

SENATE BILL NO. 147
INTRODUCED BY J. SHOCKLEY
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND A BOARD OF COUNTY COMMISSIONERS TO RESTRICT ACTIVITY ON WILDLAND AREAS WHERE THERE EXISTS A HIGH FIRE HAZARD; CLARIFYING THE GOVERNOR'S AUTHORITY TO CLOSE AREAS TO ACCESS UPON A DECLARATION OF AN EMERGENCY OR DISASTER RELATED TO FIRE DANGER; PROHIBITING A PERSON FROM ACCESSING LAND THAT IS CLOSED AND PROVIDING FOR A PERMIT PROCESS UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THE AUTHORITY OF THE PRESIDING OFFICER OF A BOARD OF COUNTY COMMISSIONERS TO CLOSE AREAS TO ACCESS UPON A DECLARATION OF AN EMERGENCY OR DISASTER; CLARIFYING THAT WHEN THE GOVERNOR OR A PRESIDING OFFICER OF A BOARD OF COUNTY COMMISSIONERS CLOSES AN AREA TO ACCESS, THAT AREA IS ALSO CLOSED TO HUNTING AND FISHING; AMENDING SECTIONS 10-3-104, SECTION 10-3-406, AND 87-3-106; MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~NEW SECTION. Section 1. Activity restrictions in high fire hazard area.~~ The department may designate areas on state and private lands as high fire hazard areas and may require all persons present or engaged in any activity in the high fire hazard areas to cease operations or activities or to adjust working hours to less critical periods of the day.

~~NEW SECTION. Section 2. Wildland closure.~~ (1) A person may not access a wildland area designated as closed to access by a governor's proclamation of an emergency or disaster issued under Title 10, chapter 3, parts 1 through 3, except under a written permit issued by a recognized agency.

(2) Permits to enter upon closed areas may be issued by a recognized agency upon a showing of real need by the applicant. Permits may MUST be issued to individuals having actual residence as a permanent or principal place of abode in the designated areas or to individuals engaged in employment that does not present a fire hazard UNLESS THERE IS A SIGNIFICANT RISK TO HUMAN SAFETY IF ENTRANCE IS ALLOWED.

(3) A permit is not required for individuals engaged in firefighting, fire prevention, or law enforcement or

who are engaged in official business:

~~(4) FOR THE PURPOSES OF THIS SECTION, "OFFICIAL BUSINESS" INCLUDES BUT IS NOT LIMITED TO THE FUNCTIONS OF GOVERNMENTAL AGENCIES AND THE ACTIVITIES OF UTILITIES, COOPERATIVES, AND TELECOMMUNICATIONS PROVIDERS TO OPERATE, CONSTRUCT, REPAIR, AND MAINTAIN UTILITY FACILITIES THAT ARE ESSENTIAL TO THE PUBLIC.~~

NEW SECTION. Section 1. Activity restrictions in high fire hazard areas. (1) A board of county commissioners may designate areas on private land or on land that is not under the jurisdiction of a municipality or a state or federal agency as high fire hazard areas.

(2) Except as provided in 87-3-106(2), in designated high fire hazard areas, the board may require all persons, firms, or corporations present or engaged in any activity in those areas to cease operations or activities or to adjust working hours to less critical periods of the day.

(3) The presiding officer of the board may control ingress and egress into a high fire hazard area if an emergency or disaster is declared under the provisions of Title 10, chapter 3, part 4.

~~(4) (A) AN ENTITY THAT IS CONDUCTING OFFICIAL BUSINESS, AN ENTITY HAVING ACTUAL RESIDENCE AS A PERMANENT OR PRINCIPAL PLACE OF ABODE IN THE DESIGNATED AREA, OR AN ENTITY ENGAGED IN EMPLOYMENT THAT DOES NOT PRESENT A FIRE HAZARD MUST BE ALLOWED INGRESS AND EGRESS UNLESS THERE IS A SIGNIFICANT RISK TO HUMAN HEALTH OR SAFETY.~~

~~(B) FOR THE PURPOSES OF THIS SECTION, "OFFICIAL BUSINESS" INCLUDES BUT IS NOT LIMITED TO THE FUNCTIONS OF GOVERNMENTAL AGENCIES AND THE ACTIVITIES OF UTILITIES, COOPERATIVES, AND TELECOMMUNICATIONS PROVIDERS TO OPERATE, CONSTRUCT, REPAIR, AND MAINTAIN UTILITY FACILITIES THAT ARE ESSENTIAL TO THE PUBLIC.~~

~~**Section 4.** Section 10-3-104, MCA, is amended to read:~~

~~**"10-3-104. General authority of governor.** (1) The governor is responsible for carrying out parts 1 through 4 ~~3~~ of this chapter.~~

~~(2) In addition to any other powers conferred upon the governor by law, the governor may:~~

~~(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;~~

~~(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;~~

~~_____ (c) control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.~~

~~_____ (3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.~~

~~_____ (4) The authority to control ingress and egress, as provided in subsection (2)(c), includes the authority to close wildland areas to access during periods of extreme fire danger. Upon closure of wildland areas, the provisions of [section 2] apply.~~

Section 2. Section 10-3-406, MCA, is amended to read:

"10-3-406. Authority of principal executive officer. (1) Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

(1)(a) direct and compel the evacuation of all or part of the population from an incident or emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2)(b) control the ingress and egress to and from an incident or emergency or disaster area; AND the movement of persons within the area; ~~and the occupancy of premises therein in the area.~~

(2) ~~The~~ SUBJECT TO [SECTION 1(4)(A)], THE authority to control ingress and egress, as provided in subsection (1)(b), includes the authority to close wildland areas to access during periods of extreme fire danger."

~~_____ **Section 6.** Section 87-3-106, MCA, is amended to read:~~

~~_____ **"87-3-106. Hunting and fishing prohibited in fire danger areas.** (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of natural resources and conservation, closes an area to trespass because of fire danger, that area is declares an emergency or a disaster under Title 10, chapter 3, parts 1 through 3, or the presiding officer of a board of county commissioners declares an emergency or a disaster under Title 10, chapter 3, part 4, that is related to extreme fire danger and closes areas to access, those areas are automatically closed to hunting or fishing and remains remain closed while the fire closure remains in effect.~~

~~_____ (2) A board of county commissioners may initiate a request for a closure by that hunting and fishing be~~

~~restricted in an area that has not been closed to access but that the board considers to be a high fire hazard area by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered."~~

NEW SECTION. Section 3. Codification instruction. ~~(1) [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [sections 1 and 2].~~

~~———(2) [Section 3 1] is intended to be codified as an integral part of Title 7, chapter 33, part 22, and the provisions of Title 7, chapter 33, part 22, apply to [section 3 1].~~

NEW SECTION. Section 4. Effective date. [This act] is effective June 1, 2007.

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