

HOUSE BILL NO. 475
INTRODUCED BY R. MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA LOCAL GOVERNMENT CONSENT ACT; REQUIRING LOCAL CONSENT FOR CERTAIN STATE LAND USE DECISIONS; PROVIDING EXCEPTIONS; REQUIRING NOTIFICATION OF LOCAL GOVERNMENT OFFICIALS; PROVIDING FOR A MANDAMUS ACTION TO COMPEL COMPLIANCE; REQUIRING REPAYMENT OF STATE ASSESSMENTS TO COUNTIES FOR COUNTY ROADS ON STATE LANDS; AMENDING SECTIONS 75-7-102, 77-1-108, 77-1-804, 87-1-257, AND 87-5-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature meets in regular session for only 90 days every other year; and

WHEREAS, the Legislature has statutorily authorized Executive Branch agencies to implement state policies and programs and has empowered the Executive Branch, through the adoption of administrative rules, to make land use decisions that impact citizens and local jurisdictions; and

WHEREAS, in the absence of more frequent legislative oversight, it is appropriate and in the public interest to require that certain decisions of some agencies made under the concept of implied consent rooted in legislative policy be consistent with the desires of local communities and regions that are directly affected by these administrative decisions; and

WHEREAS, local tax money that could be used to help fund local schools is being assessed by the state for county road easements on state land.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Montana Local Government Consent Act".

NEW SECTION. **Section 2. Purpose.** It is the purpose of [sections 1 through 8] to require that the implementation or enforcement of certain state agency administrative actions or land use policy decisions have the approval of the affected local government jurisdictions.

NEW SECTION. **Section 3. Definitions.** Unless the context requires otherwise, as used in [sections

1 through 8], the following definitions apply:

(1) (a) "Administrative action" or "policy decision" means an action taken or proposed by a state agency to implement or enforce a discretionary provision of rule, guidance, directive, or policy.

(b) The term does not include a nondiscretionary action taken or proposed as the result of specific statutory direction.

(2) "State land" has the same meaning as provided in 77-1-101.

NEW SECTION. Section 4. State land access restriction prohibited without local approval. (1) The board of land commissioners, acting alone or through the department of natural resources and conservation, may not physically, administratively, through recommendation, or in any other way close, limit, or otherwise restrict public access to a trail, road, or other means of public access to state land within the jurisdiction of the department except as provided in subsections (2) and (3).

(2) If the department of natural resources and conservation proposes to restrict public access pursuant to subsection (1), the department shall notify in writing the county commissioners of the county or counties in which the subject trail, road, or state land is located. Within 60 days of receipt of the notification, the commissioners of the county or counties affected shall hold a public hearing on the department's proposal. The county commissioners shall especially consider in their deliberations the interests and desires of county residents most likely to be affected by the proposal.

(3) The department is prohibited from taking any action pursuant to subsection (1) without the written consent of:

(a) the county commissioner who represents the county commission district most directly affected by the proposal; and

(b) a majority of the board of county commissioners.

NEW SECTION. Section 5. Administrative actions by department of fish, wildlife, and parks. (1) The fish, wildlife, and parks commission, acting alone or through the department of fish, wildlife, and parks, may not implement or enforce the following activities through administrative action or policy decision unless it has the approval by a majority vote of the local board of supervisors for the conservation district that will be most affected by the proposed action or policy:

(a) activities that involve the development, determination, solicitation, objection to, enforcement, or utilization of a water right;

- (b) activities that impact private land for which a conservation district has jurisdiction;
- (c) actions that involve the expenditure of funds to implement the activities in subsection (1)(a) or (1)(b);
- (d) proposed recommendations to a federal agency pertaining to road closures or restrictions or limitations on public access to federal roads, trails, or easements;
- (e) administrative decisions, orders, recommendations, or directives related to:
 - (i) streambed protection pursuant to Title 75, chapter 7, part 1;
 - (ii) river restoration pursuant to Title 87, chapter 1, part 2; or
 - (iii) streambank management pursuant to Title 87, chapter 5, part 5; and
- (f) any administrative action, policy decision, or order by the department that requires fencing to keep livestock out of a stream, excluding the point of origin of a spring. The approval of a department action or order that requires the fencing of a stream to exclude livestock must expire 5 years from the date the fencing is erected.

(2) If the department of fish, wildlife, and parks proposes to implement or enforce any of the activities listed in subsection (1), the department shall notify in writing the local conservation district of the county in which the proposed activity is to take place. Within 60 days of receipt of the notification, the board of supervisors of the local conservation district affected shall hold a public hearing on the department's proposal. The board of supervisors shall especially consider in its deliberations the interests and desires of county residents most likely to be affected by the proposal.

NEW SECTION. Section 6. General prohibition without local consent. In addition to administrative action and policy decisions by the department of natural resources and conservation and the department of fish, wildlife, and parks, any other state agency having shared or unilateral jurisdiction over the activities described in [sections 4 and 5] is also prohibited from implementing or enforcing those administrative actions or policy decisions without the majority consent of the local authorities in the same manner as is described in [sections 4 and 5].

NEW SECTION. Section 7. Exceptions -- rejection of local decision -- prohibited negotiations. (1) The prohibition and approval process required in [sections 4 through 6] does not apply to:

- (a) the closure or restriction of public access to buildings, monuments, and other similar facilities unless the closure or restriction results in limiting public access to state land beyond the immediate area of the facility;
- (b) emergency situations declared by a state agency that directly impact the health, safety, and welfare of the public if the declared emergency does not last longer than 10 days. This 10-day limit may be extended but

only with approval of local officials as provided in [sections 4 through 6]; or

(c) a finding by a state agency that a local authority has withheld its consent of an agency restriction or limitation pursuant to [sections 4 through 6] for the purpose of imposing or attempting to impose additional restrictions or limitations beyond what the agency has proposed. With this finding, the agency may reject the local authority decision and implement the restriction or limitation as proposed.

(2) Negotiations or agreements between the local authority and a state agency may not expand a restriction or limitation or the scope of the restriction or limitation beyond what was initially imposed by the state agency.

(3) Nothing in [sections 4 through 6] may be used to deny or delay the implementation of a state land board project that involves coal, timber, grazing, or other uses of the natural resources on state land if a temporary public access closure is required for the project.

NEW SECTION. Section 8. Mandamus to comply. (1) A resident of a county affected by the administrative actions and policy decisions described in [sections 4 through 6] with knowledge that the consent requirements of [sections 4 through 6] are not being complied with by an agency that has a duty to comply may provide the agency director with a written statement under oath that states the specific facts of the failure to comply. Knowingly making false statements or charges in the affidavit subjects the affiant to the penalties prescribed for false swearing pursuant to 45-7-202.

(2) If the agency neglects or refuses for an unreasonable time after receipt of the written statement described in subsection (1) to comply with the requirement to seek local consent as required by [sections 4 through 6], the resident may bring a mandamus action in district court to enforce the consent requirements. If the court finds that the agency has failed in its duty to obtain local consent for its actions subject to [sections 4 through 6], the court may order the agency to comply with the requirement or be subject to contempt of court and the penalties provided by law.

NEW SECTION. Section 9. County road easements and historic right-of-way deeds on state land -- payment and reimbursement. (1) A county, acting through the board of county commissioners, may acquire an easement for a new or existing county road on state land at the discretion of the board of land commissioners pursuant to the provisions of Title 77, chapter 2.

(2) A county may acquire a historic right-of-way deed for an existing county road on state land pursuant to the provisions of 77-1-130.

(3) Except for the \$50 deed application fee for a historic right-of-way, an amount equal to the funds assessed by the state and paid by a county for the continued use of an existing county road or the acquisition of an easement for a county road on state land must be paid to the county for use in local schools. Payment by the state must be:

(a) in addition to any school funds provided to the county treasurer or to school districts pursuant to the provisions of Title 20, chapter 9, part 3;

(b) made from the trust land administration account provided for in 77-1-108;

(c) paid to the county in the same fiscal year in which the county paid the state assessment for the county road easement or right-of-way deed on state land; and

(d) used only for the funding of local public schools.

Section 10. Section 75-7-102, MCA, is amended to read:

"75-7-102. Policy. Subject to the provisions of [section 5], it is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana."

Section 11. Section 77-1-108, MCA, is amended to read:

"77-1-108. Trust land administration account. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands and refunding to the counties an amount equal to the state assessments paid for county road easements and historic right-of-way deeds on state land pursuant to [section 9].

(2) Appropriations from the account for each fiscal year may not exceed the sum of 1 1/8% of the book value balance in the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium.

(3) Unreserved funds remaining in the account at the end of a fiscal year must be transferred to each

of the permanent funds in proportionate shares to each fund's contribution to the account as calculated in 77-1-109(3)."

Section 12. Section 77-1-804, MCA, is amended to read:

"77-1-804. Rules for recreational use of state lands -- penalty. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

- (a) cabin site and homesite leases and licenses;
- (b) the seasonal presence of growing crops; and
- (c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

- (a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;
- (b) damage to surface improvements of the lessee;
- (c) the presence of threatened, endangered, or sensitive species or plant communities;
- (d) the presence of unique or special natural or cultural features;
- (e) wildlife protection;

(f) noxious weed control; or

(g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) The closure, limitation, or other restriction of public access to a trail, road, or other means of public access to state land pursuant to rules adopted under this section is subject to the notification and local government consent provisions of [section 4].

~~(8)~~(9) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601(7)."

Section 13. Section 87-1-257, MCA, is amended to read:

"87-1-257. River restoration program. (1) The department shall administer a river restoration program subject to the provisions of [section 5].

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, including but not limited to the leasing of water rights under 85-2-436.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and

recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) A project conducted under the program may not restrict or interfere with the exercise of any water right."

Section 14. Section 87-5-501, MCA, is amended to read:

"87-5-501. State policy. ~~Subject to the provisions of [section 5], it is hereby declared to be~~ the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved."

NEW SECTION. **Section 15. Codification instruction.** (1) [Sections 1 through 8] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 8].

(2) [Section 9] is intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [section 9].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

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