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House BILL NO. 348

INTRODUCED BY Harry Menaker Rush  
Milligan Sam Hackett Dudley Swanson Raney

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REGULATION OF THE RECREATIONAL AND COMMERCIAL USE OF MONTANA'S PUBLIC WATERS IN CERTAIN CASES BY ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION AND THE BOARD OF OUTFITTERS TO ADOPT AND ENFORCE RULES TO PROTECT AND PRESERVE NATURAL RESOURCES, PRESERVE THE DIVERSITY OF RECREATIONAL OPPORTUNITIES, MINIMIZE RECREATIONAL USER CONFLICTS, OR PROTECT THE PUBLIC HEALTH, PUBLIC SAFETY, OR PROPERTY; AMENDING SECTIONS 37-47-201 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

(1) A statement of intent is required for this bill because authority is granted to the fish, wildlife, and parks commission in 87-1-303 to adopt rules addressing the recreational and commercial use of Montana rivers and streams. It is intended that the commission use this authority to identify public reservoirs, public lakes, rivers, and streams that are in immediate or potential danger of resource degradation or social conflict over recreational uses and to develop rules to reasonably control the public recreational use of identified problem waters in order to protect the resource, maintain a diversity of recreational opportunities, and resolve social conflicts. Rules may include but are not limited to:

- (a) restrictions on activities allowed;
- (b) special seasons for special activities;
- (c) closures of public waters; and
- (d) the determination of restrictions on recreational and commercial use.

(2) A statement of intent is also required because authority is granted to the board of outfitters in 37-47-201 to adopt rules regulating commercial outfitting and guiding activities. When notified by the fish, wildlife, and parks commission of restrictions on commercial use as a part of overall public restriction, it is intended that the board of outfitters adopt rules regulating commercial outfitting and guiding activities on affected waters in order to protect the resource or manage social conflicts while maintaining a diversity of commercial service providers.

(3) Because of the potential for considerable effects on the public's recreational and commercial

1 use of Montana's waters, it is intended that any rules proposed under the authority of this bill be subject  
 2 to the Montana Negotiated Rulemaking Act, 2-5-101 through 2-5-110, MCA, to ensure a consensus in the  
 3 rulemaking process when negotiated rulemaking will enhance public participation.

4  
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6  
 7 **Section 1.** Section 87-1-303, MCA, is amended to read:

8 **"87-1-303. Rules for use of lands and waters.** (1) The commission may adopt and enforce rules  
 9 governing uses of lands acquired or held under easement by the commission or lands ~~which that~~ it operates  
 10 under agreement with or in conjunction with a federal or state agency or private owner. The rules ~~shall~~  
 11 must be adopted in the interest of public health, public safety, and protection of property in regulating the  
 12 use of these lands. All lease and easement agreements ~~shall~~ must itemize uses as listed in 87-1-209.

13 (2) The commission may adopt and enforce rules governing recreational uses of all public ~~fishing~~  
 14 reservoirs, public lakes, rivers, and streams ~~which that~~ are legally accessible to the public or on reservoirs  
 15 and lakes ~~which that~~ it operates under agreement with or in conjunction with a federal or state agency or  
 16 private owner. These rules ~~shall~~ must be adopted in the interest of public health, public safety, and  
 17 protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited  
 18 to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking,  
 19 camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas  
 20 along the shore of the reservoirs, lakes, rivers, and streams. The commission may adopt and enforce rules  
 21 for all public reservoirs, public lakes, rivers, and streams to protect and preserve natural resources, preserve  
 22 a diversity of recreational opportunities, and minimize recreational user conflicts. Areas regulated pursuant  
 23 to the authority contained in this section must be areas ~~which that~~ are legally accessible to the public.  
 24 ~~These rules~~ Rules adopted to protect the public health are subject to review and approval by the department  
 25 of health and environmental sciences as to public health and sanitation before becoming effective. ~~Copies~~  
 26 Adoption notices of the rules ~~shall~~ must show that endorsement."

27  
 28 **Section 2.** Section 37-47-201, MCA, is amended to read:

29 **"37-47-201. Powers and duties of board relating to outfitters and guides.** The board shall:

30 (1) prepare and publish an information pamphlet ~~which that~~ contains the names and addresses of

1 all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each  
 2 calendar year but not later than the second Friday in March. The pamphlet ~~shall~~ must contain the names  
 3 and addresses of only those outfitters who have a valid license for the current license year.

4 (2) cooperate with the federal government in matters of mutual concern regarding the business of  
 5 outfitting and guiding in Montana;

6 (3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

7 (4) establish outfitter standards and professional guide standards;

8 (5) adopt:

9 (a) rules of procedure;

10 (b) rules to administer and enforce this chapter, including but not limited to rules prescribing all  
 11 requisite qualifications for licensure. These qualifications must include training, experience in activities  
 12 similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting,  
 13 and condition and type of gear and equipment.

14 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health,  
 15 safety, and welfare of those persons using the services of outfitters and for the protection of landowners,  
 16 the general public, and outfitters' employees, agents, and representatives;

17 (6) (a) adopt and enforce rules, using a negotiated rulemaking process, regulating the number of  
 18 outfitters or guides who may operate on a particular body or stretch of water when the fish, wildlife, and  
 19 parks commission adopts rules regulating the number of recreational users on a particular body or stretch  
 20 of water based on a determination that it is necessary to:

21 (i) protect and preserve natural resources;

22 (ii) preserve a diversity of recreational opportunities;

23 (iii) minimize recreational user conflicts; or

24 (iv) protect the public health, public safety, or property;

25 (b) provide that rules adopted under this subsection (6) ensure a diversity of commercial service  
 26 providers.

27 (7) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional  
 28 guides for due cause."

29

30 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0348, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

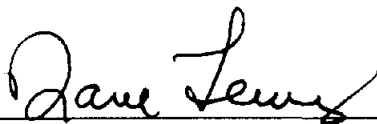
An act providing for regulation of the recreational and commercial use of Montana's public waters in certain cases by allowing the Fish, Wildlife and Parks Commission and the Board of Outfitters to adopt and enforce rules to protect and preserve natural resources, preserve the diversity of recreational opportunities, minimize recreational user conflicts, or protect the public health, public safety, or property.


ASSUMPTIONS:

1. Guidelines will be developed to determine if an area or water way is in need of special regulation.
2. Water bodies meeting the guidelines developed above will be identified.
3. Meetings with user, public, community and/or affected groups will be held to determine the impact of proposed changes to rules and/or regulations.
4. A negotiated rulemaking process will be utilized according to directions in the bill.
5. Rules will be promulgated and adopted with existing staff. A forum for the negotiated rulemaking to occur will be provided.
6. For the Board of Outfitters, the new proposal in the Executive Budget for increased FTE and state special revenue authority of about \$100,000 each year will be sufficient for ongoing work and for the proposed legislation.

FISCAL IMPACT:

There will be no fiscal impact to the Department of Fish, Wildlife and Parks or the Department of Commerce.

 2-2-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
HAL HARPER, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0348, as introduced

**HB 348**

APPROVED BY COM  
ON FISH & GAME

HOUSE BILL NO. 348

INTRODUCED BY HARPER, MENAHAN, BISHOP, BOHLINGER, SIMON, HIBBARD, GRADY, SWANSON,  
RANEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REGULATION OF THE RECREATIONAL AND  
COMMERCIAL USE OF MONTANA'S PUBLIC WATERS IN CERTAIN CASES BY ALLOWING THE FISH,  
WILDLIFE, AND PARKS COMMISSION AND THE BOARD OF OUTFITTERS TO ADOPT AND ENFORCE  
RULES TO ~~PROTECT AND PRESERVE NATURAL RESOURCES~~ ADDRESS IMPACTS CAUSED BY  
RECREATIONAL USERS, PRESERVE THE DIVERSITY OF RECREATIONAL OPPORTUNITIES, MINIMIZE  
RECREATIONAL USER CONFLICTS, OR PROTECT THE PUBLIC HEALTH, PUBLIC SAFETY, OR PROPERTY;  
AMENDING SECTIONS 37-47-201 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE."

STATEMENT OF INTENT

(1) A statement of intent is required for this bill because authority is granted to the fish, wildlife,  
and parks commission in 87-1-303 to adopt rules addressing the recreational and commercial use of  
Montana rivers and streams. It is intended that the commission use this authority to identify public  
reservoirs, public lakes, rivers, and streams that are in immediate or potential danger of resource  
degradation or social conflict over recreational uses and to develop rules to reasonably control the public  
recreational use of identified problem waters in order to ~~protect the resource~~ ADDRESS IMPACTS CAUSED  
BY RECREATIONAL USERS, maintain a diversity of recreational opportunities, and resolve social conflicts.

Rules may include but are not limited to:

- (a) restrictions on activities allowed;
- (b) special seasons for special activities;
- (c) closures of public waters; and
- (d) the determination of restrictions on recreational and commercial use.

(2) A statement of intent is also required because authority is granted to the board of outfitters in  
37-47-201 to adopt rules regulating commercial outfitting and guiding activities. When notified by the fish,  
wildlife, and parks commission of restrictions on commercial use as a part of overall public restriction, it  
is intended that the board of outfitters adopt rules regulating commercial outfitting and guiding activities

1 on affected waters in order to ~~protect the resource~~ ADDRESS IMPACTS CAUSED BY RECREATIONAL  
2 USERS or manage social conflicts while maintaining a diversity of commercial service providers.

3 (3) Because of the potential for considerable effects on the public’s recreational and commercial  
4 use of Montana’s waters, it is intended that any rules proposed under the authority of this bill be subject  
5 to the Montana Negotiated Rulemaking Act, 2-5-101 through 2-5-110, MCA, to ensure a consensus in the  
6 rulemaking process when negotiated rulemaking will enhance public participation.

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

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10 **Section 1.** Section 87-1-303, MCA, is amended to read:

11 **"87-1-303. Rules for use of lands and waters.** (1) The commission may adopt and enforce rules  
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13 under agreement with or in conjunction with a federal or state agency or private owner. The rules ~~shall~~  
14 must be adopted in the interest of public health, public safety, and protection of property in regulating the  
15 use of these lands. All lease and easement agreements ~~shall~~ must itemize uses as listed in 87-1-209.

16 (2) The commission may adopt and enforce rules governing recreational uses of all public fishing  
17 reservoirs, public lakes, rivers, and streams ~~which~~ that are legally accessible to the public or on reservoirs  
18 and lakes ~~which~~ that it operates under agreement with or in conjunction with a federal or state agency or  
19 private owner. These rules ~~shall~~ must be adopted in the interest of public health, public safety, and  
20 protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited  
21 to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking,  
22 camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas  
23 along the shore of the reservoirs, lakes, rivers, and streams. The commission may adopt and enforce rules  
24 for all public reservoirs, public lakes, rivers, and streams to ~~protect and preserve natural resources~~  
25 ADDRESS IMPACTS CAUSED BY RECREATIONAL USERS, preserve a diversity of recreational opportunities,  
26 and minimize recreational user conflicts. Areas regulated pursuant to the authority contained in this section  
27 must be areas ~~which~~ that are legally accessible to the public. ~~These rules~~ Rules adopted to protect the  
28 public health are subject to review and approval by the department of health and environmental sciences  
29 as to public health and sanitation before becoming effective. ~~Copies~~ Adoption notices of the rules ~~shall~~  
30 must show that endorsement.

1           (3) NOTHING IN THIS SECTION MAY BE CONSTRUED TO RESTRICT OR INTERFERE WITH  
 2 EXISTING WATER RIGHTS OR PRIVATE PROPERTY RIGHTS."

3  
 4           **Section 2.** Section 37-47-201, MCA, is amended to read:

5           **"37-47-201. Powers and duties of board relating to outfitters and guides.** The board shall:

6           (1) prepare and publish an information pamphlet ~~which~~ that contains the names and addresses of  
 7 all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each  
 8 calendar year but not later than the second Friday in March. The pamphlet ~~shall~~ must contain the names  
 9 and addresses of only those outfitters who have a valid license for the current license year.

10           (2) cooperate with the federal government in matters of mutual concern regarding the business of  
 11 outfitting and guiding in Montana;

12           (3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

13           (4) establish outfitter standards and professional guide standards;

14           (5) adopt:

15           (a) rules of procedure;

16           (b) rules to administer and enforce this chapter, including but not limited to rules prescribing all  
 17 requisite qualifications for licensure. These qualifications must include training, experience in activities  
 18 similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting,  
 19 and condition and type of gear and equipment.

20           (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health,  
 21 safety, and welfare of those persons using the services of outfitters and for the protection of landowners,  
 22 the general public, and outfitters' employees, agents, and representatives;

23           (6) (a) adopt and enforce rules, using a negotiated rulemaking process, regulating the number of  
 24 outfitters or guides who may operate on a particular body or stretch of water when the fish, wildlife, and  
 25 parks commission adopts rules regulating the number of recreational users on a particular body or stretch  
 26 of water based on a determination that it is necessary to:

27           ~~(i) protect and preserve natural resources~~ ADDRESS IMPACTS CAUSED BY RECREATIONAL  
 28 USERS;

29           (ii) preserve a diversity of recreational opportunities;

30           (iii) minimize recreational user conflicts; or

1           (iv) protect the public health, public safety, or property;

2           (b) provide that rules adopted under this subsection (6) ensure a diversity of commercial service  
3 providers.

4           (7) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional  
5 guides for due cause."

6

7           NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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