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SB BILL NO. 149

INTRODUCED BY Bishop

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REGULATION OF THE RECREATIONAL 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 ADDRESS IMPACTS CAUSED BY RECREATIONAL USERS, TO PRESERVE A DIVERSITY OF RECREATIONAL OPPORTUNITIES, TO MINIMIZE RECREATIONAL USER CONFLICTS, OR TO 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 conflict over recreational uses. It is also intended that the commission develop rules to reasonably control the public recreational use of identified problem waters in order to address impacts or conflicts caused by recreational users, while maintaining a diversity of recreational opportunities. 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 commission of restrictions on commercial use as part of overall public restriction, it is intended that the board adopt rules regulating commercial outfitting and guiding activities on affected waters in order to address impacts or conflicts caused by recreational users, while maintaining a diversity of commercial service providers.



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

5 (4) This bill is not intended to restrict or interfere with existing water rights or private property  
 6 rights.

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

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10 Section 1. Section 37-47-201, MCA, is amended to read:

11 "37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides.

12 The board shall:

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

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

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

20 (4) establish outfitter standards, guide standards, and professional guide standards;

21 (5) adopt:

22 (a) rules of procedure;

23 (b) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications  
 24 for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training,  
 25 testing, experience in activities similar to the service to be provided, knowledge of rules of governmental  
 26 bodies pertaining to outfitting and condition and type of gear and equipment, and ~~the~~ filing of an operations  
 27 plan.

28 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public  
 29 health, safety, and welfare, including evidence of qualification and licensure under this chapter for any  
 30 person practicing or offering to practice as an outfitter, guide, or professional guide;

1 (d) rules specifying standards for review and approval of proposed new operations plans involving  
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9 comments from hunters and sportspersons in the area to be affected by the proposal who do not make use  
10 of outfitter services.

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

15 (i) address impacts caused by recreational users;

16 (ii) preserve a diversity of recreational opportunities;

17 (iii) minimize recreational user conflicts; or

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

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

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

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24 **Section 2.** Section 87-1-303, MCA, is amended to read:

25 **"87-1-303. Rules for use of lands and waters.** (1) The commission may adopt and enforce rules  
26 governing uses of lands that are acquired or held under easement by the commission or lands that it  
27 operates under agreement with or in conjunction with a federal or state agency or private owner. The rules  
28 must be adopted in the interest of public health, public safety, and protection of property in regulating the  
29 use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

30 (2) (a) The commission may adopt and enforce rules governing recreational uses of all public fishing

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7 the shore of the reservoirs, lakes, rivers, and streams.

8 (b) The commission may adopt and enforce rules, using a negotiated rulemaking process, for all  
9 public reservoirs, public lakes, rivers, and streams to address impacts caused by recreational users, to  
10 preserve a diversity of recreational opportunities, and to minimize recreational user conflicts.

11 (3) Areas regulated pursuant to the authority contained in this section must be areas that are legally  
12 accessible to the public.

13 (4) ~~These rules~~ Rules adopted to protect the public health are subject to review and approval by  
14 the department of public health and human services with regard to issues of public health and sanitation  
15 before becoming effective. ~~Copies~~ Adoption notices of the rules must show that endorsement.

16 (5) This section does not restrict or interfere with existing water rights or private property rights."  
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18 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.  
19

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0149, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

Providing for regulation of the recreational 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 address impacts caused by recreational user conflicts, or to protect the public health, public safety, or property.

ASSUMPTIONS:

**Department of Commerce Board of Outfitters:**

1. The Board of Outfitters will incur administrative costs associated with a negotiated rulemaking process to regulate the number of outfitters and guides who may operate on a particular body of water.
2. It is assumed that it will be necessary to regulate at least one operator in each fiscal year.
3. An additional board meeting will be required each year to adopt any proposed rules. There are seven members on the board who receive \$50 a day in per diem, for a total of \$350. The total travel for seven members to attend a one-day meeting would be \$675.
4. Operating costs include \$640 for the use of a temporary service agency to perform data entry of statistics reported on yearly operational plans, and \$350 for costs associated with rulemaking, including publication in the Montana Administrative Register, newspapers, and other interested parties on the mailing list.
5. The executive director for the Board of Outfitters or other Department of Commerce staff would serve as the convener or facilitator for the negotiated rulemaking committee.
6. Members of the negotiated rulemaking committee would be responsible for their own expenses of participation.
7. Fees collected and deposited in the special revenue account fund would pay for the costs associated with this process.

**Department of Fish, Wildlife and Parks:**

8. Criteria must be developed to use for guidelines to determine if an area or water way is in need of special regulation.
9. The Department of Fish, Wildlife and Parks (FWP) will identify water bodies meeting the above criteria.
10. FWP anticipates processing one to two waters bodies per biennium.
11. Meetings with user, public, community and/or affected groups will be held to determine the impact of proposed changes to rules and/or regulations.
12. A negotiated rulemaking process will be utilized according to directions in the bill.
13. Rules will be promulgated and adopted with existing staff. A forum for the negotiated rulemaking to occur will be provided.

FISCAL IMPACT:

Fish, Wildlife and Parks:  
None

Department of Commerce  
POL Bureau/Board of Outfitters:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Personal Services	350	350
Travel	675	675
Operating Expenses	<u>990</u>	<u>990</u>
Total	2,015	2,015

(Continued)

*Dave Lewis* 1-21-97  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

*Al Bishop* 1/21/97  
AL BISHOP, PRIMARY SPONSOR DATE

Fiscal Note for SB0149, as introduced  
**SB 149**

Fiscal Note Request, SB0149, as introduced

Page 2

(continued)

	<u>FY98</u>	<u>FY99</u>
<u>Funding:</u>	<u>Difference</u>	<u>Difference</u>
Department of Commerce:		
Outfitter Licensing Fees (02)	2,015	2,015
<u>Net Impact on Fund Balance:</u> (Revenue minus expense)		
POL Board of Outfitters SSR (02)	(2,015)	(2,015)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Department of Fish, Wildlife and Parks:

It is not possible to predict the long-range effects at this time. Impacts will be dependent upon final rules adopted.

If final rules limit use and/or require active management to implement, additional costs may be incurred and will be presented to future legislative sessions.

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8 OPPORTUNITIES, TO MINIMIZE RECREATIONAL USER CONFLICTS, OR TO PROTECT THE PUBLIC  
9 HEALTH, PUBLIC SAFETY, OR PROPERTY; AMENDING SECTIONS 37-47-201 AND 87-1-303, MCA; AND  
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- 24 (d) the determination of restrictions on INDIVIDUAL AND COMMERCIAL recreational ~~and~~  
25 ~~commercial~~ use.

26 (2) A statement of intent is also required because authority is granted to the board of outfitters in  
27 37-47-201 to adopt rules regulating commercial outfitting and guiding activities. When notified by the  
28 commission of restrictions on commercial use as part of overall public restriction, it is intended that the  
29 board adopt rules regulating commercial outfitting and guiding activities on affected waters in order to  
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SECOND READING

1 RECREATIONAL service providers.

2 (3) Because of the potential for considerable impacts to the public's INDIVIDUAL AND  
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 5 2-5-110, to ensure a consensus in the rulemaking process when negotiated rulemaking will enhance public  
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14 **"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides.**

15 The board shall:

16 (1) prepare and publish an information pamphlet that contains the names and addresses of all  
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 18 calendar year but not later than the second Friday in March. The pamphlet must contain the names and  
 19 addresses of only those outfitters who have a valid license for the current license year.

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

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

23 (4) establish outfitter standards, guide standards, and professional guide standards;

24 (5) adopt:

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26 (b) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications  
 27 for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training,  
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 29 bodies pertaining to outfitting and condition and type of gear and equipment, and ~~the~~ filing of an operations  
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1 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public  
2 health, safety, and welfare, including evidence of qualification and licensure under this chapter for any  
3 person practicing or offering to practice as an outfitter, guide, or professional guide;

4 (d) rules specifying standards for review and approval of proposed new operations plans involving  
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12 comments from hunters and sportspersons in the area to be affected by the proposal who do not make use  
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14 (6) (a) adopt and enforce rules, using a negotiated rulemaking process, regulating the number of  
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22 (b) provide that rules adopted under this subsection (6) ensure a diversity of commercial  
23 RECREATIONAL service providers.

24 (7) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and  
25 professional guides for due cause."  
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27 **Section 2.** Section 87-1-303, MCA, is amended to read:

28 **"87-1-303. Rules for use of lands and waters.** (1) The commission may adopt and enforce rules  
29 governing uses of lands that are acquired or held under easement by the commission or lands that it  
30 operates under agreement with or in conjunction with a federal or state agency or private owner. The rules

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19 before becoming effective. ~~Copies~~ Adoption notices of the rules must show that endorsement.

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23 OF THEIR PROPERTY."

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

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