

1 HOUSE BILL NO. 42

2 INTRODUCED BY REHBEIN

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PENALTY FOR INSTALLING A FACILITY OR
6 STRUCTURE ON STATE LAND WITHOUT PERMISSION OF THE DEPARTMENT OF STATE LANDS; AND
7 REQUIRING REMOVAL OF THE FACILITY OR STRUCTURE AND RECLAMATION OF DISTURBED STATE LAND
8 OR PAYMENT OF AN EASEMENT, LEASE, OR LICENSE IN LIEU OF REMOVAL."

9

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

11

12 NEW SECTION. **Section 1. Liability for unauthorized installation of facility**

13 **or structure on state land -- penalty.** (1) A person who constructs a road, pipeline,
14 ditch, utility line, fence, building, or other facility or structure on state land
15 without obtaining an easement, lease, license, or other written permission of the
16 department or who disturbs state land in anticipation of the installation of a
17 facility or structure is liable to the department for a civil penalty, in an amount
18 determined by the board, of up to three times the full market value of the land
19 disturbed or affected or \$500, whichever is greater.

20 (2) In addition to the penalty provided for in subsection (1), a person who
21 constructs a facility or structure on state land without permission is liable for any
22 permanent damage to the state land and may be required to remove the facility or
23 structure and reclaim the disturbed land to the satisfaction of the department or pay
24 the department's cost of removal and reclamation.

25 (3) If the department allows the facility or structure to remain on state land,
26 the department shall also require payment of full market value of any easement, lease,
27 or license required for the facility or structure.

28

29 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to

30 be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of

1 Title 77, chapter 1, part 1, apply to [section 1].

2 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0042, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

This bill provides a penalty for installing a facility or structure on state land without the permission of the Department of State Lands (DSL), and requires removal of the facility or structure and reclamation of disturbed state land or payment of an easement, lease, or license in lieu of removal.

ASSUMPTIONS:

1. The number of trespass occurrences per fiscal year will remain the same as presently experienced--five per year for the 1997 biennium.
2. The average penalty assessed by the land board is \$500.
3. All penalties paid will be deposited to the general fund.
4. DSL costs associated with implementing this legislation will be minimal and can be absorbed within the existing budget.

FISCAL IMPACT:

Revenues:

	<u>FY96</u>	<u>FY97</u>
General fund - fines (01)	2,500	2,500

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is expected that enactment and implementation of this legislation will act as a deterrent to future trespasses and, therefore, the monies received from penalties should decrease in future biennia.

Dave Lewis 1.2.95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

William Rehbein, Jr.
 WILLIAM REHBEIN, JR., PRIMARY SPONSOR DATE
 Fiscal Note for HB0042, as introduced

HB 42

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6 STRUCTURE ON STATE LAND WITHOUT PERMISSION OF THE DEPARTMENT OF STATE LANDS; AND
7 REQUIRING REMOVAL OF THE FACILITY OR STRUCTURE AND RECLAMATION OF DISTURBED STATE
8 LAND OR PAYMENT OF AN EASEMENT, LEASE, OR LICENSE IN LIEU OF REMOVAL."

9
10 STATEMENT OF INTENT

11 IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT OF STATE LANDS AND THE
12 BOARD OF LAND COMMISSIONERS USE THIS LEGISLATION TO ENSURE THAT ALL USE OF STATE
13 LANDS IS IN THE BEST INTERESTS OF THE STATE AND RETURNS FULL MARKET VALUE TO THE
14 SCHOOL TRUST. THE LEGISLATURE INTENDS THAT THE PENALTY AMOUNTS ESTABLISHED IN THE
15 BILL BE USED AS MAXIMUMS AND EXPECTS THE BOARD TO SET APPROPRIATE SPECIFIC PENALTY
16 AMOUNTS ON A CASE-BY-CASE BASIS, TAKING INTO ACCOUNT THE FACTS OF THE SITUATION. IT
17 IS NOT THE INTENT OF THE LEGISLATURE THAT THE BOARD IMPOSE THE MAXIMUM PENALTY
18 WITHOUT SUFFICIENT JUSTIFICATION. NOTHING IN THIS LEGISLATION SHOULD BE CONSTRUED AS
19 REQUIRING THE DEPARTMENT OR BOARD TO CHANGE OR INCREASE ITS CURRENT STATE LANDS
20 TRESPASS ENFORCEMENT EFFORTS.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 NEW SECTION. Section 1. Liability for unauthorized installation of facility or structure on state
25 land -- penalty. (1) A person who, AFTER SEPTEMBER 30, 1995, constructs a road, pipeline, ditch, utility
26 line, fence, building, or other facility or structure on state land without obtaining an easement, lease,
27 license, or other written permission of the department or who, AFTER SEPTEMBER 30, 1995, disturbs state
28 land in anticipation of the installation of a THE facility or structure is liable to the department for a civil
29 penalty, in an amount determined by the board, of up to ~~three times the full market value of the land~~
30 ~~disturbed or affected~~ or \$500, ~~whichever is greater.~~

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2 structure on state land without permission is liable for any permanent damage to the state land and may
3 be required to remove the facility or structure and reclaim the disturbed land to the satisfaction of the
4 department or pay the department's cost of removal and reclamation.

5 (3) If the department allows the facility or structure to remain on state land, the department shall
6 also require payment of full market value of any easement, lease, or license required for the facility or
7 structure.

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10 integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
11 [section 1].

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-END-