

1 HOUSE BILL NO. 382

2 INTRODUCED BY W. CURDY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROHIBITING THE
5 POSSESSION OF EXPLODING TARGETS ON STATE LANDS AND WATERS DURING TIMES OF
6 DANGEROUS FIRE CONDITIONS; DEFINING "EXPLODING TARGETS"; PROVIDING RULEMAKING
7 AUTHORITY; AMENDING SECTIONS 23-1-111, 77-1-804, 87-1-301, AND 87-1-303, MCA; AND PROVIDING
8 AN IMMEDIATE EFFECTIVE DATE."

9

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

11

12 **Section 1.** Section 23-1-111, MCA, is amended to read:

13 **"23-1-111. Powers and duties of board -- rulemaking -- meetings.** (1) Except as provided in
14 subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic
15 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant
16 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the board shall:

17 (a) set the policies and provide direction to the department for:

18 (i) the management, protection, conservation, and preservation of these properties, lands, and waters
19 and their appropriate role relative to tourism and the economic health of Montana;

20 (ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at
21 these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback
22 riding, mountain biking, boating, and swimming;

23 (b) work with the commission to maintain hunting and angling opportunities on these lands and
24 waters;

25 (c) establish the rules of the department governing the use of these properties and lands. The rules
26 must be adopted in the interest of public health, public safety, public welfare, and protection of property and
27 public resources in regulating recreation, including picnicking, camping, and swimming, and sanitation. These
28 rules are subject to review and approval by the department of public health and human services with regard to

1 issues of public health and sanitation before becoming effective. Copies of the rules must show that
2 endorsement.

3 (d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters
4 by the department, except as provided in 87-1-209(4). Except as provided in subsection ~~(4)~~ (5), any decision by
5 the board to divest the department of a fee title interest in a state park or a portion of a state park must be
6 approved by the legislature in the next regular legislative session.

7 (e) review and approve the budget of the department for the administration of these properties, lands,
8 and waters prior to its transmittal to the office of budget and program planning;

9 (f) review and approve construction projects that have an estimated cost of more than \$50,000;

10 (g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote
11 recreational opportunities statewide; and

12 (h) encourage citizen involvement in management planning for these properties, lands, and waters.

13 (2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the
14 administration of fishing access sites.

15 (3) (a) The board shall adopt rules prohibiting the possession of exploding targets on properties
16 managed by the board pursuant to subsection (1) when the department of natural resources and conservation
17 determines dangerous fire conditions exist.

18 (b) For the purposes of this section, "exploding targets" means commercial targets that explode when
19 impacted by a high-velocity projectile or targets created by combining components, including but not limited to
20 ammonium nitrate and aluminum powder, that explode when impacted by a high-velocity projectile.

21 ~~(3)(4)~~ The members of the board shall hold quarterly or other meetings for the transaction of business
22 at times and places considered necessary and proper. The meetings must be called by the presiding officer or
23 by a majority of the board and must be held at the time and place specified in the call for the meeting. A
24 majority of the members constitutes a quorum for the transaction of any business. The board shall keep a
25 record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or
26 documents for the board.

27 ~~(4)(5)~~ (a) Approval of the legislature is not required for decisions regarding the transfer of a fee title
28 interest in affiliated lands or land that is part of an exchange to consolidate ownership or address impacts to

1 neighboring landowners.

2 (b) For the purposes of this subsection ~~(4)~~ (5), the term "affiliated lands" means lands owned by the
3 department but:

4 (i) not actively managed by the department; or

5 (ii) managed by another entity."
6

7 **Section 2.** Section 77-1-804, MCA, is amended to read:

8 **"77-1-804. Rules for recreational use of state lands -- penalty.** (1) The board shall adopt rules
9 authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local
10 offices of the department to administer this program whenever practical.

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

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

22 (a) cabin site and home site leases and licenses;

23 (b) the seasonal presence of growing crops; and

24 (c) active military, commercial, or mineral leases.

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

28 (5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain

1 reasons, including but not limited to:

2 (a) damage attributable to recreational use that diminishes the income-generating potential of the
3 state lands;

4 (b) damage to surface improvements of the lessee;

5 (c) the presence of threatened, endangered, or sensitive species or plant communities;

6 (d) the presence of unique or special natural or cultural features;

7 (e) wildlife protection;

8 (f) noxious weed control; or

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

10 (6) (a) The board shall adopt rules prohibiting the possession of exploding targets on state lands
11 when the department determines dangerous fire conditions exist.

12 (b) For the purposes of this section, "exploding targets" means commercial targets that explode when
13 impacted by a high-velocity projectile or targets created by combining components, including but not limited to
14 ammonium nitrate and aluminum powder, that explode when impacted by a high-velocity projectile.

15 ~~(6)~~(7) (a) Rules adopted under this section may impose restrictions on general recreational activities,
16 including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the
17 presence of livestock.

18 (b) The board may also by rule restrict access on state lands in accordance with a block management
19 program administered by the department of fish, wildlife, and parks.

20 (c) Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated
21 county roads, trails developed by the department for motorized use, and roads designated by the department to
22 be open to motorized vehicle use.

23 (d) Recreational overnight use of state lands in a 30-day period is limited to 16 days:

24 (i) in a designated campground; and

25 (ii) on unleased, unlicensed lands outside a campground unless otherwise allowed by the department.

26 (e) Pets on state lands must be on a leash or otherwise controlled to prevent harassment of livestock
27 or wildlife.

28 (f) Horses may be kept overnight on state lands if:

- 1 (i) the horses do not remain in a stream riparian zone for more than 1 hour; and
- 2 (ii) only feed certified as noxious weed seed free is present on state lands.
- 3 (g) A horse kept overnight on state lands where there is a lease or license must be kept in compliance
- 4 with the provisions of subsection ~~(6)(f)~~ (7)(f) and must be restrained.
- 5 (h) Restrictions on general recreational activities must comply with the following:
- 6 (i) at least 30 days prior to a restriction, except in the case of emergency, the lessee or the
- 7 department if requested by the lessee shall:
- 8 (A) post notice of the proposed restriction at frequent access points to the land where the restriction is
- 9 proposed; and
- 10 (B) issue a press release or a public service announcement detailing the proposed restriction;
- 11 (ii) except for seasonal restrictions and unless required for public safety, a restriction in an area may
- 12 not exceed 1 year; and
- 13 (iii) if a misuse of the land, including littering, may lead to a restriction, common access points must be
- 14 posted with notice of the possible restriction for 30 days with information detailing the misuse of land and
- 15 stating the penalties for the violation. If the misuse persists at the end of 30 days, a proposed restriction notice
- 16 may be posted in accordance with subsection ~~(6)(h)(i)~~ (7)(h)(i).
- 17 ~~(7)(8)~~ The board shall adopt rules providing for the issuance of a recreational special use license.
- 18 Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it
- 19 occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a
- 20 recreational special use license for recreational use that is not commercial, concentrated, or within the definition
- 21 of general recreational use.
- 22 ~~(8)(9)~~ For a violation of rules adopted by the board pursuant to this section, the department may
- 23 assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice
- 24 and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this
- 25 subsection must be deposited as provided in 87-1-601~~(8)~~.
- 26 ~~(9)(10)~~ Unauthorized dumping of refuse on state lands and destruction of property, which includes
- 27 land and improvements, are misdemeanor crimes punishable by a fine of not more than \$1,500."
- 28

1 **Section 3.** Section 87-1-301, MCA, is amended to read:

2 **"87-1-301. Powers of commission.** (1) Except as provided in subsections (6) and (7), the
3 commission:

4 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
5 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
6 of all other responsibilities of the department related to fish and wildlife as provided by law;

7 (b) shall establish the hunting, fishing, and trapping rules of the department;

8 (c) except as provided in 23-1-111 and ~~87-1-303(3)~~, 87-1-303(4), shall establish the rules of the
9 department governing the use of lands owned or controlled by the department and waters under the jurisdiction
10 of the department;

11 (d) must have the power within the department to establish wildlife refuges and bird and game
12 preserves;

13 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
14 provided in 23-1-111 and 87-1-209(2) and (4);

15 (f) except as provided in 23-1-111, shall review and approve the budget of the department prior to its
16 transmittal to the office of budget and program planning;

17 (g) except as provided in 23-1-111, shall review and approve construction projects that have an
18 estimated cost of more than \$1,000 but less than \$5,000;

19 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as
20 provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates
21 as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall
22 consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a
23 particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or
24 documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within
25 the particular hunting district where a restriction on elk hunting on public property is proposed.

26 (i) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to 87-3-145; and

27 (j) shall comply with, adopt policies that comply with, and ensure the department implements in each
28 region the provisions of state wildlife management plans adopted following an environmental review conducted

1 pursuant to Title 75, chapter 1, parts 1 through 3.

2 (2) The commission may adopt rules regarding the use and type of archery equipment that may be
3 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in
4 archery equipment change.

5 (3) The commission may adopt rules regarding the establishment of special licenses or permits,
6 seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or
7 enhance hunting by Montana's youth and persons with disabilities.

8 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

9 (i) separate deer licenses from nonresident elk combination licenses;

10 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without
11 the deer tag;

12 (iii) condition the use of the deer licenses; and

13 (iv) limit the number of licenses sold.

14 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary
15 and appropriate to regulate the harvest by nonresident big game combination license holders:

16 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

17 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

18 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-
19 321 through 87-1-325.

20 (5) (a) Subject to the provisions of subsection (5)(b), the commission may adopt rules to:

21 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

22 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
23 districts.

24 (b) The commission shall adopt rules for the use of and set quotas for the sale of Class D-4
25 nonresident hound handler licenses by hunting district, portions of a hunting district, group of districts, or
26 administrative regions. However, no more than two Class D-4 licenses may be issued in any one hunting
27 district per license year.

28 (c) The commission shall consider, but is not limited to consideration of, the following factors:

- 1 (i) harvest of lions by resident and nonresident hunters;
- 2 (ii) history of quota overruns;
- 3 (iii) composition, including age and sex, of the lion harvest;
- 4 (iv) historical outfitter use;
- 5 (v) conflicts among hunter groups;
- 6 (vi) availability of public and private lands; and
- 7 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.
- 8 (6) The commission may not regulate the use or possession of firearms, firearm accessories, or
- 9 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:
- 10 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
- 11 establishment of special archery seasons;
- 12 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms,
- 13 including bows and arrows, traditional handguns, and muzzleloading rifles;
- 14 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);
- 15 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; ~~or~~
- 16 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h); or
- 17 (f) the prohibition on possession of exploding targets pursuant to 87-1-303.
- 18 (7) Pursuant to 23-1-111, the commission does not oversee department activities related to the
- 19 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic
- 20 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant
- 21 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9."

22

23 **Section 4.** Section 87-1-303, MCA, is amended to read:

24 **"87-1-303. Rules for use of lands and waters.** (1) Except as provided in 23-1-111, 87-1-301(6), and

25 subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are

26 acquired or held under easement by the commission or lands that it operates under agreement with or in

27 conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public

28 health, public safety, and protection of property in regulating the use of these lands. All lease and easement

1 agreements must itemize uses as listed in 87-1-209.

2 (2) Except as provided in 87-1-301(6), the commission may adopt and enforce rules governing
3 recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to
4 the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or
5 state agency or private owner. These rules must be adopted in the interest of public health, public safety, public
6 welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping,
7 boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the
8 operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized
9 boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes,
10 rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas
11 regulated pursuant to the authority contained in this section must be areas that are legally accessible to the
12 public. These rules are subject to review and approval by the department of public health and human services
13 with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show
14 that endorsement.

15 (3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial
16 activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock
17 trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1,
18 parts 1 through 3.

19 (b) The commission may authorize domestic livestock trailing across land owned or controlled by the
20 department that is designated as a wildlife management area. The commission may adopt rules governing the
21 timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are
22 necessary both to enable the trailing of domestic livestock across the designated wildlife management area and
23 to protect and enhance state lands. The rules may not:

- 24 (i) require a fee for domestic livestock trailing or related activities; or
25 (ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

26 (4) The commission shall adopt rules prohibiting the possession of exploding targets on land owned
27 pursuant to subsection (1) or public waters managed pursuant to subsections (1) and (2) when the department
28 of natural resources and conservation determines dangerous fire conditions exist.

1 ~~(4)~~(5) For the purposes of this section, the following definitions apply:

2 (a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not
3 limited to horses, cattle, sheep, goats, and dogs.

4 (b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the
5 use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours.

6 (c) "Exploding targets" means commercial targets that explode when impacted by a high-velocity
7 projectile or targets created by combining components, including but not limited to ammonium nitrate and
8 aluminum powder, that explode when impacted by a high-velocity projectile."

9

10 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

11

- END -