANEY** asked **Carl Schweitzer**, Budget Analyst for the Governor's Office, if the cost estimate is accurate if the only action is to move one bureau to DHES. **Mr. Schweitzer** said costs were built into the fiscal note that reflected some of the equipment purchased with federal funds that DSL would lose and need to replace. The figure was \$70,000 or \$80,000. He clarified that the LFA version of the bill apparently does not include the move. The governor's version does.

**CHAIRMAN RANEY** said the motion is to move the Reclamation Division from DSL to DHES. That doesn't mean there won't be another motion to move other divisions.

**REP. TOOLE** asked **REP. FOSTER's** thoughts on the issue. **REP. FOSTER** said one move seems to be agreeable to everyone. Maybe more moves are desired. The committee should hear about that.

**Vote:** Motion to move the Reclamation Division to DHES, but hold off on the study, carried 17-1, with **REP. O'KEEFE** voting no.

**CHAIRMAN RANEY** asked **REP. BROWN** if there were something else he would like to see done. **REP. BROWN** said opposition to the bill was based primarily on appointments to boards. He indicated then that the committee could change the appointment process to require different qualifications. He urged the committee to look at that and to put the EQC study in the bill.

**CHAIRMAN RANEY** said he didn't think there was opposition to the bill from anyone on the committee. He gathered from the 12-member subcommittee that there wasn't enough time to devote to the issue to feel comfortable about it.

**CHAIRMAN RANEY** asked **Mr. Iverson** if the committee could accomplish something more in the short time it has, how he feels about the study, and whether it should be done within the department's administration, by a select committee or the EQC. **Mr. Iverson** said he is one of the authors of the original plan and still believes the whole thing can be done. If it cannot be done, then the door should not be shut on the remaining issues. He would like to take a look at restructuring the Board of Natural Resources. A two-year study should be a part of whatever is done because it would demonstrate that everything proposed is the right thing to do. How it should be done doesn't matter a whole lot. These things are better done by the Legislature. It should be either an EQC or Legislative Council study.

**CHAIRMAN RANEY** said if it were a Legislative Council study, it probably wouldn't get funded. **Mr. Iverson** said EQC probably would wonder where it would get the money too. **CHAIRMAN RANEY** asked if DSL, DNRC and DHES staff would do most of the work on the study even if it were sent to the EQC. **Mr. Iverson** said yes. Some of the work has already been done.

REP. TOOLE said it would be more appropriate to study a change in the composition of the Board of Natural Resources because it is part of a major move that shouldn't occur until the study is done.

REP. FOSTER said the committee should act on REP. TOOLE's suggestion that the committee go with this one change and look at a study. For the study to have meaning, the title should be left intact.

CHAIRMAN RANEY said the committee doesn't have to worry about the title because the Senate can do anything it wants to it. REP. TOOLE asked if it would be appropriate to adjust the title according to REP. FOSTER's motion if the concept of the bill is changed. CHAIRMAN RANEY said yes, the title would have to reflect that. But that wouldn't preclude the title from being returned to its original form on the House floor or in the Senate.

CHAIRMAN RANEY said he hasn't been able to tell if the subcommittee favored the study and where it should go. There has been no motion. Right now, the committee is voting on the bill with one amendment, which moves one department to another.

Motion: REP. GILBERT MADE A SUBSTITUTE MOTION THAT HB 866 DO PASS AS INTRODUCED.

Discussion: REP. GILBERT said he doesn't have a problem with the bill. The committee is talking around it but not saying much. He would like to see if there are enough votes to pass it out of committee.

Vote: HB 866 DO PASS AS INTRODUCED. Motion failed 7-11. EXHIBIT 8

CHAIRMAN RANEY said no other motion is before the committee. He was told by other committee members that the issue reverted to the original motion. He said REP. FOSTER's motion to move the division passed. Now the committee is back to the bill as amended by REP. FOSTER.

Motion/Vote: REP. BROOKE MOVED HB 866 DO PASS AS AMENDED. Motion carried 13-4. EXHIBIT 9

#### EXECUTIVE ACTION ON HB 889

Motion: REP. O'KEEFE MOVED HB 899 DO PASS.

Discussion: REP. O'KEEFE distributed proposed amendments to HB 889 and HB 956. EXHIBIT 10-12

REP. GILBERT said he would like to know if it is even necessary to go through the amendments.

Motion/Vote: REP. GILBERT MADE A SUBSTITUTE MOTION THAT HB 899 BE TABLED. Motion failed 6-12. EXHIBIT 13

Discussion: REP. O'KEEFE reviewed amendments. EXHIBIT 10

Motion/Vote: REP. O'KEEFE moved Concept Amendment A. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment B. Motion passed unanimously.

REP. O'KEEFE asked Gail Kuntz, Environmental Quality Council, to explain Concept Amendment C. Ms. Kuntz said it refers to cases in which hard-rock mining permits that have been awarded but the company hasn't started mining before Oct. 1, 1992. If the company starts mining before that date, it would be exempt.

Motion/Vote: REP. O'KEEFE moved Concept Amendment C. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment D. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment E. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment F. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment G. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment H. Motion passed unanimously.

Ms. Kuntz said Concept Amendment I strikes language from the bill that would have presumed an operation caused any change in water quality or quantity. Existing law in the hard-rock act allows owners of real property who feel their water quality or quantity has been damaged by mining operations to file a lawsuit. It also requires them to go through an administrative procedure with DSL to determine the cause of the change.

The amendments insert provisions of the Coal Mine Reclamation Act into the Metal Mine Act, and instruct the Department to conduct an investigation and determine the cause. If the study finds it was the mining operation, then restitution would be made.

Motion/Vote: REP. O'KEEFE moved Concept Amendment I. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment J. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment K. Motion passed unanimously.

Motion/Vote: REP. O'KEEFE moved Concept Amendment L. Motion passed unanimously.

Motion: REP. O'KEEFE MOVED HB 889 DO PASS AS AMENDED.

Discussion: REP. FAGG said he struggled with the bill. Water is the state's most important resource. He gets very angry when mining companies and others are not taking care of it. The problem he has with this bill is that mining is an important industry in Montana. Mining interests are so upset about the bill that they are going to oppose HB 448, REP. REAM's advisory bill, the purpose of which was to keep up with these sorts of problems. That bothers him too. The bottom line is he will vote against the bill. He is very reluctant. He hopes mining companies start to get together with folks on the other side of the issue to come up with some compromise bills to protect water.

REP. GILBERT said the problem with this HB 889 and HB 956 is they go too far too fast. The amendments may have helped. If the Legislature wants to run mining out of the state, then it should pass this kind of legislation. If the intent is to work with mining companies, then reasonable steps should be taken and monitored for their effects. These bills don't do that. He will vote against it.

Vote: HB 889 DO PASS AS AMENDED. Motion carried 10-8. EXHIBIT 14

#### EXECUTIVE ACTION ON HB 956

CHAIRMAN RANEY asked if the amendments to HB 956 differ from amendments to HB 889.

Motion: REP. O'KEEFE MOVED HB 956 DO PASS.

Motion: REP. O'KEEFE moved the amendments to HB 956.

Discussion: REP. O'KEEFE said Concept Amendment C, Concept Amendment F and Concept Amendment L of HB 889 are not applicable to HB 956. All others are applicable. Unless there is objection, he moved them as a group.

CHAIRMAN RANEY said the amendments are moved.

Vote: Motion to amend HB 956 carried unanimously.

Motion: REP. O'KEEFE MOVED HB 956 DO PASS AS AMENDED.

Discussion: REP. GILBERT said he had the same opinion on HB 956 as HB 889. CHAIRMAN RANEY asked REP. FAGG if he had the same opinion too. REP. FAGG indicated yes.

Vote: HB 956 DO PASS AS AMENDED. Motion carried 10-8. EXHIBIT 15

#### EXECUTIVE ACTION ON SB 99

Discussion: CHAIRMAN RANEY asked REP. COHEN to explain the relationship between SB 99 and SB 189.

REP. COHEN said the two bills are part of a package from EQC. SB 99 gives private contractors an opportunity to provide services to municipalities, refuse disposal districts or joint refuse disposal districts. SB 189 creates joint refuse disposal districts.

SB 189 will create either countywide, multi-county or multi-jurisdictional monopolies in which the private sector has no opportunity to bid to provide these services. The jurisdiction can tax all property owners within its boundaries, regardless of whether they use the service. This bill allows a board of directors to raise money, and go into bonded indebtedness without a vote of the people or any real oversight.

SB 99 provided a balance so that the private sector would be able to bid to provide the services, but there is no chance of that by the way SB 99 was amended. If SB 99 could be returned to the way the EQC put it out, it would be a good bill and he wouldn't be in vigorous opposition to SB 189.

Motion: REP. GILBERT MOVED SB 99 BE CONCURRED IN.

Motion: REP. GILBERT moved to amend SB 99 to return it to its original form.

Discussion: REP. GILBERT said the body of the Senate amendments are on Page 3, Lines 3-9. He also wanted to make any other necessary changes to return the bill to its original form. He reviewed the bill, noting that private industry providers do not receive solid preference. If they do not live up to their contract, it can be canceled.

REP. TOOLE said the government is better situated to do the work, but it has always been done by the private sector. There is room in the state to have both. When it is possible to have both, it makes sense for private owners to have preference.

REP. REAM asked what the amendment was about. REP. GILBERT said his amendment was to strike all Senate amendments and return the bill to its original form.

REP. DOLEZAL said he understands that part of the amendment will insert struck language. The other part was on Page 3, Line 10. He asked if the subsection was added in after the language was struck or if the committee would be deleting that language also. REP. GILBERT said he believes that language is fine.

CHAIRMAN RANEY said he understands REP. DOLEZAL's question. REP. GILBERT wants to leave the language inserted by the Senate and put back in language that the Senate struck. That is the motion.

Vote: Motion to amend SB 99 back to its original form carried 16-2, with REPS. O'KEEFE and BARNHART voting no.

Motion/Vote: REP. GILBERT MOVED SB 99 BE CONCURRED IN AS AMENDED. Motion carried 17-1, with REP. BARNHART voting no.

EXECUTIVE ACTION ON SB 189

Motion: REP. GILBERT MOVED SB 189 BE CONCURRED IN.

Discussion: REP. COHEN said a couple of places in the bill change the present requirement for refuse disposal districts to give notice from 30 days to 15 days. He suggested the notice be 60 days, given the possibility for multi-county and multi-jurisdictional districts. These are fees being placed on people. There should be an opportunity for public input.

Motion: REP. COHEN moved to amend SB 189 to increase the required notice from 15 days to 60 days.

Discussion: REP. COHEN said that if his motion fails, he will move to restore the language to 30 days.

REP. GILBERT said an attorney from Cut Bank explained why the 15 days is really more like 60 days. Mr. Sihler said the time requirement conflicts in several places in the statute. Some say 15 days, some say 30. The changes were to make it consistent at 15 days. He isn't aware of anything that is affected by changing the time frame. The objective of the amendments was to make the time frame consistent in different statutes.

Vote: Motion to amend SB 189 to increase notice from 15 days to 60 days passed unanimously.

Discussion: REP. O'KEEFE said the amendment to Page 8, Line 7, makes a lot of sense. The term insufficient doesn't have any meaning.

Motion/Vote: REP. O'KEEFE moved to amend SB 189 per the amendment to Page 8, Line 7, to delete the word "insufficient" and replace it with the words "have no factual or legal basis." Motion carried unanimously.

Motion: CHAIRMAN RANEY moved to amend SB 189. EXHIBIT 16

Discussion: CHAIRMAN RANEY asked Mr. Sihler to explain the amendment. Mr. Sihler said SB 189 conflicts with HB 296. SB 189 extends the allowable time period for local governments to contract with the private sector from five to 10 years for solid waste management only. HB 296, which has passed the House and Senate committee, extends the 10 years to all contracts. This coordination instruction amendment would void the conflicting requirement in SB 189.



Vote: Motion to amend SB 189 carried unanimously.

REP. COHEN referred to Section 24 on Page 16. He said he is concerned about the ability of districts to issue bonds and create a financial obligation without anything but board approval. There should be language requiring a vote of the people to allow them to do this.

REP. O'KEEFE said he understands the problem. He asked what could be done with the garbage if a landfill is needed and voters won't approve it. REP. COHEN said other options are to establish a transfer site or a recycling program to reduce the volume of refuse and ship it out to someone who wants to take it, or to go back to the existing landfill and mine out materials. Citizens want recycling, transfer and reduction.

REP. WANZENRIED asked if a motion was made. CHAIRMAN RANEY said no.

Motion: REP. COHEN moved to add whatever is needed to Section 24 to require a public vote for a bond issue.

Discussion: REP. WANZENRIED said Section 4 of the bill contains language that allows refuse districts to issue bonds without a vote when the district is fully contained in the county.

Motion: REP. COHEN amended his motion to amend both those sections.

Discussion: CHAIRMAN RANEY said it isn't known what that would involve. Amendments may be rather lengthy.

REP. GILBERT suggested the committee pass consideration on the bill to allow the researcher to determine how badly the concept amendments will screw up the bill. He understands everyone's concerns, but Subtitle D is coming down the road. If this bill is messed up so that multi-county refuse districts are killed because voters won't approve bonds, then REP. COHEN's idea won't work.

REP. DOLEZAL asked if landfills have to go through an extensive siting and permitting process before they can be established. CHAIRMAN RANEY said only if they exceed 200,000 tons. If they are under 200,000 tons, they only have to go through licensing, and that depends on whether HB 377 gets out of the Senate Natural Resources Committee.

REP. GILBERT said the committee shouldn't screw up a good idea. CHAIRMAN RANEY agreed to postpone action on the bill for the day.

#### EXECUTIVE ACTION ON SB 211

CHAIRMAN RANEY said it is late and the committee can postpone action. REP. GILBERT suggested the committee move on if there are

amendments to the bills. CHAIRMAN RANEY agreed. He said the committee will postpone action on any bill that has amendments. He then agreed to hear amendments to SB 211 because they were brief.

REP. COHEN said amendments to SB 211 would keep a \$25,000 penalty intact, adopt DHES amendments concerning a settlement of an action for civil penalties, delete the diversion of funds to the Environmental Quality Protection Fund and conform the bill to HB 414.

CHAIRMAN RANEY asked REP. WANZENRIED, who is carrying the bill, how he felt about the amendments. REP. WANZENRIED said he would like to talk to the sponsor about it.

CHAIRMAN RANEY said the committee will postpone action on SB 211. He also postponed action on SB 268 and SB 313.

EXECUTIVE ACTION ON SB 314

Motion/Vote: REP. FOSTER MOVED SB 314 BE CONCURRED IN. Motion passed unanimously.

EXECUTIVE ACTION ON SB 195

Motion: REP. O'KEEFE MOVED TO TAKE SB 195 OFF THE TABLE. Motion passed unanimously.

ADJOURNMENT

Adjournment: 7:20 p.m.

  
\_\_\_\_\_  
REP. BOB RANEY, Chairman

  
\_\_\_\_\_  
LISA FAIRMAN, Secretary

BR/lf

**HOUSE OF REPRESENTATIVES**  
**NATURAL RESOURCES COMMITTEE**

**ROLL CALL**

**DATE** 3-20-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 14

Mr. Speaker: We, the committee on Natural Resources report that House Bill 778 (first reading copy -- white) do pass as amended .

Signed: Bob Raney  
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "OF"

Insert: "LEASED"

Following: "INCLUDES"

Insert: "GENERAL"

2. Title, lines 7 through 9.

Strike: "REQUIRING" on line 7 through "MET;" on line 9

3. Title, lines 10 and 11.

Strike: "OPEN" on line 10 through "EXCEPTIONS" on line 11

Insert: "ADOPT RULES TO AUTHORIZE AND GOVERN THE RECREATIONAL USE  
AND CLOSURE OF LEASED STATE LANDS"

4. Title, line 12.

Strike: "WILDLIFE CONSERVATION"

5. Title, line 13.

Following: "THE"

Insert: "GENERAL"

Following: "OF"

Insert: "LEASED"

6. Title, lines 16 and 17.

Strike: "INCREASING" on line 16 through "LICENSES;" on line 17

7. Title, line 17.

Following: "FOR"

Strike: "DISPOSITION"

Insert: "THE STATUTORY APPROPRIATION"

8. Title, line 18.

Following: "PENALTIES;"

Strike: "AND"

Insert: "PROVIDING COMPENSATION FOR DAMAGE TO A LESSEE'S  
IMPROVEMENTS, GROWING CROPS, AND LIVESTOCK; PROVIDING AN  
APPROPRIATION;"

9. Title, line 18.

Following: "SECTIONS"

Insert: "17-7-502,"

10. Title, line 19.

Following: "19-8-504,"

Insert: "77-1-101,"

11. Title, lines 20 and 21.

Following: "87-1-502,"

Insert: "87-1-504, AND"

Following: "87-1-601,"

Strike: remainder of line 20 through "87-2-204," on line 21

Following: "MCA" on line 21

Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

12. Page 1.

Following: line 23

Strike: the statement of intent in its entirety

Insert:

"A statement of intent is required for this bill because [section 13] requires the board of land commissioners to adopt rules to implement the provisions for general recreational use of leased state lands established by this bill. Consistent with the provisions of this bill, the legislature recognizes the public's right to general recreational use of state lands, and it is the intent of the legislature that public recreational use of state lands be accomplished to the fullest extent possible. It is acknowledged that certain leased state lands will merit closure to public recreational use due to certain considerations, including but not limited to the presence of growing crops and livestock and the proximity of dwellings and agricultural buildings. Nothing in this bill authorizes or purports to authorize trespass on private lands to reach state lands.

This bill requires the board to adopt rules governing the general recreational use of leased state lands. These rules must address the compensation for damage to improvements, criteria for closure, restrictions upon certain recreational activities, and, when requested by any surface lessee, provision for the recreational user to make a reasonable effort to provide prior notice of the type and extent of the recreational use

contemplated.

[Section 18] 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 leased state lands that are attributable to recreational access are controlled or eradicated. Examples of procedures that fulfill this intent include:

- (1) a departmental weed control program;
- (2) payments for weed control activities; and
- (3) payments to county weed boards.

It is the intent of the legislature that the board evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise through the course of rulemaking and implementation, and report its findings and recommendations to the 53rd legislature."

13. Page 2.

Following: line 18

Strike: everything after the enacting clause

Insert: "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 77-1-701, 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, waterskiing, horseback riding, winter sports, viewing or enjoying historical or scenic sites, and 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 laws provided in Title 23, chapter 2, part 3.

(7) "Legally accessible state lands" means state lands that can be accessed by public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the 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."

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

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.

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

~~(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 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 13].

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for 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 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 leased state lands for general recreational purposes for a period of not less than 24 months from the date of conviction.

(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, 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 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 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 that those persons who make recreational use of leased state lands for hunting and fishing, 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 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 -- duty of 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), [section 11], [section 15], and rules adopted under [section 13] on private and leased state 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) All Except as provided in subsection (6), 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 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) All Except as provided in subsection (6), 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 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) Money collected or received from fines or forfeited bonds for the violation of [section 11], [section 15], or rules adopted under [section 13] must be deposited as follows:

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

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

NEW SECTION. Section 11. License required for general recreational use of leased state lands -- penalty.

(1) A person 12 years of age or older shall obtain an annual license pursuant to [section 12] to use leased state lands for general recreational purposes.

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

(3) A violator of subsection (1) or (2) is 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.

NEW SECTION. Section 12. License fee. (1) Until March 1,

1993, the fee for a license for the general recreational use of leased state lands is \$5, and thereafter the amount of the fee must be determined by the board based upon the cost of administering the state lands lessee compensation account provided for in [section 16].

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

NEW SECTION. Section 13. Board to prescribe rules for general recreational use of leased state lands. (1) The board shall adopt rules authorizing and governing the general recreational use of leased state lands allowed under 77-1-203.

(2) Rules adopted under this section must address the circumstances under which the board may close leased state lands to general 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. Leased state lands may be closed by the board only after public notice and opportunity for public hearing, except when the department 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.

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

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

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

- (a) damage attributable to recreational use that diminishes the income-generating potential of leased 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 general 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 leased state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on leased state lands is restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

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

(8) For a 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 Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in [section 10(6)].

NEW SECTION. Section 14. Liability of state and 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 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 general recreational user, except that a lessee that observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper fire fighting authority.

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

(2) When property is posted in accordance with subsection (1) and adjacent private property is owned by the lessee of state lands, each recreational user must have obtained permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry without 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 or more than \$500, 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 a notice in accordance with 45-6-201.

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

(2) There must be deposited in the account:

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

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

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

(3) Money deposited in the account is statutorily appropriated, as provided in 17-7-502, and must be used by the department for the following purposes:

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

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

(4) A maximum of \$100,000 may be deposited into the account. Additional revenue must 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.

NEW SECTION. Section 17. 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 leased state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon 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 from the party causing the damage. Payments under this section must be made from the state lands lessee compensation account established by [section 16], and the liability of the department for damage payments is limited to the existing balance of the account. Claim applications are to be considered in the order they are received.

NEW SECTION. Section 18. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of leased state lands. The department may by rule establish a noxious weed management program that 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 must come from the state lands lessee compensation account pursuant to [section 16].

Section 19. 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:

(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 16].

(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 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 20. Appropriation. There is appropriated from the general fund to the land trusts \$20,000 for fiscal year 1992 and \$20,000 for fiscal year 1993. The purpose of the appropriation is to compensate the land trusts for general recreational use of state lands. The appropriation must 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.

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

NEW SECTION. Section 22. 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 23. Applicability. Upon passage and approval of [this act], the board of land commissioners may commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands and the department of fish, wildlife, and parks may commence proceedings and arrangements necessary to establish a license required under [section 11], to be effective March 1, 1992.

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

-END-

CLERICAL

HOUSE Bill No. 778

Date: 3/22/91

Time: 9:30



S / H

Standing Committee

(Chairman)

Raney



S / H Committee of the Whole

SPA  
(Legislative Council Staff)

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment #13 should read:

Insert:

(in section 2)

(1) "Legally ... permission."

delete quotes

(in section 8.)

(3) ... for hunting and fishing, have ...

show comma as added

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

HOUSE STANDING COMMITTEE REPORT

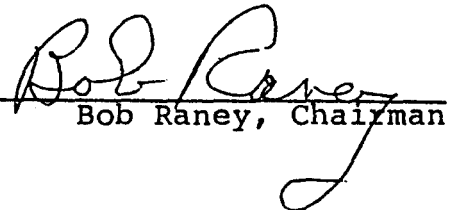
3/21/91  
2:10 PM  
p204

March 21, 1991

Page 1 of 4

Mr. Speaker: We, the committee on Natural Resources report that House Bill 731 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_

  
Bob Raney, Chairman

And, that such amendments read:

1. Title, lines 5, 7, and 12

Strike: "RIPARIAN"

Insert: "STREAMSIDE"

2. Page 1, line 16.

Page 3, lines 13 and 19.

Page 4, lines 11, 15, and 24.

Page 5, lines 1, 4, and 8.

Page 7, line 2.

Page 9, lines 9 and 20.

Page 10, line 21.

Page 12, line 18.

Strike: "riparian"

Insert: "streamside"

3. Page 1, line 21.

Strike: "protection"

Insert: "management"

4. Page 1, line 24 through page 3, line 11.

Strike: "It" on page 1, line 24 through "wildlife." on page 3,  
line 11

Insert:

"It is the intent of the legislature that the department of state lands adopt rules to implement the management standards provided for in [section 3] as enforceable standards for streamside management zones. These standards are to be coordinated with the objectives and guidelines contained in the existing system of voluntary best management practices, which will still guide forest practices outside of the streamside management zone. The department shall adopt rules governing the harvest of timber in streamside management zones to ensure the retention of merchantable and submerchantable timber necessary to

maintain the integrity of the streamside management zone. The department shall also adopt rules under which owners and operators may receive approval for alternative practices under the criteria and procedures provided in [section 3(2)].

It is the intent of the legislature that the department develop voluntary, nonenforceable guidelines concerning the selection and retention of trees and vegetation, including snags, for wildlife habitat within the streamside management zone.

It is the intent of the legislature that the department establish an interdisciplinary technical committee to assist the department in adopting rules, developing voluntary guidelines for the management of wildlife habitat, and monitoring the implementation of this bill. The members of the committee should have technical knowledge or expertise in water quality, wildlife management, or forest management and include representatives from the U.S. forest service; U.S. bureau of land management; the Montana departments of health and environmental sciences and fish, wildlife, and parks; conservation districts; the Montana state university extension forestry program; the Montana forestland conservation experiment station; the forest products industry; and the conservation community.

To the extent practical, the department should conduct onsite consultations under [section 4] in conjunction with consultations or inspections conducted pursuant to Title 76, chapter 13, parts 1 and 4. It is also the intent of the legislature that whenever department personnel in the field notice a probable water quality or 310 permit violation that they notify the appropriate authority.

It is the intent of the legislature that the department, with the assistance of the technical committee, evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise, and report its findings and recommendations to the environmental quality council."

5. Page 4, line 25.

Strike: "standards"

Insert: "guidelines"

Strike: "protection"

Insert: "management"

6. Page 6, lines 9 through 18.

Strike: subsection (7) in its entirety

Renumber: subsequent subsections

7. Page 6.

Following: line 22

Insert: "(8) "Streamside management zone" or "zone" means the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect

wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils."

8. Page 7, line 1.

Strike: "Purposes and standards"

Insert: "Standards"

9. Page 7, line 3 through page 8, line 12.

Strike: "forest" on page 7, line 3 through "protected." on page 8, line 12

Insert: "the following practices are prohibited in a streamside management zone:

- (a) broadcast burning;
- (b) the operation of wheeled or tracked vehicles except on established roads;
- (c) the forest practice of clearcutting;
- (d) the construction of roads except when necessary to cross a stream or wetland;
- (e) the handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants.
- (f) the side-casting of road material into a stream, wetland, or watercourse; and
- (g) the deposit of slash in streams or other water bodies."

10. Page 9, lines 2 through 4.

Strike: "that" on line 2 through "retained" on line 4

Insert: "for the sole purpose of harvesting additional trees"

11. Page 10, line 9.

Strike: "(a)"

12. Page 10, lines 11 through 16.

Strike: "is" on line 11 through "both" on line 16

Insert: "shall be subject to a civil penalty not to exceed \$1,000"

13. Page 10, lines 16 and 17.

Strike: the second "of" on line 16 through "is" on line 17

Insert: "constitutes"

14. Page 10, lines 18 through 22.

Strike: subsection (b) in its entirety

15. Page 12, line 14.  
Strike: "purposes and"

16. Page 12, line 20.  
Strike: "and"

17. Page 12, lines 21 and 22.  
Strike: "including" on line 21 through "7]" on line 22  
Insert: "governing the alternative practices provided for in  
[section 3]; and  
(4) regulating the harvest of timber in streamside  
management zones"


2:10  
3-21-91  
JDB

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 7

Mr. Speaker: We, the committee on Natural Resources report that House Bill 866 (first reading copy -- white) do pass as amended.

Signed:   
Bob Raney, Chairman

And, that such amendments read:

1. Title, lines 4 through 8.

Following: the second "ACT" on line 4

Strike: the remainder of line 4 through "CONSERVATION; AND" on line 8

Insert: "TRANSFERRING THE FUNCTIONS OF"

2. Title, line 10.

Following: "LANDS"

Strike: "; RENAMING"

Insert: "RELATED TO RECLAMATION OF MINED LANDS, COAL MINING IMPACTS, AND HARD-ROCK MINING IMPACTS TO"

3. Title, lines 11 through 14.

Following: "SCIENCES" on line 11

Strike: the remainder of line 11 through "AGENCIES" on line 14

4. Title, line 14.

Following: "SECTIONS"

Strike: "2-15-2107, 2-15-3302,"

5. Title, line 15.

Following: "17-5-202,"

Strike: "40-6-128, 75-10-103, 75-10-203,"

6. Title, lines 16 through 20.

Following: line 15

Strike: line 16 through "76-15-103," on line 20

7. Title, line 20.

Following: "80-8-110,"

Strike: "81-23-103"

8. Title, lines 23 through 25.

Following: "82-4-427," on line 23

Strike: the remainder of line 23 through "85-9-204," on line 25

9. Page 2, line 4.

Following: line 3

Strike: section 1 in its entirety

Renumber: subsequent sections

10. Page 5, lines 7 and 8.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

11. Page 5, line 9.

Following: "through"

Strike: "71"

Insert: "29"

12. Page 5, line 12.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

13. Page 5, line 13.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

14. Page 5, line 14.

Following: line 13

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

15. Page 5, line 15.

Strike: " sections 2-15-3302"

Insert: "2-15-2101"

Following: "and"

Strike: "2-15-3301"

Insert: "2-15-2104"

16. Page 5, line 24.

Following: line 23

Strike: "71"

Insert: "29"



17. Page 6, line 4.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

18. Page 6, line 5.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

19. Page 6, line 6.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

20. Page 6, line 7.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

21. Page 6, line 8.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

22. Page 6, line 9.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

23. Page 6, line 16.

Following: line 15

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

24. Page 6, lines 20 and 21.

Following: "of" on line 20

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

25. Page 6, lines 21 and 22.

Following: "of" on line 21

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

26. Page 6, line 25.

Following: "of"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

27. Page 7, line 1.  
Following: "through"  
Strike: "71"  
Insert: "29"

28. Page 7, line 5.  
Following: "through"  
Strike: "71"  
Insert: "29"

29. Page 7, line 7.  
Following: "of"  
Strike: "natural resources and environment"  
Insert: "health and environmental sciences"

30. Page 8, line 8.  
Following: "through"  
Strike: "71"  
Insert: "29"

31. Page 8, line 11.  
Following: "through"  
Strike: "71"  
Insert: "29"

32. Pages 7 through 13.  
Following: line 11 on page 7  
Strike: sections 3 through 6 in their entirety  
ReNUMBER: subsequent sections

33. Page 14, line 11.  
Following: "conservation"  
Strike: "environment"  
Insert: "conservation"

34. Pages 14 through 23.  
Following: line 22 on page 14  
Strike: sections 9 through 11 in their entirety  
ReNUMBER: subsequent sections

35. Page 24, line 14.  
Following: "reclamation,"  
Strike: "and"  
Insert: ", "

36. Page 24, line 18.

Following: ~~"conservation"~~

Insert: ", and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation"

37. Pages 24 through 67.

Following: line 21 on page 24

Strike: sections 13 through 35 in their entirety

Renumber: subsequent sections

38. Page 67, lines 20 and 21.

Following: ~~"sciences"~~ on line 20

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

39. Page 68, lines 13 and 14.

Following: ~~"lands"~~ on line 13

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

40. Pages 69 and 70.

Following: line 6 on page 69

Strike: section 37 in its entirety

Renumber: subsequent sections

41. Page 70, line 14.

Following: line 13

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

42. Page 70, lines 15 and 16.

Following: ~~"state"~~

Strike: "Title 2, chapter 15, part 33"

Insert: "2-15-2104"

43. Page 70, line 18.

Following: line 17

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

44. Page 70, line 19.

Following: ~~"32"~~

Strike: "33"

Insert: "21"

45. Page 78, line 4.

Following: line 3

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

46. Page 78, lines 5 and 6.

Following: "state" on line 5

Strike: "Title 2, chapter 15, part 33"

Insert: "2-15-2104"

47. Page 79, line 13.

Following: "lands"

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

48. Page 79, line 14.

Following: "32"

Strike: "33"

Insert: "21"

49. Page 85, line 21.

Following: line 20

Strike: "natural resources and environment"

Insert: "health and environmental sciences"

50. Pages 103 through 114.

Following: line 6 on page 103

Strike: sections 56 through 64 in their entirety

Re-number: subsequent sections

51. Page 115, line 8.

Following: "conservation"

Strike: "environment"

Insert: "conservation"

52. Page 115, line 10.

Following: "sciences;"

Insert: "the department of health and environmental sciences;"

53. Pages 115 and 116.

Following: line 13 on page 115

Strike: section 66 in its entirety

Re-number: subsequent sections

54. Page 116, line 6.

Following: "Section"

Strike: "55"

Insert: "23"

55. Page 116, line 8.  
Following: "section"  
Strike: "55"  
Insert: "23"

56. Page 116, line 21.  
Following: line 20  
Strike: "66"  
Insert: "24"

57. Page 117, line 2.  
Following: "Sections"  
Strike: "67"  
Insert: "25"  
Following: "through"  
Strike: "70"  
Insert: "28"

58. Page 117, line 4.  
Following: "through"  
Strike: "66"  
Insert: "24"

59. Page 117, line 5.  
Following: "section"  
Strike: "70"  
Insert: "28"

CLERICAL

HOUSE Bill No. 810

Date: 3/21/91

Time: 5:20

ERBA  
(Legislative Council Staff)

☒ NATURAL RESOURCES  
S / H Standing Committee

(Chairman) RANEY

☐ S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment #7 should read:

Strike: "81-23-103,"

^

Page 116, line 21.

concluded

conclude January 1, 1992

(spelling)

Page 117, line 2.

effective upon

(style)

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 8

Mr. Speaker: We, the committee on Natural Resources report that House Bill 889 (first reading copy -- white) do pass as amended.

Signed: Bob Raney  
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "RESTORATION"

Strike: "AND"

Insert: "OR"

2. Title, line 7.

Following: "AND"

Insert: "RESTORATION AND CONTINUANCE OF"

3. Title, line 16.

Following: "DATE AND"

Strike: "AN"

4. Title, line 17.

Strike: "DATE"

Insert: "DATES"

5. Statement of Intent, page 1, lines 23 and 24.

Following: "plans," on line 23

Strike: "interpret the definition of beneficial uses of water,"

Insert: "provide criteria for the establishment of boundaries of water protection areas,"

6. Statement of Intent, page 2, line 19.

Following: "restoration"

Strike: "and"

Insert: "or"

7. Statement of Intent, pages 2 and 3.

Following: line 20 on page 2

Strike: line 21 on page 2 through line 4 on page 3 in their entirety

8. Statement of Intent, page 3, line 9.

Following: "plan"

Insert: ", to ensure compliance with the plan following permit issuance, and to investigate complaints pursuant to 82-4-355(3)"

9. Statement of Intent, page 3, line 12.

Following: "consultants"

Strike: "and"

Insert: ", "

10. Statement of Intent, page 3, line 13.

Following: "analysis"

Insert: ", and permit compliance inspections and monitoring"

11. Page 6, lines 18 through 22.

Following: "85-2-102(2)" on line 18

Strike: remainder of line 18 through "habitat" on line 22

12. Page 12, lines 5 through 8.

Following: "area" on line 5

Strike: the remainder of lines 5 through "area" on line 8

Insert: "where the quality, quantity, and hydrologic balance of surface water and ground water may be adversely affected by contamination, diminution, or interruption proximately resulting from the proposed mining operations"

13. Page 13, lines 22 and 23.

Following: "bodies" on line 22

Insert: ", "

Following: "ownership"

Insert: ", "

Strike: remainder of line 22 through "but" on line 23

14. Page 14, line 1.

Following: page 13

Strike: "water right,"

Insert: "valid right to appropriate water"

15. Page 14, lines 1 through 3.

Following: "chapter 2" on line 1

Strike: remainder of line 1 through "uses" on line 3

16. Page 16, line 20.

Following: "plan"

Insert: ", to ensure compliance with the plan following issuance of a permit, and to investigate complaints pursuant to 82-4-355(3)"



17. Page 24, line 22.

Following: ","

Insert: "or"

18. Page 24, line 23 through page 25, line 2.

Following: line 22

Strike: subsection (f) in its entirety

Renumber: subsequent subsection

19. Page 26, line 10.

Following: "replacement"

Strike: "or"

Insert: "and"

20. Page 28, line 7.

Following: "restoration"

Strike: "and"

Insert: "or"

21. Page 29, line 10.

Following: "protection"

Insert: "of water resources"

Following: "restoration"

Strike: ", and"

Insert: "or"

22. Page 30, line 11.

Following: "restoration"

Insert: "or replacement"

23. Page 32, line 4.

Following: "restoration"

Strike: "and"

Insert: "or"

24. Page 32, line 15.

Following: "restoring"

Strike: "and"

Insert: "or"

25. Page 33, line 3.

Following: "restoration"

Strike: "and"

Insert: "or"

26. Page 33, line 8.

Following: "restoration"

Strike: "and"

Insert: "or"

27. Page 37, line 18.

Following: "users."

Strike: "(1)"

28. Pages 38 through 42.

Following: line 5 on page 38

Strike: the remainder of section 17 in its entirety

29. Page 43, line 11.

Following: "by"

Strike: "clear and convincing"

Insert: "a preponderance of"

30. Page 43, lines 13 through 22.

Following: "boundaries" on line 13

Strike: the remainder of line 13 through "use" on line 22

31. Page 44, line 18.

Following: "by"

Strike: "clear and convincing"

Insert: "a preponderance of"

32. Page 45, line 1.

Following: "82-4-354."

Strike: "Mandamus to compel enforcement"

Insert: "Enforcement -- administrative review -- mandamus"

33. Page 45, line 13.

Following: "receipt of"

Strike: "the"

Insert: "an"

Following: "affidavit"

Insert: "that alleges facts demonstrating probable cause that a violation of this part or a rule adopted under this part has occurred"

34. Page 45, line 17.

Following: "affidavit"

Insert: ", "

35. Page 45, line 18.

Following: "place"

Insert: "or stating that supplemental investigation is necessary,"

36. Page 45, line 19.

Following: "permittee."

Insert: "If department determines that supplemental investigation is necessary, the commissioner shall include in the written response a statement of the reasons and a specific timeframe, not to exceed 30 days unless the commissioner demonstrates good cause that more time is needed, for completion of the investigation and issuance of the commissioner's statement agreeing or disagreeing that a violation has taken place."

37. Page 45, line 24.

Following: line 23

Strike: "appeal the commissioner's determination to the board"

Insert: "request an administrative hearing"

Following: "or"

Insert: ", if the commissioner's decision is arbitrary, capricious, or an abuse of discretion,"

38. Page 46, lines 5 and 6.

Following: "board" on line 5

Strike: "or bring an action of mandamus"

39. Page 46, line 7.

Following: "occurred"

Insert: "or bring an action of mandamus"

40. Page 46, lines 10 and 11.

Following: "shall" on line 10

Strike: ": (a)"

41. Pages 46 and 47.

Following: line 14 on page 46

Strike: subsection (b) in its entirety

42. Page 47, line 15.

Following: line 14

Insert: "(5) The court, in issuing a final order in any action brought pursuant to subsection (3), may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.

(6) A person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, permit, or license issued under it. However, an action may not commence:

(a) prior to 60 days after the plaintiff has given notice in

writing to the department and to the alleged violator; or  
(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, permit, or license issued under it."

Renumber: subsequent subsections

43. Page 47, line 17.

Following: "under"

Strike: "this section."

Insert: "subsection 6."

(8) A person who is injured in his person or property through the violation by any permittee or licensee of a rule, order, permit, or license issued pursuant to this part may bring an action for damages, including reasonable attorney and expert witness fees, against the permittee or licensee only in the county in which the exploration or mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under Title 39, chapter 71."

Renumber: subsequent subsection

44. Page 48, line 3.

Following: "the"

Strike: "operator"

Insert: "permittee or licensee"

45. Page 48, line 5.

Following: "supply"

Insert: "proximately"

46. Page 48, line 7.

Strike: "(2)"

Insert: "(3)"

47. Page 48, lines 8 through 11.

Following: "suit" on line 8

Strike: the remainder of line 8 through "1991" on line 11

48. Page 48, line 12.

Following: line 11

Insert: "(2) Prima facie evidence of injury in a suit under this section is established by a showing that the ore body or overlying strata is an aquifer in that location and that the ore body or the overlying strata has been removed or disrupted. A prima facie showing shifts the burden to the defendant permittee or licensee to show that the plaintiff owner's water supply was not injured by the removal or disruption."

Renumber: subsequent subsection

49. Page 48, line 15.  
Following: "department"  
Insert: "shall"

50. Page 48, line 16.  
Following: "(i)"  
Strike: "shall"

51. Page 48, line 18.  
Following: line 17  
Insert: "the water protection plan and"  
Following: "site"  
Insert: "and within the water protection area"

52. Page 48, line 19.  
Following: "(ii)"  
Strike: "may"

53. Page 48, line 23.  
Following: "(iii)"  
Strike: "shall"  
Following: "issue"  
Insert: "within 90 days"

54. Page 48, line 25.  
Following: line 24  
Strike: "and"  
Insert: "or"

55. Page 49, lines 1 through 3  
Following: "(iv)"  
Strike: the remainder of line 1 through "operation," on line 3

56. Page 49, line 5.  
Following: "within"  
Strike: "a reasonable time"  
Insert: "45 days"

57. Page 49, line 6.  
Following: "duration"  
Strike: ". If"  
Insert: ";  
(v) if"

58. Page 49, line 7.  
Following: "replaced"  
Insert: ", pursuant to subsection (3) (a) (iv)"  
Following: ", "  
Strike: "the department shall"

59. Page 50, line 6.

Following: "rules"

Insert: "at an operation within the state"

60. Page 54, line 9.

Following: "to"

Strike: "proceedings begun"

Insert: ": (1) proposed operations for which an application for an operating permit is filed or for which an application for an amended or revised permit to expand operations is filed"

Following: "1991"

Insert: "; and

(2) operations for which an application for an operating permit was filed prior to [the effective date of this act] and for which the operating permit has not been issued or for which the operating permit has been issued and the operator has not commenced mining prior to October 1, 1992"

CLERICAL

HOUSE Bill No. 889

Date: 3/22/91

Time: 11:10

SBA

(Legislative Council Staff)



Natural Resources  
S / H Standing Committee

(Chairman)



S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment #36 should read:

Insert: " If the department . . . " grammar

Amendment #43 should read:

Strike: " this section " period not underlined

Insert: " subsection (6) (8) . . . " ^ ^

Amendment #59 should read:

Following: " rules " (show as added)

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 5

Mr. Speaker: We, the committee on Natural Resources report that House Bill 956 (first reading copy -- white) do pass as amended .

Signed: Bob Raney  
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "RESTORATION"

Strike: "AND"

Insert: "OR"

Following: "RESOURCES AND"

Insert: "RESTORATION AND CONTINUATION OF"

2. Statement of Intent, page 1, lines 23 and 24.

Following: "plans,"

Strike: "interpret the definition of beneficial uses of water,"

Insert: "provide criteria for the establishment of boundaries of water protection areas,"

3. Statement of Intent, page 2, line 20.

Following: "restoration"

Strike: "and"

Insert: "or"

4. Statement of Intent, page 3, lines 4 through 12.

Strike: lines 4 through 12 in their entirety

5. Statement of Intent, page 3, line 17.

Following: "plan"

Insert: "and to investigate complaints pursuant to 82-4-253(3)"

6. Page 8, lines 1 through 5.

Following: "85-2-102(2)" on line 1

Strike: the remainder of line 1 through "habitat" on line 5

7. Pages 14 and 15.

Following: "area" on page 14, line 23

Strike: the remainder of line 23 through "area" on page 15, line 2

Insert: "where the quality, quantity, and hydrologic balance of



surface water and ground water may be adversely affected by contamination, diminution, or interruption proximately resulting from the proposed mining operations"

8. Page 15, lines 11 and 12.

Following: "bodies" on line 11

Insert: ", "

Following: "ownership,"

Strike: the remainder of line 11 through "but" on line 12

9. Page 15, line 15.

Following: line 14

Strike: "water right"

Insert: "valid right to appropriate water"

10. Page 15, lines 15 through 17.

Following: "2" on line 15

Strike: the remainder of line 15 through "uses" on line 17

11. Page 29, line 17.

Following: "plan"

Insert: "and investigation of complaints pursuant to 82-4-253(3)"

12. Page 32, line 8.

Following: "board;"

Insert: "or"

13. Page 32, lines 9 through 13.

Strike: subsection (f) in its entirety

Renumber: subsequent subsection

14. Page 33, line 12.

Following: "replacement"

Strike: "or"

Insert: "and"

15. Page 60, line 7.

Following: "protection"

Insert: "of water resources"

16. Page 67, line 10.

Following: "permittees"

Strike: "and water users"

Following: "."

Strike: "(1)"

17. Pages 67 through 72.

Following: line 23 on page 67

Strike: the remainder of section 18 in its entirety

18. Page 73, lines 4 and 5.

Following: "by" on line 4

Strike: "clear and convincing"

Insert: "a preponderance of"

19. Page 73, lines 6 through 15.

Following: "boundaries" on line 6

Strike: the remainder of line 6 through "use" on line 15

20. Page 74, line 11.

Following: "by"

Strike: "clear and convincing"

Insert: "a preponderance of"

21. Page 80, line 25.

Following: "82-4-252."

Strike: "Mandamus."

Insert: "Enforcement -- administrative review -- mandamus."

22. Page 81, line 13.

Following: "receipt of"

Strike: "the"

Insert: "an"

Following: "affidavit"

Insert: "that alleges facts demonstrating probable cause that a violation of the act or rules has occurred"

23. Page 81, line 19.

Following: "place"

Insert: "or stating that supplemental investigation is necessary. If the department determines that supplemental investigation is necessary, the commissioner shall include in the written response a statement of the reasons and a specific timeframe, not to exceed 30 days, unless the commissioner demonstrates good cause that more time is needed for completion of the investigation and issuance of the commissioner's statement agreeing or disagreeing that a violation has taken place."

24. Pages 81 and 82.

Following: "may" on page 82, line 25.

Strike: the remainder of line 25 through "board" on page 82, line 1

Insert: "request an administrative hearing"

25. Page 82, line 1.

Following: "or"

Insert: ", if the commissioner's decision is arbitrary,

capricious, or an abuse of discretion,"

26. Page 82, lines 8 and 9.

Following: "board" on line 8

Strike: "or bring an action of mandamus"

27. Page 82, line 10.

Following: "occurred"

Insert: "or bring an action of mandamus"

28. Page 82, lines 13 and 14.

Following: "shall" on line 13

Strike: " : (a)"

29. Pages 82 and 83.

Following: line 18 on page 82

Strike: subsection (b) in its entirety

30. Page 83, line 19.

Following: line 18

Insert: "(5) A person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued under it. However, an action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under it."

Renumber: subsequent subsections

31. Page 84, line 12.

Following: "~~appropriate.~~"

Insert: "The court, in issuing a final order in any action brought pursuant to subsection (3), may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines an award is appropriate."

32. Page 85, line 16.

Following: "information"

Insert: ", "

Following: "including"

Insert: "the water protection plan and"

33. Page 85, line 17.

Following: "site"

Insert: "and in the water protection area"

34. Page 86, line 4.

Following: "by the"

Strike: "surface"

35. Page 86, lines 19 through 21.

Following: line 18

Strike: subsection (6) in its entirety

36. Page 87, line 15.

Following: "to"

Strike: "proceedings begun"

Insert: "proposed mining operations for which an application for an operating permit is filed or for which an application for a permit renewal or for an amended or revised permit to expand operations is filed"

CLERICAL

House Bill No. 956

Date: 3/22/91

Time: 7:45 a.m.

MER  
(Legislative Council Staff)

☒ Natural Resources  
S / H Standing Committee

(Chairman) Bob Raney  
O'Keefe Raney

☐ S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment # 8, "Following: "bodies" on..."  
"Following: "ownership"

Amendment # 24, "Following: "may" on page (82) 81,..."

Amendment # 23, "~~Following~~, insert,  
"taken place."

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 99 (third reading copy -- blue) be concurred in as amended .

Signed: Bob Raney  
Bob Raney, Chairman

Carried by: Rep. Gilbert

And, that such amendments read:

1. Title, line 8.

Following: "~~PROVIDING~~"

Insert: "A PREFERENCE FOR PRIVATELY OPERATED SOLID WASTE  
MANAGEMENT SYSTEMS; PROVIDING"

2. Title, line 9.

Strike: "~~FOR~~"

Insert: "TO ENABLE"

3. Title, line 10.

Strike: "~~PUBLIC~~" through "TO"

Following: "~~DETERMINE~~"

Strike: "~~ON~~"

Insert: "TO DETERMINE"

4. Page 1, line 25.

Strike: "AND"

5. Page 2, line 2.

Strike: "STANDARDS"

Insert: "required assumptions and calculations of costs and  
benefits"

6. Page 2, line 4.

Following: "and"

Insert: "; and

(3) justification of the decision of an applicant to use private or public management of the proposed solid waste management system"

7. Page 3, line 3.  
Following: "state."

Insert: "Local governments have primary responsibility for determining, under procedures developed by the department pursuant to 75-10-104, the extent that private industry is used in solid waste management systems and shall provide a preference to private industry if costs and services are substantially equal to alternate, publicly operated services."

8. Page 5, line 19.  
Strike: "AND"

9. Page 5, line 21.  
Following: "and"  
Insert: "; and"

(9) provide a procedure for local governments to determine if solid waste management systems should be operated by local government or private industry"

10. Page 6.  
Following: line 9  
Insert: "(b) the procedures for determining if a solid waste management system should be managed by a local government or private industry;"  
Renummer: subsequent subsections

3-21-91  
JDB

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report  
that Senate Bill 314 (third reading copy -- blue) be concurred  
in .

Signed: Bob Raney  
Bob Raney, Chairman

Carried by: Rep. Clark



1  
DATE 3-20-91  
HB 476

Amendments to House Bill No. 476  
First Reading Copy

Requested by Rep. Cohen  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 11, 1991

1. Title, line 5.  
Following: "TIMBER"  
Strike: "CUT"  
Insert: "HARVESTED"

2. Page 1, line 22.  
Page 5, line 12.  
Page 5, line 13.  
Page 5, line 14.  
Page 7, line 23.  
Page 8, line 25.  
Page 9, line 2.  
Strike: "9"  
Insert: "15"

3. Page 1  
Following: line 22  
Insert: "(1) 'Commercial purposes' means purposes other than for  
personal use by the person who is harvesting the timber."  
Renummer: subsequent subsections

4. Page 1, line 25 through page 2, line 10.  
Strike: subsections (2) and (3) in their entirety  
Insert: "(3) 'Harvest' means to remove standing or down timber,  
whether dead or alive, from the land where grown."  
Renummer: subsequent subsections

5. Page 2.  
Following: line 12  
Insert: "(5) 'Timber' means trees, dead or alive, or parts of  
trees, not including fruit and seeds."  
Renummer: subsequent subsection

6. Page 2, lines 13 and 15.  
Page 3, line 1.  
Strike: "cut"  
Insert: "harvested"

7. Page 2, line 17.  
Strike: "cut"  
Insert: "harvested for commercial purposes"

8. Page 2, lines 18 through 23.  
Following: the second "state"  
Strike: the remainder of lines 18 through 23

Insert: ", federal, and private lands. The tax attaches at the time the timber is harvested and is owed by the person who harvests the timber. However, if the person who harvests the timber is acting as an agent, employee, or contractor for another, the tax is owed by the person on whose behalf the timber is harvested."

9. Page 3, line 2 through page 5, line 7.

Strike: sections 3, 4, and 5 in their entirety

Insert:

**NEW SECTION. Section 3. Annual return and payment of tax.**

(1) Each person subject to the tax in [section 2] shall compute on forms prescribed by the department the tax on each calendar year's harvest of timber, except as provided in subsection (4). The return must indicate the volume of timber harvested and other information that the department may require. The completed return, with the tax payment, must be delivered to the department no later than March 1.

(2) The return must be signed by the person who owes the tax. If the person who owes the tax is a business entity other than an individual, then the return must be signed by an individual who has the authority to act on behalf of and bind the business entity.

(3) The department may grant a reasonable extension of time for filing returns and payment of taxes whenever in its judgment good cause exists.

(4) If the tax owed is less than \$10, the filing of the return and the payment of the tax are not required.

**NEW SECTION. Section 4. Retention of records.** Each person subject to the tax in [section 2] shall retain, for 5 years after the due date of the return, all pertinent and relevant records necessary for the calculation of the tax or bearing upon the matters required in the return and any other information that the department may require.

**NEW SECTION. Section 5. Estimated tax on failure to file -- audit.** (1) If a person subject to the tax in [section 2] fails to file a return as required under [section 3], the department may make an estimate of the tax due from any information in its possession.

(2) For the purposes of making an estimate of the timber harvested or to ascertain the correctness of a return, the department may examine any books, papers, records, or memoranda of any person subject to the tax and that is relevant to the matters required to be included in the return. The department may require the attendance of a person who it reasonably believes is subject to the tax, any officer or employee of the person, or any other person having knowledge of timber harvest activities. It may take testimony and require proof of matters asserted."

10. Page 5, lines 19 and 20.

Strike: "disclosed by the return filed pursuant to [section 4]"

Insert: "paid or when it disallows a claim for refund"

1  
DATE 3-20-91  
476

11. Page 5, lines 21 and 22.

Strike: "mail" on line 21 through "assessed" on line 22

Insert: "provide notice by mail"

12. Page 5, line 24.

Following: "tax"

Insert: "or disallowance of refund"

13. Page 5, lines 24 and 25.

Strike: "that sets forth the grounds upon which the protest is based"

14. Page 6, line 1.

Strike: "a"

Insert: "an oral"

Following: "hearing"

Insert: "or present additional evidence relating to his tax liability"

15. Page 6, line 2.

Following: "assessed"

Insert: "or the refund proposed to be disallowed"

16. Page 6, line 4.

Strike: "a"

Insert: "an oral"

17. Page 6, line 5.

Following: "assessment"

Insert: "or disallowed refund"

18. Page 6, lines 12 through 15.

Strike: "A" on line 12 through "[section 4]" on line 15

19. Page 7.

Following: line 21

Insert:

"NEW SECTION. Section 9. Interest and penalties. (1) If a taxpayer fails to pay the tax imposed under [section 2] on or before the due date of the return as provided in [section 3], there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not neglect.

(2) If any tax due under [section 3] is not paid when due, interest is added to the tax due at the rate of 1% a month or fraction of month, from the due date until paid.

NEW SECTION. Section 10. Credit for overpayment -- interest on overpayment. (1) If the department determines that the amount of taxes, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any taxes, penalty, or interest then due from the taxpayer and the balance must be refunded to the taxpayer or its successor through reorganization,

merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsections (2)(a) and (2)(b), interest is allowed on overpayments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest accrues at the same rate as is charged on delinquent taxes. Interest may not accrue when the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest is allowed:

(a) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than \$1.

(3) A payment not made incident to a discharge of an actual tax liability or one reasonably assumed to be imposed by this law may not be considered an overpayment for which interest is allowable.

NEW SECTION. Section 11. Warrant for distraint. If a tax imposed by [sections 1 through 15] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provide in Title 15, chapter 1, part 7.

NEW SECTION. Section 12. Closing agreements. (1) The director of revenue or his designee is authorized to enter into an agreement with any taxpayer relating to the liability of the taxpayer in respect to the taxes imposed by [section 1 through 15].

(2) An agreement is final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or in any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the closing agreement may not be annulled, modified, set aside, or disregarded.

NEW SECTION. Section 13. Certified copies of tax returns -- fee. (1) Certified copies of returns filed pursuant to [sections 1 through 15] may be furnished by the department to the taxpayer or his representative upon the payment of 50 cents a page.

(2) All money collected as provided in subsection (1) must be deposited in the general fund and must be used to reimburse the department for the costs involved in the preparation of the copies and certificates.

NEW SECTION. Section 14. Rulemaking authority. The

1  
3-20-91  
476  
department may adopt rules necessary to carry out the provisions of [sections 1 through 15]."

Renumber: subsequent sections

20. Page 7, line 25.

Strike: "10"

Insert: "16"

21. Page 8.

Following: line 23

Insert:

"NEW SECTION. Section 17. Coordination instruction. If Senate Bill No. 445 is passed and approved and if it includes a section adopting a uniform tax appeal procedure, then [section 7] is void and the provisions of Senate Bill No. 445 govern the appeal procedures."

Renumber: subsequent sections

22. Page 9, lines 3 and 6.

Strike: "10"

Insert: "16"

23. Page 9, line 10.

Strike: "forest products cut after June 30"

Insert: "timber harvested after December 31"

EXHIBIT 2  
DATE 3-20-91  
HB 476

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 476 NUMBER 1

MOTION: HB476 Do pass as amended.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE		✓
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE <i>did not vote</i>		
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	8	9

EXHIBIT 3  
DATE 3-20-91  
HB 401

Amendments to House Bill No. 401  
First Reading Copy

Requested by Rep. Cohen  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 18, 1991

1. Title, line 5.

Strike: "AUTHORIZING"

Insert: "PROVIDING THAT ALLOWABLE USE OF STATE LANDS INCLUDES  
GENERAL RECREATIONAL USE BY THE PUBLIC; REQUIRING"

2. Title, lines 6 through 10.

Strike: "IMPLEMENT" on line 6 through "AND" on line 10

Insert: "ADOPT RULES AUTHORIZING AND GOVERNING THE GENERAL  
RECREATIONAL USE OF STATE LANDS; REQUIRING PURCHASE AND  
POSSESSION OF A RECREATIONAL USE LICENSE BY PERSONS 12 YEARS  
OF AGE OR OLDER FOR THE GENERAL RECREATIONAL USE OF STATE  
LANDS; PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT  
BY THE WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND  
PARKS; PROVIDING PENALTIES; PROVIDING FOR THE STATUTORY  
APPROPRIATION OF LICENSE FEES AND PENALTIES; PROVIDING  
COMPENSATION FOR DAMAGE TO IMPROVEMENTS, GROWING CROPS, AND  
LIVESTOCK;"

3. Title, lines 10 and 11.

Strike: "17-3-1003" on line 10 through the remainder of the title

Insert: "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,  
MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

4. Page 1.

Following: line 13

Strike: the statement of intent in its entirety

Insert:

"A statement of intent is required for this bill because  
[section 13] 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 certain considerations, including  
but not limited to the presence of growing crops and livestock  
and the proximity of dwellings and agricultural buildings.  
Nothing in this bill authorizes or purports to authorize trespass  
on private lands to reach state lands.

This bill requires the board to adopt rules governing the  
actions of the recreational user of state lands. These rules  
must address protection of the resource value, compensation for  
damage to improvements, criteria for closure, restrictions upon

certain recreational activities, and, when requested by any surface lessee, provision for the recreational user to make a reasonable effort to provide prior notice of the type and extent of the recreational use contemplated.

[Section 18] 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 procedures that fulfill this intent include:

- (1) a departmental weed control program;
- (2) payments for weed control activities; and
- (3) payments to county weed boards.

It is the intent of the legislature that the board evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise through the course of rulemaking and implementation, and report its findings and recommendations to the 53rd legislature."

5. Page 3.

Following: line 5

Strike: everything after the enacting clause

Insert: "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 77-1-701, 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, waterskiing, horseback riding, winter sports, viewing or enjoying historical or scenic sites, and 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 laws provided in Title 23, chapter 2, part 3.

(7) "Legally accessible state lands" means state lands that can be accessed by public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the 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.

(2) It is consistent with the powers and duties of the board in subsection (1) that the people are entitled to general recreational use of state lands 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 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 13].

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for 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 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.

(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 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 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 that those persons who make recreational use of state lands, as defined in 77-1-101, for hunting and fishing, 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 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 -- duty of 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), [section 11], [section 15], and rules adopted under [section 13] on private and state 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) All Except as

provided in subsection (6), 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 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) All Except as provided in subsection (6), 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 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) Money collected or received from fines or forfeited bonds for the violation of [section 11], [section 15], or rules adopted under [section 13] must be deposited as follows:

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

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

**NEW SECTION. Section 11. 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 annual recreational use license pursuant to [section 12] to use state lands, as defined in 77-1-101, for general recreational purposes.

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

(3) A violator of subsection (1) or (2) is 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.

**NEW SECTION. Section 12. 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 1 year of 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 account pursuant to [section 16].

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

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

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

**NEW SECTION. Section 13. 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 to 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 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.

(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) cabinsite and homesite 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 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 general 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 is restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, 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 Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in [section 10(6)].

**NEW SECTION. Section 14. Liability of state and 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 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 general recreational user, except that a lessee that observes a fire caused by a general recreational user shall make reasonable

efforts to suppress the fire or report it to the proper fire fighting authority.

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

(2) When property is posted in accordance with subsection (1) and adjacent private property is owned by the lessee of state lands, each recreational user of state lands must have obtained permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry without 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 or more than \$500, 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 a notice in accordance with 45-6-201.

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

(2) There must be deposited in the account:

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

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

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

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

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

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

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

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

**NEW SECTION.** **Section 17. Compensation for damage to improvements, growing crops, or livestock.** A lessee may apply to the department for reimbursement of documented costs of repair to



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

NEW SECTION. **Section 21. 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 22. Applicability.** Upon passage and approval of [this act], the board of land commissioners may commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands and the department of fish, wildlife, and parks may commence proceedings and arrangements necessary to establish a recreational use license to be effective March 1, 1992.

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

-END-

or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant 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 from the party causing the damage. Payments under this section must be made from the state lands recreational use account established by [section 16], and the liability of the department for damage payments is limited to the existing balance of the account. Claim applications are to be considered in the order they are received.

**NEW SECTION. Section 18. Weed control management.** (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that 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 must come from the state lands recreational use account pursuant to [section 16].

**Section 19. 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:

(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 16].

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

Amendments to HB  
(Recreation Access Bill)

EXHIBIT 4  
DATE 3-20-91  
HB 401

1. Amend Draft Copy Page ~~3~~<sup>3</sup>, section ~~1~~<sup>1</sup> (6), line 2,

Following: "fishing"

Strike: "swimming, boating, rafting tubing, camping, picnicking, hiking, nature study, photography, bird watching, waterskiing,, horseback riding, winter sports, viewing or enjoying historical or scenic sites,"

2. Amend Draft Copy Page 15, section 12,

Following subsection: (3)

Insert: "(4) The board may establish fees for a recreational use license for activities not specifically listed in [Section 2 (6)] at an amount not to exceed \$10. The fee shall be based upon the recreational value of the use and the amount of administrative costs associated with the activity.

EXHIBIT 5  
DATE 3-20-91  
HB 401

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 401 NUMBER 1

MOTION: REP. GILBERT MADE A SUBSTITUTE MOTION TO AMEND THE  
COMPROMISE HB401 TO INSERT THE WORD "LEASED" AFTER THE  
WORD "STATE" ON LINE 4 OF SECTION 11 ON PAGE 8.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		✓
REP. BOB GILBERT	✓	
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM		✓
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER <i>declined to vote</i>		
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	9	8

DRAFT

6  
DATE 3-20-91

HB 778

Amendments to House Bill No. 778  
First Reading Copy

Requested by Rep. Cohen  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 19, 1991

1. Title, line 6.  
Following: "OF"  
Insert: "LEASED"  
Following: "INCLUDES"  
Insert: "GENERAL"
2. Title, lines 7 through 9.  
Strike: "REQUIRING" on line 7 through "MET;" on line 9
3. Title, lines 10 and 11.  
Strike: "OPEN" on line 10 through "EXCEPTIONS" on line 11  
Insert: "ADOPT RULES TO AUTHORIZE AND GOVERN THE RECREATIONAL USE  
AND CLOSURE OF LEASED STATE LANDS"
4. Title, line 12.  
Strike: "WILDLIFE CONSERVATION"
5. Title, line 13.  
Following: "THE"  
Insert: "GENERAL"  
Following: "OF"  
Insert: "LEASED"
6. Title, lines 16 and 17.  
Strike: "INCREASING" on line 16 through "LICENSES;" on line 17
7. Title, line 17.  
Following: "FOR"  
Strike: "DISPOSITION"  
Insert: "THE STATUTORY APPROPRIATION"
8. Title, line 18.  
Following: "PENALTIES;"  
Insert: "PROVIDING COMPENSATION FOR DAMAGE TO LESSEE'S  
IMPROVEMENTS, GROWING CROPS, AND LIVESTOCK;"
9. Title, line 18.  
Following: "SECTIONS"  
Insert: "17-7-502"
10. Title, line 19.  
Following: "19-8-504,"  
Insert: "77-1-101,"

11. Title, line 20.  
Following: "87-1-502,"  
Insert: "87-1-504, AND"  
Strike: REMAINDER OF LINE 20

12. Title, line 21.  
Strike: "87-2-204,"

13. Page 1.  
Following: line 23  
Strike: the statement of intent in its entirety  
Insert:

"A statement of intent is required for this bill because [section 13] 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, the legislature recognizes the public's right to general recreational use of state lands, and it is the intent of the legislature that public recreational use of state lands be accomplished to the fullest extent possible. It is acknowledged that certain leased state lands will merit closure from public recreational use due to certain considerations, including but not limited to the presence of growing crops and livestock and the proximity of dwellings and agricultural buildings. Nothing in this bill authorizes or purports to authorize trespass on private lands to reach state lands.

This bill requires the board to adopt rules governing the recreational use of leased state lands. These rules must address the compensation for damage to improvements, criteria for closure, restrictions upon certain recreational activities, and, when requested by any surface lessee, provision for the recreational user to make a reasonable effort to provide prior notice of the type and extent of the recreational use contemplated.

[Section 18] 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 leased state lands that are attributable to recreational access are controlled or eradicated. Examples of procedures that fulfill this intent include:

- (1) a departmental weed control program;
- (2) payments for weed control activities; and
- (3) payments to county weed boards.

It is the intent of the legislature that the board evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise through the course of rulemaking and implementation, and report its findings and recommendations to the 53rd legislature."

14. Page 2.  
Following: line 18  
Strike: everything after the enacting clause  
Insert: "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 77-1-701, 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, waterskiing, horseback riding, winter sports, viewing or enjoying historical or scenic sites, and 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 laws provided in Title 23, chapter 2, part 3.

(7) "Legally accessible state lands" means state lands that can be accessed by public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the 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."

(8) "Leased state lands" means state lands, as defined under 77-1-101, that have been leased for agricultural, grazing, timber, or other purposes.

**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.

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

~~(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 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 13].

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for 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 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 leased state lands for recreational purposes for a period of not less than 24 months from the date of conviction.

(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, 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 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 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 that those persons who make recreational use of leased state lands for hunting and fishing, 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 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 -- duty of 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), [section 11], [section 15], and rules adopted under [section 13] on private and leased state 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) All Except as provided in subsection (6), 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 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) All Except as provided in subsection (6), 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 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 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) Money collected or received from fines or forfeited bonds for the violation of [section 11], [section 15], or rules adopted under [section 13] must be deposited as follows:

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

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

**NEW SECTION. Section 11. License required for general recreational use of leased state lands -- penalty.**

(1) A person 12 years of age or older shall obtain an annual license pursuant to [section 12] to use leased state lands for general recreational purposes.

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

(3) A violator of subsection (1) or (2) is 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.

**NEW SECTION. Section 12. License fee.** (1) Until March 1, 1993, the fee for a license for the general recreational use of leased state lands is \$5;

(2) Thereafter, the amount of the fee must be determined by the board based upon the cost of administering the lessee compensation fund provided for in [section 16].

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish,

wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9.

**NEW SECTION. Section 13. Board to prescribe rules for recreational use of state lands.** (1) The board shall adopt rules authorizing and governing the recreational use of leased state lands allowed under 77-1-203.

(2) Rules adopted under this section must address the circumstances under which the board may close leased state lands to general 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. Leased state lands may be closed by the board only after public notice and opportunity for public hearing, except when the department 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.

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

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

(5) Under rules adopted by the board, state leased 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 leased 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 general 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 leased state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on leased state lands is restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a special use license. Commercial or concentrated

recreational use, as defined in 77-1-101, must be prohibited on leased state lands unless it occurs under the provisions of a 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 Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in [section 10(6)].

**NEW SECTION. Section 14. Liability of state and 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 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 general recreational user, except that a lessee that observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper fire fighting authority.

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

(2) When property is posted in accordance with subsection (1) and adjacent private property is owned by the lessee of state lands, each recreational user of state lands must have obtained permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry without 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 or more than \$500, 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 a notice in accordance with 45-6-201.

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

(2) There must be deposited in the account:

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

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

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

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

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

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

(4) A maximum of \$100,000 may be deposited into the account. Additional revenue must 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.

NEW SECTION. Section 17. 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. The application must include an affidavit by the applicant 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 from the party causing the damage. Payments under this section must be made from the state lands recreational use account established by [section 16], and the liability of the department for damage payments is limited to the existing balance of the account. Claim applications are to be considered in the order they are received.

NEW SECTION. Section 18. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of leased state lands. The department may by rule establish a noxious weed management program that 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 must come from the state lands lessee compensation account pursuant to [section 16].

Section 19. 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:

(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 16.

(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 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 20. Appropriation. There is appropriated from the state general fund to the land trusts \$20,000 for fiscal year 1992 and \$20,000 for fiscal year 1993. The purpose of the appropriation is to compensate the land trusts for general recreational use of state lands. The appropriation must 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.

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

**NEW SECTION.** Section 22. 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 23. Applicability. Upon passage and approval of [this act], the board of land commissioners may commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands and the department of fish, wildlife, and parks may commence proceedings and arrangements necessary to establish a recreational use license to be effective March 1, 1992.



DATE 3-20-91  
# 778

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

-END-

EXHIBIT 7  
DATE 3-20-91  
HB 778

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 778 NUMBER 1

MOTION: To amend HB 778

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT	✓	
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON	✓	
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER	✓	
REP. DAVID HOFFMAN		✓
REP. DICK KNOX <i>declined to vote</i>		
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	14	3

3-20-91

866

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

## ROLL CALL VOTE

DATE 3-20-91 BILL NO. 866 NUMBER 1MOTION: HR 866 DO PASS AS INTRODUCED

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		✓
REP. BOB GILBERT	✓	
REP. BEN COHEN		✓
REP. ORVAL ELLISON	✓	
REP. BOB REAM		✓
REP. TOM NELSON	✓	
REP. VIVIAN BROOKE		✓
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL		✓
REP. RUSSELL FAGG	✓	
REP. MIKE FOSTER	✓	
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX	✓	
REP. BRUCE MEASURE		✓
REP. JIM SOUTHWORTH		✓
REP. HOWARD TOOLE		✓
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN		✓
TOTAL	7	11

EX-101 9  
DATE 3-20-91  
HB 866

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 866 NUMBER 2

MOTION: HB 866 DO PASS AS AMENDED BY REP. FOSTER

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		✓
REP. BOB GILBERT	✓	
REP. BEN COHEN		✓
REP. ORVAL ELLISON	✓	
REP. BOB REAM	✓	
REP. TOM NELSON	✓	
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG	✓	
REP. MIKE FOSTER	✓	
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX	✓	
REP. BRUCE MEASURE <i>did not vote</i>		
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN		✓
TOTAL	13	4

EXHIBIT 9  
DATE 3-20-91  
HB 866

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 866 NUMBER 2

MOTION: HB 866 DO PASS AS AMENDED BY REP. FOSTER

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		✓
REP. BOB GILBERT	✓	
REP. BEN COHEN		✓
REP. ORVAL ELLISON	✓	
REP. BOB REAM	✓	
REP. TOM NELSON	✓	
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG	✓	
REP. MIKE FOSTER	✓	
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX	✓	
REP. BRUCE MEASURE <i>did not vote</i>		
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN		✓
TOTAL	13	4

**PROPOSED AMENDMENTS TO HB 889 & HB 956 CONCURRED  
WITH AND SPONSORED BY REPRESENTATIVE O'KEEFE  
March 19, 1991**

After the House Natural Resources hearing on HB 889 & 956, several amendments have been suggested by the sponsor, other members of the House Natural Resources Committee, proponents, and the Department of State Lands. Representative O'Keefe has worked to address several concerns raised in the hearing. This summary describes amendments that Representative O'Keefe has accepted. The following descriptions will follow the text of the grey bills from beginning to end as much as possible, although changes implementing the same concept are grouped together even though their implementing language may be on several different pages. The individual language amendment numbers are grouped into "concept" amendments that can be moved and voted on as one motion for both bills. The two exceptions to this are Concept Amendments C, F & L, which apply only to HB 889.

**Concept Amendment A:**

**Correcting Water Restoration and Replacement to Water Protection or Replacement (DSL).** [HB 889, title, pp. 2, 26, 28, 29, 30, 32, 33. HB 956, title, pp. 2, 33, 60.] DSL caught several "ands" that should have been "ors" that have been incorporated into both grey bills. The amendment numbers implementing these corrections for HB 889 are:

**1, 2, 6, 19 through 26.**

The amendment numbers implementing these corrections for HB 956 are:

**1, 3, 14, 15.**

**Concept Amendment B:**

**Clarifying "proceedings" to determine applicability dates (DSL).** [HB 889, p. 54, section 27; & HB 956, p. 87, Section 26)]. DSL asked that the term "proceedings" be clarified. It has been clarified in both bills to mean that an *application for an operating permit, or a permit expansion*, filed after October 1, 1991 would have to comply with the new provisions of this act. The amendment number for HB 889 implementing this provision is:

**60.**

The amendment number for HB 956 implementing this provision is:

36.

**Concept Amendment C:**

*proposed  
amendment*

**Applicability dates (Proponents).** [HB 889 only, title, lines 16 & 17; and p. 54, section 27.] The sponsor agreed to the suggestions of proponents to require hard rock mining operations that have not received a mine permit by ~~July~~ <sup>October</sup>, 1992, or those that have received a permit, but have not begun mining, to comply with the new requirements of this law. Hard rock miners are not required to renew their permits, and so would never have to comply with the new water protection requirements in HB 889 as long as they applied for their permits before October 1, 1991. This amendment partially addresses this problem by giving companies a deadline to begin mining, but would still allow companies who have started the permitting process before October 1, 1991 to be exempted from the new requirements of HB 889 if they begin mining before July 1, 1992. The amendment numbers implementing this provision in HB 889 are:

3, 4, & 60.

**Concept Amendment D:**

*proposed  
amendment*

**Clarifying that beneficial uses means only those beneficial uses allowed under current Montana water laws (Proponents).** [HB 889, p. 1, lines 23 & 24; p. 2, lines 21-25; p. 3 lines 1-4; p. 6, lines 18-21; p. 14, lines 1-3. HB 956, p. 1, lines 23 & 24; p. 3, lines 4-12; p. 8 lines 1-5; p. 15, lines 15-17.] The language in both bills defining beneficial uses of water resources raised concerns that the bills would expand the definition of beneficial uses beyond current Montana water law. That was not the intent, and these amendments tighten the language to clarify this. The amendment numbers implementing this provision for HB 889 are:

5 (attached also to Concept "E" below), 7, 11, 14 & 15.

The amendment numbers implementing this provision for HB 956 are:

2 (attached also to Concept "E" below), 4, 6, 9 & 10.

**Concept Amendment E:**

Redefining water protection area to comply with the federal Surface Mining Control & Reclamation Act. Giving the agency the rulemaking authority to set the boundaries of the water protection area, (DSL, Rep. Fagg). [HB 889, p. 1, lines 23-24; p. 12, lines 5-8; HB 956, p. 1, lines 23-24; p. 14, lines 23-25 & p. 15, lines 1-2.] The industry, DSL, and Representative Fagg suggested that the definition of the water protection area be changed in both bills. One argument was that the boundary was too inflexible and should be allowed to follow the hydrology of the area. This would mean that the water protection area could be either smaller or larger than the set boundaries in the original bill. The new language in both bills is modelled after the requirements of the federal Surface Mining Control and Reclamation Act, and gives DSL rulemaking authority to further define the criteria for setting water protection area boundaries. The amendment numbers implementing this provision for HB 889 are:

5 (attached to 5 in Concept "D" above), & 12.

The amendment numbers implementing this provision for HB 956 are:

2 (attached to 5 in Concept "D" above), & 7.

**Concept Amendment F:**

Funding (DSL, O'Keefe). [HB 889 only, p. 3, line 9 and line 13; p. 16, line 20.] DSL believed that the current language in HB 889 would give the agency rulemaking authority to charge fees only to review the proposed water protection plan during the permit application process. The sponsor has agreed to revise the language of HB 889 to allow the agency to charge fees for monitoring, inspections and investigations to ensure compliance with the water protection plan once it's in place. The amendment numbers implementing this provision for HB 889 are:

8, 9, 10 & 16.

**Concept Amendment G:**

Removing references to water resources outside state boundaries (Industry, O'Keefe). [HB 889, p. 15, lines 11-1. HB 956, p. lines 22-23.] Industry raised concerns about allowing water resources to be defined to include those water resources beyond



Montana's boundaries. Although the industry failed to say what they were specifically concerned about, the sponsor and proponents do not believe this to be an essential provision of the bill, and have agreed to take these references out to avoid any confusion. The amendment numbers implementing this provision for HB 889 are:

13.

The amendment numbers implementing this provision for HB 956 are:

8.

#### Concept Amendment H:

*Remove*  
*concern*  
**Remove self bonding as a financial assurance mechanism.** [HB 889, p. 24, lines 23-25; p. 25, lines 1-2. HB 956, lines 8-14.] DSL raised concerns about being able to enforce this financial assurance mechanism, so the sponsor agreed to remove it as an option. The amendment numbers implementing this provision for HB 889 are:

17 & 18.

The amendment numbers implementing this provision for HB 956 are:

12 & 13.

#### Concept Amendment I:

*Remove*  
*concern*  
**Remove burden of proof requirement for company to pay for temporary replacement of water resources degraded by mining before a determination is made that the mining caused the water loss, and strengthen current temporary water replacement language (Reps. Fagg, Toole O'Keefe).** [HB 889, remove from p. 36, line 6 through p. 42, line 12. HB 956, remove from p. 67, line 24, through p. 72, line 6.] The sponsor has agreed to eliminate the requirement in both bills that the company pay the expense of temporary replacement of water resources damaged by mining pending an agency or court decision as to whether the company caused the damages. Additional amendments to the bills would strengthen the temporary water replacement provisions of current law.

**Strengthening current water replacement provisions (Proponents, O'Keefe).** [HB 889, pp. 48-49, HB 956, p. 3, line 17; p. 85, lines 16-17, p. 86, lines 1-5 & lines 19-21.] The changes in HB 889 incorporate the stronger prima facie language from the current coal reclamation act into the Metal Mine Reclamation Act. This is a less severe legal test than the "clear and convincing" test that was included in the unamended bills, and it has been in place in state and federal coal reclamation laws for over a decade. It is limited, however, only to water damaged by mining carried out over aquifers. Added to both bills are provisions requiring companies to reimburse water users their costs of temporarily replacing their water, and for any economic damages caused by the loss of their water, after they prevail in court. This replaces the bills' language under temporary water replacement that had required the companies to pay immediately, and then be reimbursed by the water user if they're later found not to have caused the water damage. The amendment numbers implementing Concept Amendment "I" for HB 889 are:

**27, 28, 44 through 58.**

The amendment numbers implementing Concept Amendment "I" for HB 956 are:

**5, 11, 16, 17, 29 through 35.**

**Concept Amendment J:**

**Changing the "clear and convincing evidence" test to prevail in court to less stringent "preponderance of evidence" test (Rep. Fagg).** [HB 889, p. 43, line 11; p. 43, lines 13-22; p. 44, line 18. HB 956, p. 73, lines 4-5 & lines 6-15; p. 74, line 11.] These amendments, proposed by representative Fagg and accepted by the sponsor, would lessen the burden of proof test for the company to show why the water protection area boundary should not be expanded; and for the water user to show that water monitoring should be expanded beyond the water protection area before a decision is made to expand the water protection area boundary.

The amendment numbers implementing Concept Amendment "J" for HB 889 are:

**29, 30, 31.**

The amendment numbers implementing Concept Amendment "J" for HB 956 are:

18, 19, 20.

**Concept Amendment K:**

DSL administrative proposals to protect against abuses of citizen enforcement provisions (DSL, Proponents Sponsor). [HB 889, pp. 45-47, HB 956, pp. 82-84.] This language represents a compromise between the sponsor and DSL. It incorporates language to protect DSL from frivolous complaints, while retaining a set timeframe by which DSL must still make decisions in response to valid complaints. It reinserts the option of civil action which was inadvertently taken out in the bills. It restores both parties rights to recover litigation costs which was also taken out of the coal law. It places that same provision to recover court costs into the hard rock law from which it is currently absent. The amendment numbers implementing this provision for HB 889 are:

32 through 43.

The amendment numbers implementing this provision for HB 956 are:

21 through 28.

**Concept Amendment L:**

Removing authority under the hard rock act to deny a permit because of violations in other states. [HB 889 only, p. 50, line 6.] This provision was modelled after the federal surface mining act that has a nationwide applicator violator system that allows states to find out if a company has outstanding violation anywhere in the country, and to deny any new permits until they correct the violation. Because of the lack of uniformity in state hard rock laws, however, DSL had reservations about trying to initiate this requirement for the hard rock act. The sponsor has therefore agreed to the DSL amendment to limit this requirement only to those violations within Montana. The amendment number implementing this provision for HB 889 is:

59.

Amendments to House Bill No. 889  
First Reading Copy

EXHIBIT 11  
DATE 3-2-91  
HB 889

Requested by Rep. O'Keefe  
For the Committee on Natural Resources

Prepared by Gail Kuntz  
March 7, 1991

1. Title, line 6.

A Following: "RESTORATION"

Strike: "AND"

Insert: "OR"

2. Title, line 7.

A Following: "AND"

Insert: "RESTORATION AND CONTINUANCE OF"

3. Title, line 16.

C Following: "DATE AND"

Strike: "AN"

4. Title, line 17.

C Strike: "DATE"

Insert: "DATES"

5. Statement of Intent, page 1, lines 23 and 24.

D Following: "plans," on line 23

Strike: ~~"interpret the definition of beneficial uses of water,"~~

E Insert: "provide criteria for the establishment of boundaries of water protection areas,"

6. Statement of Intent, page 2, line 19.

A Following: "restoration"

Strike: "and"

Insert: "or"

7. Statement of Intent, pages 2 and 3.

D Following: line 20 on page 2

Strike: line 21 on page 2 through line 4 on page 3 in their entirety

8. Statement of Intent, page 3, line 9.

F Following: "plan"

Insert: ", to ensure compliance with the plan following permit issuance, and to investigate complaints pursuant to 82-4-355(3)"

9. Statement of Intent, page 3, line 12.

F Following: "consultants"

Strike: "and"

Insert: ", "

F 10. Statement of Intent, page 3, line 13.

Following: "analysis"

Insert: ", and permit compliance inspections and monitoring"

11. Page 6, lines 18 through 22.

Following: "85-2-102(2)" on line 18

Strike: remainder of line 18 through "habitat" on line 22

12. Page 12, lines 5 through 8.

Following: "area" on line 5

Strike: the remainder of lines 5 through "area" on line 8

Insert: "where the quality, quantity, and hydrologic balance of surface water and ground water may be adversely affected by contamination, diminution, or interruption proximately resulting from the proposed mining operations"

13. Page 13, lines 22 and 23.

Following: "bodies" on line 22

Insert: ", "

Following: "ownership"

Insert: ", "

Strike: remainder of line 22 through "but" on line 23

14. Page 14, line 1.

Following: page 13

Strike: "water right,"

Insert: "valid right to appropriate water"

15. Page 14, lines 1 through 3.

Following: "chapter 2" on line 1

Strike: remainder of line 1 through "uses" on line 3

16. Page 16, line 20.

Following: "plan"

Insert: ", to ensure compliance with the plan following issuance of a permit, and to investigate complaints pursuant to 82-4-355(3)"

17. Page 24, line 22.

Following: " ; "

Insert: "or"

18. Page 24, line 23 through page 25, line 2.

Following: line 22

Strike: subsection (f) in its entirety

Renumber: subsequent subsection

19. Page 26, line 10.

Following: "replacement"

Strike: "or"

Insert: "and"

20. Page 28, line 7.

Following: "restoration"

Strike: "and"

Insert: "or"

A 21. Page 29, line 10.  
Following: "protection"  
Insert: "of water resources"  
Following: "restoration"  
Strike: "and"  
Insert: "or"

A 22. Page 30, line 11.  
Following: "restoration"  
Insert: "or replacement"

A 23. Page 32, line 4.  
Following: "restoration"  
Strike: "and"  
Insert: "or"

A 24. Page 32, line 15.  
Following: "restoring"  
Strike: "and"  
Insert: "or"

A 25. Page 33, line 3.  
Following: "restoration"  
Strike: "and"  
Insert: "or"

A 26. Page 33, line 8.  
Following: "restoration"  
Strike: "and"  
Insert: "or"

I 27. Page 37, line 18.  
Following: "users."  
Strike: "(1)"

I 28. Pages 38 through 42.  
Following: line 5 on page 38  
Strike: the remainder of section 17 in its entirety

J 29. Page 43, line 11.  
Following: "by"  
Strike: "clear and convincing"  
Insert: "a preponderance of"

J 30. Page 43, lines 13 through 22.  
Following: "boundaries" on line 13  
Strike: the remainder of line 13 through "use" on line 22

J 31. Page 44, line 18.  
Following: "by"  
Strike: "clear and convincing"  
Insert: "a preponderance of"

K 32. Page 45, line 1.

Following: "82-4-354."

Strike: "Mandamus to compel enforcement"

Insert: "Enforcement -- administrative review -- mandamus"

33. Page 45, line 13.

Following: "receipt of"

Strike: "the"

Insert: "an"

Following: "affidavit"

Insert: "that alleges facts demonstrating probable cause that a violation of this part or a rule adopted under this part has occurred"

34. Page 45, line 17.

Following: "affidavit"

Insert: ", "

35. Page 45, line 18.

Following: "place"

Insert: "or stating that supplemental investigation is necessary,"

36. Page 45, line 19.

Following: "permittee."

Insert: "If department determines that supplemental investigation is necessary, the commissioner shall include in the written response a statement of the reasons and a specific timeframe, not to exceed 30 days unless the commissioner demonstrates good cause that more time is needed, for completion of the investigation and issuance of the commissioner's statement agreeing or disagreeing that a violation has taken place."

37. Page 45, line 24.

Following: line 23

Strike: "appeal the commissioner's determination to the board"

Insert: "request an administrative hearing"

Following: "or"

Insert: ", if the commissioner's decision is arbitrary, capricious, or an abuse of discretion,"

38. Page 46, lines 5 and 6.

Following: "board" on line 5

Strike: "or bring an action of mandamus"

39. Page 46, line 7.

Following: "occurred"

Insert: "or bring an action of mandamus"

40. Page 46, lines 10 and 11.

Following: "shall" on line 10

Strike: ":(a)"

41. Pages 46 and 47.

Following: line 14 on page 46

Strike: subsection (b) in its entirety

42. Page 47, line 15.

Following: line 14

K Insert: "(5) The court, in issuing a final order in any action brought pursuant to subsection (3), may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.

(6) A person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, permit, or license issued under it. However, an action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, permit, or license issued under it."

Renumber: subsequent subsections

43. Page 47, line 17.

Following: "under"

K Strike: "this section."

Insert: "subsection 6.

(8) A person who is injured in his person or property through the violation by any permittee or licensee of a rule, order, permit, or license issued pursuant to this part may bring an action for damages, including reasonable attorney and expert witness fees, against the permittee or licensee only in the county in which the exploration or mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under Title 39, chapter 71."

Renumber: subsequent subsection

44. Page 48, line 3.

I Following: "the"

Strike: "operator"

Insert: "permittee or licensee"

45. Page 48, line 5.

I Following: "supply"

Insert: "proximately"

46. Page 48, line 7.

I Strike: "(2)"

Insert: "(3)"

47. Page 48, lines 8 through 11.

I Following: "suit" on line 8

Strike: the remainder of line 8 through "1991" on line 11



I 48. Page 48, line 12.

Following: line 11

Insert: "(2) Prima facie evidence of injury in a suit under this section is established by a showing that the ore body or overlying strata is an aquifer in that location and that the ore body or the overlying strata has been removed or disrupted. A prima facie showing shifts the burden to the defendant permittee or licensee to show that the plaintiff owner's water supply was not injured by the removal or disruption."

Renumber: subsequent subsection

I 49. Page 48, line 15.

Following: "department"

Insert: "shall"

I 50. Page 48, line 16.

Following: "(i)"

Strike: "shall"

I 51. Page 48, line 18.

Following: line 17

Insert: "the water protection plan and"

Following: "site"

Insert: "and within the water protection area"

I 52. Page 48, line 19.

Following: "(ii)"

Strike: "may"

I 53. Page 48, line 23.

Following: "(iii)"

Strike: "shall"

Following: "issue"

Insert: "within 90 days"

I 54. Page 48, line 25.

Following: line 24

Strike: "and"

Insert: "or"

I 55. Page 49, lines 1 through 3

Following: "(iv)"

Strike: the remainder of line 1 through "operation," on line 3

I 56. Page 49, line 5.

Following: "within"

Strike: "a reasonable time"

Insert: "45 days"

I 57. Page 49, line 6.

Following: "duration"

Strike: ". If"

Insert: ";

11  
3-20-91  
889

Strike: subsection (b) in its entirety

42. Page 47, line 15.

Following: line 14

K  
Insert: "(5) The court, in issuing a final order in any action brought pursuant to subsection (3), may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.

(6) A person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, permit, or license issued under it. However, an action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, permit, or license issued under it."

Renumber: subsequent subsections

43. Page 47, line 17.

Following: "under"

Strike: "this section."

Insert: "subsection 6."

(8) A person who is injured in his person or property through the violation by any permittee or licensee of a rule, order, permit, or license issued pursuant to this part may bring an action for damages, including reasonable attorney and expert witness fees, against the permittee or licensee only in the county in which the exploration or mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under Title 39, chapter 71."

Renumber: subsequent subsection

44. Page 48, line 3.

Following: "the"

Strike: "operator"

Insert: "permittee or licensee"

45. Page 48, line 5.

Following: "supply"

Insert: "proximately"

46. Page 48, line 7.

Strike: "(2)"

Insert: "(3)"

47. Page 48, lines 8 through 11.

Following: "suit" on line 8

Strike: the remainder of line 8 through "1991" on line 11

I 48. Page 48, line 12.

Following: line 11

Insert: "(2) Prima facie evidence of injury in a suit under this section is established by a showing that the ore body or overlying strata is an aquifer in that location and that the ore body or the overlying strata has been removed or disrupted. A prima facie showing shifts the burden to the defendant permittee or licensee to show that the plaintiff owner's water supply was not injured by the removal or disruption."

Renumber: subsequent subsection

I 49. Page 48, line 15.

Following: "department"

Insert: "shall"

I 50. Page 48, line 16.

Following: "(i)"

Strike: "shall"

I 51. Page 48, line 18.

Following: line 17

Insert: "the water protection plan and"

Following: "site"

Insert: "and within the water protection area"

I 52. Page 48, line 19.

Following: "(ii)"

Strike: "may"

I 53. Page 48, line 23.

Following: "(iii)"

Strike: "shall"

Following: "issue"

Insert: "within 90 days"

I 54. Page 48, line 25.

Following: line 24

Strike: "and"

Insert: "or"

I 55. Page 49, lines 1 through 3

Following: "(iv)"

Strike: the remainder of line 1 through "operation," on line 3

I 56. Page 49, line 5.

Following: "within"

Strike: "a reasonable time"

Insert: "45 days"

I 57. Page 49, line 6.

Following: "duration"

Strike: ". If"

Insert: ";

adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued under it. However, an action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under it."

Renumber: subsequent subsections

31. Page 84, line 12.

Following: ~~"appropriate."~~

I Insert: "The court, in issuing a final order in any action brought pursuant to subsection (3), may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines an award is appropriate."

32. Page 85, line 16.

I Following: "information"

Insert: ", "

Following: "including"

Insert: "the water protection plan and"

33. Page 85, line 17.

I Following: "site"

Insert: "and in the water protection area"

34. Page 86, line 4.

I Following: "by the"

Strike: "surface"

35. Page 86, lines 19 through 21.

I Following: line 18

Strike: subsection (6) in its entirety

36. Page 87, line 15.

Following: "to"

Strike: "proceedings begun"

2 Insert: "proposed mining operations for which an application for an operating permit is filed or for which an application for a permit renewal or for an amended or revised permit to expand operations is filed"

K 21. Page 80, line 25.  
Following: "82-4-252."  
Strike: "Mandamus."  
Insert: "Enforcement -- administrative review -- mandamus."

K 22. Page 81, line 13.  
Following: "receipt of"  
Strike: "the"  
Insert: "an"  
Following: "affidavit"  
Insert: "that alleges facts demonstrating probable cause that a violation of the act or rules has occurred"

K 23. Page 81, line 19.  
Following: "place"  
Insert: "or stating that supplemental investigation is necessary. If the department determines that supplemental investigation is necessary, the commissioner shall include in the written response a statement of the reasons and a specific timeframe, not to exceed 30 days, unless the commissioner demonstrates good cause that more time is needed for completion of the investigation and issuance of the commissioner's statement agreeing or disagreeing that a violation has taken place."

K 24. Pages 81 and 82.  
Following: "may" on page 81, line 25  
Strike: the remainder of line 25 through "board" on page 82, line 1  
Insert: "request an administrative hearing"

K 25. Page 82, line 1.  
Following: "or"  
Insert: ", if the commissioner's decision is arbitrary, capricious, or an abuse of discretion,"

K 26. Page 82, lines 8 and 9.  
Following: "board" on line 8  
Strike: "or bring an action of mandamus"

K 27. Page 82, line 10.  
Following: "occurred"  
Insert: "or bring an action of mandamus"

K 28. Page 82, lines 13 and 14.  
Following: "shall" on line 13  
Strike: "i (a)"

I 29. Pages 82 and 83.  
Following: line 18 on page 82  
Strike: subsection (b) in its entirety

I 30. Page 83, line 19.  
Following: line 18  
Insert: "(5) A person having an interest that is or may be

Amendments to House Bill No. 956  
First Reading Copy

Requested by Rep. O'Keefe  
For the Committee on Natural Resources

Prepared by Gail Kuntz  
March 14, 1991

1. Title, line 7.

Following: "RESTORATION"

Strike: "AND"

Insert: "OR"

Following: "RESOURCES AND"

Insert: "RESTORATION AND CONTINUATION OF"

2. Statement of Intent, page 1, lines 23 and 24.

Following: "plans,"

Strike: "interpret the definition of beneficial uses of water,"

Insert: "provide criteria for the establishment of boundaries of water protection areas,"

3. Statement of Intent, page 2, line 20.

Following: "restoration"

Strike: "and"

Insert: "or"

4. Statement of Intent, page 3, lines 4 through 12.

Strike: lines 4 through 12 in their entirety

5. Statement of Intent, page 3, line 17.

Following: "plan"

Insert: "and to investigate complaints pursuant to 82-4-253(3)"

6. Page 8, lines 1 through 5.

Following: "85-2-102(2)" on line 1

Strike: the remainder of line 1 through "habitat" on line 5

7. Pages 14 and 15.

Following: "area" on page 14, line 23

Strike: the remainder of line 23 through "area" on page 15, line 2

Insert: "where the quality, quantity, and hydrologic balance of surface water and ground water may be adversely affected by contamination, diminution, or interruption proximately resulting from the proposed mining operations"

8. Page 15, lines 11 and 12.

Following: "bodies" on line 11

Insert: ", "

Following: "ownership,"

Strike: the remainder of line 11 through "but" on line 12

9. Page 15, line 15.

- D Following: line 14  
Strike: "water right"  
Insert: "valid right to appropriate water"
- D 10. Page 15, lines 15 through 17.  
Following: "2" on line 15  
Strike: the remainder of line 15 through "uses" on line 17
- I 11. Page 29, line 17.  
Following: "plan"  
Insert: "and investigation of complaints pursuant to 82-4-253(3)"
- H 12. Page 32, line 8.  
Following: "board;"  
Insert: "or"
- H 13. Page 32, lines 9 through 13.  
Strike: subsection (f) in its entirety  
Renumber: subsequent subsection
- A 14. Page 33, line 12.  
Following: "replacement"  
Strike: "or"  
Insert: "and"
- A 15. Page 60, line 7.  
Following: "protection"  
Insert: "of water resources"
- I 16. Page 67, line 10.  
Following: "permittees"  
Strike: "and water users"  
Following: "."  
Strike: "(1)"
- I 17. Pages 67 through 72.  
Following: line 23 on page 67  
Strike: the remainder of section 18 in its entirety
- J 18. Page 73, lines 4 and 5.  
Following: "by" on line 4  
Strike: "clear and convincing"  
Insert: "a preponderance of"
- J 19. Page 73, lines 6 through 15.  
Following: "boundaries" on line 6  
Strike: the remainder of line 6 through "use" on line 15
- J 20. Page 74, line 11.  
Following: "by"  
Strike: "clear and convincing"  
Insert: "a preponderance of"

13  
3-20-91  
889

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 889 NUMBER 1

MOTION: REP. GILBERT MADE A SUBSTITUTE MOTION THAT  
HB 889 BE TABLED.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		✓
REP. BOB GILBERT	✓	
REP. BEN COHEN		✓
REP. ORVAL ELLISON	✓	
REP. BOB REAM		✓
REP. TOM NELSON	✓	
REP. VIVIAN BROOKE		✓
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL		✓
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER	✓	
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX	✓	
REP. BRUCE MEASURE		✓
REP. JIM SOUTHWORTH		✓
REP. HOWARD TOOLE		✓
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN		✓
TOTAL	6	12



EXHIBIT 14  
DATE 3-20-91  
# 889

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 889 NUMBER 2

MOTION: REP. O'KEEFE MOVED HB889 DO PASS AS AMENDED.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	10	8

12  
3-20-91  
956

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 956 NUMBER 1

MOTION: REP. O'KEEFE MOVED  
HB 956 DO PASS AS AMENDED

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	10	8

16  
DATE 3-20-91  
SB  
189

Amendments to Senate Bill No. 189  
Third Reading Copy

Requested by Rep. Raney  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 20, 1991

1. Page 19.  
Following: line 21  
Insert:

"NEW SECTION. Section 32. Coordination instruction. If House Bill No. 296 is passed and approved and if it includes a section that amends 7-5-2306, then [section 1 of this act], amending 7-5-2306, is void."  
Renumber: subsequent sections