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INTRODUCED BY GRINDE *House* BILL NO. 551

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PENALTY FOR INSTALLATION OR CONSTRUCTION OF A FACILITY OR STRUCTURE ON STATE TRUST LAND BY A PERSON OTHER THAN A LESSEE WITHOUT PERMISSION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ALLOWING THE DEPARTMENT TO REQUIRE THE REMOVAL OF THE FACILITY OR STRUCTURE, RECLAMATION OF DISTURBED STATE TRUST LAND, PAYMENT FOR REMOVAL AND RECLAMATION, OR PAYMENT FOR AN EASEMENT, LEASE, OR LICENSE IN LIEU OF REMOVAL; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

It is the intent of the legislature to protect state trust land from resource damage by nonauthorized use of state trust land. The legislature intends that the department of natural resources and conservation and the board of land commissioners use this legislation to ensure that all use of state trust land is in the best interests of the state and returns full market value to the school trust. The legislature intends that the penalty amounts established in this bill be used as maximums and expects the board to set appropriate specific penalty amounts on a case-by-case basis, taking into account the facts of each situation. It is not the intent of the legislature that the board impose the maximum penalty without sufficient justification. Nothing in this bill should be construed as requiring the department or the board to change or increase current state trust land trespass enforcement efforts.

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

NEW SECTION. Section 1. Liability for unauthorized installation or construction of facility or structure on state trust land -- penalty. (1) A person, other than the lessee of the affected state trust land, may not, after September 30, 1997:

(a) install or construct a road, pipeline, ditch, utility line, fence, building, or other facility or structure on state trust land without obtaining an easement, lease, license, or other written permission of the department; or

1 (b) disturb state trust land in anticipation of the installation or construction of the facility or
2 structure.

3 (2) A person who violates subsection (1) is liable to the department for a civil penalty in an amount
4 determined by the board. The penalty may be an amount up to three times the full market value of the land
5 disturbed or affected or \$500, whichever is greater.

6 (3) In addition to the penalty provided for in subsection (1), a person who installs or constructs a
7 facility or structure on state trust land without permission is liable for any permanent damage to the state
8 trust land and may be required to remove the facility or structure and to reclaim the disturbed land to the
9 satisfaction of the department or to pay the department's cost of removal and reclamation.

10 (4) If the department allows the facility or structure to remain on state trust land, the department
11 shall also require payment of full market value of any easement, lease, or license required for the facility
12 or structure.

13 (5) The penalties provided in this section do not apply to the lessee of the affected state trust land.
14 The remedies and penalties provided in a state trust easement, lease, or license and the statutes and
15 regulations under which the easement, lease, or license was entered are the exclusive remedies and
16 penalties that may be applied to a lessee.

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18 **NEW SECTION.** **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
19 integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
20 [section 1].

21

22 **NEW SECTION.** **Section 3. Effective date.** [This act] is effective July 1, 1997.

23

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0551, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing a penalty for installation or construction of a facility or structure on state trust land by a person other than a lessee without permission of the Department of Natural Resources and Conservation; allowing the department to require the removal of the facility or structure, reclamation of disturbed state trust land, payment for removal and reclamation, or payment for 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 1999 biennium.
2. The average penalty assessed by the Board of Land Commissioners is \$500.
3. All penalties paid will be deposited to the general fund. (5 X \$500 = \$2,500/FY)
4. DNRC costs associated with implementing this legislation will be minimal and can be absorbed within present law base budget as recommended in the Executive Budget for the 1999 biennium.

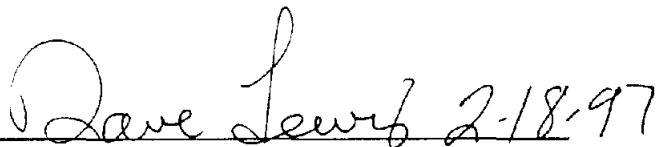
FISCAL IMPACT:

Revenues:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
General Fund (01)	2,500	2,500
<u>Net Impact on Fund Balance:</u>		
General Fund (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, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


LARRY HAL GRINDE, PRIMARY SPONSOR DATE

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

NEW SECTION. **Section 1. Liability for unauthorized installation or construction of facility or structure on state trust land -- penalty.** (1) A person, other than the lessee of the affected state trust land, may not, after September 30, 1997:

(a) install or construct a road, pipeline, ditch, utility line, fence, building, or other facility or structure on state trust land without obtaining an easement, lease, license, or other written permission of the department; or

1 (b) disturb state trust land in anticipation of the installation or construction of the facility or
2 structure.

3 (2) A person who violates subsection (1) is liable to the department for a civil penalty in an amount
4 determined by the board. The penalty may be an amount up to three times the full market value of the land
5 disturbed or affected or \$500, whichever is greater.

6 (3) In addition to the penalty provided for in subsection (1), a person who installs or constructs a
7 facility or structure on state trust land without permission is liable for any permanent damage to the state
8 trust land and may be required to remove the facility or structure and to reclaim the disturbed land to the
9 satisfaction of the department or to pay the department's cost of removal and reclamation.

10 (4) If the department allows the facility or structure to remain on state trust land, the department
11 shall also require payment of full market value of any easement, lease, or license required for the facility
12 or structure.

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15 regulations under which the easement, lease, or license was entered are the exclusive remedies and
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18 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
19 integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
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22 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1997.

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17 (6) THE PENALTIES PROVIDED IN THIS SECTION DO NOT APPLY TO PERSONS WHO HAVE
18 INADVERTENTLY INSTALLED OR CONSTRUCTED PIPELINES OR UTILITY LINES WITHIN 20 FEET OF THE
19 EASEMENT BOUNDARIES GRANTED BY THE STATE.

20 (7) THE PENALTIES PROVIDED IN THIS SECTION DO NOT APPLY TO FACILITIES OR STRUCTURES
21 INSTALLED ON LANDS ACQUIRED BY THE STATE THROUGH EXCHANGE OR PURCHASE THAT WERE
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