

HOUSE BILL NO. 352

INTRODUCED BY T. JACOBSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE USE OF CERTAIN STATE TRUST LAND FOR
5 HUNTING, FISHING, AND TRAPPING; PROHIBITING AN OUTFITTER FROM HUNTING, FISHING, OR
6 TRAPPING ON STATE LAND NOT LEGALLY ACCESSIBLE; PROHIBITING A LESSEE FROM ALLOWING
7 ACCESS BY AN OUTFITTER TO STATE TRUST LAND NOT LEGALLY ACCESSIBLE; PROVIDING
8 PENALTIES; REQUIRING GAME WARDENS TO ENFORCE PROVISIONS OF THIS ACT; PROVIDING THAT
9 FINES COLLECTED UNDER THIS ACT ARE DEPOSITED IN THE GENERAL FUND; AND AMENDING
10 SECTIONS 77-1-101, 77-1-801, 87-1-504, AND 87-1-601, MCA."
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12 WHEREAS, throughout the state of Montana, lessees of state school trust sections allow access to
13 outfitters to conduct hunts for profit but do not allow the general public to cross their private land to do the same;

14 WHEREAS, these actions by lessees deny the rights of the rest of the Montana public, whom the state
15 trust lands are meant to benefit; and

16 WHEREAS, this bill attempts to remedy the current situation and to be fair to all.
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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 NEW SECTION. **Section 1. Recreational use on lands not legally accessible.** (1) The board or
21 department may not issue a recreational use license for hunting, fishing, and trapping purposes to an outfitter,
22 as defined in 37-47-101, for use of state trust land that is not legally accessible.

23 (2) A person who violates this section is guilty of a misdemeanor and shall be fined not less than \$500.
24

25 NEW SECTION. **Section 2. Lessee responsibility for hunting, fishing, trapping on certain trust**
26 **lands.** (1) A lessee may not grant permission to an outfitter, as defined in 37-47-101, to cross private land to
27 access state trust land that is not legally accessible for hunting, fishing, and trapping purposes.

28 (2) A person who violates this section is guilty of a misdemeanor and shall be fined not less than \$500
29 a section for each section of leased state trust land.
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1 **Section 3.** Section 77-1-101, MCA, is amended to read:

2 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land
3 in 77-1-701, in this title, the following definitions apply:

4 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana
5 constitution.

6 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
7 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes
8 all outfitting activity and all activities not included within the definition of general recreational use.

9 (3) "Department" means the department of natural resources and conservation provided for in Title 2,
10 chapter 15, part 33.

11 (4) "Distributable revenue" applies to all land trusts managed by the board, except property held pursuant
12 to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and
13 includes:

14 (a) 95% of all revenue from the management of school trust lands and the common school permanent
15 fund, except for mineral royalties or land sale proceeds that are deposited directly in the permanent fund;

16 (b) the interest and income described in 20-9-341, less any unrealized gains or losses;

17 (c) the interest and income received from the leasing, licensing, or other use of state trust lands; and

18 (d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant
19 and university system lands.

20 (5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and
21 other activities determined by the board to be compatible with the use of state lands.

22 (b) The term does not include the use of streams and rivers by the public under the stream access laws
23 provided in Title 23, chapter 2, part 3.

24 (6) "Legally accessible state lands" means state lands that can be accessed by:

25 (a) dedicated public road, right-of-way, or easement;

26 (b) public waters;

27 (c) adjacent federal, state, county, or municipal land if the land is open to public use; or

28 (d) adjacent contiguous private land if permission to cross the land has been secured from the
29 landowner. ~~The~~ Subject to [section 2], the granting of permission by a private landowner to cross private property
30 in a particular instance does not subject the state land that is accessed to general recreational use by members

1 of the public, other than those granted permission.

2 (7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced
3 in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that
4 may harm native plant communities and that is designated:

5 (a) as a statewide noxious weed by rule of the department of agriculture; or

6 (b) as a district noxious weed by a district weed board organized under 7-22-2103.

7 (8) (a) "State land" or "lands" means:

8 (i) lands granted to the state by the United States for any purpose, either directly or through exchange
9 for other lands;

10 (ii) lands deeded or devised to the state from any person; and

11 (iii) lands that are the property of the state through the operation of law.

12 (b) The term does not include:

13 (i) lands that the state conveys through the issuance of patent;

14 (ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution
15 and that are the property of that institution;

16 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307;

17 or

18 (iv) lands acquired through investments under the provisions of 17-6-201.

19 (9) "State trust land" means lands or property interests held in trust by the state:

20 (a) under Article X, sections 2 and 11, of the Montana constitution;

21 (b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended; and

22 (c) through the operation of law for specified trust beneficiaries.

23 (10) "Weed management" or "control" has the meaning provided in 7-22-2101."

24

25 **Section 4.** Section 77-1-801, MCA, is amended to read:

26 **"77-1-801. (Temporary) Recreational use license required to use state lands for general**
27 **recreational purposes -- penalty -- exemption.** (1) Except as provided in subsection (3) and subject to [section
28 1], a person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use
29 state lands, as defined in 77-1-101, for general recreational purposes.

30 (2) Except as provided in subsection (3), a person shall, upon the request of a peace officer or fish and

1 game warden, present for inspection the person's recreational use license.

2 (3) If the department and the department of fish, wildlife, and parks consent to and sign an agreement
3 for hunting, fishing, and trapping purposes, as provided in 77-1-815, a person is not required to obtain a
4 recreational use license for use of legally accessible state trust land for hunting, fishing, and trapping purposes.

5 (4) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50 or
6 more than \$500 or be imprisoned in the county jail for not more than 6 months, or both. (Void on occurrence of
7 contingency--sec. 8, Ch. 596, L. 2003.)

8 **77-1-801. (Effective on occurrence of contingency) Recreational use license required to use state**
9 **lands for general recreational purposes -- penalty.** (1) ~~A~~ Subject to [section 1], a person 12 years of age or
10 older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in
11 77-1-101, for general recreational purposes.

12 (2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection
13 the person's recreational use license.

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

16

17 **Section 5.** Section 87-1-504, MCA, is amended to read:

18 **"87-1-504. Protection of private property -- duty of wardens.** It is the duty of wardens to enforce the
19 provisions of 45-6-101, 45-6-203, 75-10-212(2), 77-1-801, 77-1-806, [section 1], [section 2], and rules adopted
20 under 77-1-804 on private and state lands being used for hunting and fishing."

21

22 **Section 6.** Section 87-1-601, MCA, is amended to read:

23 **"87-1-601. Use of fish and game money.** (1) (a) Except as provided in 87-1-290, [87-1-293,] 87-1-623,
24 and subsections (8) and (10) of this section, all money collected or received from the sale of hunting and fishing
25 licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and
26 game laws of this state, or from appropriations or received by the department from any other state source must
27 be turned over to the department of revenue and placed in the state special revenue fund to the credit of the
28 department.

29 (b) Any money received from federal sources must be deposited in the federal special revenue fund to
30 the credit of the department.

1 (c) All interest earned on money from the following sources must be placed in the state special revenue
2 fund to the credit of the department:

3 (i) the general license account;

4 (ii) the license drawing account;

5 (iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411,
6 87-2-722, and 87-2-724; and

7 (iv) money received from the sale of any other hunting and fishing license.

8 (2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart
9 and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be
10 made by the department under the terms of this title. The money described in subsection (1) must be spent for
11 those purposes by the department, subject to appropriation by the legislature.

12 (3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special
13 revenue fund and the federal special revenue fund.

14 (4) Except as provided in subsections (8) and (9), all money collected or received from fines and forfeited
15 bonds, except money collected or received by a justice's court, that relates to violations of state fish and game
16 laws under Title 87 must be deposited by the department of revenue and credited to the department in a state
17 special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and
18 game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the
19 fine is not imposed in addition to the costs of prosecution.

20 (5) (a) Except as provided in 87-1-621, section 2(3), Chapter 560, Laws of 2005, and subsection (6) of
21 this section, money must be deposited in an account in the permanent fund if it is received by the department
22 from:

23 (i) the sale of surplus real property;

24 (ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department,
25 except royalties or other compensation based on production; and

26 (iii) leases of interests in department real property not contemplated at the time of acquisition.

27 (b) The interest derived from the account, but not the principal, may be used only for the purpose of
28 operation, development, and maintenance of real property of the department and only upon appropriation by the
29 legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or
30 state statutes specifically naming the department or money received by the department, then the use of this

1 money must be limited in the manner, method, and amount to those uses that do not result in a violation.

2 (6) Money received from the sale or lease of lands acquired and managed for the purposes of Title 23,
3 chapter 1, must be deposited in the state special revenue fund in the account established for miscellaneous funds
4 received for state parks and may be used only for the purposes of Title 23, chapter 1.

5 (7) Money received from the collection of license drawing applications is subject to the deposit
6 requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit
7 schedule pursuant to 17-6-105(8).

8 (8) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806,
9 [section 1], [section 2], or rules adopted under 77-1-804 must be deposited in the state general fund.

10 (9) The department of revenue shall deposit in the state general fund one-half of the money received
11 from the fines imposed pursuant to Title 87, chapter 6.

12 (10) (a) The department shall deposit all money received from the search and rescue surcharge in
13 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as
14 provided for in 10-3-801.

15 (b) Upon certification by the department of reimbursement requests submitted by the department of
16 military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the
17 department may transfer funds from the special revenue account to the search and rescue account provided for
18 in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

19 (c) Using funds in the department's search and rescue account that are not already committed to
20 reimbursement for search and rescue missions, the department may provide matching funds to the department
21 of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion
22 that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears
23 to the statewide total of search and rescue missions.

24 (d) Any money deposited in the special revenue account is available for reimbursement of search and
25 rescue missions and to provide matching funds to reimburse counties for search and rescue training and
26 equipment costs. (Bracketed language in (1)(a) terminates June 30, 2019--sec. 7, Ch. 83, L. 2013.)"

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28 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 and 2] are intended to be codified
29 as an integral part of Title 77, chapter 1, part 8, and the provisions of Title 77, chapter 1, part 8, apply to [sections
30 1 and 2].

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