

HOUSE BILL 407

Introduced by Dolezal, et al.

1/30	Introduced
1/30	Referred to Natural Resources
1/30	Fiscal Note Requested
1/30	First Reading
2/06	Fiscal Note Received
2/08	Fiscal Note Printed
2/15	Hearing
2/17	Tabled in Committee
2/20	Motion Failed to take from Committee and place on 2nd Reading

1 House BILL NO. 407
2 INTRODUCED BY Delegated
3 Ray Raney Dowell Stanford Truitt
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION
5 OF GENERAL RECREATIONAL USE AS APPLIED TO THE RECREATIONAL
6 USE OF STATE LANDS; ELIMINATING THE RECREATIONAL USE
7 LICENSE; REQUIRING THE DEPARTMENT OF STATE LANDS TO MARK THE
8 BOUNDARIES OF CERTAIN STATE LAND LEASEHOLDS; AMENDING
9 SECTIONS 77-1-101, 77-1-808, 87-1-504, AND 87-1-601, MCA;
10 AND REPEALING SECTIONS 77-1-801 AND 77-1-802, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 "77-1-101. Definitions. Unless the context requires
15 otherwise and except for the definition of state land in
16 77-1-701, in this title, the following definitions apply:

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

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

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

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

5 (5) "General recreational use" includes noncommercial
6 and nonconcentrated hunting, fishing, and other activities
7 determined by the board to be compatible with the use of
8 state lands. General recreational use also includes camping,
9 hiking, photography, berry picking, mushroom picking,
10 bicycling, and similar activities not commonly associated
11 with motorized vehicle use. General recreational use does
12 not include the use of streams and rivers by the public
13 under the stream access laws provided in Title 23, chapter
14 2, part 3.

15 (6) "Legally accessible state lands" means state lands
16 that can be accessed by dedicated public road, right-of-way,
17 or easement; by public waters; by adjacent federal, state,
18 county, or municipal land if the land is open to public use;
19 or by adjacent contiguous private land if permission to
20 cross the land has been secured from the landowner. The
21 granting of permission by a private landowner to cross
22 private property in a particular instance does not subject
23 the state land that is accessed to general recreational use
24 by members of the public other than those granted
25 permission.

(7) "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."

Section 2. Section 77-1-808, MCA, is amended to read:

"77-1-808. 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 77-1-802;~~

~~(b)~~ all revenue received from the imposition of fines under ~~77-1-801 and~~ 77-1-806 and from civil penalties imposed pursuant to 77-1-804; and

~~(c)~~ (b) 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 pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(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."

Section 3. 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 4. Section 87-1-601, MCA, is amended to read:

1 "87-1-601. Use of fish and game money. (1) (a) Except
2 as provided in subsection (7), all money collected or
3 received from the sale of hunting and fishing licenses or
4 permits, from the sale of seized game or hides, or from
5 damages collected for violations of the fish and game laws
6 of this state, from appropriations, or received by the
7 department from any other state source must be turned over
8 to the state treasurer and placed by--him in the state
9 special revenue fund to the credit of the department.

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

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

16 (i) the general license account;

17 (ii) the license drawing account;

18 (iii) accounts established to administer the provisions
19 of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and
20 87-2-724; and

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

23 (2) That money must be exclusively set apart and made
24 available for the payment of all salaries, per diem, fees,
25 expenses, and expenditures authorized to be made by the

1 department under the terms of this title. That money must be
2 spent for those purposes by the department, subject to
3 appropriation by the legislature.

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

7 (4) Except as provided in subsection (7), all money
8 collected or received from fines and forfeited bonds, except
9 money collected or received by a justice's court, relating
10 to violations of state fish and game laws under Title 87
11 must be deposited by the state treasurer and credited to the
12 department in a state special revenue fund account for this
13 purpose. Out of any fine imposed by a court for the
14 violation of the fish and game laws, the costs of
15 prosecution must be paid to the county where the trial was
16 held in any case in which the fine is not imposed in
17 addition to the costs of prosecution.

18 (5) Money received by the department from the sale of
19 surplus real property; exploration or development of oil,
20 gas, or mineral deposits from lands acquired by the
21 department except royalties or other compensation based on
22 production; and from leases of interests in department real
23 property not contemplated at the time of acquisition must be
24 deposited in an account within the nonexpendable trust fund
25 of the state treasury. The interest derived from the fund,

1 but not the principal, may be used only for the purpose of
 2 operation, development, and maintenance of real property of
 3 the department, and only upon appropriation by the
 4 legislature. If the use of money as set forth in this
 5 section would result in violation of applicable federal laws
 6 or state statutes specifically naming the department or
 7 money received by the department, then the use of this money
 8 must be limited in the manner, method, and amount to those
 9 uses that do not result in a violation.

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

15 (7) Money collected or received from fines or forfeited
 16 bonds for the violation of ~~77-1-801~~, 77-1-806, or rules
 17 adopted under 77-1-804 must be deposited as follows:

18 (a) 50% in an account for use by the department for the
 19 enforcement of ~~77-1-801~~, 77-1-806, and rules adopted under
 20 77-1-804; and

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

24 NEW SECTION. Section 5. Posting of state land
 25 leaseholds. The department shall post the boundary of each

1 state land leasehold required to be open to general
 2 recreational use under 77-1-203(3). Posting must be
 3 accomplished through the use of signs prepared by the
 4 department that are consistent in size, color, and lettering
 5 and that are conspicuously placed in a manner to inform the
 6 general recreational user of the entire boundary of each
 7 leasehold.

8 NEW SECTION. Section 6. Repealer. Sections 77-1-801
 9 and 77-1-802, MCA, are repealed.

10 NEW SECTION. Section 7. Codification instruction.
 11 [Section 5] is intended to be codified as an integral part
 12 of Title 77, chapter 1, part 8, and the provisions of Title
 13 77, chapter 1, part 8, apply to [section 5].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

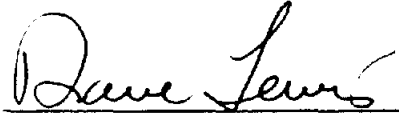
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0407, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the definition of general recreational use as applied to the recreational use of state lands; eliminating the recreational use license; and requiring the Department of State Lands to mark the boundaries of certain state land leaseholds.

ASSUMPTIONS:

1. FY93 State Lands Recreational Use License sales are expected to total 29,000 licenses. Department of Fish, Wildlife and Parks (FWP) recorded sales as of December 31, 1992 were 28,860 licenses. Additionally, it is anticipated that numbers of licenses would continue to increase in future years with greater awareness of the program and license requirement.
2. Recreational usage of state lands would increase year-round without the license requirement and with broadening of allowable uses. With increased usage, there will be more issues of contention between existing land uses for Department of State Lands (DSL) to deal with. DSL will still be required to administer general recreational use and special recreational uses; review and process lease closure petitions; review and process open road designation petitions; investigate and process violations of the statutes and administrative rules; process noxious weed control requests; and process damage compensation requests.
3. Annual revenues of 29,000 licenses x \$5.00/licenses = \$145,000 will be eliminated. This total revenue breaks down to \$87,000 in annual income to the school equalization account, \$43,500 to the state lands recreational use account for program administration, and \$14,500 in license agent commissions.
4. The proposed expansion of the definition of general 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 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 fiscal year 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 \$10,080 (current payment to FWP of \$.22/license (\$6,380) for administration of license sales; and \$3,700 for license printing).

(Continued)

 2-5-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-8-93
EDWARD DOLEZAL, PRIMARY SPONSOR DATE

Fiscal Note for HB0407, as introduced

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6. 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 trust accounts. Only operating expenses have been charged to the recreational use account. The intent is to begin charging 1.00 FTE recreational use coordinator to the account. It was anticipated that administration of the recreational use program would become self sufficient using funds available in the state lands recreational use account. These expenditures are not shown in a table below because they are statutorily appropriated.
7. Assuming signing is the intended method of boundary posting, there are over 41,000 separate parcels of state land contained within 16,000+ separate sections. If 66.66% of these sections are open to general recreational use (legally accessible without requiring permission to cross private property), 10,656 sections would require posting. If each of these sections has four sides, and four signs per side are required, 170,496 signs would be required. Signs currently utilized by the U.S. Forest Service for boundary posting cost \$1.52 per sign. Therefore, the cost to purchase signs would be $170,496 \times \$1.52 = \$259,154$. Posts for holding the signs may be required for as many as half of the boundaries of state sections. $3 \text{ posts} \times \$2/\text{post} \times 2 \text{ sides per section} \times 10,000 \text{ sections} = \$120,000$.
8. If DSL is expected to post signs with existing personnel, the process could be expected to take at least ten years. Posting would occur in conjunction with normal field evaluation schedules which include inspection of approximately 10% of the total leased/licensed land per year. Delegating existing personnel to boundary posting will result in delayed field evaluations, and delays or discontinuance of other management and administrative duties normally performed by these personnel. These delays and discontinuances would result in decreased revenues to the school trust accounts and decreased management of the trust resources.
9. If DSL is expected to post the boundaries as soon as possible, additional personnel would need to be hired to perform the posting. It is estimated that six, two-person crews could accomplish the posting in 21 months. Each crew would consist of a grade 10 and a grade 9 for a monthly cost of \$3,220 in personal services. Therefore, $6 \text{ crews} \times \$3,220/\text{crew}/\text{mo} \times 21 \text{ months} = \$405,720$ in personal services. Each crew would require vehicles, gasoline, meals and lodging. These capital and operating expenses are estimated to be \$255,000 for the life of the project.
10. Costs are based on the assumption that boundary posting will be accomplished by estimation and not by legal survey.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenues:</u>						
School Equalization Account	88,250	0	<88,250>	88,250	0	<88,250>
State Lands Rec. Use Account	43,500	0	<43,500>	43,500	0	<43,500>
License Agent's Commission	14,500	0	<14,500>	14,500	0	<14,500>
Total	146,250	0	<146,250>	146,250	0	<146,250>

Expenditures:

1. DSL costs in continuing to administer the recreational use program without state special revenue will be approximately \$238,920 per year.
2. Total estimated cost for purchasing signs and posts for boundary posting would be \$379,154.
3. Personal services, operating expenses and capital expenditures to physically post the signs are estimated at \$660,720.

Net Impact:

DSL costs in administering the recreational use program and in purchasing and posting signs would be funded from the general fund. Ongoing annual costs are about \$239,000 per year and the one-time signing costs would be about \$1.04 million.

TECHNICAL NOTES:

1. Trust lands administered by the DSL 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. 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.
4. The proposed legislation does not specify by when the posting of boundaries must be accomplished.
5. The proposed legislation does not address how the boundary of the state land will be determined. Many boundaries are unknown at present and if a legal survey is required, substantial costs will be incurred by DSL in contracting legal surveys. Estimated costs of legal surveys would be \$1-2,000/section depending on terrain, configuration of the tract, and availability of known corners.
6. The proposed legislation is not specific as to how many signs are necessary to accomplish the task of conspicuously marking the boundary.
7. Section 5 requires sorting of signs on any "leasehold" required to be open to general recreational use. DSL issues grazing licenses instead of leases on forest lands. The word leasehold should be replaced with "that is leased or licensed and is"
8. Section 5 requires posting of signs on any leasehold "required to be open to general recreational use under 77-1-203(3)." This includes all state land that is not subject to categorical or site-specific closure. Thus, under this language, land for which there is no public access must be signed. This fiscal note is based on the assumption that the intent of the sponsor was to require signing only on state lands that are accessible by the general public (and not those lands that are accessible only by permission of a private landowners). If this is the case, the language on page 8, lines 1 and 2 should be amended to clarify the statute. If the intent was to include all lands, whether public access is available or not, the 92% rather than 67% of state lands would require posting and the cost of signs and posts should be increased in this note accordingly.

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