

1 *House* BILL NO. *98*
 2 INTRODUCED BY *Amundson Lebeck Vincent*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ACCESS TO
 5 STATE LANDS AND THAT STATE LANDS SHALL BE OPEN TO THE
 6 GENERAL PUBLIC FOR RECREATIONAL USE EXCEPT IN CERTAIN
 7 CASES."
 8

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

10 Section 1. Purpose. The legislature finds that
 11 outdoor recreation is an important element in the way of
 12 life of many Montanans. It finds furthermore that outdoor
 13 recreation is an important element in the industry of
 14 tourism, a vital part of Montana's economy.

15 The impact of outdoor recreational activities is too
 16 great for privately owned lands to support. It is therefore
 17 necessary that the public lands of the state of Montana be
 18 utilized under the multiple-use concept for outdoor
 19 recreation.

20 Section 2. Declaration of right of access. In as much
 21 as a majority of state lands are not accessible by public
 22 road, the state of Montana affirms its right of access of
 23 way through necessity so that it may use its own lands.

24 Section 3. Lands available for recreation. All state
 25 lands consisting of six hundred forty (640) acres or more

1 contiguous lands suitable for or being used for grazing that
 2 have potential for use for outdoor recreation shall be made
 3 available for this use.

4 Section 4. Closure for safety. State lands used for
 5 outdoor recreation may be closed to that use for reasonable
 6 periods of time for reasons of public safety.

7 Section 5. Use restricted. The use of motorized
 8 vehicles by the public on the lands described in section 3
 9 of this act is restricted to the roads or trails which may
 10 exist on those lands.

11 The person leasing the land or holding a permit for use
 12 of the land may determine the roads or trails to be used.

13 Section 6. Liability. The lessee or permittee of any
 14 lands described above shall not be held liable by the state
 15 for malicious or accidental property damage or wildfire on
 16 those lands resulting from actions by the general public on
 17 those lands.

18 Section 7. Conditions for use. There shall be access
 19 to all state lands open for use by the public under the
 20 provisions of section 3 of this act according to the
 21 following:

22 (1) Where parcels of state land contact other public
 23 lands, state or federal and the common boundary is fenced,
 24 gates shall be provided for access to the state lands.

25 (2) Leases and permits for state land used for

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1 grazing, agriculture, or forestry shall include a provision
 2 under which the lessee or permittee grants a right-of-way
 3 for the duration of the lease or permit across his private
 4 or deeded land for public access to the state land. The
 5 right-of-way granted need be no more than a single vehicle
 6 width strip of land or trail with minimum deviation from the
 7 trail for the purpose of passing another vehicle inherent in
 8 the easement. It may be posted at the discretion of the
 9 landowner to indicate that it is a special state access
 10 trail only, and that no trespassing, hunting or shooting is
 11 allowed on or across the private land on either side of the
 12 right-of-way. The owner of the land shall have the right of
 13 designating the location of this trail.

14 (3) Where state lands consisting of six hundred forty
 15 (640) acres or more, are surrounded by private land not
 16 owned directly or indirectly by the holder of any state
 17 lease or permit, the state shall condemn through the right
 18 of eminent domain as access, land twenty (20) feet wide
 19 across the private land, preferably and if possible along a
 20 section line, from the nearest public road right-of-way, of
 21 state or federal land to which there is access to the
 22 isolated state land. This special state access right-of-way
 23 may be posted as in subsection (1) of this section.

24 (4) A person violating the posting provisions of this
 25 act by trespassing, hunting or shooting on or across the

1 private land on either side of a state access trail is
 2 guilty of a misdemeanor and upon conviction shall be fined
 3 not to exceed three hundred dollars (\$300) or imprisoned in
 4 the county jail for a period not to exceed thirty (30) days,
 5 or both.

6 (5) The department of state lands shall provide owners
 7 of private lands bordering state access trails referred to
 8 in this act with signs indicating the official posting at
 9 the private landowner's request.

10 Section 8. Severability. If a part of this act is
 11 invalid, all valid parts that are severable from the invalid
 12 part remain in effect. If a part of this act is invalid in
 13 one or more of its applications, the part remains in effect
 14 in all valid applications that are severable from the
 15 invalid applications.

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 98

INTRODUCED BY HUENNEKENS, LUEBECK, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ACCESS TO STATE LANDS AND THAT STATE LANDS SHALL BE OPEN TO THE GENERAL PUBLIC FOR RECREATIONAL USE EXCEPT IN CERTAIN CASES."

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

Section 1. Purpose. The legislature finds that outdoor recreation is an important element in the way of life of many Montanans. It finds furthermore that outdoor recreation is an important element in the industry of tourism, a vital part of Montana's economy.

The impact of outdoor recreational activities is too great for privately owned lands to support. It is therefore necessary that the public lands of the state of Montana be utilized under the multiple-use concept for outdoor recreation.

Section 2. Declaration of right of access. In as much as a majority of state lands are not accessible by public road, the state of Montana affirms its right of access of way through necessity so that it may use its own lands.

Section 3. Lands available for recreation. All state lands consisting of six hundred forty (640) ~~acres~~ or more

contiguous ~~lands~~ ACRES suitable for or being used for grazing that have potential for use for outdoor recreation shall, ~~be made available for this use.~~ AS THE OPPORTUNITY DEVELOPS, BE MADE AVAILABLE FOR RECREATIONAL USE UNDER THE MULTIPLE USE CONCEPT. THE DEPARTMENT OF FISH AND GAME SHALL DEVELOP AN INVENTORY OF SUCH LANDS WHICH SHALL BE KEPT CURRENT IN THE DEPARTMENT OF LANDS. AS EACH LAND UNIT ON SUCH REGISTER COMES UP FOR LEASE RENEGOTIATION, THE DEPARTMENT OF LANDS SHALL TAKE THE FOLLOWING ACTIONS:

(1) WHERE A PUBLIC ROAD EXISTS ALONG OR THROUGH THE LAND UNIT, OR WHERE ADJOINING PUBLIC LANDS TO WHICH THERE IS A PUBLIC ACCESS IN TURN PROVIDE ACCESS TO THE LAND UNIT BEING RENEGOTIATED, THE NEW LEASE SHALL CONTAIN A STATEMENT THAT THE LAND UNIT WILL BE AVAILABLE FOR PUBLIC RECREATIONAL USE UNDER RULES ESTABLISHED BY THE DEPARTMENT OF LANDS.

(2) WHERE NO DIRECT ACCESS TO THE LAND UNIT EXISTS AND THERE ARE EQUAL COMPETITIVE BIDS ON THE LAND, THE CONDITIONS OF THE BIDDING SHALL PRESCRIBE THAT WHICHEVER BIDDER AGREES TO PROVIDE A MEANS OF ACCESS TO ALLOW PUBLIC RECREATIONAL USE OF THE LAND SHALL BE GIVEN PRIORITY CONSIDERATION IN THE AWARDING OF THE LEASE.

(3) WHERE THERE IS NO DIRECT ACCESS TO THE LAND UNIT AND THERE IS NO COMPETITIVE BID, AND THE BIDDER REFUSES TO PROVIDE A MEANS OF ACCESS TO ALLOW PUBLIC RECREATIONAL USE OF THE LAND, A PENALTY OF ONE DOLLAR (\$1) PER A.U.M. SHALL

1 BE IMPOSED TO REIMBURSE THE STATE FOR THE RECREATIONAL VALUE
 2 ITS CITIZENS HAVE BEEN DEPRIVED OF.

3 SECTION 4. PROVISION OF ACCESS. ACCESS TO ALL STATE
 4 LANDS OPEN FOR RECREATIONAL USE BY THE PUBLIC UNDER THE
 5 PROVISIONS OF SECTION 3 SHALL BE IN ACCORDANCE WITH THE
 6 FOLLOWING:

7 (1) WHERE THE UNIT OF STATE LAND CONTACTS A PUBLIC
 8 ROAD OR OTHER PUBLIC LANDS, STATE OR FEDERAL, TO WHICH THERE
 9 IS PUBLIC ACCESS, AND THE BOUNDARY IS FENCED, GATES SHALL BE
 10 PROVIDED WHERE NEEDED TO THE STATE LAND.

11 (2) LEASES OR PERMITS FOR STATE LAND EXTENDED UNDER
 12 SECTION 3 (2) SHALL INCLUDE A PROVISION UNDER WHICH THE
 13 LESSEE OR PERMITTEE GRANTS AN EASEMENT FOR THE DURATION OF
 14 THE LEASE OR PERMIT ACROSS HIS PRIVATE OR DEEDED LAND FOR
 15 PUBLIC ACCESS TO THE STATE LAND. THE EASEMENT, CALLED A
 16 STATE ACCESS TRAIL, MAY BE AN EXISTING ROAD OR TRAIL. IT
 17 MAY BE A FIFTEEN (15) FOOT WIDE STRIP OF LAND ALONG OR AS
 18 NEAR TO A SECTION LINE AS POSSIBLE AND IN THIS CASE
 19 VEHICULAR USE IS NOT IMPLICIT IN THE EASEMENT BUT SHALL BE A
 20 MATTER OF TERRAIN SUITABILITY. THE STATE ACCESS TRAIL MAY
 21 BE POSTED AT THE DISCRETION OF THE LANDOWNER TO INDICATE
 22 THAT IT IS A SPECIAL STATE ACCESS TRAIL ONLY, AND THAT NO
 23 TRESPASSING, HUNTING OR SHOOTING IS ALLOWED ON OR ACROSS THE
 24 PRIVATE LAND ON EITHER SIDE OF THE RIGHT-OF-WAY. THE OWNER
 25 OF THE LAND SHALL HAVE THE RIGHT OF DESIGNATING THE LOCATION

1 OF THIS TRAIL.

2 (3) IN THE CASES DESCRIBED IN SECTION 3 (3) AND IN
 3 CASES WHERE STATE LANDS CONSISTING OF SIX HUNDRED FORTY
 4 (640) ACRES OR MORE ARE SURROUNDED BY PRIVATE LAND NOT OWNED
 5 DIRECTLY OR INDIRECTLY BY THE HOLDER OF ANY STATE LEASE OR
 6 PERMIT, THE STATE MAY CONDEMN THROUGH THE RIGHT OF EMINENT
 7 DOMAIN, AN ACCESS TRAIL FIFTEEN (15) FEET WIDE ACROSS THE
 8 PRIVATE LAND BY THE SHORTEST AND MOST DIRECT ROUTE FROM THE
 9 NEAREST PUBLIC ROAD OR STATE OR FEDERAL LAND TO WHICH THERE
 10 IS PUBLIC ACCESS. THIS SPECIAL STATE ACCESS TRAIL MAY BE
 11 POSTED AS IN SUBSECTION (2) OF THIS SECTION.

12 (4) A PERSON VIOLATING THE POSTING PROVISIONS OF THIS
 13 ACT BY TRESPASSING, HUNTING OR SHOOTING ON OR ACROSS A STATE
 14 ACCESS TRAIL WITHOUT PERMISSION OF THE LANDOWNER IS GUILTY
 15 OF A MISDEMEANOR AND UPON CONVICTION SHALL BE FINED NOT TO
 16 EXCEED THREE HUNDRED (\$300) OR IMPRISONED IN THE COUNTY JAIL
 17 FOR A PERIOD NOT TO EXCEED THIRTY (30) DAYS, OR BOTH.

18 (5) THE DEPARTMENT OF STATE LANDS SHALL PROVIDE OWNERS
 19 OF PRIVATE LANDS BORDERING STATE ACCESS TRAILS REFERRED TO
 20 IN THIS ACT WITH SIGNS INDICATING THE OFFICIAL POSTING AT
 21 THE PRIVATE LANDOWNER'S REQUEST.

22 Section 5. Closure for safety. State lands used for
 23 outdoor recreation may be closed to that use for reasonable
 24 periods of time for reasons of public safety.

25 Section 6. Use restricted. The use of motorized

1 vehicles by the public on the STATE lands described in
 2 section 3 ~~of this act is restricted to the roads or trails~~
 3 ~~which may exist on these lands.~~ IS RESTRICTED TO PASSAGE
 4 ACROSS THOSE LANDS NECESSARY TO REACH OTHER PUBLIC LANDS AND
 5 THEN ONLY ON EXISTING ROADS AND TRAILS.

6 The person leasing the land or holding a permit for use
 7 of the land may determine the roads or trails to be used.
 8 WHEN SOIL AND GROUND CONDITIONS HAVE BEEN RENDERED BY RAIN
 9 OR SNOW LIABLE TO SERIOUS DAMAGE THROUGH RUTTING AND
 10 SUBSEQUENT EROSION THE LEASE OR PERMIT HOLDER MAY APPLY TO
 11 THE DEPARTMENT OF LANDS FOR A TEMPORARY CLOSURE TO VEHICLES
 12 OF UP TO THREE (3) DAYS WHICH MAY BE RENEWED IF CONDITIONS
 13 REQUIRE.

14 Section 7. Liability. The lessee or permittee of any
 15 lands described above shall not be held liable by the state
 16 for malicious or accidental property damage or wildfire on
 17 those lands resulting from actions by the general public on
 18 those lands.

19 Section 8. ~~Conditions for use.~~ ~~There shall be access~~
 20 ~~to all state lands open for use by the public under the~~
 21 ~~provisions of section 3 of this act according to the~~
 22 ~~following:~~

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 24 ~~lands, state or federal and the common boundary is fenced,~~
 25 ~~gates shall be provided for access to the state lands.~~

1 ~~(2) Leases and permits for state land used for~~
 2 ~~grazing, agriculture, or forestry shall include a provision~~
 3 ~~under which the lessee or permittee grants a right of way~~
 4 ~~for the duration of the lease or permit across his private~~
 5 ~~or deeded land for public access to the state land. The~~
 6 ~~right of way granted need be no more than a single vehicle~~
 7 ~~width strip of land or trail with minimum deviation from the~~
 8 ~~trail for the purpose of passing another vehicle inherent in~~
 9 ~~the easement. It may be posted at the discretion of the~~
 10 ~~landowner to indicate that it is a special state access~~
 11 ~~trail only, and that no trespassing, hunting or shooting is~~
 12 ~~allowed on or across the private land on either side of the~~
 13 ~~right of way. The owner of the land shall have the right of~~
 14 ~~designating the location of this trail.~~

15 ~~(3) Where state lands consisting of six hundred forty~~
 16 ~~(640) acres or more are surrounded by private land not~~
 17 ~~owned directly or indirectly by the holder of any state~~
 18 ~~lease or permit, the state shall condemn through the right~~
 19 ~~of eminent domain as access land twenty (20) feet wide~~
 20 ~~across the private land, preferably and if possible along a~~
 21 ~~section line, from the nearest public road right of way, of~~
 22 ~~state or federal land to which there is access to the~~
 23 ~~isolated state land. This special state access right of way~~
 24 ~~may be posted as in subsection (1) of this section.~~

25 ~~(4) A person violating the posting provisions of this~~

1 ~~act-by-trespassing,-hunting-or-shooting--on--or--across--the~~
2 ~~private--land--on--either--side--of--a-state-access-trail-is~~
3 ~~guilty-of-a-misdemeanor-and-upon-conviction-shall--be--fined~~
4 ~~not--to-exceed-three-hundred-dollars-(\$300)-or-imprisoned-in~~
5 ~~the-county-jail-for-a-period-not-to-exceed-thirty-(30)-days,~~
6 ~~or-both.~~

7 ~~(5)--The-department-of-state-lands-shall-provide-owners~~
8 ~~of-private-lands-bordering-state-access-trails--referred--to~~
9 ~~in--this--act--with-signs-indicating-the-official-posting-at~~
10 ~~the-private-landowner's-request. IF THE LEASE OR PERMIT~~
11 ~~HOLDER SO DESIRES AND POSTS IN A PROMINENTLY VISIBLE~~
12 ~~LOCATION THE EXACT LOCATION OF HIS RESIDENCE, HE MAY REQUIRE~~
13 ~~THAT USERS OF STATE RECREATIONAL LAND OR STATE RECREATIONAL~~
14 ~~TRAILS NOTIFY HIM THAT THEY WILL BE UPON AND USING SUCH LAND~~
15 ~~AND TRAILS.~~

16 Section 9. Severability. If a part of this act is
17 invalid, all valid parts that are severable from the invalid
18 part remain in effect. If a part of this act is invalid in
19 one or more of its applications, the part remains in effect
20 in all valid applications that are severable from the
21 invalid applications.

-End-