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House BILL NO. 186

INTRODUCED BY ALLAN WALTERS *for* Bitney House

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE RECREATIONAL USE LICENSE AND FEE ASSESSED AGAINST RECREATIONAL USERS OF STATE LANDS; AMENDING SECTIONS 70-16-302, 77-1-106, 77-1-808, 87-1-504, AND 87-1-601, MCA; AND REPEALING SECTIONS 77-1-801 AND 77-1-802, MCA."

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

**Section 1.** Section 70-16-302, MCA, is amended to read:

**"70-16-302. Restriction on liability of landowner.** (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. ~~For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.~~

(2) As used in this part, "landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(3) As used in this part, "property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(4) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable

1 to any person for any injury to person or property resulting from any act or omission of the department  
2 unless the act or omission constitutes willful or wanton misconduct."

3

4 **Section 2.** Section 77-1-106, MCA, is amended to read:

5 **"77-1-106. Setting of rates or fees -- rules.** (1) In setting the lease rental rates or fees for the use  
6 of state lands and cabin sites, the board shall consider the impact of the uses on the school trust asset,  
7 lessee expenses for management, water development, weed control, fire control, the term of the lease, the  
8 production capabilities, the conditions on the lease payment, and any other required expenses reasonably  
9 borne by the lessee. In setting cabin site lease rates, the board shall consider expenses that are commonly  
10 incurred by the lessees to preserve the value of the state land or to provide services commonly provided  
11 by private lessors in the area.

12 (2) All lease rental rates and fees established by the board under 77-1-208, ~~77-1-802~~, 77-6-202,  
13 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state  
14 with regard to the long-term productivity of the school trust lands, while optimizing the return to the school  
15 trust.

16 (3) The board shall comply with Title 2, chapter 4, part 3, in setting rental rates and license fees  
17 pursuant to 77-1-208, ~~77-1-802~~, 77-6-202, 77-6-501, 77-6-502, and 77-6-507."

18

19 **Section 3.** Section 77-1-808, MCA, is amended to read:

20 **"77-1-808. State lands recreational use account.** (1) There is a state lands recreational use  
21 account in the state special revenue fund provided for in 17-2-102.

22 (2) There must be deposited in the account:

23 (a) ~~all revenue received from the recreational use license established by 77-1-802;~~

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

26 ~~(c)~~ (b) money received by the department in the form of legislative appropriations, reimbursements,  
27 gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

28 (3) Money deposited in the state lands recreational use account must be used by the department  
29 for the following purposes:

30 (a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been

1 proved to be caused by recreational users;

2 (b) assistance in weed control management necessary as a result of recreational use of state lands;

3 (c) protection of the resource value of the trust assets; and

4 (d) administration and management for the implementation of recreational use of state lands."

5

6 **Section 4.** Section 87-1-504, MCA, is amended to read:

7 **"87-1-504. Protection of private property -- duty of wardens.** It is the duty of wardens (state  
8 conservation officers) to enforce the provisions of 45-6-101, 45-6-203, 75-10-212(2), ~~77-1-804~~, 77-1-806,  
9 and rules adopted under 77-1-804 on private and state lands being used for hunting and fishing and to act  
10 as ex officio firewardens as provided by 77-5-104."

11

12 **Section 5.** Section 87-1-601, MCA, is amended to read:

13 **"87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money  
14 collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game  
15 or hides, from damages collected for violations of the fish and game laws of this state, from appropriations,  
16 or received by the department from any other state source must be turned over to the state treasurer and  
17 placed in the state special revenue fund to the credit of the department.

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

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

22 (i) the general license account;

23 (ii) the license drawing account;

24 (iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412,  
25 87-2-722, and 87-2-724; and

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

27 (2) The money described in subsection (1) must be exclusively set apart and made available for  
28 the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the  
29 department under the terms of this title. The money described in subsection (1) must be spent for those  
30 purposes by the department, subject to appropriation by the legislature.

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

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

9 (5) Money received by the department from the sale of surplus real property; from exploration or  
10 development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other  
11 compensation based on production; and from leases of interests in department real property not  
12 contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust  
13 fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for  
14 the purpose of operation, development, and maintenance of real property of the department, and only upon  
15 appropriation by the legislature. If the use of money as set forth in this section would result in violation of  
16 applicable federal laws or state statutes specifically naming the department or money received by the  
17 department, then the use of this money must be limited in the manner, method, and amount to those uses  
18 that do not result in a violation.

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

22 (7) Money collected or received from fines or forfeited bonds for the violation of ~~77-1-801,~~  
23 ~~77-1-806,~~ or rules adopted under 77-1-804 must be deposited as follows:

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

26 (b) 50% in the state lands recreational use account established by 77-1-808 for use by the  
27 department of natural resources and conservation in the management of state lands.

28 (8) ~~After July 1, 1995, the~~ The state treasurer shall deposit in the state general fund one-half of  
29 the money received from the fines pursuant to 87-1-102."  
30



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0186, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating the recreational use license and fee assessed against recreational users of state lands.

ASSUMPTIONS:

Department of Natural Resources and Conservation:

1. The proposed legislation only removes the fee provision from the recreational use program. Therefore, the administration of the program is still necessary. The reduction to current expenditures is the cost of printing the licenses (\$5,700/FY).
2. A minimum of \$308,918 would be collected from the sale of recreational use licenses each year, under the current statutes. This is derived by prorating the current year sales-to-date, assuming the same rate of collection in previous years.
3. The current distribution of the license fee is as follows: \$1.28/license to the recreational use account (for administration of program), \$0.50/license to the license agent selling the license, \$0.22/license to the DFWP for advertising and license distribution, and the remainder to the various trusts (this amount varies, depending on the license sold under the new licensing structure).
4. The \$308,918 collected in revenues would be split among the 4 entities addressed in assumption #3. These revenues would cease to be collected if the proposed legislation is passed. Assuming the same rate of collection for the remainder of the license year, the decrease in revenues would be split as follows: \$41,815 to the recreational use account, \$16,334 to the license agents, \$7,187 to the DFWP, and \$243,582 to the various trusts.
5. The recreational use program is currently funded from the recreational use account. Due to the decrease in revenues to the account, the shortfall in revenues would need to be made up by the general fund. The recommended budget is \$57,788 for fiscal year 1998 and \$58,161 for fiscal year 1999. Given the reduction in expenses noted in assumption #1, the amount needed from the general fund would be \$52,088 and \$52,461 each year respectively.

Department of Fish, Wildlife and Parks:

1. The FWP license agents currently sell recreational use licenses for DNRC.
2. The department charges DNRC a processing fee of \$0.22 per license which covers the department's costs.
3. License revenue would be \$7,187 in each fiscal year (DNRC).
4. Game wardens spend some of their time checking for recreational use licenses as part of their duties. Eliminating this work would not result in any appreciable savings.

FISCAL IMPACT:

Expenditures:

Department of Natural Resources and Conservation:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	(5,700)	(5,700)

Funding:

General Fund (01)	52,088	52,461
Recreational Use Account (02)	(57,788)	(58,161)

(Continued - page 2)

*Dave Lewis* 1-13-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

ALLAN WALTERS, PRIMARY SPONSOR      DATE  
 Fiscal Note for HB0186, as introduced

HB 186

Expenditures: (continued)  
Department of Fish, Wildlife and Parks:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	(7,187)	(7,187)

Funding:

Recreational Use Account (02)	(7,187)	(7,187)
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Revenues:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
General Fund from Trusts (01)	(243,582)	(243,582)
Recreational Use Account (02)	(41,815)	(41,815)
License Agents (02)	(16,334)	(16,334)
Dept. of Fish, Wildlife, Parks (02)	<u>(7,187)</u>	<u>(7,187)</u>
Total	(308,918)	(308,918)

Net Impact on Fund Balance:

General Fund (01)	(295,670)	(296,043)
Recreational Use Account (02)	<u>(361)</u>	<u>12</u>
Total	(296,031)	(296,031)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Loss of this revenue source for local license agents statewide.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Loss of this source of revenue to the general fund for the school trusts.
2. Increased costs to the general fund to administer the recreational use program on school trust lands.

TECHNICAL NOTES:

1. Trust lands administered by the Department of Natural Resources and Conservation are subject to the Montana Enabling Act which is Federal Law. Under Section 11 of that Act, no interest in state 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.  
Section 6 of the proposed legislation repeals the license fee for recreational use of state trust land. To the extent that the grant of right to make recreational use of state trust land is a grant of an interest in state trust lands, the trusts must receive full market value for that use. The removal of the license fee, therefore, violates the Enabling Act.
2. The Montana Constitution, Article X, Section 11, provides that state 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.