

HOUSE BILL 352

Introduced by Molnar, et al.

1/25	Introduced
1/25	Referred to Natural Resources
1/25	Fiscal Note Requested
1/25	First Reading
1/29	Fiscal Note Received
2/01	Hearing
2/01	Fiscal Note Printed
2/08	Tabled in Committee

1 *House* BILL NO. *352*  
 2 INTRODUCED BY *BRAD MOLNAR* *Delegated Range*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
 5 STATE LANDS LEASING PROCESS AND LAWS APPLICABLE TO THE  
 6 RECREATIONAL USE OF STATE LANDS; GRANTING CERTAIN PRIVILEGES  
 7 AND PROHIBITING CERTAIN ACTIVITIES APPLICABLE TO  
 8 RECREATIONAL USE OF STATE LAND; ELIMINATING THE RECREATIONAL  
 9 USE LICENSE; CLARIFYING THE RULEMAKING AUTHORITY OF THE  
 10 BOARD OF LAND COMMISSIONERS AND THE COMMISSIONER OF STATE  
 11 LANDS WITH REGARD TO STATE LAND CLOSURE; ELIMINATING THE BID  
 12 PREFERENCE ON STATE LAND LEASES; REVISING BID ADVERTISING  
 13 PROVISIONS AND SETTING A BID PACKAGE COST; AMENDING SECTIONS  
 14 17-7-502, 77-1-101, 77-1-203, 77-1-804, 77-6-116, 77-6-202,  
 15 77-6-205, 77-6-208, 77-6-212, 87-1-504, AND 87-1-601, MCA;  
 16 AND REPEALING SECTIONS 77-1-801, 77-1-802, 77-1-806,  
 17 77-1-808, 77-1-809, AND 77-1-810, MCA."

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

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

21 "77-1-101. Definitions. Unless the context requires  
 22 otherwise and except for the definition of state land in  
 23 77-1-701 and [section 4], in this title, the following  
 24 definitions apply:

25 (1) "Board" means the board of land commissioners

1 provided for in Article X, section 4, of the constitution of  
 2 this state.

3 (2) ~~"Commercial-or-concentrated-recreational-use"~~ means  
 4 ~~any--recreational--use--that--is--organized,--developed,--or~~  
 5 ~~coordinated,--whether-for-profit-or-otherwise--Commercial-or~~  
 6 ~~concentrated--recreational--use--includes--all--outfitting~~  
 7 ~~activity---and---all--activities--not--included--within--the~~  
 8 ~~definition-of-general-recreational-user~~ "Casual recreational  
 9 use" means horseback riding, photography, wildlife and bird  
 10 observation, hiking, rock hunting, and other recreational  
 11 day uses. The term does not include camping except in  
 12 camping areas established by the board, joy riding, or other  
 13 uses that would result in damage to state land or the roads  
 14 and improvements on the state land. Casual recreational use  
 15 does not include the use of streams and rivers by the public  
 16 under the stream access laws provided in Title 23, chapter  
 17 2, part 3.

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

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

22 (5) ~~"General--recreational--use"~~ includes noncommercial  
 23 ~~and-nonconcentrated-hunting,--fishing,--and--other--activities~~  
 24 ~~determined--by--the--board--to-be-compatible-with-the-use-of~~  
 25 ~~state-lands,--General-recreational-use--does-not--include--the~~

1 use--of--streams--and--rivers-by-the-public-under-the-stream  
 2 access-laws--provided--in--Title--23,--chapter--2,--part--3:  
 3 "Established road" means any road or trail that has been  
 4 graded or constructed to carry vehicular traffic or upon  
 5 which repeated vehicular traffic has created well-defined  
 6 tracks.

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

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

1 that are the property of that institution; or lands acquired  
 2 through foreclosure of any investments purchased under the  
 3 provisions of 17-6-211.

4 (8) "Surface lessee" means a holder of a grazing lease,  
 5 agricultural lease, or other surface lease granted under  
 6 chapter 6 of this title."

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

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

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

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

25 (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~~ must, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) State lands, including those lands that are leased primarily for other purposes, are open to general hunting, fishing, and casual recreational use subject to legal access and to closures and restrictions pursuant to rules adopted under 77-1-804.

(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 hunting, fishing, and casual recreational purposes use without advance written permission of the department."

**Section 3.** Section 77-1-804, MCA, is amended to read:

"77-1-804. Rules for recreational use of state lands -- motor vehicle use and road closure -- penalty. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Such The action

by the board may be taken upon its own initiative or upon petition by ~~an--individual,--organization,--corporation,--or governmental--agency~~ the surface lessee. 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 in the area of the proposed closure, 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 that provide 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 certain reasons,

including but not limited to:

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

(b) 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 for hunting, fishing, and casual recreational use~~ is restricted to ~~federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use~~ established roads, unless the roads are closed

by direction of the board, on its own motion or upon request of the surface lessee, or under the emergency closure provisions of subsection (7)(b).

(7) (a) ~~The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-1017, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use. The board shall apply the following criteria when considering whether to close established roads or access to state land pursuant to subsection (6):~~

(i) whether motor vehicle use has caused or is causing unacceptable damage to the roadbed, excessive soil erosion, or significant impacts to vegetation, watershed, or other state land natural resource attributes;

(ii) whether motor vehicle use has caused or is causing considerable adverse effects on other authorized uses of or improvements on state land;

(iii) whether motor vehicle use creates a threat to public health or safety; and

(iv) whether circumstances exist that create a situation requiring immediate action to protect state land or the

1 public health and safety.

2 (b) (i) The commissioner is authorized to approve road  
3 closures on an emergency basis when the commissioner  
4 determines, using the criteria listed in subsection (7)(a),  
5 that closure of an established road is necessary and under  
6 the circumstances should not be delayed until the next  
7 meeting of the board.

8 (ii) The commissioner shall approve the road closure in  
9 writing, setting forth the reasons for approving the road  
10 closure, the specific road or road segment to which closure  
11 applies, and how and where the road closure must be posted.  
12 Written approval must be provided to the surface lessee, the  
13 county sheriff in the county where the road closure is  
14 located, members of the board, and other interested parties  
15 upon request.

16 (iii) An emergency road closure approved by the  
17 commissioner is effective only until the next meeting of the  
18 board, at which time the closure must either be continued or  
19 rescinded by action of the board.

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

1 as provided in 87-1-601(6)."

2 NEW SECTION. Section 4. Definition. As used in  
3 [sections 4 through 9], "state land" means land under the  
4 jurisdiction of the board.

5 NEW SECTION. Section 5. Public hunting and fishing  
6 privileges. The public has the privilege of hunting and  
7 fishing on legally accessible state land unless the land is  
8 closed by direction of the board, on its own motion or upon  
9 request of the surface lessee. This privilege does not  
10 extend to Class 3 lands used as cultivated cropland. This  
11 privilege is to fish in any river, stream, lake, or pond and  
12 to hunt, pursue, and kill game animals, game birds, and  
13 migratory game birds on state land under applicable state  
14 and federal hunting and fishing laws and regulations. This  
15 privilege is allowed only when it will not result in damage  
16 to the state land or roads and improvements on the state  
17 land.

18 NEW SECTION. Section 6. Casual recreational use. The  
19 public has the privilege of using legally accessible state  
20 land for casual recreational use unless the land is closed  
21 by direction of the board, on its own motion or upon request  
22 of the surface lessee. This privilege is allowed only when  
23 it will not result in damage to the state land or roads and  
24 improvements on the state land. Organized, developed, or  
25 commercial recreational use of state land is prohibited

1 unless it occurs under the provisions of a lease issued by  
2 the board for that specific use.

3 **NEW SECTION. Section 7. Fees and charges prohibited.** A  
4 person may not charge for or receive payment from persons  
5 engaged in hunting, fishing, or casual recreational use on  
6 state land.

7 **NEW SECTION. Section 8. Open fires prohibited.** A  
8 person may not build, maintain, attend, or use an open fire,  
9 campfire, or charcoal grill on state land while engaged in  
10 hunting, fishing, casual recreational use, or other  
11 activities authorized under [sections 4 through 9], except  
12 in camping areas established by the board.

13 **NEW SECTION. Section 9. Overnight camping prohibited.**  
14 A person may not camp overnight on state land while engaged  
15 in hunting, fishing, casual recreational use, or other  
16 activities authorized under [sections 4 through 9], except  
17 in camping areas established by the board.

18 **Section 10.** Section 77-6-116, MCA, is amended to read:

19 "77-6-116. Voluntary termination of lease to allow  
20 concurrence with federal conservation reserve program or  
21 because of dissatisfaction with recreational access  
22 provisions -- competitive bidding required. (1) A lessee of  
23 state land who wishes to enter the state land in the federal  
24 conservation reserve program may request voluntary  
25 termination of the remainder of the lease prior to scheduled

1 expiration in order to seek a renewal lease that will run  
2 concurrently with the federal program. The lessee shall  
3 apply for voluntary termination to the department on a form  
4 prescribed by the department. The form must specify:

5 (a) the name of the lessee and a designation of the  
6 leased land for which voluntary termination is sought;

7 (b) the scheduled termination date of the lease; and

8 (c) the term of eligibility of the land under the  
9 federal conservation reserve program.

10 (2) A lessee who is dissatisfied with provisions  
11 imposed on a lease granted prior to [the effective date of  
12 this act] to ensure public recreational access may, without  
13 penalty, request voluntary termination of the remainder of  
14 the lease prior to its scheduled expiration. The lessee  
15 shall apply for voluntary termination to the department on a  
16 form prescribed by the department. The form must specify:

17 (a) the name of the lessee and a designation of the  
18 leased land for which voluntary termination is sought; and

19 (b) the scheduled termination date of the lease.

20 (3) Upon receipt of a proper application, the  
21 department shall terminate the remainder of the lease. When  
22 a request for voluntary termination is granted, the  
23 department shall fulfill the notification requirements of  
24 77-6-204, and the lease is subject to the same competitive  
25 bidding process as renewal leases under 77-6-205. However,

~~the lessee requesting voluntary termination retains the preference right allowed under 77-6-205.~~

~~(3)(4)~~ If a lease renewal is granted pursuant to 77-6-205 to a lessee who has requested voluntary termination under this section subsection (1) of this section, the term of the renewal lease must coincide with the term of eligibility under the federal conservation reserve program."

**Section 11.** Section 77-6-202, MCA, is amended to read:

"77-6-202. Lease by competitive bidding. When the department receives an application to lease ~~an unleased tract~~, it shall advertise ~~for bids on the tract. In advertising for bids on parcels that have established public access, the department shall advertise the bid once a week for 4 weeks in a newspaper of general circulation in the local area where the bid is offered, if there is one, and in a newspaper of general circulation in the county or region where the bid is offered. The cost of the bid package is 300% of administrative bid costs or \$20, whichever is greater.~~ The tract ~~shall~~ must be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease ~~shall~~ must then be issued, at a rental to be determined by the board, to the first bidder willing to pay

the board determined rental whose name is selected through a random selection process from all bidders on the tract."

**Section 12.** Section 77-6-205, MCA, is amended to read:

"77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due from ~~him~~ the lessee to the state or who has voluntarily terminated a lease under 77-6-116(1) is entitled to have ~~his~~ the lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration or within 30 days following voluntary termination if ~~no~~ other applications for lease of the land have not been received 30 days prior to the expiration of ~~his~~ the lease or within 30 days following voluntary termination. The renewal must be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. ~~Except as provided in 77-6-212, if other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant.~~ Applications for lease of lands in this section must be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. ~~If the~~



1 lessee--exercises--the-preference-right-and-believes-the-bid  
 2 to-be-excessive,he-may-request-an--administrative--hearing.  
 3 The--request--must--contain--a--statement-of-reasons-why-the  
 4 lessee-believes-the-bid-not-to-be-in-the--state's--best  
 5 interest,--The--department--shall--grant--the--request-for-a  
 6 hearing--if--it--determines--that--the--statement--indicates  
 7 evidence-that-the--bid--may--not--be--in--the--state's--best  
 8 interests,--The--board--may,--after--the-hearing,--reduce-the  
 9 rental-from-the-amount-bid-if-the-lessee-shows-that-the--bid  
 10 is-not-in-the-best-interest-of-the-state-because-it-is-above  
 11 community--standards--for--a--lease-of-the-land,would-cause  
 12 damage--to--the--tract,--or--would--impair--its--long-term  
 13 productivity,--if--the--board--reduces-the-bid,it-shall-set  
 14 forth-its-findings-and-conclusions-in-writing-and-inform-the  
 15 lessee-and-competitive-bidder-of-the-reduction. It is the  
 16 duty of the board to secure the best lessees possible, so  
 17 that the state may receive the maximum return possible with  
 18 the least injury occurring to the land.

19 (3) A renewal lease may be canceled pursuant to  
 20 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by  
 21 the lessee that occurred during the previous lease term but  
 22 no more than 3 years prior to the date on which the notice  
 23 of cancellation required by 77-6-211 is issued. Cancellation  
 24 procedures instituted but not completed before renewal are  
 25 applicable to the renewal lease.

1 (4) A renewal lease may be voluntarily terminated  
 2 pursuant to 77-6-116."

3 **Section 13.** Section 77-6-208, MCA, is amended to read:

4 "77-6-208. Assignment of leases -- subleasing -- loss  
 5 of preference right. (1) Leases to state lands may be  
 6 assigned on blanks prescribed by the department, but no an  
 7 assignment is not binding on the state unless the assignment  
 8 is filed with the department, approved by it and payment  
 9 made of the assignment fee under 77-1-302.

10 (2) Preference ~~shall~~ must always be given to the  
 11 applicant who wants the land for ~~his~~ the applicant's own  
 12 individual use, so that the full advantage coming from the  
 13 leasing and use of the lands may reach those who actually  
 14 till the soil and so that they are not compelled to pay a  
 15 higher rental than that due the state.

16 (3) If a lessee subleases state lands on terms less  
 17 advantageous to the sublessee than the terms given by the  
 18 state, the department shall cancel the lease, subject to the  
 19 appeal procedure provided in 77-6-211. If a lessee subleases  
 20 state lands without filing a copy of the sublease with the  
 21 department and without receiving its approval, the  
 22 department may cancel the lease, subject to the appeal  
 23 procedure provided in 77-6-211.

24 ~~(4)--The-subleasing-of-state-land-may-result-in-loss--of~~  
 25 ~~the--preference--right--to--renew--the--lease-as-provided-in~~

77-6-212,

~~{5}--No-assignment-or-series-of-assignments-may-be-made  
to-avoid-the-loss-of-the-preference-right-under-77-6-212."~~

**Section 14.** Section 77-6-212, MCA, is amended to read:

~~"77-6-212. Loss--of--preference--right-----cancellation~~  
~~Cancellation of lease -- subleasing -- pasturing agreements.~~

~~(1) Except-as-provided-in-subsections-{3}-and-{4}, a--lessee  
of--state--land--classified-as-agricultural-or-grazing-land-may  
not-exercise-the-preference-right-provided-in-77-6-205-if-he  
subleases-the-land-for-more-than-2-years-in-the-term-of--the  
lease.~~

~~{2} The department shall cancel a lease of state  
agricultural or grazing land if the lessee subleases the  
land for more than 3 years during the term of the lease,  
unless the sublease is made between members of a family as  
provided in subsection {3}{2}.~~

~~{3}{2} A lessee under subsection (1) or--{2} may  
sublease the land for a period of not more than 5 years  
without losing the preference-right-or-the lease to state  
land if, during the term of the lease, the land is subleased  
only to a spouse, son, daughter, adopted child, or sibling  
of the lessee.~~

~~{4}{3} The lessee does not lose the preference-right-or  
right to lease because of subleasing as provided under this  
section if:~~

(a) the sublease is one-third or less acres of the  
lease; or

(b) the sublease is considered to be a pasturing  
agreement and is approved in writing by the department prior  
to the initiation of the agreement.

~~{5}{4}~~ For purposes of this section, a sublease may not  
be considered a pasturing agreement unless the lessee  
personally retains management and physical control of the  
land and livestock. "Management" means but is not limited  
to:

(a) providing all costs for improvements, land  
maintenance, and range renovation, if range renovation is  
approved by the department;

(b) making all decisions regarding rotation or other  
placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out  
dates of the livestock on state land; and

(d) making all decisions regarding proper range  
management, including placement of water, fencing, and salt.

~~{6}--A-lessee-of-state-land-classified-as--agricultural  
or--grazing-land-shall-lose-the-preference-right-provided-in  
77-6-205-upon-conviction-of-a--felony--offense--involving--a  
dangerous--drug,--as--defined--in--Title-50,--chapter-32,--and  
involving-the-planting,--propagating,--cultivating,--growing,  
harvesting,--manufacturing,--compounding,--converting,~~

1 producing,---processing,---preparing,---testing,---analyzing,  
 2 packaging,---repackaging,---storing,---or---concealing---of---a  
 3 dangerous-drug-on-any-portion-of-the-unit. When a state land  
 4 lease--is--held--by-an-association, company, or corporation,  
 5 conviction-of-a--member--of--the--association, company, or  
 6 corporation-under-this-subsection-does-not-result-in-loss-of  
 7 lease--preference--unless--it--appears--that--the--operator,  
 8 manager, or family-in-control-of-the-association, company,  
 9 or corporation--is--a--consenting--party--or--privy--to--the  
 10 violation-of-this-subsection."

11 **Section 15.** Section 17-7-502, MCA, is amended to read:

12 "17-7-502. Statutory appropriations -- definition --  
 13 requisites for validity. (1) A statutory appropriation is an  
 14 appropriation made by permanent law that authorizes spending  
 15 by a state agency without the need for a biennial  
 16 legislative appropriation or budget amendment.

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

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

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

25 (3) The following laws are the only laws containing

1 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
 2 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
 3 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
 4 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
 5 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
 6 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
 7 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
 8 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
 9 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
 10 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
 11 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
 12 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206;  
 13 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;  
 14 75-11-313; 76-12-123; ~~77-1-808~~; 80-2-103; 80-11-310;  
 15 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215;  
 16 90-6-331; 90-7-220; and 90-9-306.

17 (4) There is a statutory appropriation to pay the  
 18 principal, interest, premiums, and costs of issuing, paying,  
 19 and securing all bonds, notes, or other obligations, as due,  
 20 that have been authorized and issued pursuant to the laws of  
 21 Montana. Agencies that have entered into agreements  
 22 authorized by the laws of Montana to pay the state  
 23 treasurer, for deposit in accordance with 17-2-101 through  
 24 17-2-107, as determined by the state treasurer, an amount  
 25 sufficient to pay the principal and interest as due on the

bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

**Section 16.** Section 87-1-504, MCA, is amended to read:

**\*87-1-504. Protection of private property -- duty of wardens.** (1) It ~~shall--be~~ is the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, 75-10-212(2), ~~77-1-801, 77-1-806,~~ and rules adopted under 77-1-804 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 17.** Section 87-1-601, MCA, is amended to read:

**\*87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), 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 must be turned over

to the state treasurer and placed by--him in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) That money must 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 must be spent for those purposes by the department, subject to appropriation by the legislature.

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

(4) Except as provided in subsection (7), 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 must 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 must be paid to the county where the trial was held in any case in which 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 must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, 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 in this section 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 a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of ~~77-1-8017-77-1-8067-or~~ rules adopted under 77-1-804 must be deposited ~~as follows:~~

~~(a)--50% in an account for use by the department for the enforcement of 77-1-8017-77-1-8067-and rules adopted under 77-1-8047-and~~

~~(b)--50% in the state lands recreational use account established by 77-1-808 for use by the department of state lands in the management of state lands."~~

NEW SECTION. **Section 18.** Repealer. Sections 77-1-801, 77-1-802, 77-1-806, 77-1-808, 77-1-809, and 77-1-810, MCA, are repealed.

NEW SECTION. **Section 19.** Codification instruction. [Sections 4 through 9] are intended to be codified as an integral part of Title 77, chapter 1, part 8, and the provisions of Title 77, chapter 1, part 8, apply to [sections 4 through 9].

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

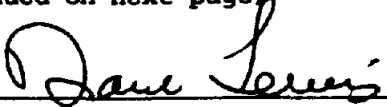
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0352, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** An act generally revising the state lands leasing process and laws applicable to the recreational use of state lands; granting certain privileges and prohibiting certain activities applicable to recreational use of state land; eliminating the recreational use license; clarifying the rulemaking authority of the Board of Land Commissioners and the Commissioner of State Lands with regard to state land closure; eliminating the bid preference on state land leases; revising bid advertising provisions and setting a bid package cost.

**ASSUMPTIONS:**

1. FY93 State Lands Recreational Use License sales will total 32,000 licenses. The Department of Fish, Wildlife and Parks (FWP) recorded sales as of November 30, 1992 were 28,450 licenses. FWP estimates total recorded sales for the license year should reach 32,000 licenses. Additionally, it was anticipated that license sales would continue to increase in future years with greater awareness of the program and license requirement.
2. Recreational usage of state lands would be anticipated to increase year-round without the license requirement and broadening of allowable uses. With increased usage it can be assumed that there will be more issues of contention between existing land uses for the Department of State Lands (DSL) to deal with. DSL will still be required to administer special recreational uses of state lands; review and process lease closure requests; and review and process road closure requests. The proposed requirement of all road closures requiring land board approval will require a more lengthy and costly process than the current road opening requests.
3. Annual revenues from 32,000 licenses x \$5.00/license = \$160,000 will be eliminated. This total revenue breaks down to \$96,000 in annual income to the school equalization account, \$48,000 to the State Lands Recreational Use Account for program administration, and \$16,000 in license agent commissions.
4. The proposed definition of "casual recreational use" includes some uses for which DSL is currently issuing licenses and charging fees. These revenues would be eliminated under the proposed legislation. It is estimated that 25 such licenses are issued annually with an average fee of \$50. Therefore, an additional \$1,250 in school equalization revenues would be eliminated.
5. DSL administrative expenses will need to be funded from the general fund to continue the program as it now exists.
6. DSL expenditures to administer the recreational use program will not change with the proposed legislation. DSL must still administer the recreational use program in compliance with the proposed statutes and administrative rules. DSL has not completed a full FY with the program in effect, so actual expenditures are not available at this time. Estimated expenditures based upon the first 6 months of FY93 amount to \$117,000 in personal services and \$7,500 in operating expenses. Assuming that these expenditures will be the same for the next 6 months, the total FY93 expenditures would be \$234,000 in personal services and \$15,000 in operating expenses. Under the proposed legislation the expenditures would be reduced by an estimated \$10,740 (current payment to FWP of \$.22/license (\$7,040) for administration of license sales; and (by \$3,700 for license printing).

(continued on next page)

  
DAVID LEWIS, BUDGET DIRECTOR  
Office of Budget and Program Planning

1-29-93  
DATE

BRAD MOLNAR, PRIMARY SPONSOR

DATE

Fiscal Note for HB0352, as introduced

**HB 352**

7. The proposed legislation will require amendments to the existing administrative recreational use rules. It is anticipated that these rule amendments will require public review and comment. This rulemaking process is estimated to cost \$5,000 based on other recent rule making efforts.
8. To date, the personal services expenses have been charged to other existing programs due to the start up nature of the program and the uncertainty of funds in the recreational use account. This delegation of personnel time to the recreational use program has resulted in lost revenues to other existing programs. Only operating expenses have been charged to the recreational use account. The intent is to begin charging 1.00 FTE (the recreational use program coordinator) to the account from now on. It was anticipated that, beginning in the 1995 biennium, the administration of the recreational use program would progress towards self-sufficiency using funds available in the state lands recreational use account. The expenditures are not shown below because they are statutorily appropriated.
9. Advertisement of all parcels with established public access for competitive bid leasing will require additional funding for advertising. Estimated advertising costs will be \$100 per lease advertised four times in the local newspaper and in the regional newspaper. There are estimated to be 650 leases renewed annually that would have established "legal access". Therefore, 650 leases x \$100/ad = \$65,000. Additionally, there is estimated to be an hour of staff time spent per advertisement. This equates to roughly an additional 600 hours x \$10/hr = \$6,000.
10. Staff and legal time spent on competitive bid hearings regarding the preference right would be eliminated. However, staff and legal time would substantially increase in the processing of improvement settlements when the lessee changes. The net result of these administrative impacts would be greater time spent due to the complexity of improvement settlements.
11. There is no way to project an increase or decrease in lease rentals to the school equalization account as a result of the removal of the preference right and advertisement of leases. Some sources indicate the existence of the preference right adds value to the leasehold interest and thereby increases the rental the lessee is willing to pay.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenue:</u>						
School Equalization Account	97,250	0	<97,250>	97,250	0	<97,250>
State Lands Rec. Use Account	48,000	0	<48,000>	48,000	0	<48,000>
License Agent's Commission	<u>16,000</u>	<u>0</u>	<u>&lt;16,000&gt;</u>	<u>16,000</u>	<u>0</u>	<u>&lt;16,000&gt;</u>
TOTAL	161,250	0	<161,250>	161,250	0	<161,250>

Additional Impact:

DSL administrative costs for administering the recreational use program and lease advertisement, must be funded from the general fund and/or other trust management program revenues. The latter would reduce funds from other agencies in order to maintain the recreational use program and accomplish the advertisement of leases.

(continued on next page)

**HB 352**

TECHNICAL NOTES:

1. Trust lands administered by the Department of State Lands are subject to the Montana Enabling Act which is Federal Law. Under Section 11 of that Act, no interest in trust land may be disposed of (sold, leased, or licensed) unless full market value is obtained. Court cases interpret this provision to require monetary compensation to the trust beneficiaries, which are the common school system, certain units of the university system, and certain other institutions. The proposed legislation repeals the \$5 license fee for recreational use of state land. To the extent that the grant of right to make recreational use of state land is a grant of an interest in state lands, the trusts must receive full market value for that use. The removal of the \$5 license fee therefore violates the Enabling Act.
2. The Montana Constitution, Article X, Section 11, provides that trust lands must be held and disposed of for the purposes for which they were granted and may not be disposed of (sold, leased, or licensed) at less than full market value. Thus, the defects discussed above are also constitutional defects.
3. Section 6 prohibits organized, developed or commercial recreational use that is not conducted pursuant to a lease. However 77-1-804(7) authorizes issuance of licenses for these uses. The term "or license" should therefore be added after lease on page 11, line 1.
4. The legislation does not include a definition of "established public access" as used in Section 11(3). Does this language fit with "established roads" as discussed in Section 1(5), or does it mean "legal access" as discussed in Section 1(6)?
5. The language used in Section 11 regarding bid costs is confusing. Specifically, what are considered to be the administrative bid costs? Currently, the application fee for competitive bidding is \$25, and is non-refundable.
6. An economic study on the full market value of surface uses of state lands is currently in progress and scheduled to be finalized by February 3, 1993. The results of this economic study may significantly change revenue projections outlined in this fiscal note.

**HB 352**



APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

**SB 352**  
BILL NO. **352**

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, DENTIST, AND HOSPITAL LIEN ACT TO INCLUDE PSYCHOLOGISTS, LICENSED SOCIAL WORKERS, AND LICENSED PROFESSIONAL COUNSELORS; AND AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA."

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

**Section 1.** Section 71-3-1111, MCA, is amended to read:

"71-3-1111. **Short title.** This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, and Hospital Lien Act"."

**Section 2.** Section 71-3-1112, MCA, is amended to read:

"71-3-1112. **Purpose.** The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, psychologists, licensed social workers, licensed professional counselors, and hospitals when a person receiving medical or other treatment:

- (1) is injured through the fault or neglect of another; or
- (2) is either insured or a beneficiary under insurance."

**Section 3.** Section 71-3-1114, MCA, is amended to read:

"71-3-1114. **Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, psychologists, licensed social workers, licensed professional counselors, and hospitals.**

(1) Whenever a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital renders services to a person injured through the fault or neglect of another, the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on:

(a) any claim or cause of action the injured person, his the person's estate, or successors may have for injury, disease, or death;

(b) any judgment the injured person, his the person's estate, or successors may obtain for injury, disease, or death; and

(c) all money paid in satisfaction of such the judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420."

**Section 4.** Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital claiming a lien shall serve written notice upon the person and upon ~~his~~ the insurer, if any, against whom liability for injury, disease, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing

dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

**Section 5.** Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital for the reasonable value of the services."

**Section 6.** Section 71-3-1118, MCA, is amended to read:

"71-3-1118. (Temporary) Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the

1 Occupational Disease Act of Montana.

2 (2) This part applies to all payments awarded for  
3 medical, therapy, chiropractic, dentistry, and hospital  
4 services pursuant to the acts referred to in subsection (1).

5 (3) This part does not apply to any benefits payable  
6 under a policy of life insurance or group life insurance; a  
7 contract of disability insurance, except benefits payable in  
8 reimbursement for services rendered by a physician, nurse,  
9 physical therapist, occupational therapist, chiropractor,  
10 person practicing dentistry, or hospital; or an annuity  
11 contract or to pension benefits payable under a qualified  
12 pension plan. (Terminates April 17, 1993--sec. 4, Ch. 469,  
13 L. 1991.)

14 71-3-1118. (Effective April 17, 1993) Applicability.

15 (1) Except as provided in subsection (2), this part does not  
16 apply to compensation awarded to workers for injury,  
17 disease, or death pursuant to the Workers' Compensation Act  
18 or the Occupational Disease Act of Montana.

19 (2) This part applies to all payments awarded for  
20 medical, therapy, chiropractic, dentistry, counseling, and  
21 hospital services pursuant to the acts referred to in  
22 subsection (1).

23 (3) This part does not apply to any benefits payable  
24 under a policy of life insurance or group life insurance, a  
25 contract of disability insurance, or an annuity contract or

1 to pension benefits payable under a qualified pension plan."

-End-