

## SENATE BILL NO. 130

INTRODUCED BY D. MCGEE

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AUTHORITY FOR A LICENSING AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE RECREATIONAL USE OF STATE TRUST LAND FOR HUNTING, FISHING, AND TRAPPING PURPOSES; PROVIDING FOR THE RECREATIONAL USES OF STATE TRUST LAND FOR OTHER THAN HUNTING, FISHING, AND TRAPPING PURPOSES; PROVIDING THAT 15 PERCENT OF THE GROSS REVENUE RECEIVED AS A RESULT OF A RECREATIONAL USE LICENSING AGREEMENT BE DEPOSITED IN THE STATE LANDS RECREATIONAL USE ACCOUNT AND 85 PERCENT OF THE REVENUE RECEIVED BE ALLOCATED AMONG THE INSTITUTIONAL TRUSTS; PROVIDING THAT A LICENSING AGREEMENT BETWEEN THE DEPARTMENTS DOES NOT CONSTITUTE CONSIDERATION WITH REGARD TO THE RESTRICTION OF LIABILITY OF A LANDOWNER; INCLUDING LICENSING AGREEMENT RATES AS ONE OF THE ACTIONS FOR WHICH THE BOARD OF LAND COMMISSIONERS SHALL CONSIDER VARIOUS IMPACTS INCLUDING MANAGEMENT EXPENSES, WATER DEVELOPMENT, WEED CONTROL, AND FIRE CONTROL; PROVIDING AN EXEMPTION TO THE REQUIREMENT FOR A RECREATIONAL USE LICENSE FOR RECREATIONAL USE OF STATE TRUST LAND IF A RECREATIONAL USE LICENSING AGREEMENT IS REACHED BETWEEN THE TWO DEPARTMENTS AND OTHER COMPENSATION IS MADE TO THE INSTITUTIONAL TRUSTS TO COMPENSATE FOR USES OTHER THAN HUNTING, FISHING, AND TRAPPING; PROVIDING AN ALLOCATION SCHEME FOR REVENUE RECEIVED AS A RESULT OF A RECREATIONAL USE LICENSING AGREEMENT; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD OF LAND COMMISSIONERS FOR THE IMPLEMENTATION AND ADMINISTRATION OF A RECREATIONAL USE LICENSING AGREEMENT; ADDING ACQUISITION OF ACCESS AND MAINTENANCE OF ROADS NECESSARY FOR PUBLIC RECREATIONAL USE OF STATE TRUST LAND AS A QUALIFIED USE OF FUNDS IN THE RECREATIONAL USE ACCOUNT; INCREASING THE RESIDENT AND NONRESIDENT WILDLIFE CONSERVATION LICENSE FEES BY \$1.25 EACH; AMENDING SECTIONS 70-16-302, 77-1-106, 77-1-801, 77-1-802, 77-1-804, 77-1-808, AND 87-2-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

WHEREAS, the Department of Natural Resources and Conservation presently authorizes the public to use state school trust land through individual recreational use licenses; and

WHEREAS, the primary recreational uses of state school trust land are hunting and fishing; and

WHEREAS, the Department of Natural Resources and Conservation and the Department of Fish, Wildlife, and Parks wish to provide a more efficient system for authorizing public recreational use for hunting, fishing, and trapping on state trust land and concurrently provide greater benefit to the institutional beneficiaries of the trust; and

WHEREAS, the Department of Fish, Wildlife, and Parks has the discretionary authority in section 87-1-209, MCA, to enter into a licensing agreement on behalf of the public for the recreational uses of school trust land for hunting, fishing, and trapping; and

WHEREAS, the Department of Fish, Wildlife, and Parks needs additional revenue to offset the cost of a general licensing agreement with the Department of Natural Resources and Conservation to secure the recreational rights of hunting, fishing, and trapping on state trust land; and

WHEREAS, the Department of Natural Resources and Conservation and the Department of Fish, Wildlife, and Parks have reached an agreement that, given the legislative authority, they intend to enter into a licensing agreement for the recreational use of school trust land parcels for hunting, fishing, and trapping purposes.

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

**NEW SECTION. Section 1. Recreational use licensing agreement for hunting, fishing, and trapping.** (1) The board is authorized to license the department of fish, wildlife, and parks to make parcels of state trust land as described in 77-1-401 available for recreational use by the public for hunting, fishing, and trapping purposes. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust lands. Hunting, fishing, and trapping on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) A license may be issued to the department of fish, wildlife, and parks for a term of up to 10 years. Through this licensing agreement, the board shall recover for the institutional beneficiaries of the trust the full market value of the public recreational rights that are conveyed. Fifteen percent of the gross receipts from a license must be deposited in the state lands recreational use account established in 77-1-808. The remaining 85% must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) During any period that the department of fish, wildlife, and parks has obtained a license for recreational use by the public for hunting, fishing, and trapping on parcels of state trust land, an individual recreational use license under 77-1-801 or 77-1-802 may not be required for a member of the public to hunt, fish, or trap upon the parcels affected by the license agreement.

**NEW SECTION. Section 2. Recreational uses of state trust lands for other than hunting, fishing, or trapping -- funds.** (1) The public may use state trust land for recreational uses other than hunting, fishing, and trapping under restrictions and regulations established by the board pursuant to 77-1-804 if:

(a) the various trusts are fully compensated for the recreational use of state trust land by the public for hunting, fishing, and trapping purposes through a licensing agreement with the department of fish, wildlife, and parks pursuant to [section 1]; and

(b) the department:

(i) fully compensates the various trusts for recreational uses other than hunting, fishing, and trapping;

or

(ii) requires a recreational use license under 77-1-801 for these other uses.

(2) The department, in lieu of requiring a recreational use license for these other uses under 77-1-801, may fully compensate the various trusts for these other recreational uses in a manner and in an amount separate and apart from [section 1] and that is approved by the board.

(3) Funds received from the department of fish, wildlife, and parks as a result of a recreational use licensing agreement may only be:

(a) used to compensate the trusts for the public's use of state trust land for hunting, fishing, and trapping;

and

(b) deposited in the state lands recreation use account as provided in [section 1].

**Section 3.** 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 or other funds provided under [sections 1 and 2].

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

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

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

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

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

**Section 5.** Section 77-1-801, MCA, is amended to read:

**"77-1-801. Recreational use license required to use state lands for general recreational purposes -- penalty -- exemption.** (1) Except as provided in subsections (3) and (4), a person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) Except as provided in subsections (3) and (4), a person shall, upon the request of a peace officer or fish and game warden, present for inspection his the person's recreational use license.

(3) If the department and the department of fish, wildlife, and parks consent to and sign a recreational use licensing agreement for hunting, fishing, and trapping purposes, as provided in [sections 1 and 2], a person is not required to obtain a recreational use license for use of state land parcels for hunting, fishing, and trapping purposes.

(4) If the department fully compensates the trusts for the recreational use of state trust land by the public for recreational purposes other than hunting, fishing, and trapping, as provided in [section 2], a person is not required to obtain a recreational use license for these other uses on state lands.

~~(3)~~(5) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both."

**Section 6.** Section 77-1-802, MCA, is amended to read:

**"77-1-802. Recreational use license -- fee.** (1) The fee for a recreational use license must attain full market value: whether the license is sold on an individual basis or on a group basis through a recreational use licensing agreement with the department of fish, wildlife, and parks as provided in [section 1].

(2) ~~Money~~ Except as provided in [sections 1 and 2], money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage ~~contribution to~~ of acreage in the total acreage of all state land trusts.

(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.

(3) ~~The~~ If the department and the department of fish, wildlife, and parks do not agree to a recreational use licensing agreement, the department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative

offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

**Section 7.** 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, including parcels subject to the recreational use licensing agreement provided for in [section 1]. 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) (a) 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.

(b) If the department and the department of fish, wildlife, and parks both consent to and sign a recreational use licensing agreement, the board shall adopt rules for implementation and administration of the licensing agreement as provided in [section 1].

(8) 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 8.** Section 77-1-808, MCA, is amended to read:

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

(2) There must be deposited in the account:

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

(b) 15% of the revenue received as a result of licensing the department of fish, wildlife, and parks for the public recreational rights of hunting, fishing, and trapping as provided in [section 1]; and

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

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

- (a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;
- (b) assistance in weed control management necessary as a result of recreational use of state lands;
- (c) protection of the resource value of the trust assets; ~~and~~
- (d) administration and management for the implementation of recreational use of state lands; and
- (e) acquisition of access and maintenance of roads necessary for public recreational use of state trust land and other related uses."

**Section 9.** Section 87-2-202, MCA, is amended to read:

**"87-2-202. (Temporary) Application -- fee -- expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~\$4~~ \$5.25.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~\$7~~ \$8.25.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only



once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates March 1, 2006--sec. 9, Ch. 216, L. 2001; bracketed language terminates or is amended on occurrence of contingency--sec. 3, Ch. 321, L. 2001.)

**87-2-202. (Effective March 1, 2006) Application -- fee -- expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~\$4~~ \$5.25.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~\$7~~ \$8.25.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency--sec. 3, Ch. 321, L. 2001.)"

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 8, and the provisions of Title 77, chapter 1, part 8, apply to [sections 1 and 2].

NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12. Effective date.** [This act] is effective March 1, 2004.

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