

DRAFT

HJR 32

**A Study of State Parks, Outdoor Recreation, and
Heritage Resource Programs**



Masonic Lodge and School House, Bannack State Park -- Photo by Hope Stockwell

**A report to the 63rd Legislature
July 2012**

Environmental Quality Council

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Table of Contents

Introduction.	3
Findings and Recommendations.	4
Background.	5
Administrative Alternatives.....	8
Appendix A -- House Joint Resolution No. 32 (2011)	
Appendix B -- Existing state park, outdoor recreation, and heritage programs in Montana	
Appendix C -- Summary of past legislative audits and reports on state parks, outdoor recreation, and heritage resource programs	
Appendix D -- Administration of state parks in the Rocky Mountain region	
Appendix E -- HB 370 (2011) impacts	
Appendix F -- Memo from Marilyn Ross, Montana Heritage Commission Chair, to the EQC	
Appendix G -- Montana Heritage Commission Senate Bill No. 3 Summary Table	
Appendix H -- Montana Heritage Commission 2013 long-range building request	
Appendix I -- Department of Fish, Wildlife, and Parks' Parks Division Revenue & Expenditures	
Appendix J -- Montana Heritage Commission Revenue & Expenditures	
Appendix K -- Virginia City, Nevada City, and Reeder's Alley Concessionaire Contract Summary	
Appendix L -- Montana Fish, Wildlife, and Parks' Parks Division Biennial Fee Rule	
Appendix M -- Funding options for state parks	
Appendix N -- Estimated costs of administrative alternatives for state parks	
Appendix O -- Estimated costs of administrative alternatives for state parks to DFWP and a stand-alone state parks agency	
Appendix P -- Cost of a stand-alone parks commission	
Appendix Q -- Comparing Commissions (MT, SD, NE, KS, TX)	
Appendix R -- Parks land acquisitions, 2002 to 2011	
Appendix S -- HB 628 (2011) fiscal note	
Appendix T -- LC 9000	
Appendix U -- LC 9001	
Appendix V -- LC 9002	
Appendix W -- LC 9010	

Introduction

House Joint Resolution No. 32 (Appendix A), assigned to the Environmental Quality Council (EQC), requested an interim study of ways to improve the management, recognition, and coordination of state parks and outdoor recreation and heritage resource programs operated by the state of Montana.

HJR 32 asked that the assigned committee:

- review audits and studies related to the management, support, and funding of state parks and outdoor recreational and heritage resource programs;
- evaluate the priority, organizational structure, and management of Department of Fish, Wildlife, and Parks (DFWP) programs related to state parks, boating, off-highway vehicles, and snowmobiling;
- evaluate the relationship between state, city, county, and federal park and recreation programs and provide recommendations for improving statewide coordination and communication between these programs;
- identify methods to improve the management of state parks and recreational and heritage resources for Montana citizens while supporting local communities and their economic health;
- compile and review information on other state park and recreational systems in the Rocky Mountain region, including their organizational structure, management, and governance;
- recommend changes to improve the balance, effectiveness, and priority of parks, recreation, and heritage resource stewardship in Montana; and
- propose legislation for consideration by the 63rd Legislature that raises the awareness, professionalism, and priority of state parks and recreational programs in Montana and establishes a state parks and recreation board that fosters additional citizen involvement and oversight of these programs.

At its May 2011 meeting, the EQC allocated .06 FTE, or 173 hours, to complete the HJR 32 study, including the following tasks:

1. Receive summaries of existing state parks and outdoor recreation and heritage programs and past legislative audits and reports on these programs (Appendix B and C);
✓ completed September 2011
2. Review the administrative structure and operation of these programs in other Rocky Mountain states (Appendix D);
✓ completed January 2012
3. Host a panel discussion with administering state agencies;
✓ completed January 2012
4. Follow impacts of HB 370, 2011 (Appendix E).
✓ completed July 2012

Findings and Recommendations

After completing the enclosed analysis, the EQC finds:

- Montana's state parks, outdoor recreational opportunities, and heritage sites and programs are a tremendous resource for all residents, families, schools, communities, and the economy.
- Despite the fact that Montana draws more than 10 million visitors per year, the majority are destined for Glacier and Yellowstone National Parks. Montana needs to be much more aggressive in marketing its state parks, state-owned sites at Virginia and Nevada Cities, and other recreational and heritage resources to capitalize on these visitors and help the state sites achieve their full potential and maximize use by residents and nonresidents alike.
- While integrating the administration of these programs might be desirable due to seemingly natural alliances between their missions, operations, and resource needs, it does not seem appropriate at this time to combine management of state parks with that of Virginia and Nevada Cities.
- The Legislature should continue in the next interim to monitor the Montana Heritage Preservation and Development Commission (MHC) and its operation of state-owned properties at Virginia and Nevada Cities in order to track the impacts of the MHC's reorganization in August 2011 and its implementation of a new business plan.
- The state parks system is overshadowed by controversial wildlife issues that dominate the attention of its mother agency, the Department of Fish, Wildlife, and Parks. While the Department of Commerce and its tourism-focused mission may present an opportunity to enhance the state parks system, it does not seem appropriate at this time to move the administration of state parks to that agency.
- It is fully appropriate to create a separate governing body to oversee state parks and other recreational programs administered by the Parks Division, regardless of which agency the division is in, in order to provide a dedicated forum for and greater discussion of parks and recreation policies, issues, and access.
- All of Montana's state parks and outdoor recreational and heritage resources deserve more support. The state has untold gems that are being neglected and may be tarnished or even lost without a greater commitment and attention by the Legislature and the people of Montana.

Background

The HJR 32 study primarily grew out of ongoing discussions about the solvency and management of Montana's state parks system. The Legislative Finance Committee reviewed the parks system in the 2009-2010 interim but did not propose legislation.

At the request of the DFWP, the 2011 Legislature passed Senate Bill No. 43, revising the state's list of primitive parks and the types of improvements that may be made at those sites with an eye toward increasing customer satisfaction and improving relationships with neighbors. The 2011 Legislature also approved House Bill No. 370, which increased the optional light motor vehicle registration fee used for operation and maintenance of state parks from \$3.50 to \$5.37 and for state-owned facilities at Virginia and Nevada Cities from \$0.25 to \$0.38.

Meanwhile, House Bill No. 628 (2011) sought to move the Parks Division out of DFWP and into the Department of Commerce, which currently houses the Montana Heritage Preservation and Development Commission (MHC). The state-owned sites in Virginia and Nevada Cities would have been converted into a state park; the MHC would have been disbanded; and a new state parks, recreation, and heritage board would have been established to oversee all. HB 628 did not pass, but it provoked discussion about improved management and coordination of these programs, leading to the drafting of HJR 32.

To Be or Not to Be

The idea of making the state-owned sites at Virginia and Nevada Cities a state park has been kicked around since before the properties were purchased.

The buildings and artifacts that make up the present-day tourist attraction were gathered over time and from around Montana and the country by Charles and Sue Bovey. The 55th Montana Legislature authorized the state's purchase of the collection for \$6.5 million in 1997. The 248 buildings, 160 acres, and estimated 500,000 to 1 million artifacts were bought whole-cloth and largely sight unseen.



The "Cheap Cash Store" in Virginia City, originally built in 1867 near Radersburg, MT, is furnished today as a crowded miner's store. Photo by Hope Stockwell.

Instead of creating a state park, the 55th Legislature established the MHC and tasked it with hiring staff and running day-to-day operations in Virginia and Nevada Cities. The Legislature directed the MHC to sort through the Bovey collection and create an accurate and comprehensive inventory. The Legislature also dictated that no general fund money be given to the effort in the future and that the properties be managed to become self-sufficient and

profitable.¹

In 2003, the Legislative Audit Committee requested a performance audit of the state operations at Virginia and Nevada Cities. The audit made several findings and recommendations, many related to the efficacy of the MHC and its statutory construction.

The audit said that while the 14-member commission and its expertise were critical for providing input on the initial planning and stabilization of the sites in Virginia and Nevada Cities, the commission's structure appeared not to be conducive to effective onsite, day-to-day oversight. In addition, the MHC – which was then attached to the Historical Society – was bumping against conflicting authorities with the Society's Board of Trustees.

The audit found that while the MHC had requested various studies and plans in an effort to achieve statutorily mandated profitability, many of the study recommendations had not been implemented. The audit highlighted the lack of a full-time, on site manager and difficulties in creating the artifact inventory due to resource, staffing, and maintenance issues.

The audit also pointed out that when the state purchased the Virginia and Nevada Cities sites, limited information was available on the extent of their preservation, stabilization, maintenance, and financial needs; initially, operational expenses could not be accurately projected.

With 6 years of experience under the state's belt, the audit concluded that the sites and operations would not be self-sufficient and that long-term support would be needed. The audit suggested it was time to revise the mission and operation of the sites at Virginia and Nevada Cities.



Examples of preservation work needed in Virginia City. At left: The back of the E.L.Smith Store. At right: Cogswell Cabin where the log wall on the left has rotted away. Photos by Hope Stockwell

Auditors explored four management options: 1) Remove the Historical Society from the management structure; 2) give all management responsibilities to the Historical Society and dissolve the MHC; 3) move site management to the Department of Commerce to provide a tie with economic development and tourism; and 4) hand management over to the Parks Division at the DFWP.

¹ 22-3-1001 and 22-3-1003, MCA.

Ultimately, the audit recommended that management be transferred to the Parks Division for the following reasons:

- no other government operation appears to have a site management system that is as comprehensive and compatible;
- stakeholders are frustrated with the current lack of structure/business approach;
- similar operations across the nation are operated as state parks; and
- operations will likely become more effective in addressing planned development and preservation goals.

In the end, it was the Legislature's decision to make and it decided to leave the MHC intact and responsible for day-to-day operations at Virginia and Nevada Cities. However, the MHC was moved from the Historical Society and administratively attached to the Department of Commerce.

In 2012, management and resource issues continue to challenge the MHC. The operations at Virginia and Nevada Cities have not achieved profitability. And while the artifact inventory is currently up-to-date, a more detailed cataloging of the artifacts is only about 25% complete.

While the Legislature has extended the statutory appropriation of accommodations tax money to the MHC (\$400,000/year, previously set to expire in 2007), it did not appropriate long-range building program (LRBP) funds for capital improvements at Virginia and Nevada Cities in FY 2012 and 2013², and the general fund is still off limits. Federal grants have waned.

Faced with a \$400,000 shortfall, the MHC reorganized in August 2011. The move affected both seasonal and permanent employees. Overall, the staff was decreased by five FTE.

In a memo to the EQC dated January 11, 2012 (Appendix F), MHC Chair Marilyn Ross stated that, moving forward, the Commission intends to "place a greater emphasis on a business model that will increase profitability of the site and greater economic sustainability." To that end, Ross wrote, the MHC created a new business development manager position as part of its reorganization.

The EQC expressed concern at its March 2012 meeting about the MHC's budget for maintenance and preservation; \$23,890 was budgeted for FY 2012 and FY 2013. That amount was reduced to \$19,412 as part of the MHC's restructuring. When asked how the MHC was prioritizing its work given the limited resources, the MHC provided an inventory of its heritage properties, created pursuant to Senate Bill No. 3 (2011) (Appendix G), and its 2013 long-range building appropriations request (Appendix H). When visiting Virginia and Nevada Cities in May 2012, the EQC learned that the MHC has just two full-time maintenance workers.

²The MHC received \$750,000 from the long-range building program for FY 2010 and 2011. Its request for \$1.3 million in FY 2012 and 2013 was not approved. The MHC is currently asking for \$3.0 million from LRBP in FY 2014 and 2015.

Administrative Alternatives

Over the course of the interim, the EQC has explored various administrative alternatives in hopes of providing more support and stability to the state parks system and Virginia and Nevada Cities.

At a panel discussion in January 2012, potentially affected state agencies were asked to weigh in on the pros and cons of six possible administrative scenarios:

- No change in the current structure;
- Leaving state parks within DFWP, but creating a separate governing body for them;
- Transferring administration of state parks to the Department of Natural Resources and Conservation and creating a separate governing body for them;
- Transferring administration of state parks to the Department of Commerce and creating a combined state parks/heritage commission to oversee state parks and Virginia and Nevada Cities;
- Transferring administration of Virginia and Nevada Cities to the state parks system in whichever department the Parks Division is located; and
- Creating a new department, possibly combined with the Historical Society, to administer state parks, historical sites, outdoor recreation (boating, OHV, trails), and other heritage resources, including Virginia and Nevada Cities.

Following the January 2012 discussion, the EQC asked for additional information -- much of it financial -- regarding various administrative alternatives before deciding whether to proceed with any concept. The requested data was compiled in the following appendices and presented to the EQC in March 2012.

Appendix I:	Current revenue and expenditures for the State Parks Division
Appendix J:	Current revenue and expenditures for the Montana Heritage Commission
Appendix K:	Current terms of concessionaire and rental contracts at Virginia and Nevada Cities and Reeder's Alley
Appendix L:	Current user fees collected by the State Parks Division
Appendix M:	Legislative options for increasing revenue for the State Parks Division
Appendix N:	Estimated cost of reassigning the administration of the State Parks Division to the Department of Natural Resources, the Department of Commerce, or the Montana Historical Society
Appendix O:	Estimated cost of a stand-alone State Parks agency
Appendix P:	Estimated cost of a stand-alone State Parks Commission
Appendix Q:	Comparing combined fish, wildlife, and parks commissions in MT, TX, NE, SD, KS
Appendix R:	State Parks Acquisitions Data
Appendix S:	HB 628 (2011) Fiscal Note

After discussing these appendices, the EQC agreed to draft three bills (Appendices T, U, V) that would alter the administration of state parks and Virginia and Nevada Cities.

These bill drafts were variations on a theme. Each of the three would create a new governing body to oversee state parks, separate from the existing Fish, Wildlife, and Parks Commission. LC 9001 and LC 9002 would transfer management of the state-owned sites in Virginia and Nevada Cities, as well as Reeder's Alley in Helena, to the Parks Division at the DFWP – without turning the sites into state parks. LC 9001 would also disband the Montana Heritage Preservation and Development Commission (MHC), which currently oversees Virginia and Nevada Cities and Reeder's Alley. LC 9002, meanwhile, would morph the MHC into an advisory council to a new state parks, recreation, and heritage board.

Separating Parks

Public support expressed to the EQC for creating a separate governing body for the state parks system has been two fold: 1) to increase the amount of time spent discussing parks and recreation policy issues; and 2) to insulate state parks from contentious wildlife management issues (like bison and wolves) that have cast the DFWP in a harsh spotlight.



Lewis and Clark Caverns State Park Visitor Center.
Photo by Hope Stockwell

A review of FWP Commission meetings between March 2011 and March 2012 finds wildlife management issues (many related to the setting of hunting seasons and regulations) routinely dominate the agenda. During that time period, 136 agenda items dealt with wildlife-related issues, while 27 were specific to fish and fisheries and 30 were related to parks and recreation.³ (For the purposes of this analysis, the term “recreation” includes boating and motorized and nonmotorized trail use.)

Of the 30 parks and recreation agenda items, 22 dealt with boating and water use regulations and 8 were specific to state parks. Of the latter, three dealt with acquisition of the former Milltown Dam site and two were about Smith River usage. The other three were related to the Parks Division's new online reservation system, acquisition of the Travelers' Rest State Park visitor center, and a grazing lease adjacent to First Peoples Buffalo Jump State Park.

There are currently five states with combined fish, wildlife, and parks commissions – Montana, South Dakota, Nebraska, Kansas, and Texas -- though Colorado is transitioning to the sixth under order from that state's 2011 Legislature.

³This review of FWP Commission meetings was limited to the actual number of agenda items and did not consider the length of time spent discussing each.

In January 2012, the EQC asked staff to research what, if anything, these states are doing to dedicate commission time to parks issues. No specific policies were found, and trying to quantify or qualify the “face time” state parks receive with their commissions proved difficult.

A review of the states’ statutes reveals that while commission members with livestock or agricultural experience are required in three states (Montana, South Dakota, and Nebraska), a parks or recreation representative is not required in any. Texas’ statute comes the closest, stating the governor shall “attempt to include persons with expertise in diverse fields, including historic preservation, conservation, and outdoor recreation.”

Anecdotally, individual personalities seem to drive the amount of attention state parks receive from these combined commissions. Jim Fuller, a staffer with the Nebraska Parks Division, says his administrator is “a go-getter, always making sure he’s out there selling our product. This guy makes sure our wants and needs are known.”

Kevin Good, special assistant to the director of Texas State Parks, agrees it comes down to the individual. But, Good says, a state’s characteristics drive commission agendas as well. For instance, Good describes Texas as “very much a private property state.”

“Sometimes the issues our commission is dealing with on land and water use does have the impact of crowding out park issues,” Good says, “not that they’re (commissioners) not interested, but it’s just kind of a priority thing.”

In Colorado, where the 2011 Legislature approved a merger of the state’s previously separate parks and wildlife divisions -- and their governing commissions -- as a cost-saving and efficiency measure, parks are already feeling a time crunch, according to Ken Brink, Assistant Director of Park Field Operations.

Brink told the EQC in January 2012 that “we’ve already seen in just the short amount of time we’ve been merged that a vast majority of time and issues that come before the commission are wildlife related, probably 90% of them. Already the former parks board members are taking notice that there’s a shift in hours put into discussion and there’s a concern about will there be a shift in priorities and perspective.”

The five members of the previous Colorado parks board and the nine members of the previous wildlife commission were tasked with making a recommendation to the 2012 Colorado Legislature about the mission and makeup of the new, combined commission. Brink says there was a lot of discussion about which constituency groups would be represented, in what numbers, and whether there would be a geographic distribution or a preference for specialized backgrounds.

The 2012 Colorado Legislature ultimately created a 13-member Parks and Wildlife Commission consisting of 2 ex-officio members and 11 voting members. Of the voting members, four must

live west of the continental divide, three must be sports persons, three must be actively involved in production agriculture and demonstrate a reasonable knowledge of wildlife issues, and three must demonstrate that they regularly engage in outdoor recreation and utilize park resources. Of the last three, one must represent a nonprofit organization that supports and promotes the conservation and enhancement of wildlife and habitat, recognizes and promotes primarily nonconsumptive wildlife use, and has expertise in wildlife issues, wildlife habitat, or wildlife management.

Dollars and Cents

In estimating the cost of various administrative alternatives for Montana, the DFWP suggested a separate state parks board could consist of seven members meeting six times a year for about \$9,000.

The cost of a commission is primarily dependent on how many members it has and where they live, since they're reimbursed for travel.

Currently, the five-member FWP Commission meets about once a month for 1 or 2 days. It has a budget of \$39,500, which includes \$20,000 for travel-related expenses, including lodging, mileage, and meals, \$2,000 for supplies, materials, and communications, and \$17,000 for member compensation. As a quasi-judicial board, members are entitled to \$50 compensation for each day in which a member is "actually and necessarily engaged in the performance of board duties".⁴

In contrast, the MHC has 14 members, but only meets quarterly, and is not quasi-judicial. In FY 2011, the MHC reported total costs of \$5,178 including lodging, mileage, and a few meals, according to the Department of Commerce.

The bill drafts that the EQC requested in March 2012 would create a five-member governing body for state parks. The board would be quasi-judicial in order to allow for rulemaking and other agency oversight functions.

A First-Hand Look

The EQC traveled to Lewis and Clark Caverns State Park and Virginia and Nevada Cities on May 2, 2012, to get a first hand look at operations and hear from site managers and workers about how potential administrative changes could affect their programs.

⁴ 2-15-124, MCA



Left, EQC members view the Paradise Room at Lewis and Clark Caverns State Park.
Right, EQC members tour the Kiskadden Stone Block building in Virginia City. Photos by Hope Stockwell

While at Lewis and Clark Caverns, EQC members heard support for the concept of creating a separate state parks and recreation board to oversee the Parks Division at DFWP. Hopes for dedicating more time to parks and recreation policy discussions and working to improve marketing strategies were specifically mentioned.

However, at Virginia and Nevada Cities, EQC members were asked by MHC staff, concessionaires, local residents, and county commissioners to leave the MHC intact and attached to the Department of Commerce, in order to give them more time to see how the MHC's reorganization and new business plan will impact operation of the state's properties there.

Proposed Legislation

Upon its return to Helena, on May 3, 2012, the EQC voted to move forward with LC 9000 (Appendix S) to create a separate state parks and recreation board to oversee the Parks Division and the state parks system.

The EQC did not advance a bill draft that would alter the administration of Virginia and Nevada Cities at this time. However, the EQC opted to draft a study resolution (LC 9010, Appendix W) that seeks continued monitoring of the MHC and its operations next interim.

The EQC also expressed interest in working toward integrating and coordinating management and marketing of the state's historic sites at Virginia and Nevada Cities with state parks and other recreational and heritage resources in the future due to their seemingly natural alliances in mission, operation, and resource needs.



A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WAYS TO IMPROVE THE MANAGEMENT, RECOGNITION, AND COORDINATION OF STATE PARKS AND OUTDOOR RECREATION AND HERITAGE RESOURCE PROGRAMS OPERATED BY THE STATE OF MONTANA.

WHEREAS, state parks, outdoor recreation, and heritage resources are vitally important to families, communities, and the tourism economy of Montana; and

WHEREAS, Montana is blessed with some of the greatest resources in the United States; and

WHEREAS, 20 years of studies and reports identifying the need to improve the management, image, and organization of Montana's state parks have resulted in limited success; and

WHEREAS, well-managed boating, snowmobiling, and off-highway vehicle programs are important to Montana citizens as a form of thrift and in supporting a healthy tourism economy; and

WHEREAS, Montana state parks have magnificent natural, cultural, and recreational resources that require management for multiple uses; and

WHEREAS, the mission and management objectives for state parks may differ from many other programs administered by the Department of Fish, Wildlife, and Parks and need to be raised in priority and focus; and

WHEREAS, use of state parks by Montana residents has increased 78% since 2002; and

WHEREAS, demands for services at those parks and conservation of park resources need to be balanced; and

WHEREAS, hunting and fishing license dollars cannot be used to operate park and recreation programs; and

WHEREAS, cities and counties also work to provide for and coordinate strong outdoor recreation programs to maintain healthy communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review audits and studies related to the management, support, and funding of state parks and outdoor recreational and heritage resource programs;

(2) evaluate the priority, organizational structure, and management of Department of Fish, Wildlife, and Parks programs related to state parks, boating, off-highway vehicles, and snowmobiling;

(3) evaluate the relationship between state, city, county, and federal park and recreation programs and provide recommendations for improving statewide coordination and communication between these programs;

(4) identify methods to improve the management of state parks and recreational and heritage resources for Montana citizens while supporting local communities and their economic health;

(5) compile and review information on other state park and recreational systems in the Rocky Mountain region, including their organizational structure, management, and governance;

(6) recommend changes to improve the balance, effectiveness, and priority of parks, recreation, and heritage resource stewardship in Montana; and

(7) propose legislation for consideration by the 63rd Legislature that:

(a) raises the awareness, professionalism, and priority of state parks and recreational programs in Montana; and

(b) establishes a state parks and recreation board that fosters additional citizen involvement and oversight of these programs.

BE IT FURTHER RESOLVED, that if the study results in a recommendation that the administration of state parks be moved out of the Department of Fish, Wildlife, and Parks, it be done with the intent to consolidate and improve the effectiveness of state park and recreation program management.

BE IT FURTHER RESOLVED, that the study involve the participation of recreation user groups, local, state, federal, and tribal stakeholders, including city officials, county commissioners, national park service representatives, heritage resource professionals, and other stakeholders interested in state park and recreation program management.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review

HJ0032

requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

- END -

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HJ 32 -- Existing State Park, Outdoor Recreation, and Heritage Programs in Montana

Agency	Division	Division Responsibilities/HJ 32 Programs	Funding
DFWP	State Parks	<p>State Parks: Maintenance and Operation (includes safety, historic preservation, education/interpretive responsibilities, capital development)</p> <p>Uses parks revenue to pay DFWP's Enforcement (\$207,000) and Communication/Education Bureaus (\$33,000) for some services.</p>	Optional \$5.37 light motor vehicle registration fee; entry/use fees; concessionaire payments; sale of merchandise; accommodation tax; revenue from forest management; motor vehicle revenue for marine equipment and boat facilities; fuel tax for parks allowing motorboats; federal boating monies; coal tax trust interest.
		<p>Recreation: Handles communication, education, and grants for off-highway vehicle (motorized trails), snowmobile (motorized trails), non-motorized trails, and boating programs. Receives citizen input from the OHV, Snowmobile, Boating, and State Trails Advisory Committees.</p>	<p>About \$1 million/year in federal highway funds for trail grants: award 30% to motorized, 30% to non-motorized, 40% mixed.</p> <p>OHV: fuel tax, registration, and decal fees</p> <p>Snowmobile: fuel tax, motor vehicle revenue, and nonresident snowmobile permits</p> <p>Boating: registration fees, federal boating monies</p> <p>Non-motorized trails: coal tax trust interest</p>
		<p>15 other affiliated sites: rifle ranges, recreation sites (Billings and Bozeman manage two recreation sites)</p>	Various, e.g., coal tax trust interest, parks-earned revenue
		<p>Administration of other grants:</p> <ul style="list-style-type: none"> • Land and Water Conservation Fund (federal) monies disbursed as local government recreation grants for swimming pools, ball fields, playgrounds, etc. \$37 million since 1964. Require 50% local or state match. Citizen review committee helps with the statewide comprehensive outdoor recreation plan and applications. • Boat decal fees used for local grants to develop community projects and for certain state park operations. 	

HJ 32 -- Existing State Park, Outdoor Recreation, and Heritage Programs in Montana

Agency	Division	Division Responsibilities/HJ 32 Programs	Funding	
Commerce	Community Development	<p>Main Street</p> <ul style="list-style-type: none"> • Helps preserve historic downtowns to promote economic viability, e.g., facade programs, window display training, etc. • 4 "certified" Main Street communities with dedicated staff on site -- certified communities may be administered by nonprofit organizations. Dedicated staff are not state employees. 	<p>General fund</p> <p>Preserve America grants - federal funding, \$7500 grants, focuses mainly on downtown areas, providing technical advice on best use of money & resources. Awarded to Terry, Sheridan, and Stevensville</p>	
	Tourism	<p>TIIP grants -- fund bricks and mortar preservation projects in communities. Typically provide \$300,000 in grants/year. This year \$530,000, which will deplete the balance in the account.</p>		Accommodation tax
		<p>Special events grants -- could be cultural events</p>		
		<p>Promotions -- ties reference to heritage sites and state parks into statewide and regional promotional campaigns</p>	<p>Private sources, e.g., cooperative effort with private businesses or convention visitor bureau</p>	
		<p>Montana Tourism and Recreation Initiative -- cooperative working group of 17 state and federal agencies to plan and fund mutually beneficial tourism and recreation projects. MTRI has three levels of activity: the directors level, working group level, and focus team level. Directors meet at least once a year, agency staff meet in a working group 4-6 times a year, focus teams implement projects.</p>	<p>Agencies contribute their own resources, e.g., staff and manpower</p>	

HJ 32 -- Existing State Park, Outdoor Recreation, and Heritage Programs in Montana

Agency	Division	Division Responsibilities/HJ 32 Programs	Funding
	<p>Montana Heritage Commission</p> <p>(administratively attached to the Department of Commerce, not a division)</p>	<p>Virginia and Nevada Cities 7 FTE Current location of Heritage Commission office.</p> <p>Comprises the Bovey properties purchased by the state in 1997 (251 buildings, various personal property, and land) for \$7 million. The Heritage Commission was formed at this time to administer the properties.</p>	<p>\$0.38 light motor vehicle licensing fee</p> <p>Concessionaire leases</p>
		<p>Reeders Alley (Helena) 0 FTE, previously the site of the Heritage Commission office, which closed May 1, 2011.</p> <p>Given to state by previous owners. Assigned to Heritage Commission when it was formed in 1997. Previously administered by Historical Society.</p>	<p>Concessionaire leases generate \$75,000 - \$100,000/year. When full, covers operational costs.</p>

HJ 32 -- Existing State Park, Outdoor Recreation, and Heritage Programs in Montana

Agency	Division	Division Responsibilities/HJ 32 Programs	Funding
<p>Historical Society</p> <p>Statutory Mandate: 22-3-101, MCA " . . .an agency of state government for the use, learning, culture, and enjoyment of the citizens of the state and for the acquisition, preservation, and protection of historical records, art, archival, and museum objects, historical places, sites, and monuments and the custody, maintenance, and operation of the historical library, museums, art galleries, and historical places, sites, and monuments.</p>	<p>Governed by a Board of Trustees appointed by the governor. Trustees select the director and set policy.</p>	<p>Historical Society Museum Collects, preserves, and interprets fine art, historical, archaeological, and ethnological artifacts that pertain to Montana and its adjoining geographic region.</p>	<p>General fund</p> <p>Federal grants (e.g. National Park Service grant for SHPO)</p> <p>Memberships</p> <p>Accommodations tax</p> <p>Admissions</p> <p>Merchandise sales</p> <p>Private donations for special projects</p>
		<p>State Historic Preservation Office (SHPO) Works with state agencies and citizens to encourage the identification, documentation, recognition, and protection of heritage sites in Montana. Is required by SB 3 (2011) to biennially remit to the legislature information submitted by state agencies and the university system regarding the status and maintenance needs of and management recommendations for heritage properties.</p>	
		<p>Original Governor's Mansion Acquired by the state in 1913; the society assumed administrative responsibility in 1981 and operates the building as a historic house museum. Has a 14 member Helena-based committee that conducts fund-raising efforts for conservation projects associated with the mansion.</p>	
		<p>Moss Mansion Society has owned this property since 1985. The City of Billings holds a 38.5% interest. Administrative responsibility is delegated to local boards via legal agreements. The Society has oversight of physical changes to the property or actions that could encumber the state.</p>	

HJR 32

A summary of past legislative audits and reports on state parks, outdoor recreation, and heritage resource programs

**Prepared by Hope Stockwell
for
The Environmental Quality Council**

September 14, 2011

Fiscal Health of the State Parks Program

Legislative Finance Committee (2009-2010)

In December 2009, the LFC was provided a report regarding the structural imbalance associated with operation of the state park system. The LFC directed Legislative Fiscal Division (LFD) staff to work with the Department of Fish, Wildlife, and Parks (DFWP) to provide recommendations to address the structural imbalance. The resulting report identified options for increasing state parks' revenues and other systemic issues related to operation of state parks. In response to LFC discussions, DFWP staff reviewed a number of state park properties for potential operational changes such as divestiture, transfer to another entity, or privatization. This effort exposed several issues:

- How are state trust lands that house state parks treated? How is fair market value derived? What should the relationship between DNRC and the state parks program look like?
- What is the relationship between water projects land and state parks? How are these parcels evaluated for siting of a state park?
- What is the difference between a state park and a historic site? How should sites of regional significance be handled in the park system?
- Does the legislature want the state to subsidize the operations of a city park? Should DFWP be allowed to transfer property to another governmental entity for community use purposes?

The LFC report offered several legislative decision points for consideration. Two were acted upon by the 2011 Legislature [a fee increase for state parks (HB 370) and a revision of the primitive parks act (SB 43)]. Others that were not acted upon included:

- allowing FWP to transfer parks lands to other governmental entities for community use
- directing FWP to assure clear and clean title to all parks properties
- defining the parks system
- evaluating land arrangements between state agencies
- determining the role for historical parks

The related LFC reports listed below are available on the legislative web site at:

<http://leg.mt.gov/css/Committees/Interim/2011-2012/EQC/Studies-Duties/studies-duties.asp#hj32>

Issues Impacting the Fiscal Health of the State Parks Program, November 19, 2009

State Parks: Update, June 2, 2010

Property Analysis State Park Lands, June 2, 2010

State Parks Program Performance Audit

Legislative Audit Division (February 2001)

At the request of the Legislative Audit Committee, the Legislative Audit Division (LAD) examined the program activities of the Parks Division at the Department of Fish, Wildlife, and Parks (DFWP), which at the time was responsible for administering programs related to state parks, recreation sites, fishing access sites (FAS), trails development, land and water conservation funds, and Capitol Complex maintenance. LAD found that overall:

- state parks appear well-maintained
- FAS maintenance practices could be improved in Regions 3 and 6
- parks operations comply with primitive park designations

During the course of the audit, LAD identified other policy questions that needed to be addressed, including:

- Is the State Parks Program a natural resource protection program or a tourism program?
- How does having two key historical and cultural sites (Virginia and Nevada Cities) outside the system impact state parks operations?
- How is coordination with tourism and travel promotion assured?
- What are the long-term maintenance and replacement needs of an aging infrastructure?
- Should operations continue to place high reliance on volunteer staff?
- How should the state's Tourism Advisory Council and the Heritage Preservation and Development Commission be more involved in parks decisions?
- Who are the system's primary customers - residents or tourists?

LAD recommended that DFWP re-establish the State Parks Futures Committee to address those policy questions as well as changes that have occurred in the parks system, including park fee revenues, park resources, statutory parks designations, potential long-term policy changes, and other policy considerations. A State Parks Futures Committee was previously appointed by DFWP, with approval from the governor and legislative leaders, in 1989. A second State Parks Futures Committee was appointed in 2001 in response to the audit. That committee released its recommendations in December 2002, many of which were subsequently implemented by DFWP.

The full audit is available at:

<http://leg.mt.gov/content/Committees/Interim/2011-2012/EQC/Studies-Duties/parks-audit-2001.pdf>

HJR 32: Interim Study on Historic Preservation Education and Local Government Interim Committee (2009-2010)

For HJR 32 (2009), the Education and Local Government (ELG) Interim Committee reviewed information on the current state of historic preservation in Montana. This study included the:

- Montana Historical Society and State Historic Preservation Office;
- Parks Division Heritage Resources Program at the Department of Fish, Wildlife, and Parks;
- Montana Main Street Program and Heritage Preservation and Development Commission at the Department of Commerce;
- Montana Arts Council's Cultural and Aesthetic Grants Program; and
- the Long-Range Building Program administered by the Department of Administration.

As part of its work, the ELG discussed various strategies for improving management of state heritage resources and issued the following recommendations:

- Require state agencies and the Montana University System to biennially report to the preservation review board the status and maintenance needs of heritage properties owned and maintained by those entities. (SB 3, 2011)
- Require the State Historic Preservation Officer to compile the information on the state and University System heritage properties and report to an interim legislative committee, along with any recommendations. (SB 3, 2011)
- State agencies that manage heritage properties should explore partnerships with nongovernmental entities for potential outsourcing of technical assistance programs that would make state dollars directed to heritage activities more effective.

The ELG also recommended that the 2011-2012 interim committee having the appropriate subject area jurisdiction continue to explore ways to strengthen historic preservation in Montana and that the following be among the considerations:

- Including the Main Street program in the Department of Commerce budget, rather than continuing to rely on one-time-only funding.
- Expanding the state historic preservation tax credit.
- Requesting that the Department of Commerce, through its travel and tourism promotion functions, place more focus on heritage tourism
- Exploring use of Treasure State Endowment Program funding and other potential funding sources in establishment of a Preservation Grants Fund.
- Commissioning a comprehensive analysis specific to Montana of economic impacts of tax credits and other historic preservation efforts, similar to a report issued in March 2010 by researchers with the Rutgers University Edward J. Bloustein School of Planning and Public Policy, which examined the origins and impacts of the Federal Historic Tax Credit.
- Exploring consolidation of some state heritage programs—such as SHPO, Montana Heritage Commission, Travel Montana, Main Street, FWP—to avoid redundancy and ensure greater effectiveness.

The full report is available at the below URL. The information begins on page II-1.

http://leg.mt.gov/content/Publications/Committees/interim/2009_2010/2010-community-service.pdf

Legislative Audit Reports

Findings/Recommendations

Each report listed below is available on the legislative web site at:

<http://leg.mt.gov/css/Committees/Interim/2011-2012/EQC/Studies-Duties/studies-duties.asp#hj32>

Montana Historical Society Financial-Compliance Audit, April 1999

- Recommended that the Historical Society (to which the Heritage Preservation and Development Commission was then attached) establish rules governing acquisition of historic sites in accordance with state law

State Parks Program Performance Audit, February 2001 (see page 3)

Montana Historical Society Financial-Compliance Audit, March 2001

- Recommended that the Heritage Preservation and Development Commission (which was attached to the Historical Society at the time):
 - work with the Society to comply with cash management provisions of its federal grant and resolve the need for repayment of interest with the federal grantor
 - work with the Society to establish controls to ensure federal financial and performance reports (related to federal grants) are submitted in accordance with federal regulations
 - establish policies and procedures to control its procurement process
 - establish internal controls to ensure costs charged to the federal grant are allowable and that access to equipment is adequately controlled
 - and the Society take measures to verify the existence of its artifacts in a timely manner
 - and the Society properly report property exchange transactions in accordance with federal regulations and work with the Department of Administration in order to properly record property exchange transactions on the state's accounting records

Montana Historical Society Financial-Compliance Audit, February 2003

- Recommended that the Heritage Preservation and Development Commission (which was attached to the Historical Society at the time):
 - work with the Society to comply with federal cash management requirements of its federal grant
 - and the Society establish procedures to ensure purchasing cards are used in accordance with state policy

Virginia and Nevada City Historic Site Management Performance Audit, February 2003

- Recommended that the Heritage Preservation and Development Commission develop a system of staffing controls and allocate staff to assure priority workload areas are addressed

- Recommended the legislature transfer ownership and management of all artifacts and real property to one managing entity (issue revolved around conflicting authorities with the Historical Society Board of Trustees)
- Recommended the Heritage Preservation and Development Commission create an established, foreseeable time line and methods for completing an artifact inventory
- Recommended the legislature transfer the management of historic sites at Virginia and Nevada Cities to the Parks Division with the Department of Fish, Wildlife, and Parks and attach the Heritage Preservation and Development Commission to DFWP and use the professional expertise of the members in an advisory capacity

Other available publications

The reports listed below were produced by entities outside of the Legislative Branch and are also available at:

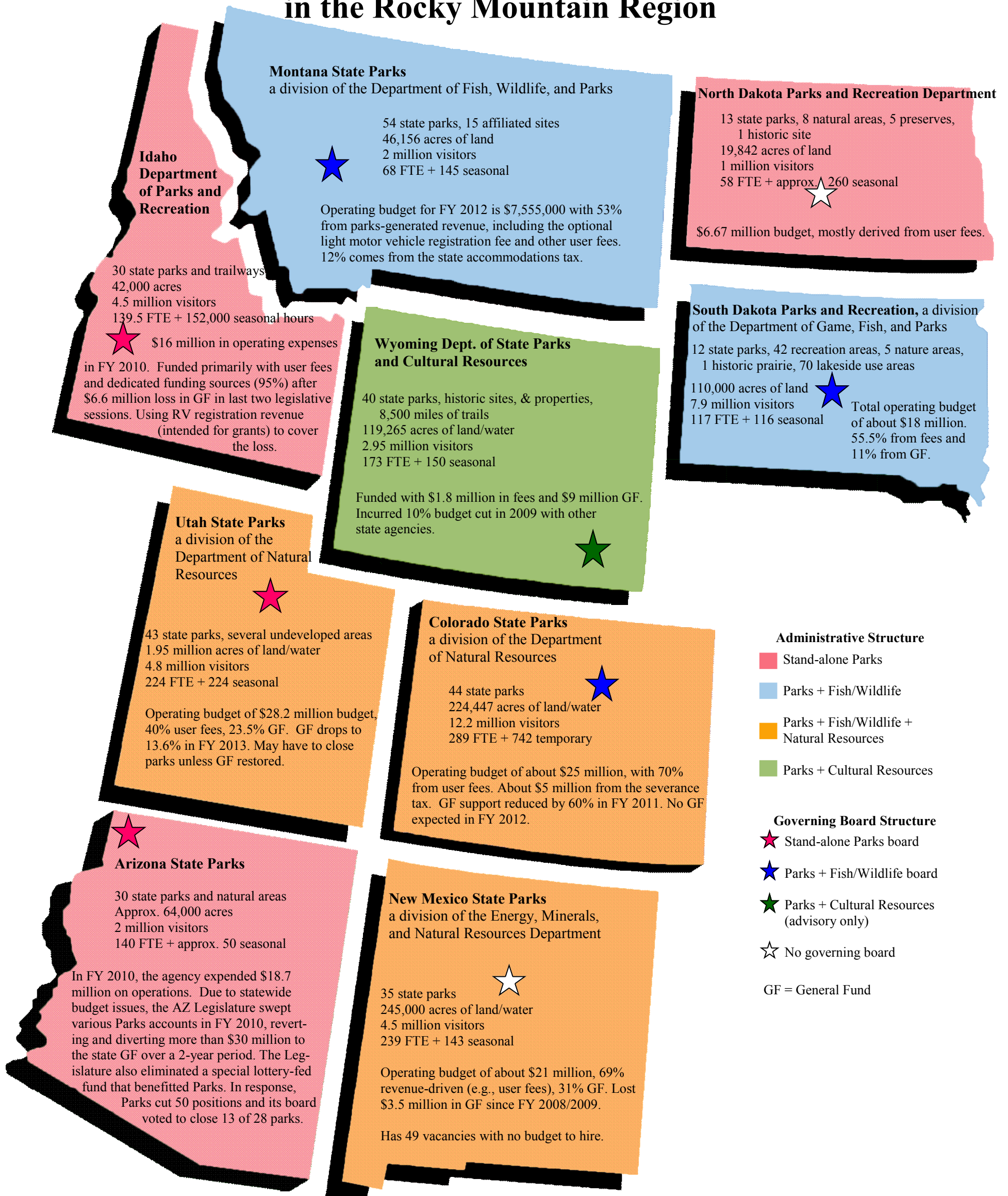
<http://leg.mt.gov/css/Committees/Interim/2011-2012/EQC/Studies-Duties/studies-duties.asp#hj32>

Report to the Montana Legislature for 2009-2010, Montana Heritage Preservation and Development Commission.

2010 Economic Impact Survey of Visitors to Montana State Parks, Bureau of Business and Economic Research, University of Montana, December 2010.

Montanan's Opinions Regarding Montana State Park Funding: A Montana Poll Finding, Bureau of Business and Economic Research, University of Montana, January 2011.

Administration of State Parks in the Rocky Mountain Region



Of Structural Interest...

Colorado's previously separate State Parks and Wildlife Divisions in the Department of Natural Resources are merging under a 2011 legislative order. Ken Brink, a co-chair of the transition team, says they're finding some operational items that can be combined and some that can't.

Wyoming State Parks were previously housed in the Department of Commerce until that agency was disbanded in 1999 and the Department of State Parks and Cultural Resources was established. The Department's Director, Milward Simpson, says there are great synergies and sharing of resources between the state parks and cultural resources divisions. He says a shared belief that they are the "stewards of Wyoming's identity" ties all of the programs together.

New Mexico once considered putting state parks with Tourism but Director Tommy Mutz says there was a feeling that state parks needed to be with his agency — the Energy, Minerals, and Natural Resources Department (EMNRD) — where there's more of a "natural resources culture". For instance, the various divisions all do similar work with NEPA and SHPO compliance. He says state parks can dip into the oil and energy conservation divisions for help as needed. In a unique structural combination, New Mexico's Department of Fish and Game is administratively-attached to EMNRD, but operates under its own director with total autonomy. Mutz feels that fish and game and state parks should be combined because there's hunting and fishing in state parks.

North Dakota State Parks operated under the Historical Commission until 1965. South Dakota's Historical Society is part of the South Dakota Department of Tourism.

SHPO — Arizona and Wyoming are the only states to house their State Historic Preservation Office (SHPO) with state parks. The other seven states house SHPO in their Historical Societies (or their equivalent — the Utah Department of Community and Culture Department and the New Mexico Department of Cultural Affairs).

Historical and "heritage" sites are being operated primarily by State Parks and Historical Societies (or their equivalent).

State Parks' Strategies

In the 2012 legislative session, Idaho Parks and Recreation will ask for the optional purchase of a \$10 Parks Passport with vehicle registration to stabilize revenue.

Idaho just completed business and marketing plans for each state park and incorporated related action items into its budget plans.

Wyoming State Parks and Cultural Resources recently developed a 10-year strategic plan that will be updated every 2 years and incorporated into budgeting. It includes recommendations from Wyoming's Tourism Industry Master Plan to develop a "ranching" park, mobile apps for real time travel/recreation information, Wi-Fi in all parks, and creation of a marketing/product development council.

Efforts to develop a strategic plan for North Dakota Parks and Recreation have stalled but staff hope to reinvigorate the process in the next year.

The ND legislature first appropriated money for parks promotion (\$9,000) in 2010. Parks partners with ND Tourism, but Tourism focuses mostly on out-of-state visitors while Parks focuses on in-state.

Every state park has a friends group contributing time and money; some are more active than others.

South Dakota State Parks is downsizing from 6 to 4 regions to save money and is managing some Bureau of Reclamation reservoir shore land to increase recreation opportunities and its revenue base.

SD State Parks does master planning upon acquisition, but hasn't completed management plans for specific parks in a long time.

Utah State Parks works closely and pools money and in-kind services with local governments for promotions. Counties apply for tourism grants that state parks are ineligible for due to the funding source (accommodations tax).

The Colorado DNR just merged its state parks and wildlife divisions for efficiency, savings, and enhanced service. They will operate under a combined governing board. A transition team is developing proposals for the mission and size of the combined division.

In response to state park closures resulting from legislative budget cuts, Arizona State Parks teamed up with public and private partners to create innovative operating agreements to keep all but five state parks open in FY 2010.

AZ State Parks has a research and marketing section and partners with the AZ Office of Tourism and the AZ Council for Enhancing Recreation and Tourism to update its maps.

AZ State Parks utilizes the service of 800 volunteers.

New Mexico State Parks is initiating a strategic operations and sustainability (SOS) program, looking for efficiency measures (e.g., unmanned fee booths to save on staff and fuel, solar panels, and closing its downtown Santa Fe office).

NM State Parks has no governing board, but in Fall 2011 created a citizen advisory board. The agency is also looking at forming friends groups to help with fundraising.

NM State Parks is required by law to update management plans for each park every 5 years, but is falling behind on this time-intensive process.

Working with Tourism...

State Parks in Idaho and Utah can't join their states' tourism agency marketing campaigns because the state parks don't collect the accommodations tax used to fund the campaigns. In Utah, some counties that receive accommodations tax revenue give the money to state parks to help fund FTE. Idaho State Parks and Recreation Communication Manager Jennifer Blazek says her agency remains in close touch with the Idaho Tourism Department about ideas and the two partner on cooperative media tours.

Wyoming State Parks says it works closely with the state Tourism Department, but that the Tourism Department is more procedurally nimble and has less "red tape". Wyoming recently completed its Tourism Industry Master Plan — a 10-year view on ways to increase travel expenditures in the state by 6% annually and the number of related jobs by 3% annually. The plan makes several recommendations related to state parks (see Wyoming strategies above) and can be viewed at www.projectfrontdoor.com.

Colorado State Parks works with its state tourism office, but both agencies' budgets have been cut. They're focusing on inexpensive strategies like improving web presence and increasing use of social media.

New Mexico State Parks says it has a "small" tie with its state tourism office, which holds about \$50,000 for state park and historical monument promotions. State Parks has its own marketing section — down from 4 to 2 people — that produces e-cards, radio and tv ads, and brochures. State Parks is in the process of hiring a contractor to help it get into social media and monitor its website.

TO: EQC Members

FROM: Marilyn Ross, Chair, Montana Heritage Commission

DATE: January 11, 2012

RE: HJ 32

Memorandum

During the September 14, 2011 hearing I was asked to prepare a written response to a question regarding the management structure for the state-owned properties in Virginia City, Nevada City and Reeder's Alley. The following is a brief explanation of the current operations and management of those resources.

Introduction

On April 23, 1997, the Montana Legislature authorized the purchase of the Bovey family properties in Virginia City and Nevada City for \$6.5 million. The purchase included about half of the historic structures in Virginia City; all of Nevada City; and the artifacts and collections of Western Americana including large collection of music machines. The Montana Heritage Commission was created to manage the sites and was attached to the Montana Historical Society for administrative purposes. The Commission is made up of 14 members.

In 2003 the Legislature passed SB 232 which attached the Heritage Commission to the Department of Commerce for administrative purposes.

At the time of purchase and creation of the Heritage Commission it was made very clear that the 55th Legislature had very specific management goals for the sites. As stated in the statutes the Heritage Commission was mandated to use the properties to become economically self-supporting and establish a management structure to ensure the profitable operation of the site.

To that end the statute contains the intent of the 55th Legislature that no General Fund money be used for operation and maintenance of the site.

Re-Organization and Current Management Structure

Since its inception in 1997 the MHC has struggled to maintain a secure financial foundation. MHC received a federal grant to start its historic building preservation program in 2001 and a second federal grant was awarded in 2004. MHC hired additional staff and strengthened its preservation and maintenance programs. A portion of the federal grants were used to pay administrative and overhead costs. The federal funds allowed MHC to increase staffing levels and maintain a consistent operating budget.

In 2007 the federal grant funds ended. Federal funds used to pay for overhead costs ceased and many positions at MHC had to shift their funding support to the State Long-Range Building program.

MHC was not included in the LRB Program for the next biennium (2011 Legislative Session.) This means there will be no more LRB funds when the currently allocated funds are expended.

Without LRB the statutorily appropriated funds are:

1. \$400,000 from the accommodation "Bed Tax", Section 15-65-121 MCA
2. \$200,00 from vehicle fees, Section 61-3-321, MCA

Additional revenues are:

1. Earned revenues from leases
2. Nevada City gate ticket revenues

Historically revenue from these 3 sources total approximately \$939,000 annually.

Before the re-organization and Reduction in Force in Summer 2011 the expenses were approximately \$400,000 more than our projected revenue.

The Commission in the Spring of 2011 took the following actions to address the funding reality;

1. Closed the MHC Office in Helena and moved all operations to Virginia City
2. Reduced the seasonal workforce from 12 to 6
3. All remaining money in LRB will be used only to correct the most

pressing infra-structure needs, I.e. water, electricity, fencing and security to protect the State's investment in buildings and artifacts.

4. The positions of Administrative Specialist in the Helena Office and the position of Visitor Services specialist were left vacant.

Reduction in Force

The Commission determined the need to implement a Reduction in Force to align revenue and expenses. Effective on August 31, 2011 the following actions were taken:

1. Eliminated 3 professional positions: Curator of Interpretations; Curator of Collections; Archeologist. Created one full time position to cover the three professional responsibilities. The Cultural Resource Manager is responsible for overseeing the duties of Archeology, Collections, and Interpretation using contracted labor when necessary.
- 2 Eliminated the Site Manager position and moved those responsibilities to the Business Manager.

The total staff positions eliminated through RIF and attrition were 5 FTE.

Re-organization and Current Structure

The Commission intends moving forward that MHC will place a greater emphasis on a business model that will increase profitability of the site and greater economic sustainability. To this end, Commission created a Business Development Manager position.

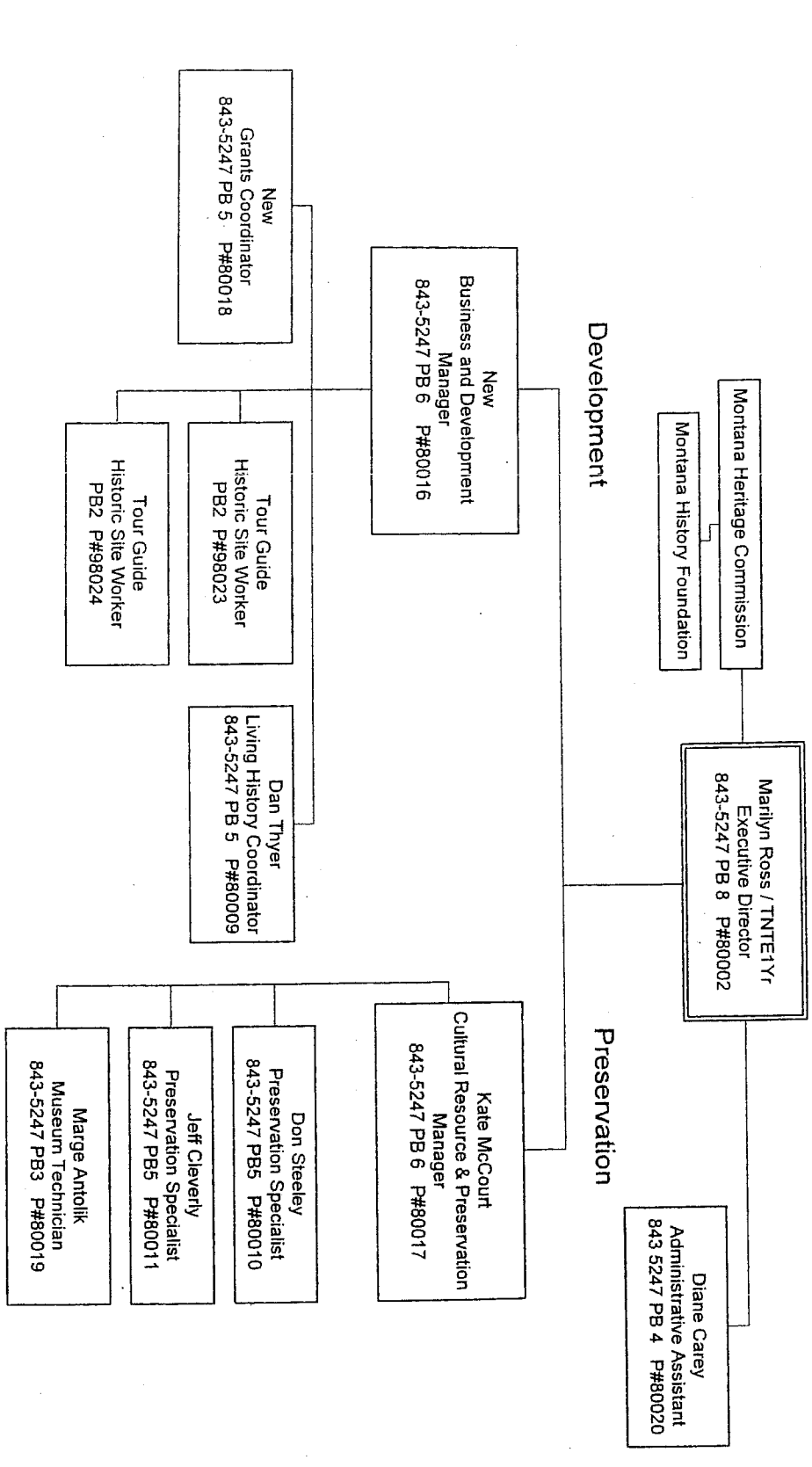
The Commission believes these changes will allow for more effective management of staff; afford efficiencies in developing the business aspects of the operation; and pursue funding activities to make the operations economically independent.

The current organizational chart is attached.

MONTANA

Department of Commerce Montana Heritage Commission

Last Updated September 30, 2011



SB3 Summary Table

MHC Building #	Building date	State-owned Heritage Property	Use	Status	Condition	Priority Preservation needs
V001	1864	Ford Bovey House	MHC	Watch	Fair	Drainage issues, exterior wood treatment, concrete re-pointing
V002		Ford Bovey Cabin	MHC	Watch	Fair	Foundation assessment, oil exterior, french drain, maintain daubing, roof, window & door systems
V003		Tack Shed	MHC	Watch	Fair	New roof, vegetation control
V004		Bovey Barn	MHC	Watch	Good	Vegetation control
V005	Bovey	Stone Cellar Ruins		N/A	N/A	Bovey construction, N/A
V006		Brewery Dugout Cabin		Endangered	Poor	NPS shoring in place, needs wall stabilization and drainage
V008		Sim Ferguson Cabin		Satisfactory	Good	Full restortaion in 2005. Vegetation control needed
V009	ca. 1900	Kissling Cabin	MHC	Satisfactory	Good	Full restortaion in 2005. Roof material replacement, vegetation
V010	ca. 1865	Thexton/Kitson House	MHC	Satisfactory	Good	Modified in 1990s, needs heating upgrade, vegetation control
V011		Old House		Watch	Fair	None immediate, vegetation control
V013		Aunt Julia's Garage		Removed	Failed	Concessionaire removed in Spring 2011 due to safety hazzard
V014	1875	Aunt Julia's House	Commercial	Satisfactory	Good	Vegetation control
V015		Aunt Julia's Outhouse		Satisfactory	Good	Vegetation control
V016	Bovey	Dance & Stuart Store	MHC Display	Satisfactory	Good	Exterior wood treatment, vegetation
V017		Pitman Gas Station & Shed	MHC Display	Watch	Fair	Vegetation, drainage, repair and treat wood siding
V018		Cabbage Patch Barn		Watch	Fair	None immediate, vegetation control
V019		Cababge Patch Shed		Watch	Poor	Foundation piers, repair exterior timbers, regrade & drainage, vegetation
V020		Shed east of barn- Cabbage Patch		Threatened	Poor	Stabilize entire structure & roof, vegetation
V021		Shed with display- Cabbage Patch		Watch	Fair	Dug for drainage in 2009, needs foundation and drainage, vegetation
V022		Outhouse- Cabbage Patch		Watch	Fair	Vegetation, eventually: new roof and door preservation, wood treatments
V023	1863	Kramer Building***	MHC Display	Satisfactory	Good	Signature VC building, reserved in 2008-2009 season, will need on-going monitoring
V025		Tin Clad Shed- Cabbage Patch		Watch	Fair	Vegetation, eventually drainage
V026	1863	Weston Hotel	MHC Display	Satisfactory	Good	Extensive restoration in 2009
V027	1863	McGovern Store***	MHC Display	Watch	Good	UV window protection for display. Building stabilized in 2008
V028		McGovern Outhouse		Watch	Fair	None immediate, will need a foundation, vegetation control
V029		Tobacco Shop	MHC Display	Satisfactory	Good	Drainage issues corrected in 2008
V030	1863	Jewelry Store**	MHC Display	Satisfactory	Good	Drainage issues corrected in 2008, foundation will need to be addressed eventually
V031		Outhouse behind the Jewelry		Threatened	Poor	Does not appear salvadgable at this point
V032	1863	Toy Store**	MHC Display	Satisfactory	Good	Exterior wood treatment
V033		Toy Store Ground Floor Outhouse		Watch	Fair	Proper foundation, roof replaced
V034		Toy Store 2 Story Outhouse		Watch	Fair	Permanent stabilization, proper foundation, vegetation
V035	Bovey	City Bakery	Commercial	Watch	Poor	Stabilize rear of building, remove, excavate, rebuild concrete wall
V036	1863	Kiskadden Barn***	MHC Display	Watch	Fair	Roof repairs, vegetation
V037		Kiskadden Barn Outhouse		N/A	Failed	Structure caved in completely Winter 2009
V038/V039	1860s/Bovey	Fairweather Inn & Annex**	Commercial	Watch	Good	Drainage issues, repoint foundation
V040	1864/Bovey	Montana Post & Stone Print Shop***	MHC Display	Threatened	Poor	Stabilization of northern wall of Print Shop (temporary bracing in place), grade & drainage issues
V041		Tin Shed		Satisfactory	Fair	Vegetation
V042	1863-80s	Gilbert Brewery***	Commercial	Watch	Good	Received preservation treatments from 2008-2011, including HB645 grant for Malting Tower
V043		Pottery Shop & Bottling Building		Threatened	Fair	Structural risk from underground springs & vegetation, SE corner collapsed, temporarily stabilized
V044		Gilbert House		Threatened	Poor	Structural risk from underground springs & vegetation, door & window preservation, full assessment
V045	Bovey	Daylight Village Cabins 1&2		N/A	N/A	Structural risk from Daylight Creek, unusable
V046	Bovey	Daylight Village Cabins 3&4		N/A	N/A	Structural risk from Daylight Creek, unusable
V047	Bovey	Daylight Village Cabins 5&6		N/A	N/A	Structural risk from Daylight Creek, unusable
V048	Bovey	Daylight Village Cabins 7&8		N/A	N/A	Structural risk from Daylight Creek, unusable
V049	Bovey	Daylight Village Cabins 9&10		N/A	N/A	Structural risk from Daylight Creek, unusable
V050	Bovey	Building by Pottery Shop		N/A	N/A	N/A
V051	Bovey	Boiler & Restrooms	Commercial	N/A	N/A	N/A
V052	Bovey	Daylight Village Office		N/A	N/A	N/A

SB3 Summary Table

V053	Bovey	Building on East End		N/A	N/A	Structural risk from Daylight Creek, unusable
V054	Bovey	West Building No. 25-28	Commercial	N/A	N/A	Brewery Follies lodging, needs structural work, electrical upgrades
V055	Bovey	Cabins 29-32	Commercial	N/A	N/A	Brewery Follies lodging, needs structural work, electrical upgrades
V056	Bovey	East Building No. 33-38		N/A	N/A	N/A
V057	Bovey	Village Pump		N/A	N/A	Vegetation, foundation, exterior wood treatments
V065	1864	Content Corner***	MHC/Commercial	Watch	Good	Received preservation treatments from 2003-2010, mold abatement
V066		Content Corner Root Cellar	MHC/Commercial	Watch	Good	None needed for now
V067		Ruby Chang's	Commercial	Satisfactory	Good	None needed for now
V068	Bovey	Gypsy Arcade	MHC Display	Satisfactory	Good	None needed for now
V070	1863-4	E.L. Smith Store	MHC Display	Satisfactory	Good	None needed for now
V071		E.L. Smith Icehouse		Watch	Fair	Internal stonework cracked, flooring joists repair
V072	Bovey	Wells Fargo Display***	Commercial	Satisfactory	Good	None needed for now
V073	Bovey	Assay Office	MHC Display	Watch	Fair	Sagging floor, stonework
V074-76		Buford Block	MHC/Commercial	Watch	Fair	Parapet rebuilt, stone retaining wall addressed
V077	Bovey	Elling Store	MHC Display	Satisfactory	Good	None needed for now
V078	Bovey	Boots & Shoes	Commercial	Satisfactory	Good	None needed for now
V079		Photo Shop	Commercial	Satisfactory	Good	None needed for now
V080		Shingle Shed	Commercial	Threatened	Poor	Wood deterioration, no foundation, drainage, roof stabilization
V081		Barber Shop	MHC Display	Watch	Fair	Front porch stabilization, repair siding, wood treatment, foundation & drainage issues
V082		Virginia City Trading Company	Commercial	Watch	Good	Gutters, exterior wood treatment
V083		Prasch Blacksmith Shop**	MHC Display	Watch	Fair	Needs permanent stabilization, currently has temporary bracing
V084		Sauerbier Blacksmith Shop**	MHC Display	Satisfactory	Good	Structure reframed in early 2000s, needs interior chimney stabilization, drainage
V085	1863-1983	Bale of Hay Saloon	Commercial	Satisfactory	Good	Drainage
V086	Bovey	Bale of Hay Connection	Commercial	Satisfactory	Good	Drainage
V087	1890s	Opera House***	Commercial	Watch	Good	Masonry on parapet redone, monitor for cracking, drainage on west side
V088		Opera House Shop	Commercial	Watch	Fair	Plywood siding in poor condition, foundation cracks
V089		Scenery Shed	Commercial	Satisfactory	Good	Vegetation control
V090		Mutt Dixon House/Costume Shop	Commercial	Satisfactory	Good	Vegetation control, foundation, drainage
V091		Mutt Dixon Shed	Commercial	Threatened	Poor	Reset on piers, vegetation, repair exterior wood, repair roof shingles
V093	Bovey	Virginia City Depot*	MHC/Commercial	Satisfactory	Good	Fix bathroom off of porch, vegetation control
V094	1870s	Green Front "Hotel"****	MHC Display	Threatened	Fair	Complete foundation replacement, drainage, exterior wood treatments
V095	1870s	Green Front "Restaurant"****	MHC Display	Satisfactory	Good	Received preservation treatment in 2010
V096		Motor Car Shed		Watch	Fair	Foundation, drainage
V097		Little Joe's Cabin		Watch	Fair	Foundation, repair damaged sill logs, drainage
V098		Little Joe's Outhouse		Watch	Poor	Foundation, drainage, wood treatment, vegetation
V099		Dry Bean Shed		Endangered	Failed	Though the framing condition is fair, the building is a shell and will receive no preservation
V100	Bovey	Fayette Harrington House	Commercial	Satisfactory	Good	Exterior wood treatments, eventual regrading
V101	Bovey	Player's Bath House	Commercial	Watch	Fair	Vegetation, drainage, exterior wood treatment
V102	Bovey	Ruby Cabin	Commercial	Satisfactory	Fair	Exterior wood treatments, eventual regrading
V103	Bovey	School House Cabin	Commercial	Watch	Fair	Foundation, sill logs, drainage
V104	Bovey	Iron Rod Cabin	Commercial	Threatened	Poor	Foundation, sill logs, drainage
V105	Bovey	Duck Pond Cabin	Commercial	Watch	Fair	Sill logs, drainage
V106	Bovey	Axolotl Cabin	Commercial	Watch	Fair	Sill logs, drainage
V108		White Building (White Shed)	MHC storage	Satisfactory	Good	Foundation, regrading
V109		White Building Outhouse		Satisfactory	Good	Vegetation, eventual foundation
V110		Bonanza Inn Coal Shed		Satisfactory	Fair	Exterior paint for aesthetics, eventual sill & foundation
V111	1866	Bonanza Inn***	MHC	Satisfactory	Good	Foundation and drainage eventually
V112	1875	Nunnery	Commercial	Watch	Fair	Paint, foundation, drainage, vegetation
V113	1870s	Minerva Cogswell Cabin		Endangered	Poor	Foundation, roof, walls, sill logs, floor framing, drainage, exterior finish

Attachment B:

SB3 Summary Table

V114	1870s	Jack Taylor Cabin		Satisfactory	Good	Full preservation in Summer 2009
V115	1864	Susan Marr House		Endangered	Poor	Still standing, needs full preservation
V116		Smitty's Garage		Satisfactory	Fair	Vegetation, drainage, wood treatments
V117		Smitty's Coal Shed		Satisfactory	Fair	Foundation, wood treatments, drainage
V118	Bovey	Governor Meagher Cabin	MHC	Watch	Fair	Foundation, floor, drainage, exterior wood treatments
V119	1876	"Lightening Splitter"	Commercial	Watch	Fair	Drainage, vegetation, eventual foundation
V120	1884	Ron Abbie Cabin	Commercial	Watch	Fair	Foundation, vegetation, exterior wood treatments
V121	1875	Methodist Church**	MHC storage	Satisfactory	Good	Resecure parging, some repointing, drainage eventually
V122/V123	1864	Daems Cottages**	MHC	Satisfactory	Good	Full preservation in 2005-06
V124	1869	Hickman House		Watch	Poor	Foundation, drainage, walls, wood treatment, vegetation- started excavation in 09'

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Long Range Building Request

MHC Background:

In 1997, the 55th Montana Legislature established the Montana Heritage Preservation and Development Commission (MHC) to acquire and manage historic properties for the State of Montana. This legislation approved the purchase of Virginia and Nevada Cities comprising 248 buildings, 160 acres of land, and hundreds of thousands of artifacts. These large historic town sites were the first properties managed by the MHC. Since 1997, the Montana Board of Land Commissioners approved two additional acquisitions of historic Reeder's Alley and the Pioneer Cabin in Helena. Reeder's Alley was received through a private donation on November 19, 2001. The Pioneer Cabin at the front of Reeder's Alley was received from a private donation on June 19, 2006.

The Montana legislature authorizes the MHC to care for heritage resources "in a manner that protects the properties and encourages economic independence" (MCA 22-3-1001). Our statutory purpose is to acquire and manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, and are genuinely representative of the state's culture and history. MHC has worked hard to expand the economic and revenue generating uses for our state buildings.

MHC is responsible for the management and economic use of these historic properties including; building improvements, structural stabilization, site maintenance, artifact conservation, and protection of diverse historic features. MHC serves as a resource for the public and professionals interested in learning more about Montana history, historic building preservation, archaeology, conservation of artifacts, education, living history, and historic site management.

Historic Significance:

Virginia City is Montana's Territorial Capital (1865-1875). The size, scope, and quality of the historic site helped make Virginia City one of the first National Historic Landmark Districts in Montana (1961). Nevada City is an assemblage of approximately 60 historic buildings, some original to the site, and from across Montana and Yellowstone National Park. Nevada City operates as an outdoor museum and hosts dozens of public educational events, with unique hands-on experiences for visitors of all ages. Reeder's Alley and Pioneer Cabin are the oldest remaining miner's settlements in Helena. These historic sites are significant to Montana and national history as places of western settlement and the formation of Montana society. The economic value of maintaining these sites benefits state businesses and the tourism industry.

Request and Use of Funds:

Our total funding request is for \$3,000,000 for the maintenance of historic properties of the Montana Heritage Commission. Funds will be used to hire architect and engineering services, private contractors, and utilize in-house preservation staff to conduct the needed repairs and upgrades. MHC regularly seeks non-state funding sources in the form of grants, donations and other income to leverage and expand our preservation goals. However, state funds are needed to care for state owned historic buildings and protect their contents and economic value, as MHC generated revenue is not generally used for preservation needs.

Title: Virginia City and Nevada City**Location: Madison County, Montana****Funding Request: \$3,000,000****Project Need and Description:**

MHC seeks continued funding to conduct critical safety and building stabilizations on revenue generating properties in Virginia and Nevada Cities. Our business operations and earned revenues depend on our hotels and rental properties to serve our leaseholders and visitors service businesses. We also have some building projects in “mid stream” that need to be completed. Funds will be used for completing urgent life-safety and structural deficiencies in Nevada City and to complete critical building stabilization and maintenance to foundations, sill logs, utilities and drainage. Funds will cover architectural and engineering assessments, private contractors, and an in-house archaeologist and preservation staff to conduct the necessary work.

To date, more than half the properties have received some treatment to protect or stabilize the buildings. The scope and scale of our historic properties, and the deferred maintenance accumulated over the years, means significant maintenance and safety needs remain. Most of our buildings also protect and house valuable historic artifacts. Repairs to buildings will have a positive impact on collections by protecting certain exhibits from environmental dangers such as mold, vermin, and water, and theft. This funding request will protect these state assets and continue our work to stabilize and preserve our high priority properties, and allow us to create new economic and revenue generating uses in these state buildings.

Virginia City Needs:

Virginia City is listed as a National Historic Landmark, due to 183 contributing original 1863 Montana Gold Rush buildings. During the tourist season, its main street boardwalks are filled with an estimate of 75,000 to 90,000 camera-wielding tourists yearly. Virginia City transports people back in time, and it is the hope of the MHC that while the nostalgic feeling never goes away, we can keep our buildings safe, standing and in great condition both for our revenue generating concessionaires and for our visitors for future generation to come.

Total Cost Estimate: 1.5 Million

Opera House:

The Opera House, built in 1900 as a livery, is one of Virginia City's most utilized buildings as the home of the Virginia City Players. The façade of the Opera House is rapidly deteriorating. The mortar on the capstones and at least two courses of stone are visibly crumbling. This causes a danger to the pedestrians walking below, especially in the busy tourist season, when the Opera House is also very much a daily attraction. The loose mortar and stones need to be re-stacked from the stable level. The stones will be re-stacked using a compatible mortar to maintain historic integrity, as well as structural soundness. Any old mortar should be consolidated as needed. This project would either be completed by the in-house Preservation Specialists, or contracted out stone masons with knowledge of historic stone and mortar work.

Cost estimate: \$10,000



Failing capstones on façade of Opera House might cause safety issues and look unseemly on one of VC's most popular attractions.

Buford Store:

The Buford Store, built in 1875, is the first brick store in town. Unfortunately it is an un-reinforced brick structure. Two years ago the building was compromised when someone climbed onto the roof and pulled down six feet of the brick parapet, which needs to be stabilized and rebuilt. There has also been seismic activity which has further deteriorated the mortar which holds the building together, along with the wind, rain and ice. One wall is leaning treacherously towards the roof. The brick wall will need to be re-stacked, using the original bricks, and the parapet should be re-laid with appropriate historic mortar.

Cost estimate: \$15,000



Rubber sheeting and plywood buttresses are employed to keep the brick parapet from collapsing all-together. These are temporary measures until the problem can be addressed with masonry.

Montana Post:

The original portion of this important Montana building (1863) is in jeopardy below the ground level. It was built with no footing and we have already lost a section of stone. The only thing holding the building up are stabilization timbers placed over ten years ago. Drainage desperately needs to be addressed. In this crucial building, there needs to be a major excavation for the foundation, which includes jacking up and stabilizing the building, replacement of rotted sill logs and sill plates, a new concrete foundation, a repair of rotting floor framing and sheeting, a re-pointing of stone walls inside and out, addition of gutters, and window and door replacement and repair. The northeast corner of the exterior of the building is already showing signs of cracking. A seismic retrofit should also be considered, as with all stone buildings built without reinforcement.

Cost estimate: \$60,000



Thought the stabilizing timbers are in good shape, this is a temporary solution to an eminent problem that will eventually arise within all unreinforced stone structures in Virginia City.



A view of the bowed out interior wall, and the exterior wall of the Montana Post building: Cracks are already appearing on the outside above where the section of stone has failed in the basement.

Greenfront “Hotel”:

This high profile structure has a fascinating history, once being a brothel in the heart of Virginia City’s “Chinatown”, and as it sits next to the Depot where throngs of tourists congregate during the summer season, it should be interpreted as such. Although the “Restaurant” portion of the two buildings that make up the Greenfront was preserved in 2010, the “Hotel” has not. Although this dynamic of side-by-side structures shows the dichotomy and challenges of state funding, the MHC would like them to be a working display for tourists to visit as they wait for the Alder Gulch Short line train to arrive. The Greenfront “Hotel” will need: complete excavation, removal of rotted sill logs, new fieldstone foundation constructed, new sill logs hewn and placed, French drain installed for drainage, gravel installed, clapboards repaired or treated, exterior painted for protection, new roof, and interior finish work.

Cost estimate: \$20,000



On the left: Un-preserved “Hotel”



The “Restaurant” on the right has been stabilized and sits well above grade



Preserved building has new foundation and sill logs



Non-preserved building has virtually no foundation and rotted sill logs



The interior of both buildings needs finishing before a display can be placed

Hickman House:

The excavation for the Hickman House was started by the MHC Preservation Crew but never completed. The historic building, built in 1869, would be extremely useful as housing for MHC seasonal workers, and needs to be completely excavated, jacked up for stabilization by replacement of rotted sill logs and sill plates, a new foundation poured, replacement of rotted floor framing and sheeting, gutters added, window and door repair, replacement of rotted porch, complete demolition of interior, and replacement and re-roofing of the accompanying outbuilding. Plumbing and electrical upgrades are also necessary.

Cost estimate: \$100,000



The interior of an addition to the Hickman House sitting on floor joists exposed to the element, interior decay



Saw dust from burrowing insects, rat feces and a cat skeleton



Black mold could cause serious health issues



The rotted porch and failed stone foundation of the Hickman House



Virginia City Depot Bathrooms:

The bathrooms that sit off of the corner of the Virginia City Depot porch are a safety risk. There is little to no support holding them up. If this issue is not addressed soon, they are in danger of collapsing, which would more than likely happen during the busy tourist season, when there is high traffic in that area. They need bracing and stabilization, and a plumbing upgrade.

Cost estimate: \$20,000



The Virginia City Depot bathrooms sit precariously at the corner of the porch with little structural support

Cogswell Cabin:

The Cogswell Cabin is failing almost beyond the point of repair. It needs an entire new foundation system, and the roofing and framing stabilized and re-built, and a new roof. One log wall has completely rotted away, and all bottom logs need to be replaced. If we do not preserve this building in entirety it will collapse. It is extremely relevant to the social history of Virginia City, housing some of the earliest African American entrepreneurs in Montana and will hopefully be interpreted as such in the future.

Cost estimate: \$100,000



No south interior wall remains in the Cogswell Cabin to shelter it from the elements, and the protective muslin is clearly beyond repair with weather and water damage.

Prasch Blacksmith Shop:

This building has appeared on the “never finished” list for a record amount of time: work began over ten years ago. It is one of the many buildings on the main street with a fascinating history, having been a “hurdy-gurdy” dancehall when it was originally built, then converted to a blacksmith shop in the 1870s and used as such up to 1946. Once completed, it can be opened for the public once again as a display. It needs footings poured (the holes have already been dug) and a timber-framed structure built internally to support the building. The floor itself needs replacement and the two forges need stabilization and chimneys. Gutters are also needed. Externally, the narrow alley between the Prasch and Saubier Blacksmith Shops needs to be re-graded for improved drainage, as ice and snow gather each winter and accelerate wood rot.

Cost estimate: \$60,000



Gilbert House:

Built in 1864, this was the home of the Henry Gilbert family, who ran Montana's earliest standing Brewery in Virginia City. A \$100,000 grant was just awarded the MHC to stabilize the malting tower of the Brewery, which eased a dent in the building's preservation needs, yet no attention has been paid to the

Gilbert home, a building which could serve many uses, commercially and for MHC housing. The structure is slowly sinking below grade due to an underground spring. The long list of stabilization and preservation treatments needed includes: Abatement of frass mold, dust, and organic material, mitigate lead and asbestos hazards, archaeological assessment and services, create positive drainage and water diversion from area, major excavation for foundation and/ or pilings, and drainage system, jack up and stabilize building, replace rotten sill logs and plates, pour foundation or pilings, restore or replace porches, consolidate or replace chimneys, flash chimneys and roof valleys, replace flooring system throughout, window and door repair, preservation, and replacement, add gutters, and upgrade electrical, plumbing, flooring, and insulation.

Cost estimate: \$200,000



Pottery Shop & Bottling Building:

This structure was built as a bottling building within the Gilbert Brewery Complex. It was used by Sue Ford Bovey as a Pottery Shop. It is a victim of Daylight Creek's dangerous curving due to the vegetation that has grown up in the area in the last few decades, and would benefit from a hydrology assessment.

Other than that, it needs: creation of positive drainage and water diversion from area, excavation for foundation, or pilings, and drainage system, jack up and stabilize building, pour foundation or pilings,

restore east concrete wall, restore northeast concrete brick corner, re-point existing brickwork, stabilize flooring throughout, window and door repair, preservation, and replacement.
 Cost estimate: \$50,000



Cabbage Patch:

The Cabbage Patch is a grouping of structures located with Block 154, one of Virginia City's oldest sections of town. It is a popular place for tourists to congregate, and it could be made into a small park area if it were cleaned up and stabilized. The buildings, though small in stature, need: abatement of frass, mold, dust, and plant material, create positive drainage and water diversion from area, excavation for foundation, or pilings, and drainage system, jack up and stabilize building, replace rotten sill logs and plates, pour foundation footings or pilings, restore or replace roof systems, consolidate or replace siding, stabilize interior walls and ceilings, restore or replace floor framing and sheathing throughout, stabilize and restore outhouses, repair fences, window and door repair, preservation, and replacement

Cost estimate: \$50,000





Buford Block/E.L. Smith Store/Assay Office:

The E.L. Smith Store and The Wells Fargo Office display (within the Buford Block) are part of a grouping of several historic structures on the south side of Wallace Street that contribute to the mercantile past of the Virginia City Historic Landmark District. They contain displays that receive thousands of visitors a summer, house thousands of dollars worth of artifacts, and also contain successful businesses, the Wells Fargo Coffee House and the Stage Coach and Trail Rides office. The buildings possess significant deterioration due to compounded moisture problems and structural failure of crucial members. These buildings will need: abatement of frass, mold, and dust and organic material, remove artifacts and curatorial services, repair or replace rotten joists, rafters and structural members, restore lathe and plaster walls, major excavation for foundation, replace rotted sill logs and plates, pour foundation, create positive drainage for area, restore and re-point all historic masonry and brickwork, and stabilize the original storerooms for concessionaire use.

Cost estimate: \$150,000



The E.L. Smith Store has structural issues both inside and out





The Wells Fargo Office has major interior damage to the historic lath and plaster, and the exterior needs oiling



The brickwork on Virginia City's upscale restaurant, the Wells Fargo Coffee House, is in need of re-pointing

City Bakery:

The City Bakery is a Bovey partial reconstruction; as the original building had crumbled almost repair. It is currently being used by a concessionaire. The rear exterior of the building is in bad shape. The existing concrete block wall needs to be removed, excavated for footings and rebuilt. A crack monitor places on the building only five years ago shows a disturbing rapidity to its deterioration.

Cost estimate: \$20,000



Figure 12: Crack monitor on the rear façade of the City Bakery shows the growing displacement of the building at an alarming rate.

Village Pump:

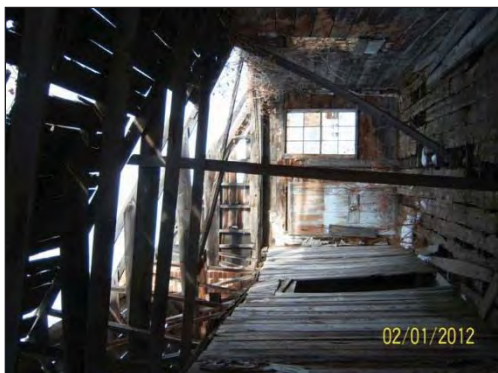
Built by the Boveys and once serving Virginia City as a gas station, this large structure is not only one of the first buildings that tourists see when they drive into town, it could have value as a commercial structure. It currently houses an impressive array of Ford Model T parts. Though it is a more recent construction, the field stone and poured concrete foundation is in poor shape. Cost estimate: \$100,000



Susan Marr House:

Slated for a Virginia City Institute Workshop several years ago, the 1864 Marr house is close to being beyond the point of restoration. It is gravely endangered, yet its walls still stand, rendering it not completely lost by preservation standards. It requires: abatement of frass, mold, dust and organic material, archaeological assessment and services, creation of positive drainage and water diversion from area, major excavation for foundation, jack up and stabilize building, replace rotten sill logs, plates and structural members, repair collapsed roof and re-roof with cedar shingles, window and door preservation or replacement, and if the structure is made usable, a complete electrical and plumbing installation.

Cost estimate: \$200,000



Nevada City Needs: Nevada City is MHC's revenue generating Open Air Museum. Although most of the historic buildings have been brought in from other areas of Montana, they have many needs that must be addressed. Most sit on makeshift concrete foundations and have rotting timbers that need to be replaced or treated with consolidants. Some sit on the ground with no foundations. Many need new roofs. If the MHC is to make the Nevada City Open Air Museum a commercial success, and therefore to make it self-sustainable, as was the original statutory mandate when the State of Montana bought the properties in 1997, Nevada City will need to be in stable, safe condition, and it will need to be believable as a western gold mining boom town. The MHC Living History program is making great strides to be a formidable Montana tourist attraction, and the structures that they interpret in the town must follow suit.

Cost estimate: \$1.5 million

Nevada City Hotel:

Before work commences a soil analysis is necessary to determine foundation system type. It needs a major excavation both for drainage and a new foundation, replacement of rotted sill logs and sill plates, replacement of flooring, window and door repair, and gutters. Also included would be a complete electrical and plumbing upgrade.

Cost estimate: \$400,000



“Bovey Backfill” has failed, leaving cracks and spaces for moisture to accumulate, accelerating wood rot along the entire exterior of structure



The Nevada City Hotel sits on large upright beams, some that do not even touch the ground (above right)

George Ives Jail:

This 1863 original structure is in grave danger of failing. It is one of the few remaining original buildings in Nevada City, which was a blacksmith shop and served as the holding cell for George Ives during the most famous trial in Nevada City. In order to save this building, it will need: a new foundation excavated, “Bovey Backfill” removed, vegetation removed, rotted sill logs replaced, a rock foundation placed, boards and battens replaced, roof replaced, a French drain for moisture, oiling, and new or salvaged hardware. The rodents need to be removed and kept out.

Cost estimate: \$20,000



The George Ives Jail: an original Nevada City structure in danger of collapsing. Bottom right: an archaeological test unit filled with ice is proof that the building needs regarding.

Other Nevada City structure needs:



Figure 13: Original Nevada City building in need: The George Ives Jail



Figure 14: Poor drainage creates a sheet of ice in front of the Sedman House, an impressive structure that needs to be treated by painting



Figure 15: Rotting boards require consolidant

Figure 16: No access to second floor due to stairs in poor shape



Figure 17: Rear portion of Richards Cabin collapsing- safety issue



Figure 18: NR Listed Finney House interior never completed



Figure 19: Collapsing roof is a safety issue

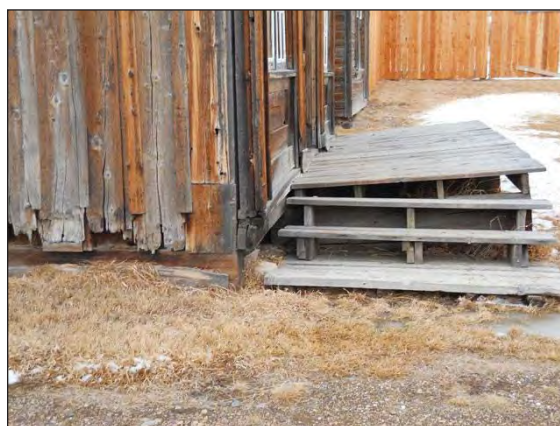


Figure 20: Many porches need work as they are safety concerns



Figure 21: Charlie Bovey Building in desperate need of stabilization- floor is sunken in, endangering collections

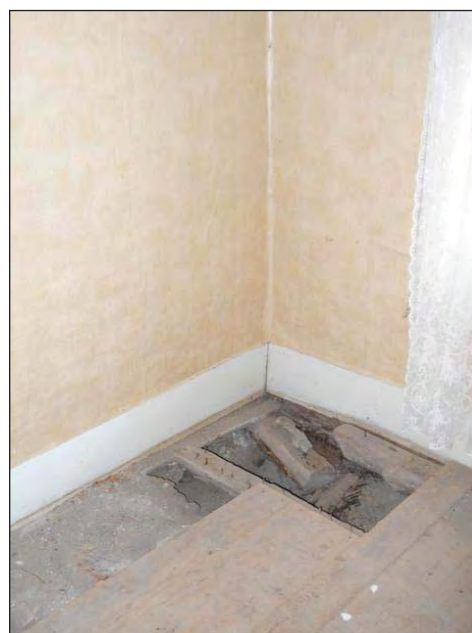


Figure 22: Interior of Finney House left unfinished



Figure 23: Failing foundations and rotting logs need to be addressed



Figure 24: Iron Rod Cabin needs a foundation and weatherproofing



The Richards Cabin, an original structure, has major drainage issues



Water damage in the NR listed Dr. Don L. Byam house

Department of Fish, Wildlife and Parks -- Parks Division*

Expenditures	FY 2010 Actuals	FY 2011 Actuals	FY 2012 Approp.
FTE	120.26	120.26	84.01
Personal Services			
Salaries	\$ 4,266,420	\$ 4,323,649	\$ 3,126,597
Benefits	1,424,226	1,466,944	1,134,561
Total Personal Services	\$ 5,690,646	\$ 5,790,593	\$ 4,261,158
Operating Costs			
Other Services	\$ 678,078	\$ 572,841	\$ 741,882
Supplies & Materials	410,202	416,815	312,920
Communications	131,829	130,928	125,254
Travel	577,556	490,618	314,176
Rent	83,692	45,914	50,554
Utilities	187,205	200,185	202,514
Repairs & Maintenance	681,191	351,416	441,357
Other Expenses	75,178	112,197	141,539
Goods for Resale	213	3,683	-
Total Operating Costs	\$ 2,825,143	\$ 2,324,597	\$ 2,330,196
Equipment & Intangible Assets	\$ 323,127	\$ 194,123	\$ 461,748
Grants	\$ 421,437	\$ 453,112	\$ 445,318
Total Expenditures	\$ 9,260,353	\$ 8,762,425	\$ 7,498,420
Funding Source			
Off Highway Vehicle Gas Tax	\$ 60,028	\$ 57,034	\$ 106,094
Parks Safety/Ed OHV Dealer Reg	5,001	4,046	4,476
Off Hwy Vehicle Acct (Parks)	15,613	15,105	11,000
Motorboat Fees	-	90,846	50,000
Parks OHV Fuel Safety/Educ	12,333	12,427	11,499
Parks Snomo Fuel Tax Sfty/Educ	46,258	44,785	41,479
Motorboat Certification-Parks	17,851	17,767	18,163
Snowmobile Registration-Parks	232,879	254,300	224,995
Fishing Access Site Maint	341,860	368,936	-
Snowmobile Fuel Tax	516,918	419,403	790,254
Coal Tax Trust Account	912,783	881,830	814,737
General License†	2,210,107	2,156,768	172,500
State Parks Miscellaneous**	3,464,478	3,250,162	4,016,805
Light Vehicle Registration Fee	2,806,294	2,627,298	3,147,225±
Motorboat Fuel Tax	1,084,346	846,324	1,108,300
FAS - Vehicle Registration	55,607	57,224	-
Fedl Fish(W/B) Wildlife(P/R)‡	284,292	285,467	128,118
Parks Funding Total	\$ 9,260,355	\$ 8,762,425	\$ 7,498,420

*Figures are for HB 2 and HB 13. They do not include statutorily-appropriated revenue collected via the accommodations tax for state park facility maintenance from which the Parks Division received \$1,046,000 in FY 2010 and \$942,000 in FY 2011.

**Includes user fees and the light vehicle registration fee.

±estimated FY 2012 revenue, DFWP

†General license money set aside in HB 2 for Fishing Access Site (FAS) management in state parks. FAS are now administered by the Fisheries Bureau. As such, the Parks Division may not spend this appropriation.

‡Federal revenue for motorboat-related activities in state parks.

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Department of Commerce -- Montana Heritage Commission

Description	Actual FY 2010	Actual FY 2011	Revenues to date FY 2012
Beginning Fund Balance	\$3,957	\$45,133	\$39,765
Revenues			
Taxes			
Accommodations Tax	\$ 400,000	\$ 400,000	\$ 400,000
Light Vehicle Registration	201,575	187,507	93,010
Charges for Services	19,926	12,944	9,248
VC/NC Railroad	111,913	59,521	0
Nevada City Gate Fees	60,008	63,930	56,246
BOI Investment Earnings	2,277	2,199	2
Sales of Documents/Mdse/Prop	58,755	45,763	25,926
Rentals/Lease/Royalties			
Building Rentals	74,118	57,103	11,640
Concessionaire Reeder's Alley	0	6,400	44,241
Concessionaire Virginia and Nevada Cities	98,510	92,194	81,118
Contributions/Premiums	7,620	220	0
Grants/Transfers/Misc	34,755	12,931	6,795
Transfer In from Dept of Commerce*	0	100,000	0
Revenues that must be collected to meet projections	0	0	269,652
Total Revenues	\$ 1,069,457	\$ 1,040,711	\$ 997,878
Expenditures			
	Actual	Actual	Budgeted as Revised 2/3/2012
FTE	18.25	18.25	11.00
Personal Services			
Salaries	\$ 421,979	\$ 407,582	\$ 363,333
Benefits	135,855	132,774	152,724
Budgeted Vacancy Savings	0	0	(20,313)
Total Personal Services	\$ 557,834	\$ 540,356	\$ 495,744
Operating Costs			
Other Services	\$ 112,969	\$ 148,926	\$ 124,809
Supplies & Materials	53,110	35,444	49,123
Communications	42,133	41,788	37,945
Travel	24,781	29,802	24,473
Rent	7,476	21,557	2,476
Utilities	97,501	92,070	98,819
Repairs & Maintenance	23,890	29,166	19,412
Other Expenses	97,133	92,209	91,366
Goods for Resale	10,517	14,295	9,961
Signs	0	465	0
Total Operating Costs	\$ 469,511	\$ 505,723	\$ 458,384
Equipment	\$ -	\$ -	\$ 6,000
Total Expenditures	\$ 1,027,345	\$ 1,046,079	\$ 960,128
Adjustments	\$ 935	\$ -	\$ -
Ending Fund Balance	<u>\$ 45,133</u>	<u>\$ 39,765</u>	<u>\$ 77,515</u>

*Funds transferred for grant of ARRA funding for historical preservation

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Virginia City & Nevada City Concessionaires

Totaling \$96,259.64 in revenue in 2011

Payment Info	Term Date
Alder Gulch Accommodations - John & Linda Hamilton	12/31/2012
Annual rent of \$22,666 to be paid in 3 installments of 7,555.33 on or before the 15th of July, Aug & Sept with 1% increase over previous year added to Sept payment (1%=\$222.20 in 2011)	
Aunt Julia's - Duxbury	12/31/2012
Annual rent of \$3,000 to be paid in 5 monthly installments of \$600 due before the 1st day of June, July, August, Sept, October thru 10/31/12	
Bale of Hay - Gay & Kay Rossow	12/31/2017
Annual rent of 11,044.07 to be paid in 4 monthly installments due by 1st of June, July, Aug & Sept	
Bob's Place - Kirk Belding	12/31/2023
Annual rent of \$4,637 with 2,318.50 due by 15th of July & Sept	
Brewery Follies - Verdon Ventures (Mike & Jill Verdon)	12/30/2015
Annual base rent - \$4,400; Annual liquor license lease - \$2,000; \$1,200 due 15th of June, July, August September & October	
\$125,000 Paid \$12,178 gross revenue	
City Bakery -	10/31/2012
Annual rent of \$500 to be paid on or before the 1st of July of 2011 and 2012 ea	
Montana Picture Gallery - Tim & Stacey Gordon	12/31/2013
June, July, Aug & Sept	
Opera House - Rocky Mountain College	10/15/2011
Annual base rent - \$7500, \$1875 due 1st of June, July, Aug, Sept.	Expired
5% of gross revenue over \$50,000 (5%=\$537 in 2011)	Not renewing
Overland Stage & Horseback Rides - BJ & Lisa Morgan	12/13/2015
Annual rent of \$1,725.00 to be paid on or before the 1st day of July, August and September. If operating from October-April, \$15.00 per day (No off-season rent paid in 2011.)	
River of Gold - John & Carma Sinerius	10/31/2011
Paid \$2,800 for the year in rent. (No vendors currently in place. MHC considering whether to take over operations for revenue stream.)	Expired
Ruby Chang's - Jennifer McGuire	10/31/2014
\$1,000 annual, \$200 due 15th of May, June, July, August, September	
Star Bakery - Nevada City Star, Mike & Heather Hale	10/31/2011
\$3,295 total; \$1098.33 due 15th of July, August & September	New mgmt
Tent Village - Duxbury (Aunt Julia's)	12/31/2012
Annual rent of \$750.00 to be paid in two installments of \$375.00 due on or before the 1st of June and July	
Virginia City Trading Co. - Randy Van Dyke	12/31/2011
Rent 15% of gross revenues for prev. month, due 15th June, July, Aug, Sept, Oct. (Pays Bale of Hay for electrical charges) Paid \$4955.37 total for year	
Wells Fargo Coffee House - Patrick McKay	12/31/2012
Annual rent of \$6,000 & liquore license fee of \$2,000 to be paid in 3 payments on or before 15th of July, Aug, Sept	

REEDER'S ALLEY - Tenant Rent and Utilities Budget Billing

Revenue from rent totaling \$71,808 in 2011

	Utilities	Rent	Total	Due date
Papa Tony's - 139 & SH Kitchen	217	293	510	1st
Shreiner - 105	84	650	734	1st
Dundee's Barber Shop - 107	110	321	431	1st
VACANT - 111	47	190	237	1st
VACANT - 113	57	190	247	1st
MHC - 115 & 117				1st
Theresa Boyar - 119	42	135	177	1st
Ted Mazzaresse - 121	133	450	583	1st
Marca Gibson - 123 & 125	71	275	346	1st
SOS - 127 & 129	92	315	407	1st
WELC - 131 & 133	90	450	540	15th
VACANT - 135	53	175	228	1st
Clay Scott - 137	53	175	228	1st
Mt Preservation Alliance - 120 #2	135	750	885	1st
CASA - 120 #1	136	765	901	1st
Caretakers Cabin	0	500	500	1st
Total Monthly	1,411	5984	7,395	



Montana Fish, Wildlife & Parks

Parks Division

Biennial Fee Rule

Fees and Rules for the
State Park System and Fishing Access Sites

Adopted by FWP Commission on November 18, 2010

Note: Appreciating public concern over the current economy, the FWP Commission directed the Parks Division to delay implementing state park camping fee increases for residents of Montana, and Lewis and Clark Caverns cave tour fee increases for a minimum of one year and until such time that the economy has improved.



TABLE OF CONTENTS

Fee Rule Tables: State Parks and Fishing Access Sites 3

State Park Entrance Fees 3

State Park Camping Fees 3

State Park Campsite Reservation Fees 3

Fishing Access Site Camping Fees..... 4

Facility Rental Fees..... 4

Special Use and Group Use Fees 4

Other State Park and FAS Fees..... 4

Alberton Gorge Commercial Use Fees 4

Blackfoot and Madison River Use Fees 4

I. Introduction and Applicability of Rules..... 5

II. Legal Authority 5

III. Definitions..... 5

IV. Entrance to State Parks..... 6

V. Camping at State Parks 7

VI. Campsite Reservation Program 8

VII. Camping at Fishing Access Sites..... 8

VIII. Use of Shelters, Pavillions, Amphitheaters, and Meeting Rooms 9

IX. Special Use, Group Use and Special Events 10

X. Other State Park and FAS Use 11

XI. Alberton Gorge Commercial Use 11

XII. Blackfoot and Madison River Use 11

XIII. Special Rules and Regulations..... 13

XIV. Penalties 13

XV. Severability Clause 13

Appendix A. 23-1-105 and 61-3-321, MCA..... 14

FEE RULE TABLES: STATE PARKS AND FISHING ACCESS SITES**State Park Entrance Fees**

Item	Fees
Daily Entrance Fee (vehicle)	\$0 Resident \$5 Nonresident (\$3 Disabled)
Daily Entrance Fee (pedestrian, bicycle, non-commercial passenger bus)	\$0 Resident \$3 Nonresident
Nonresident State Park Annual Pass	\$25 (1 st vehicle) \$20 (additional vehicle)

State Park Camping Fees

Item	Current Fees Peak Season	Current Fees Off-Season	Future Fees ¹ Peak Season	Future Fees Off-Season
Campsite	\$15 Resident (\$7.50 Resident Senior/Disabled) \$23 Nonresident (\$18 Nonresident with Park Pass)	\$15 Resident (\$7.50 Resident Senior/Disabled) \$20 Nonresident (\$15 Nonresident with Park Pass)	\$18 Resident (\$9 Resident Senior/Disabled) \$23 Nonresident (\$18 Nonresident with Park Pass)	\$15 Resident (\$7.50 Resident Senior/Disabled) \$20 Nonresident (\$15 Nonresident with Park Pass)
Campsite with Electricity	\$20 Resident (\$12.50 Resident Senior/Disabled) \$28 Nonresident (\$23 Nonresident with Park Pass)	\$20 Resident (\$12.50 Resident Senior/Disabled) \$25 Nonresident (\$20 Nonresident with Park Pass)	\$23 Resident (\$14 Resident Senior/Disabled) \$28 Nonresident (\$23 Nonresident with Park Pass)	\$20 Resident (\$12.50 Resident Senior/Disabled) \$25 Nonresident (\$20 Nonresident with Park Pass)
Cabin	\$45 Resident \$55 Nonresident	\$45 Resident \$50 Nonresident	\$50 Resident \$55 Nonresident	\$45 Resident \$50 Nonresident
Regular Yurt	\$45 Resident \$55 Nonresident	\$45 Resident \$50 Nonresident	\$50 Resident \$55 Nonresident	\$45 Resident \$50 Nonresident
Large Yurt	\$45 Resident \$60 Nonresident	\$45 Resident \$55 Nonresident	\$55 Resident \$60 Nonresident	\$45 Resident \$55 Nonresident
Tipi	\$25 Resident \$35 Nonresident	\$25 Resident \$30 Nonresident	\$30 Resident \$35 Nonresident	\$25 Resident \$30 Nonresident
Backcountry Camping (walk-in / bike-in)	\$7 Resident (\$3.50 Resident Senior/Disabled) \$15 Nonresident	\$7 Resident (\$3.50 Resident Senior/Disabled) \$12 Nonresident	\$10 Resident (\$5 Resident Senior/Disabled) \$15 Nonresident	\$7 Resident (\$3.50 Resident Senior/Disabled) \$12 Nonresident
Showers	\$2	\$2	\$2	\$2

State Park Campsite Reservation Fees

Item	Fees
Reservation Fee: Individual campsite or facility (campsite/cabin/yurt/tipi)	\$10
Reservation Fee: Group campsite or facility	\$25
Reservation Modification Fee	\$10
Reservation Cancellation Fee: Individual campsite or facility	\$15 or 1 st night camping, whichever is greater
Reservation Cancellation Fee: Group campsite or facility	\$50 if 21 or more days prior to scheduled arrival If less than 21 days, forfeit 1 st night camping fee
Reservation No Show	No refund (reservation, camping fee)

¹ See Note on cover page of this fee rule for explanation on future fees.

Fishing Access Site Camping Fees

Item	Fees
FAS Campsite	\$7 for fishing license holders \$12 for non-license holders

Facility Rental Fees

Item	Fees
Shelter or Pavilion Reservation:	\$75 rental fee (\$100 deposit)
Meeting Room Reservation	\$50 per half day \$75 per full day \$100 deposit

Special Use and Group Use Fees

Item	Fees
Special Use, Group Use, Special Events	\$3 per person or \$5 per vehicle \$100 deposit

Other State Park and FAS Fees

Item	Current Fees	Future Fees ²
Guided Cave Tours (Lewis & Clark Caverns)	\$10 per adult (age 12 and above) \$5 per child (age 6 to 11) <u>Educational Group:</u> \$8 per adult (age 12 and above) \$4 per child (age 6 to 11) <u>Candle Tours:</u> \$15 per adult (age 12 and above) \$8 per child (age 6 to 11)	\$12 per adult (age 13 and above) \$6 per child (age 6 to 12) <u>Educational Group:</u> \$10 per adult (age 13 and above) \$5 per child (age 6 to 12) <u>Candle Tours:</u> \$16 per adult (age 13 and above) \$8 per child (age 6 to 12)
Guided Tours, Special Interpretive/Training Programs	\$2 per person or as posted	\$2 per person or as posted
Firewood Cutting Permit	\$20/cord	\$20/cord
Boat Mooring Buoy	\$5 per day (\$12 if camping on boat)	\$5 per day (\$12 if camping on boat)
Boat Slip Rental	\$5 per day (\$12 if camping on boat)	\$5 per day (\$12 if camping on boat)

Alberton Gorge Commercial Use Fees

Item	Fees
Commercial Use	3% of unadjusted gross revenue

Blackfoot and Madison River Use Fees

Item	Fees
Commercial Use	3% of unadjusted gross revenue
Competitive Events	\$3 per person per day, or \$95, whichever amount is greater
Organized Groups	\$3 per person per day

² See Note on cover page of this fee rule for explanation on future fees.

Parks Division Biennial Fee Rule

Adopted by the FWP Commission on November 18, 2010

I. INTRODUCTION AND APPLICABILITY OF RULES

- A. The biennial fee rule applies to non-commercial use of state parks and fishing access sites, organized groups and competitive events on the Blackfoot and Madison rivers, and commercial use of the Alibon Gorge (all other commercial use of state parks and fishing access sites are governed by 12.14.101 through 12.14.170, ARM).
- B. This biennial fee rule is in effect for the two calendar years following the date of adoption. The Fish, Wildlife and Parks Commission may amend the fee rule at any time during this time period.
- C. Per 12.8.213 (3), ARM, regulations relating to establishment of fees for recreation use of lands and waters owned and controlled by the state of Montana, acting by and through the Fish, Wildlife and Parks Commission, will be adopted on an annual and seasonal basis and therefore will not be considered or processed as subject to the Montana Administrative Procedures Act.
- D. The Fish, Wildlife and Parks Commission has the authority to adopt these rules as annual or biennial rules not subject to the specific requirements of the Montana Administrative Procedures Act per section 2-4-102(11)(b)(iv), MCA.
- E. The parks division may reduce or waive fees established by this biennial fee rule to increase utilization of a park, promote special events, in response to camping conditions or other factors contributing to visitor dissatisfaction, or for a park or fishing access site with a lower level of services or amenities. Such fee reductions must be approved by the parks division administrator or his or her designee.

II. LEGAL AUTHORITY

- A. Sections 23-1-105, 23-1-106, 23-1-118, 61-3-321, 87-1-303, MCA, and 12.8.213, ARM, authorize the collection of fees and charges for use of Montana state parks and fishing access sites, and rulemaking for the sites' use, occupancy, and protection.

III. DEFINITIONS

- A. "Camp" means to occupy a campsite overnight at a state park or fishing access site.
- B. "Camping unit" means one sleeping device or shelter, including but not limited to a tent, motor home, camping bus, truck mounted camping shell, pull-type camper, or other device designed and commonly used for sleeping.
- C. "Commercial use" is defined as per ARM 12.14.101(3).
- D. "Commission" means Fish, Wildlife and Parks Commission.
- E. "Competitive event" means any organized, sanctioned, or structured use, event, or activity on lands owned or managed by the department or related waters in which two or more contestants compete, the participants register, enter, or complete an application for the event, and/or a predetermined course or area is designated.
- F. "Department" means Department of Fish, Wildlife and Parks.
- G. "Dispersed camping" means camping that occurs in areas that are not individually signed or numbered.
- H. "Educational group" means an organized group that is officially recognized as an educational or scientific institution by a federal, state, or local government entity. Documentation of this recognition must be on institutional letterhead and include a signature by the head of the institution/department and documentation of official educational or scientific tax exemption as granted by the Internal Revenue Service. The definition of an education group includes home schooling per 25-5-111, MCA.

- I. "Motor vehicle" means any passenger car, truck, van, or motor home, and does not include vehicles engaged in commercial use.
- J. "Nonresident" means a person who does not meet the definition of a resident as defined in 87-2-102, MCA.
- K. "Nonresident daily entrance fee" is the fee for gaining access to a unit of the state park system, either by an annual pass or daily entrance permit.
- L. "Nonresident state park annual pass" is a non-transferable, non-refundable pass that grants a non-commercial nonresident vehicle and up to eight occupants free access to state parks for a one-year time period beginning March 1 through the last day of February.
- M. "Nonresident vehicle" shall be defined as a vehicle bearing license plates from a state or province other than Montana.
- N. "Off season" means the time period beginning the day after Labor Day up to and including the Thursday before Memorial Day when visitation is typically lower, fewer amenities are available, and/or the state park system operation expenses are lower.
- O. "Organized group" means a structured, ordered, consolidated, or scheduled event on, or occupation of, lands owned or managed by the department or related waters that is not commercial or competitive.
- P. "Peak season" means the time period from the Friday before Memorial Day through Labor Day when visitation is typically higher, more amenities are available, and/or the state park system operation expenses are higher.
- Q. "Primitive parks" are those sites listed in 23-1-116, MCA, subject to special restrictions on development and fee collection.
- R. "Reservation fee" means the transaction fee assessed when using the state park camping reservation program.
- S. "Resident" means a resident of Montana as defined in 87-2-102, MCA.
- T. "Single visit" is a stay within a designated area during a daily period when the park is open for public use.
- U. "Service group" means a group that donates proceeds or services to the management or improvement of fish, wildlife, and parks, including the maintenance, management, or the improvement or development of facilities.

IV. ENTRANCE TO STATE PARKS

- A. A person driving a vehicle licensed in Montana with a paid state park vehicle registration fee will be granted daily access to state parks at no charge per 23-1-105(6), and 61-3-321(18)(a), MCA (see Appendix A). Occupants of the vehicle shall not be charged daily entrance fees.
- B. A nonresident or nonresident vehicle shall not enter or use park areas, campgrounds, or other facilities, or otherwise participate in programs or activities for which a fee has been established without first paying the required fee per ARM 12.8.213.
- C. Payment of a single visit fee authorizes exits from and re-entries to all designated fee areas for the date the fee is paid.
- D. The non-resident entrance fee provides for the entry of one private, non-commercial motor vehicle and its occupants into a park area, or the entry of a single person into a park on foot, by bus, bicycle, or means other than by conventional motor vehicle for a "single visit."
- E. Non-resident children under 13 years of age are admitted free to sites that charge a per-person daily entrance fee.
- F. A nonresident who is participating in an authorized commercial activity is not subject to the daily entrance fee.
- G. The daily nonresident entrance permit is valid only for the date issued.
- H. A nonresident with a disability shall be charged the single person nonresident entrance fee of \$3 when accessing a state park in a vehicle so long as they are the sole occupant of that vehicle.
- I. Federal park passports, e.g. the America the Beautiful card, are not valid at Montana state parks.

- J. To be valid, the nonresident state park pass must be permanently affixed to the interior lower left area of the vehicle's windshield. A \$10 fee shall be assessed to replace a lost or destroyed pass. When replacing a windshield, a nonresident pass holder may present the peeled-off pass or the largest remnants to receive a free replacement.
- K. The pass can be purchased at selected license agents, department offices, designated recreation fee areas, and via the department's web site. A nonresident who purchases a state park pass via the department's web site may print a temporary copy that is valid for entry into any state park for a period of 7 days following the date of purchase. The purchaser will receive an official pass in the mail. A pass purchased via the department's web site shall be assessed a service fee.
- L. Additional passes may be purchased at a reduced cost. Each additional vehicle must be registered to the same street address.

V. CAMPING AT STATE PARKS

- A. There is a fee to camp at state parks. Exception:
 - i. There is no camping fee for residents at primitive state parks with the exception of Thompson Falls state park and Headwaters state park as provided in 23-1-118, MCA.
- B. A camping fee is charged per each individually signed or numbered campsite unless otherwise posted. The park manager may apply the campsite fee to each camping unit for dispersed camping areas and campsites that accommodate multiple camping units.
- C. A visitor must immediately pay the required camping fee upon arriving at or occupying a campsite, cabin, yurt, or tipi. The camping permit must be attached to the campsite post if available or displayed on driver's side dashboard.
- D. The nonresident camping fee includes the nonresident entrance fee. A nonresident who purchases a state park annual pass may subtract \$5 per night from the camping fee.
- E. Overnight camping fees shall be assessed when camping overnight on a boat that is moored within a designated boat slip, marina or buoy.
- F. In addition to the group campsite reservation fee, each individual or party within the group must pay the applicable camping fees listed in this fee rule.
- G. 23-1-105(2), MCA, provides that an overnight camping fee will be discounted 50% for a campsite rented by a Montana resident who is a:
 - i. senior citizen 62 years of age or older and provides a photo identification with Montana resident address (e.g., Montana Driver's License); or
 - ii. person with a disability, verified by either a disability form obtained from the department and signed by a physician, a Resident Disability Conservation License, or a disability permit or license plate issued by the Montana Motor Vehicle Division.
- H. Only one discount may be applied to an overnight camping fee, not a combination. No discount may be applied to the electrical fee or to any other fees such as boat slips, firewood, etc.
- I. A senior citizen with a Golden Years' Pass issued by the department shall be granted free camping. The Golden Years' Pass is valid only if the holder or spouse is in the vehicle to which it is attached. This pass is non-transferable. The original holder of a Golden Years' Pass can obtain a replacement pass at any FWP office or the Helena headquarters for \$1 by showing a portion of the original pass. The Golden Years' Pass has not been issued since 1989 and therefore as of 2010 the holder must be at least 83 years of age.
- J. Selected state park campsites may be reserved through the department's state park campsite reservation system.
- K. Campsites may not be "held" by an individual or party for another individual or party arriving later. No person may pay a camping fee or leave an item as a means to reserve or hold an unoccupied site. This does not prohibit the reservation of a campsite through the department's state park campsite reservation system.

- L. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is eight (8) people.
- M. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is one camping unit and up to two additional tents. "Camping unit" means one sleeping device or shelter, including but not limited to a tent, motor home, camping bus, truck mounted camping shell, pull-type camper, or other device designed and commonly use for sleeping.
- N. All camper units with the exception of tents, and all motor vehicles, boats, trailers, motorcycles, non-licensed recreational vehicles, and other similar forms of transportation must be parked within the designated parking area of the campsite or at designated overflow (alternative) parking areas.
- O. The park manager may establish a dispersed camping area with occupancy limits and terms and conditions for use of the area. Occupancy limits that exceed thirty (30) people may require a special use permit.
- P. No person may leave a campsite unattended overnight. Nightly occupancy is required.
- Q. Camping at one or more campsites in any one designated recreation area for a period longer than fourteen (14) days during any 30-day period is prohibited unless otherwise posted. In areas so posted, said occupancy shall be limited to seven (7) days during any 30-day period. Such 30-day periods shall run consecutively during the year commencing with the first day each person camps in a designated recreation area each year.
- R. No person may set up camp in areas other than designated campgrounds, or in any department-administered shelter building unless the shelter is posted as a camp shelter.
- S. No person or group may set up camp or otherwise occupy a campsite that has already been reserved or paid for by another person or group.
- T. No person may leave a set-up camp, or trailer, camper, other vehicle, or equipment unattended for more than 48 hours unless the area is otherwise posted.
- U. Checkout time for campers using fee areas is 2:00 p.m. the following day unless otherwise posted.
- V. Overnight camping fees shall be assessed when camping overnight on a boat that is moored within a designated boat slip, marina or buoy.
- W. All camping fees include the 7% State of Montana accommodation tax as per 15-65-111 & 15-68-102, MCA.

VI. CAMPSITE RESERVATION PROGRAM

- A. There is a nonrefundable, nontransferable reservation fee charged for reserving a state park campsite or facility through the campsite reservation program. The reservation fee is in addition to the camping fee.
- B. There is a nonrefundable modification fee charged for changing a reservation.
- C. There is a cancellation fee charged when cancelling a campsite or facility reservation.
- D. The Commission delegates authority to the Parks Division Administrator to develop procedures for administering the camping reservation system, including but not limited to procedures on reservation limits, modifications, and cancellations.

VII. CAMPING AT FISHING ACCESS SITES

- A. There are no daily entrance fees at fishing access sites.
- B. There is a fee to camp at fishing access sites that are posted as fee areas. A visitor must immediately pay the required camping fee upon arriving at or occupying a campsite. The camping permit must be attached to the campsite post if available or displayed on driver's side dashboard.
- C. A camping fee is charged per each individually signed or numbered campsite unless otherwise posted. The park manager may apply the campsite fee to each camping unit for dispersed camping areas and campsites that accommodate multiple camping units.

- D. Fishing access site camping seasons vary based upon specific site conditions, location, and other factors. Some sites may be closed during the winter season or other portions of the year (contact a department regional office for details).
- E. A person must have a valid fishing license to qualify for the reduced (lower) camping fee at fishing access sites.
- F. 23-1-105(2), MCA, provides that an overnight camping fee will be discounted 50% for a campsite rented by a Montana resident who is a:
 - i. senior citizen 62 years of age or older and provides a photo identification with Montana resident address (e.g., Montana Driver's License); or
 - ii. person with a disability, verified by either a disability form obtained from the department and signed by a physician, a Resident Disability Conservation License, or a disability permit or license plate issued by the Montana Motor Vehicle Division.
- G. Only one discount may be applied to an overnight camping fee, not a combination.
- H. Campsites may not be "held" by an individual or party for another individual or party arriving later. No person may pay a camping fee or leave an item as a means to reserve or hold an unoccupied site.
- I. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is eight (8) people.
- J. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is one camper unit and up to two additional tents. "Camping unit" means one sleeping device or shelter, including but not limited to a tent, motor home, camping bus, truck mounted camping shell, pull-type camper, or other device designed and commonly use for sleeping.
- K. All camper units with the exception of tents, and all motor vehicles, boats, trailers, motorcycles, non-licensed recreational vehicles, and other similar forms of transportation must be confined within the designated parking area of the campsite or at designated overflow (alternative) parking areas.
- L. The park manager may establish a dispersed camping area with occupancy limits and terms and conditions for use of the area. Occupancy limits that exceed thirty (30) people may require a special use permit.
- M. No person may leave a campsite unattended overnight. Nightly occupancy is required.
- N. Camping at one or more campsites in any one designated recreation area for a period longer than fourteen (14) days during any 30-day period is prohibited unless otherwise posted. In areas so posted, said occupancy shall be limited to seven (7) days during any 30-day period. Such 30-day periods shall run consecutively during the year commencing with the first day each person camps in a designated recreation area each year.
- O. No person may set up camp in areas other than designated campgrounds, or in any department-administered shelter building unless the shelter is posted as a camp shelter.
- P. No person or group may set up camp or otherwise occupy a campsite that has already been reserved or paid for by another person or group.
- Q. No person may leave a set-up camp, or trailer, camper, other vehicle, or equipment unattended for more than 48 hours unless the area is otherwise posted.
- R. Checkout time for campers using fee areas is 2:00 p.m. the following day unless otherwise posted.
- S. Overnight camping fees shall be assessed when camping overnight on a boat that is moored within a designated boat slip, marina or buoy.
- T. All camping fees include the 7% State of Montana accommodation tax as per 15-65-111 & 15-68-102, MCA.

VIII. USE OF SHELTERS, PAVILLIONS, AMPHITHEATERS, AND MEETING ROOMS

- A. An individual or group may reserve a shelter, pavilion, amphitheater or meeting room subject to availability and approval by staff. The park manager may deny the reservation request or stipulate the conditions of use based on the nature of the proposed use and the regulations and management objectives in place at the park or fishing access site where the use would occur.

- B. A facility reservation form should be submitted to the appropriate regional office or park a minimum of seven (7) days prior to the proposed date(s) of use. Reservations may also be made by telephoning the appropriate regional headquarters or park office. All telephone reservations must be confirmed within five (5) days by submitting a facility reservation form.
- C. There is a rental fee for use of shelters, pavilions, amphitheaters, and meeting rooms. The fee must be paid prior to use of the facility.
- D. The park manager may adjust the rental fee on a case-by-case basis for educational groups or an individual or group that donates money or services to the state park system.
- E. A cleaning/security deposit is required and must be submitted in advance with the facility reservation form and rental fee. The park manager shall assess the cleanup and/or restoration of resources and facilities and if conditions are satisfactory the manager shall refund the deposit.
- F. The park manager may waive the deposit requirement for groups that have previously reserved a facility and demonstrated satisfactory cleanup and/or restoration of resources and facilities.
- G. The park manager shall refund the cleaning/security deposit if the reservation is canceled more than seven (7) days in advance. If a reservation is canceled less than seven (7) days before the intended use period, the cleaning/deposit shall be retained. If the facility is unavailable for the intended use due to unforeseen conditions, both the fee and deposit shall be refunded.

IX. SPECIAL USE, GROUP USE AND SPECIAL EVENTS

- A. All groups or events of 30 or more people must secure a special use permit prior to using a state park or fishing access site. Examples of groups or events that may require a special use permit include but are not limited to wedding parties, family reunions, fishing contests, and research activities.
- B. The park manager may require a special use permit for groups of less than 30 people based on management or resource protection objectives for a site, special rules or regulations, or other determining factors.
- C. The park manager may deny or amend a request for a special use permit based on the management and resource protection goals for a site or other extenuating circumstances.
- D. Groups that meet the definition of commercial use are governed by the department's commercial use rules.
- E. A special use permit may be issued to a group or individual representing a group.
- F. The proposed special use must comply with pertinent state and federal laws and regulations including public health, safety, and air and water quality.
- G. A group or individual receiving a special use permit must comply with the terms and conditions of the permit. The park manager may establish limits on the size of groups.
- H. The proposed special use must not adversely impact neighboring properties, existing archaeological, historical, cultural, or natural values and must not conflict with management objectives and guidelines.
- I. Special use permit applications should be submitted to the appropriate regional office or park a minimum of seven (7) days prior to the proposed date of use.
- J. The park manager may charge a fee for special use, group use and special events at state parks and fishing access sites. The fee does not include the daily entrance fees when applicable. The fee must be submitted in advance with the permit application and deposit unless otherwise specified by the department.
- K. The park manager may adjust the special use fee upward or downward to accommodate the nature of the activity, compensate for site impacts or department staffing needs, or for other unique circumstances pertaining to the permitted activity.
- L. The park manager may adjust the special use fee on a case-by-case basis for educational groups when the following conditions are met:
 - i. the group is from a bona fide institution that meets the definition of an educational group;
 - ii. the group provides a written explanation of the educational purpose of the visit; and
 - iii. the use is not primarily for recreational purposes.

- M. The park manager may adjust the special use fee on a case-by-case basis for service groups when the group or event:
 - i. donates proceeds or services to the management or improvement of fish, wildlife, and parks, including the maintenance, management, or the improvement or development of facilities;
 - ii. donates proceeds from the event or activity to a nonprofit organization or charitable cause; or
 - iii. is organized primarily for children under the age of thirteen.
- N. A cleaning/security deposit is required in advance for special use or group use that requires a permit and must be included with the permit application and fee.
- O. The park manager may waive the deposit requirement for groups that have previously reserved a facility and demonstrated satisfactory cleanup and/or restoration of resources and facilities and compliance with the permit terms and conditions.

X. OTHER STATE PARK AND FAS USE

- A. The department may charge and collect a fee for department-provided guided tours, interpretive or training programs, firewood cutting permits, boat mooring, and boat slip rental. The park manager may adjust the guided tour fee on a case-by-case basis for marketing or otherwise promoting the activity.
- B. Firewood cutting is only available on a limited basis and may only occur at designated sites.

XI. ALBERTON GORGE COMMERCIAL USE

- A. For the purpose of this fee rule, the Alberton Gorge shall be defined as the region between and including Cyr fishing access site to Tarkio fishing access site along the Clark Fork River and shall be known as the Gorge.
- B. The department's Commercial Use Administrative Rules (ARM 12.14.101 through ARM 12.14.170) and Commercial Use Permit Fee Rule apply to commercial use within the Gorge.
- C. Commercial use, as defined in ARM 12.14.101(3), within the Gorge is limited to commercial use that demonstrated "Historical Commercial Use" of the Gorge prior to January 1, 1998 by registering with the department by March 15, 1999. Those who failed to demonstrate proof of prior commercial use by that date are not considered historical commercial users and therefore are prohibited from conducting commercial use within the Gorge.
- D. In accordance with ARM 12.14.120(1), a restricted use permit is required in advance to conduct commercial use within the Gorge.

XII. BLACKFOOT AND MADISON RIVER USE

- A. The department, in conjunction with the Bureau of Land Management (BLM), requires a Special Recreation Permit for commercial use, competitive events, and organized group activities at department and BLM access sites along the Blackfoot River and Madison River.
- B. The department shall issue Special Recreation Permits pursuant to ARM 12.11.6501 through 12.11.6575, the department's Commercial Use Administrative Rules (ARM 12.14.101 through ARM 12.14.170), and the Commercial Use Permit Fee Rule.
- C. The maximum sizes for organized and commercial groups on the Blackfoot River are as follows:

River Reach	Organized Groups Maximum size, (individuals)	Commercial Groups Maximum size, (individuals)
1. Headwaters to the Mineral Hill area	0	0 floating, 3 wading
2. Mineral Hill area to North Fork confluence	12	12
3. North Fork confluence (or Harry Morgan FAS) to Russell Gates FAS	21	21
4. Russell Gates FAS to Roundup FAS	30 (40 May 1 - June 15)	30 (40 May 1 - June 15)
5. Roundup FAS to Johnsrud Park FAS*	30 (40 May 1 - June 15)	30 (40 May 1 - June 15)
6. Johnsrud Park FAS to Bonner	Based upon site capacity	Based upon site capacity
7. North Fork of Blackfoot to Harry Morgan FAS (confluence).	0	12

*At Whitaker Bridge FAS, the maximum commercial group size will be 25 individuals from June 15 through Labor Day.

- D. Exceptions to the maximum group sizes on the Blackfoot River are as follows:
- i. reaches four (4) and five (5) include a whitewater season (May 1 through June 15) with special group sizes to accommodate the traditional spring runoff and whitewater rafting season;
 - ii. the regional park manager may adjust this time period annually to address seasonal peak spring flows conditions.
- E. A person may apply for a Blackfoot River special recreation permit and request to exceed the maximum group size limit. In such cases, the department may conduct an environmental assessment to assess the predicted impacts of the request. Such requests may be subject to cost recovery.
- F. “Site capacity” on the Blackfoot River is the number of people each site can accommodate without significant impacts to the site resources or social experience. It is the maximum use level for all recreational use, including the combined use of a recreation site by the general public and any permitted recreational uses (commercial, competitive and organized groups). Each permit in this river reach shall be determined on a case-by basis.
- G. The impacts and acceptable size limits for competitive events on the Blackfoot River shall be assessed on site-specific capacities and suitability. The permitted group size for a competitive event may be smaller than the maximum group size for organized and commercial use based on the cumulative impacts of all anticipated use. Special recreation permits do not grant exclusive use of a recreation site to any permitted group.
- H. The following criteria shall be used to determine the maximum group size for a proposed competitive event on the Blackfoot River:
- i. whether the competitive events is consistent with the management objectives outlined in the Blackfoot River Recreation Management Plan;
 - ii. whether the combination of the anticipated general public use and the special recreation permit use is expected to be within the site capacity limits;
 - iii. whether the site is capable of accommodating the proposed number of people and vehicles without damage or degradation to the facilities or resources;
 - iv. whether the proposed activity and group size is compatible with the site facilities;
 - v. the timing and duration of the proposed event; and
 - vi. the benefits to the public and/or river resources.
- I. If the proposed event is to occur in critical native fish recovery areas, the activity must be consistent with current bull trout recovery considerations.

XIII. SPECIAL RULES AND REGULATIONS

- A. Fees shall be prominently signed and posted where applicable.
- B. The department's public use regulations, 12.8.201 through 12.8.213, ARM, unless otherwise posted or noted in this fee rule, shall apply to use of state parks and fishing access sites.
- C. The Commission delegates to the director or the director's designee the authority to post special rules, consistent with existing department or commission authority, related to public use, health, safety, welfare, and resource protection per 23-1-106, MCA.

XIV. PENALTIES

- A. No person shall enter or use park areas, campgrounds, or other facilities, or otherwise participate in programs or activities for which a fee has been established without first paying the required fee. Any violation of this provision is punishable by a fine not to exceed \$500 per 23-1-106, MCA, and 12.8.213, ARM.
- B. Violation of fee requirements, administrative rules, or state laws may result in immediate expulsion from the area in addition to other enforcement actions.

XV. SEVERABILITY CLAUSE

- A. If a part of this fee rule is invalid, all valid parts are severable from the invalid part and shall remain in effect. If a part of this fee rule is invalid in one or more of its applications, the part remains in effect in all valid applications severable from the invalid applications.

APPENDIX A. 23-1-105 AND 61-3-321, MCA.

23-1-105(6)

In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, person who pay the fee provided for in 61-3-321(18)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.

61-3-321 (18)

(a) Unless a person exercises the option in subsection (18)(b), an additional fee of \$4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$4 fee, the department of fish, wildlife, and parks shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

Funding Options for State Parks

Light vehicle registration fee (61-3-321, MCA) -- This opt-out fee was increased from \$4.00 to \$6.00 by the 2011 Legislature (HB 370) as of January 1, 2012. Of the \$6.00, \$5.37 is now dedicated to state parks (up from \$3.50) and is estimated to generate an additional \$417,966 in revenue in FY 2012 and an additional \$911,898 in FY 2013. HB 370 stipulates that DFWP must use the increased revenue for maintenance and operation of state parks (as opposed to acquisition).



User fees -- The FWP Commission adopted the most recent Parks Biennial Fee rule on November 18, 2010. This fee rule includes camping, nonresident day use, off season rates, guided tours, meeting rooms, group use, special events, commercial use licenses, boat slip rentals, and the like. In FY 2011, these fees raised approximately \$1.4 million. A ten percent increase in fees could yield an additional \$140,000. A ten percent increase in just camping fees could yield approximately \$52,500. However, these fee increases are not within control of the legislature as the power to “levy and collect reasonable fees” is granted to the department in 23-1-105, MCA. To impact the current fee setting process, the EQC has two options:



- 1) writing to the FWP Commission to urge an increase in user fees. Examples of such fee changes include:
 - o Elimination of discounted camping during peak season
 - o Increase in camping fees
 - o Increase in fees for amenities such as electricity and water hookups
- 2) establishing an indexed rate of increase in statute on a yearly or biennial basis. For example, requiring the FWP Commission to increase user fees at a fixed rate each year or each biennium, or establishing a minimum increase, leaving the actual increase to the FWP Commission.

To increase revenue from user fees, the Legislature could also choose to:

- 1) eliminate the camping fee discount provided in statute for the disabled and those 62 years of age or older (23-1-105(2), MCA). Doing so could result in an estimated \$105,000 in additional revenue.
- 2) amend statute to allow for the collection of camping fees at all primitive parks. Currently, only one of the ten primitive parks (Headwaters) is allowed to collect camping fees. (23-1-118, MCA) If 50 percent of the available sites at primitive parks were filled through camping season, the revenue potential is approximately \$82,500.

Accommodations Tax -- DFWP receives a statutory appropriation of 6.5% of the accommodations tax for state park facility maintenance. This appropriation was established in



1993 in recognition of state parks' contribution to tourism. The Legislature could reallocate proceeds from the accommodations tax and increase the percentage dedicated to state parks in 15-65-121, MCA. Based on FY 2011 data, an increase of 1% would provide approximately \$195,700 in additional funding each year to state parks. But in order for state parks to receive more, another agency's allocation would have to be decreased.

Currently, the largest portion of accommodations tax revenue is given to the Department of Commerce (64.9%) and the smallest portion is provided to the university system (2.5%).

Coal Tax Trust – 15-35-108, MCA sets aside 1.27% of coal severance taxes in a permanent fund account (trust) for the benefit of state parks. Interest on the account may be used for acquisition, development, operation, and maintenance. Either of, or a combination of, the following options could be used to increase revenue for state parks:

- 1) Increase the portion of coal severance taxes allocated to state parks – an increase of one percent would deposit approximately an additional \$521,000 in the state parks' permanent fund account, subsequently increasing the interest earnings available for parks management. Given current annual returns, this increase would raise the distributable earnings by \$35,000 within the first year.
- 2) Change the disbursement options – establish an inviolate level of the trust, such as \$20 million, allowing for anything over that amount in the fund to be expended. Distribution after the trust achieves \$20 million would be the total between excess fund balance, interest, and the coal tax distribution. For example, in FY 2012, this would be approximately \$2.2 million in excess fund balance as one-time-only and annual availability of interest and coal tax distribution worth approximately \$1.5 million.

Estimated Costs of Administrative Alternatives for State Parks to the DNRC, DOC, and MHS

In January, the EQC asked staff for the estimated cost of and the possible impact to FTE if the administration of the Parks Division was assigned to another agency or if a stand-alone State Parks agency was created. Appendix N considers the costs and impacts of reassigning Parks to the Department of Natural Resources (DNRC), the Department of Commerce (DOC), or the Montana Historical Society (MHS). To complete this task, staff developed a list of standardized questions for those agencies. The questions and the agencies' responses follow.

- 1. Would your agency require additional FTE to provide centralized services to the Parks Division (for HR, accounting, legal services, etc.). Currently, the Parks Division employs approximately 68 permanent FTE and 145 seasonal employees.**

DNRC	DOC	MHS
Yes. DNRC concurs with the 2011 Session HB628 Fiscal Note submitted by the DOC.	YES. See HB 628 Fiscal Note; Assumption 26.	MHS is assuming all staff directly associated with parks would be transferred to the new Agency. MHS projects at a minimum an additional 12 FTE's to provide accounting, budget, fiscal, information technology, legal, and human resources support for the Parks Division.

HB 628 Fiscal Note, assumption 26 states:

The addition of the Parks Division would increase the DOC's total FTE by approximately 50% and the addition of 54 state parks and the other associated duties and responsibilities enumerated in the bill would require an increase in staff needed to administratively support the Parks Division. The Director's Office would require 12.00 FTE to provide accounting and fiscal, budget, human resources, information technology, and legal support to the Parks Division. Personal services costs are estimated at \$689,701 and operating expenses (including one-time-only) are estimated at \$156,169 in FY 2013. FY 2014 and FY 2015 personal services expenses are inflated by 2%; or FY 2014 at \$703,495 and FY 2015 at \$717,565. FY 2014 operating expenses are estimated to be \$114,004 and FY 2015 at \$116,284.

2. How much would your agency charge State Parks for overhead/indirect costs? What does overhead/indirect costs include at your agency and how is it calculated?

DNRC	DOC	MHS
<p>DNRC concurs with the 2011 Session HB628 Fiscal Note submitted by the DOC. This Fiscal Note details on item #26 and the table on page 7 additional costs needed by the Director’s Office to administratively support the division. To fund these additional costs, DNRC would also require spending authority in the state special revenue funds that support the Parks Division. DNRC also assess indirects on all personal services & operating expenditures in federal funds. The current approved rate is 8.44%. This indirect would be assessed on the Parks Enforcement funding from the Coast Guard.</p>	<p>See HB 628 Fiscal Note; Assumption 27.</p>	<p>The Parks division would be responsible for all costs relating to information technology for databases, parks reservations system, website expansion, any automated licensing or registration systems, Parks would be responsible for any office or shop space in Helena and in the regional offices. The Parks Division would be responsible for Fixed Costs, which typically includes warrant writer, HRIS fees, work compensation management fees, legislative audit, SABHRS, ITSD costs, deadhead service fees, the statewide cost allocation plan and any other fixed costs the OBPP might include in this process. Additionally, any rent costs associated with the Parks Division.</p>

HB 628 Fiscal Note, assumption 27 states:

It is assumed the Parks Division would be charged monthly, for the increased administrative support services provided by the DOC. FY 2013 is estimated at \$70,489 per month. Beginning in the 2015 biennium, the Parks Division would be included in the DOC indirect cost plan when a new indirect cost rate would be calculated.

3. Would your agency require additional IT support to accommodate State Parks?

DNRC	DOC	MHS
Yes	YES. See HB 628 Fiscal Note; Assumptions 17-19 & 26.	Yes, MHS has only 1 FTE for IT support. MHS would require additional FTEs with the possibly of contract IT support for the regional offices.

HB 628 Fiscal Note, assumptions 17-19 state:

- 17. Additionally, it is further assumed that the Parks Division would contract with the Department of Fish and Wildlife for information technology services for all remotely located staff.
- 18. The Parks Division uses an online application system for Smith River floating permits. For the purposes of this fiscal note it is also assumed the Parks Division would continue to contract with the Department of Fish and Wildlife to continue those services. It is estimated the expenses that DOC would pay to the Department of Fish and Wildlife for shared facilities, etc. is \$105,000 for fiscal year 2013. DOC will need additional authority to cover this cost.
- 19. The Parks Division is currently implementing an online reservation system for campsites, teepees, cabins, and yurts. For the purposes of this fiscal note, it is also assumed the Parks Division would continue to contract with the private vendor and the State of Idaho to continue those services
- 26. See page 1 of this appendix.

4. Would your agency's existing facilities be able to accommodate the current State Parks staff? (There are approximately 16 FTE in Helena; the remainder work in regional or field offices. Space options could include leasing existing space or moving to different facilities.)

DNRC	DOC	MHS
No	NO. See HB 628 Fiscal Note; Assumption 16.	MHS will not be able to accommodate any additional FTE's in our current location. The Parks Division would either lease all current space or relocate to other facilities.

HB 628 Fiscal Note Assumption 16 states:

HB 628 authorizes the Parks Division to enter into cooperative agreements with the Department of Fish and Wildlife and any other state, city, county, or other governmental unit to carry out the provisions enumerated in the bill. For the purposes of this fiscal note, it is assumed that the Parks Division staff would remain in their current locations, both in Helena and in their remote locations, and the Parks Division would do this by contracting with the Department of Fish and Wildlife and/or the Department of Administration.

5. Does your agency have a motor pool? If so, could it accommodate use by additional staff?

DNRC	DOC	MHS
Yes, DNRC has both owned and leased vehicles. No, it would not be able to accommodate all the additional staff.	NO. See HB 628 Fiscal Note; Assumption 21.	MHS does not manage or have a motor pool. The Parks Division would either need to purchase or lease vehicles for Park's operations

HB 628 Fiscal Note Assumption 21 states:

The DOC doesn't manage nor have a motor pool. For the purposes of this fiscal note it is assumed the Parks Division would purchase or lease the vehicles needed for its operations. Vehicles, including law enforcement vehicles, would be purchased through the Department of Administration, or leased from the Department of Transportation motor pool or the Department of Fish and Wildlife motor pool.

6. How much money would your agency need to amend signage, stationary, uniforms, etc. with the addition of a Parks Division?

DNRC	DOC	MHS
Unable to determine.	Any costs would be assumed by the Parks Division.	Unknown

7. Would your agency anticipate any other additional costs if it were assigned administration of the Parks Division?

DNRC	DOC	MHS
Unable to determine.	See HB 628 Fiscal Note Assumptions 15 - 29.	Additional costs could include office(s) moving expense and IT, communication costs to establish new lines. If new security needs for remote locations are required. Costs associated with ARM rule changes, any costs relating land title transfers. Maintenance costs for all motorized equipment utilized by Parks Division.

HB 628 Fiscal Note Assumptions 15-29 state:

- 15. The DOC would create a Parks, Recreation, and Heritage division (Parks Division) which would include the properties in Virginia and Nevada Cities and Reeders Alley in Helena that were formerly managed by the Montana Heritage Preservation and Development Commission which is eliminated in this bill.
- 16. See page 4 of this appendix.
- 17. See page 3 of this appendix.
- 18. See page 3 of this appendix.
- 19. See page 3 of this appendix.

20. It is further assumed that Park Rangers would obtain firearms training from the Law Enforcement Academy and would contract with the Department of Fish and Wildlife and other law enforcement agencies for coordinated and cooperative law enforcement activities.
21. See page 4 of this appendix.
22. The Parks Division has remote locations that collect cash and incur expenses. For the purposes of this fiscal note, it is assumed that they will continue their current practice with the collection documents and payment requests being remitted to the DOC.
23. Beginning in FY 2012, the Parks Division would modify their financial reporting systems and structure to accurately reflect only that portion of the agency/programs being transferred to the DOC as a separate entity and allow DOC staff access to those financial reports. Fishing access sites would not be included in any FY 2012 financial reporting structure as they are not proposed to be transferred in the bill.
24. The DOC would establish a separate reporting system for the Park's Division, for unemployment, property and casualty, motor vehicle, and liability insurance purposes. According to State Fund staff, the DOC would have to establish a separate internal reporting system for workers compensation purposes.
25. Any fixed costs previously allocated to the Parks Division for FY 2013 by the Department of Fish and Wildlife would be paid by the Parks Division as budgeted for. The DOC would allocate a portion of its fixed costs to the Parks Division when budgeting for the 2015 biennium. Fixed costs are typically those budgeted items such as warrant writer, HRIS fees, workers compensation management fees, legislative audit, SABHRS, ITSD costs, deadhead service fees, the statewide cost allocation plan, and any other fixed costs the OBPP might revise and/or add for the 2015 biennium.
26. See page 1 of this appendix.
27. See page 2 of this appendix.
28. The \$1.00 fee increase proposed in section 102 of the bill is allocated to state parks and for the purposes of this fiscal note, it is assumed any potential revenue increases would be addressed in the fiscal note prepared by the current Department of Fish, Wildlife, and Parks. There is no fiscal impact to the state owned properties in Virginia and Nevada Cities and Reeder's Alley in Helena.
29. The current Montana Heritage Preservation and Development Commission is statutorily appropriated and remains so if this bill were to pass. Therefore, it is assumed that any potential expenditure savings related to the elimination of the Commission would be redirected to operational and preservation activities in Virginia and Nevada Cities and Reeder's Alley in Helena.

8. Would your agency have any other special considerations if it were assigned administration of the Parks Division?

DNRC	DOC	MHS
<p>Unable to determine.</p>	<p>It should be noted that HB 628 as introduced in the last session contained numerous concurrent references to DOC rules and rules promulgated by the State Parks, Recreation, and Heritage Board. This creates an issue as to cross jurisdictional priorities between the aforementioned entities which should be addressed in any future bill drafts.</p>	<p>MHS currently has a 15 member citizen board of trustees which meets quarterly. FWP commission meets monthly. Realignment of the boards would need to be discussed and costs of board meeting may increase depending on realignment.</p> <p>MHS will be moving forward with a capitol campaign for the expansion of MHS at the corner of 6th and Roberts in Helena. If Parks were transferred to MHS the projects costs of that project would increase dramatically.</p>

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Estimated Costs of Administrative Alternatives for State Parks to DFWP and a stand-alone State Parks agency

In January, the EQC asked staff for the estimated cost of and the possible impact to FTE if the administration of the Parks Division was assigned to another agency or if a stand-alone State Parks agency was created. Appendix O considers the costs and impacts of three scenarios for the Department of Fish, Wildlife, and Parks (DFWP) and the Parks Division: 1) the Parks Division is removed from DFWP; 2) the Parks Division remains at DFWP and a stand-alone State Parks Commission is created; and 3) a stand-alone State Parks agency is established. To complete this task, staff developed a list of standardized questions for DFWP. The questions and the agency's responses follow.

Scenario #1: The administration of the Parks Division is reassigned to another agency

- 1. How would FTE at DFWP be affected by the removal of the State Parks Division from the agency? This could include impacts to centralized services (HR, accounting, legal, IT), enforcement, etc. Currently, the State Parks Division employs approximately 68 permanent FTE and 145 seasonal employees.**

DFWP response: The impact to current support function FTE levels will be minimal to none. Support functions are funded through an overhead assessment which Parks' contribution is approximately 7%. The removal of Parks' responsibilities will relieve workload pressure from existing staff, but does not significantly impact the level of overall agency support.

Primary funding for motorboat, off-highway vehicle (OHV), and snowmobile programs could remain in both State Parks and the Fish & Wildlife divisions. If these programs were managed by State Parks then some staff from the Fish & Wildlife division would then be administered by State Parks. Conversely, the day to day field presence of the boating safety could continue to be spent by enforcement by establishing an MOU with the Enforcement bureau.

- 2. How would the overhead rate charged to DFWP's divisions be impacted with the removal of the Parks Division? What does "overhead" mean to your agency and how is it calculated?**

DFWP response: FWP assesses overhead to all non-general fund accounts as required in statute. The rate is calculated as a ratio of indirect costs to direct costs.

Indirect costs are defined as those support functions that serve multiple users. It includes IT support, regional offices and support staff, the Director's office, Legal Unit, Human Resources, and Finance. Fixed costs such as building rent, ITSD

charges, DoA assessments, etc. are included. Some fixed costs such as rent won't be impacted. Others, like ITSD and DoA assessments, that are calculated based on number of users, warrants written, payroll, etc will be reduced.

Direct costs are all other expenses that can be tied directly to a program. Fisheries, Wildlife, Parks, Enforcement, and Communication and Education are all included. Without the Parks Division, the direct costs would also go down.

As a result, there will be a change to the overhead rate, but until we net the reductions to both direct and indirect costs, we don't know how much.

- 3. What would be the impact on office space currently used by Parks Division employees, both in Helena and in regional and field offices? Could the Parks Division continue using its existing space under an MOU/lease between DFWP and the new agency? Does DFWP have space needs for non-Parks Division employees that could be met if existing Parks' space became available? (The Parks Division has approximately 16 FTE in Helena; the remainder work in regional or field offices.)**

DFWP response: In Helena, the administrative office space needed is for approximately 16 staff which would administer state parks, recreational trails, snowmobile, off-highway vehicles, land and water conservation fund, boating safety, and other programming areas state wide. For regional offices, space is needed for 4 regional park offices with approximately 4 staff in each office. Staff assigned to individual parks would continue be housed in existing office space at each site.

Yes, State Parks could continue to lease space under an MOU with DFWP and remain in the current office space.

Yes, if State Parks were to vacate its current space it could be utilized by DFWP for staff that is currently housed outside the existing DFWP headquarters.

- 4. How would DFWP's motor pool be impacted by the loss of Parks Division staff/functions? Would DFWP have vehicles it no longer needed?**

DFWP response: FWP maintains an agency vehicle fleet that is operated as a propriety fund. DFWP would reassign- State Parks vehicles to other Fish & Wildlife staff as necessary and where needed.

- 5. How much money would DFWP need to amend signage, stationary, uniforms, etc. to accommodate the name change?**

DFWP response: The estimated cost to completely replace the FWP logo on signs at headquarters, area offices, fish hatcheries, fishing access sites, and wildlife management areas is estimated at a one-time cost of \$50,000. However, the replacement and the costs could be phased over a longer time period.

The logo on all uniforms in the current inventory would need to be replaced. All future restocking would reflect the new logo. It will probably take 1.5 - 2 years to cycle through the existing inventory. There will be some costs incurred for design and replacing patches.

6. Please explain any land ownership issues that would arise from reassigning the administration of the Parks Division to another agency? How many sites could be impacted?

DFWP response: Lands purchased with hunter and angler license monies must be managed for fish and wildlife related purposes. Some sites operated as state parks were originally purchased or leased with license monies for fishing access, but their current function also includes state parks activities. The department is working to resolve these issues now, but if the Parks Division was to leave the agency and take these properties with them, these issues would have to be accelerated to avoid diversion. This is likely to be a complex and costly task under any scenario affecting approximately 16 properties across the state.

7. Would DFWP anticipate any other additional cost decreases/increases if the Parks Division was reassigned to another agency?

DFWP response: The agency anticipates some one-time-only (OTO) costs such as changing signage and stationary as necessary.

8. Would DFWP have any other special considerations if the Parks Division was reassigned to another agency?

DFWP response: DFWP would request a review of statute, rules, and policies to clean up and adjust/change language pertaining to state parks, recreational trails, snowmobile, off-road vehicle, land and water conservation, and other programming responsibilities assigned to State Parks at another agency. This would be required for MCA but the agency would also internally update policies & procedures with State Parks departure.

Scenario #2: State Parks remains in DFWP, but has a separate governing commission

- 1. What is the cost of the current FWP Commission? How many meetings does it have per year? How many days does it meet?**

DFWP response: The FWP Commission usually meets 12 times a year. During calendar 2011, three meetings were 2 days, seven meetings were 1 day, and two meetings were conference calls. The average expenditure over each of the last four years has been approximately \$22,000.

- 2. What would the composition of a separate State Parks Commission look like? How many meetings would it have per year? How many days would it meet? How much would such a commission cost?**

DFWP response: A State Parks commission would be comprised of 7 members with citizens representing heritage, park and recreation interests including tourism, history, OHV use, boating, hiking, business, camping and general parks and recreation. It is expected it would meet 6 times per year at an estimated cost of \$9,000.

- 3. Please explain any significant land ownership issues that currently exist and would continue to exist if the State Parks Division remained within DFWP? How many sites are impacted?**

DFWP response: Legally, we don't believe there are current land ownership issues. The issues arise if Parks leaves the agency. FWP's assent statutes for participation in the USFWS Federal Aid programs require that FWP maintain control of all lands purchased with license dollars and/or federal aid. Land issues arise when Parks leaves the agency and the FWP director no longer has control.

As discussed in scenario 1, #6 the same issue exists whether the division stays in the department or not. If the division stays in the department, it is believed that the USFWS would be more flexible to resolving the issue of whether the land is being managed for park purposes or primarily F&W purposes.

Scenario #3: The Legislature establishes a stand-alone State Parks agency with its own governing commission

- 1. How many FTE would a stand-alone State Parks agency require in addition to existing employees for centralized services, IT, enforcement, etc.? Currently, the Parks Division employs approximately 68 permanent FTE and 145 seasonal employees. Could some functions (i.e. enforcement) be accomplished through MOU's with DFWP and/or other entities?**

DFWP response: State Parks anticipates that as a stand-alone agency it would need approximately 2.5 additional FTE which would be for centralized service functions and supervised by the business manager; 1.00 FTE for human resource and payroll and 1.00 FTE for accounts payable/claims processing, and a 0.50 FTE which would provide fee remittance/revenue processing and claims processing assistance for half the year during the busy park season. Centralized functions such as legal, IT, and other internal services would be contracted out as necessary either with vendors, DFWP, or other agencies such as DNRC.

Yes, an MOU could be negotiated with DFWP or another agency.

- 2. How much would a stand-alone agency incur in overhead costs? What would overhead costs include and how would they be calculated?**

DFWP response: The average overhead State Parks was assessed in the last 4 fiscal years was approximately \$800,000 which is about 7% for DFWP. State Parks estimates it would pay at least this amount to cover costs it incurs as a stand-alone agency. As a new agency, State Parks would assess overhead to all non-general fund accounts as required in statute. The rate is calculated as a ratio of indirect costs to direct costs.

- 3. Where would a stand-alone agency be housed? How much physical space would it need? Could the Parks Division continue using its existing space under an MOU/lease with DFWP? How much would new space cost to lease/build?**

DFWP response: See scenario 1, #3. As stated, State Parks would have 1 administrative office in Helena and 4 regional offices statewide. Additionally, State Parks could continue to lease space under an MOU with DFWP and anticipates the cost to be part of the amount it currently pays in overhead.

Stand-Alone:

Location- In Helena, State Parks would lease office space in the capital complex and if none were available, locate space

elsewhere within the city to order to provide a central office for statewide administration, legislative oversight, and public contact and service needs.

In the 4 regions the agency would house staff at existing parks where space was available. If space was not available at a park then State Parks would lease space in a centrally located city for the region.

New Space/Cost Helena- For the Helena office State Parks anticipates it would need space of approximately 3,600 sq ft at a cost of \$52,000 annually.

New Space/Cost Regions- In regional offices there would be a need of 2,400 sq ft of office space and 4,800 sq ft for maintenance storage space for equipment and supplies. Total regional space would be 7,200 sq ft at a cost of \$63,000.

Statewide total office & storage space is 10,800 sq ft at a leased cost of approximately \$ 115,000 annually.

4. Would a stand-alone agency establish its own motor pool? Would vehicles be leased or purchased? Would DFWP have any vehicles it could sell/lease based on diminished need if the Parks Division becomes a stand-alone agency?

DFWP response: State Parks would not establish its own motor pool since doing so would increase operations cost and redirect valuable financial resources away from other programs and field operations. The agency would use the state motor pool at the Montana Department of Transportation (MDOT) for vehicle needs. Vehicles that State Parks currently owns would move to the new agency. In parks or other locations where there might be a shortage of vehicles State Parks would lease from MDOT on an annual basis; fuel and repair of the vehicles would be included in the assigned rate fee State Parks would negotiate with MDOT.

After State Parks leaves the agency DFWP would review its motor pool fleet statewide and discontinue leasing or dispose of unnecessary vehicles.

5. How much money would a new agency need for signage, stationary, uniforms, setup costs, etc.?

DFWP response:

Signage- State Parks has its own logo and most of the signage at state parks has been changed out to reflect the State Parks logo; the DFWP signage and bear head logo is not on the majority of State Parks signs. The State Park logo would be used in the new agency on signage and other field instructions/directions in parks as necessary. There may be a small portion of existing signage such as boundary and regulation signs that need to be changed out. Additionally the Helena office would need appropriate signage to designate it as the headquarters office. State Parks estimates the cost at approximately \$15,000.

Stationary- All stationary used in State Parks such as letterhead and business cards have already been changed out to reflect the State Parks logo and formatted for the division. State Parks estimates no additional cost.

Uniforms- State Parks is currently reviewing the uniform for the division. Estimated costs for new uniforms would be approximately \$16,000.

Setup- If State Parks leases space from DFWP there would be no additional cost to setup office space. If State Parks were to move out of DFWP then setup costs for moving and staff setups are discussed in question 6 below.

See Scenario 1, #5 for the estimated costs for Fish and Wildlife.

6. Are there other additional costs to establish a new agency?

If State Parks moved to new office space there would be a One-time-only (OTO) cost for moving, IT, and phone setups. Small office equipment and personal items would be moved by staff and heavy equipment and office furniture would be contracted out.

7. Are there other special considerations for establishing a new agency?

The new State Parks agency would need to develop procedures, policies, and format for the commission which would be done in-house. Statutes would have to set up for Parks and changed in FW.

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Cost of a stand-alone Parks Commission

The cost of a commission would primarily be dependent on the makeup of the commission (How many commissioners are there? Where do they live?) and how many times a year and where the commission would meet. DFWP provides one possible scenario on page 4 of Appendix G, suggesting a state parks commission would have 7 members and meet 6 times a year for an estimated cost of \$9,000.

For context, here are the costs associated with the existing FWP Commission and the Montana Heritage Preservation and Development Commission .

Cost of the Fish, Wildlife, and Parks Commission



The FWP Commission meets once a month for one or two days and has a budget of \$39,500. The budgeted amount includes \$20,000 for travel-related expenses such as lodging, mileage, and meals, \$2,000 for supplies, materials, and communications, and \$17,000 for member compensation. As a quasi-judicial board, and pursuant to 2-15-124, \$50 compensation is paid to members for each day in which a member is “actually and necessarily engaged in the performance of board duties”.

As established in 2-15-3402, MCA, the FWP Commission consists of 5 members appointed by the governor from five districts. At least one member must be experienced in the breeding and management of domestic livestock. Appointments must be made without regard to political affiliation and must be made solely for the wise management of fish, wildlife, and state parks and other outdoor recreational resources of this state. A person may not be appointed to the commission unless the person is informed or interested and experienced in the subject of fish, wildlife, parks, and outdoor recreation and the requirements for the conservation and protection of fish, wildlife, parks, and outdoor recreational resources.

Cost of the Montana Heritage Preservation and Development Commission



The Montana Heritage Preservation and Development Commission, which oversees Virginia and Nevada Cities and Reeder’s Alley, meets quarterly and in FY 2011 reported total costs of \$5,178. This amount includes lodging, mileage, and a few meals, according to the Department of Commerce to which the Commission is administratively attached.

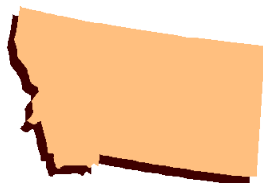
As established in 22-3-1002, MCA, the commission consists of 14 members. Nine are appointed by the governor, one is appointed by the president of the Senate, and one is appointed by the speaker of the House. The directors of the Montana Historical Society, Department of Fish, Wildlife, and Parks, and the Department of Commerce are also members. Of the members appointed by the governor:

- (a) one must have extensive experience in managing facilities that cater to tourists;
- (b) one must have experience in community planning;
- (c) one must have experience in historic preservation;
- (d) two must have broad experience in business;
- (e) one must be a member of the tourism advisory council;
- (f) one must be a Montana historian; and
- (g) two must be from the public at large.

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Comparing Commissions

There are 5 states with combined fish, wildlife, and parks commissions, including Montana. Commission makeup is specified in state statute and members are appointed by their governors.



Montana Fish, Wildlife, and Parks Commission

Total members: 5

Specific qualifications:

- One member from each of five districts.
- At least one member must be experienced in the breeding and management of domestic livestock.
- Appointments must be made without regard to political affiliation and must be made “solely for the wise management of fish, wildlife, and state parks and other outdoor recreational resources”.
- Appointees must be “informed or interested and experienced in the subject of fish, wildlife, parks, and outdoor recreation and the requirements for the conservation and protection of fish, wildlife, parks, and outdoor recreational resources”.



South Dakota Game, Fish, and Parks Commission

Total members: 8

Specific qualifications:

- No more than four from the same political party.
- Three must live west of the Missouri River and five must live east.
- At least four shall be farmers residing on a farm, engaged in agriculture, deriving at least two-thirds of gross annual incomes from crop/livestock production or both and interested in wildlife conservation.



Nebraska Game and Parks Commission

Total members: 9

Specific qualifications:

- One member from each of eight districts, plus one “at-large” member.
- Shall be “well informed and interested” in matters under their jurisdiction.
- At least three members shall be actually engaged in agricultural pursuits.
- No more than five from the same political party.



Kansas Wildlife and Parks Commission

Total members: 7

Specific qualifications:

- One member from each administrative region.
- The governor shall “give consideration to the appointment of licensed hunters, fishermen and furharvesters, park users and to nonsumptive users of wildlife and park resources.
- No more than a majority from the same political party.



Texas Parks and Wildlife Commission

Total members: 9

Specific qualifications: The governor is required by statute to “attempt to include persons with expertise in diverse fields, including historic preservation, conservation, and outdoor recreation.”

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Parks Land Acquisitions Years 2002 to Present

Site Name	Type	County	Acres	Cost to FWP	Purchase Funding Source * See Notes	Transaction Date	Operations Budget FY12 * See Notes
Great Falls Shooting Sports Complex	Parks affiliated land	Cascade	594	(Land Exchange)	--	June 8, 2002	\$0
Lone Pine	State Park	Flathead	41	\$204,250	LWCF, Coal Tax	September 17, 2002	\$117,929
Makoshika	State Park	Dawson	4,486	\$140,000	Parks Revenue	December 24, 2002	\$187,061
Travelers' Rest	State Park	Missoula	10	246,075	LWCF	August 1, 2003	\$105,954
Giant Springs	State Park	Cascade	10	(Donation)	--	October 2, 2003	\$143,280
Travelers' Rest	State Park	Missoula	11	\$204,000	LWCF	November 18, 2003	
Lewis and Clark Caverns	State Park	Jefferson	9	\$8,244	Parks Revenue	December 17, 2003	\$400,545
Travelers' Rest	State Park	Missoula	1	(Donation)	--	January 30, 2004	
Tower Rock	State Park	Cascade	137	(Donation)	--	April 29, 2004	\$1,300
Alberton Gorge Recreation Corridor (AGRC)	Parks affiliated land	Mineral	145	(Land Exchange)	--	November 30, 2004	\$68,000
AGRC -- Ralph's Takeout	Parks affiliated land	Mineral	103	(Land Exchange)	--	November 30, 2004	
Brush Lake	State Park	Sheridan	450	\$129,000	Parks revenue, Wallop-Breaux, and Land Exchange	December 29, 2004	\$46,358
First Peoples Buffalo Jump	State Park	Cascade	3	\$10,000	Coal Tax	May 24, 2005	\$192,968
Travelers' Rest	State Park	Missoula	4	\$148,932	LWCF	October 11, 2005	
Alberton Gorge Recreation Corridor (AGRC)	Parks affiliated land	Mineral	20	\$220,000	Parks Revenue	December 19, 2006	
Lone Pine	State Park	Flathead	40	\$470,000	Parks Revenue	October 2, 2007	
Yellowstone River	State Park	Yellowstone	200	\$266,600	General Fund	June 25, 2008	\$16,496
Marias River	State Park	Toole	1,460	\$2,000,000	General Fund	October 22, 2008	\$2,000
North Shore Flathead Lake	State Park	Flathead	161	\$1,810,834	General Fund	December 3, 2008	\$5,125
Fish Creek	State Park	Mineral	6,235	\$2,710,890	General Fund	June 16, 2010	\$41,450 *
Makoshika	State Park	Dawson	160	(Donation)	--	November 23, 2010	
Milltown	State Park	Missoula	78	\$774,500	Natural Resource Damage Program	December 30, 2010	\$79,164
Milltown	State Park	Missoula	35	(Donation)	--	September 30, 2011	

Notes:	
Purchase Funding Source- LWCF - Land, Water & Conservation Fund, federal grant program for state and local projects Coal Tax- Interest earnings from the Coal Tax Trust Park Revenue - User fees and light vehicle registration Wallop-Breaux- Federal grant program with USFWS for Motorboat sites General Fund- Access Montana 2007 appropriation for purchase of new state parks and FAS's Natural Resources Damage Program- State grant funded by settlement for Upper Clark Fork River damage	Operations Budgets FY12- *Budgets exclude equipment & capital development *Fish Creek budget includes SB164 statutory funding of \$20,000 for weeds and maintenance

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GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2013 Biennium

Bill #	HB0628	Title:	Generally revise laws related to parks and recreational resources
Primary Sponsor:	Stahl, Wayne	Status:	As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2012</u> <u>Difference</u>	<u>FY 2013</u> <u>Difference</u>	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue (FWP)	\$1,000,000	\$794,043	\$809,924	\$826,122
State Spec Rev-Parks Overhead (DOC)	\$0	\$870	(\$132,501)	(\$116,151)
Proprietary Funds (DOC)	\$0	\$950,870	\$817,499	\$833,849
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue-Parks Fee (DOC)	\$0	\$778,479	\$777,644	\$778,347
State Spec Rev-Parks Overhead (FWP)	\$0	(\$950,000)	(\$950,000)	(\$950,000)
State Spec Rev-Rental from Parks (FWP)	\$0	\$105,000	\$0	\$0
Proprietary Funds-Parks Overhead (DOC)	\$0	\$950,870	\$817,499	\$833,849
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: HB 628 transfers the management of state parks, boating, snowmobiles, and off-highway vehicles from the Department of Fish, Wildlife, and Parks (FWP) to the Department of Commerce; creates the State Parks, Recreation, and Heritage Board to provide oversight of the Department of Commerce's administration of state parks and heritage and outdoor recreational resources; and changes the name of FWP to the Department of Fish and Wildlife. The bill eliminates the Montana Heritage Preservation and Development Commission; provides for departmental and board duties and responsibilities and rule making authority; requires a review of state park lands; authorizes the sale or exchange of state park lands to other public entities; increases fees; and allows park rangers to carry firearms. There is a significant fiscal impact to the Department of Fish, Wildlife, and Parks and the Department of Commerce.

Fiscal Note Request – As Introduced

(continued)

FISCAL ANALYSIS**Assumptions:***Transfer of Parks from the Dept of Fish, Wildlife, and Parks (FWP) to the Dept of Commerce (DOC)*

1. HB 628 transfers the management of state parks, boating, snowmobile, and off-highway vehicles from FWP to DOC.
2. The effective date of the bill is July 1, 2012 except for sections 141 and 143 (effective July 1, 2013).
3. The following revenue sources will be moved from FWP to DOC in FY 2013:

	<u>MCA</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Motor Vehicle Registrations	15-1-122	\$678,679	\$647,786	\$676,836
Coal Tax Trust/Interest	15-35-108	\$2,077,823	\$2,142,826	\$2,204,710
Accommodations Tax	15-65-121	\$1,384,000	\$1,384,000	\$1,384,000
Enterprise Fund	23-1-105	\$145,000	\$145,000	\$145,000
Parks Miscellaneous Fund	**numerous	\$4,711,435	\$4,711,435	\$4,711,435
*State Parks Maintenance (Good Neighbor)	87-1-209	\$0	\$0	\$0
*Forest Management (New Section 52)	87-1-621	\$0	\$0	\$0
Gasoline Tax	60-3-201	\$2,036,037	\$2,035,951	\$2,035,966
Smith River Corridor	23-2-409	\$29,442	\$29,442	\$29,442
	TOTAL:	\$11,062,416	\$11,096,440	\$11,187,389

(* No sales or projects are planned; therefore, no revenue is expected)

(**23-1-105, 61-3-321, and 61-3-512)

4. The following Parks-related expenditures will be moved from FWP to DOC in FY 2013. Personal service and operating expenditures are increased by 2% for inflation in FY 2014 and FY 2015.

	<u>FTE</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Parks Administration	82.65	\$6,955,680	\$7,081,811	\$7,210,465
*Parks Enforcement	6.55	\$832,888	\$848,769	\$864,967
Statutory Approps	13.69	\$862,532	\$879,316	\$896,435
Enterprise Fund		\$110,000	\$112,200	\$114,444
HB 5 Capital Projects		\$6,417,030	\$0	\$0

TOTAL 102.89 \$15,178,130 \$8,922,096 \$9,086,311

(*Partially federally funded with \$387,999 per year from the coast guard.)

5. Effective July 1, 2012, HB 628 increases the vehicle registration fee from \$4 to \$5. The portion allocated to state parks increases from \$3.50 to \$4.50 and is reallocated to DOC.
6. In FY 2010, 975,708 registrations for light motor vehicles were processed, of which 77.1% or 752,612, elected to participate in the optional state parks fee.
7. The number of annual light vehicle registrations drive fee revenue. Registrations are assumed to grow at HJR 2 growth rates through FY 2013 and at OBPP estimated rates for FY 2014 and FY 2015. Therefore, it is estimated that 778,479 light vehicle registrations would reflect the collection of the state parks fee in FY 2013 (0.361% growth rate) ; 777,644 in FY 2014 (-0.107% growth rate); and 778,347 in FY 2015 (0.090% growth rate).
8. This results in increased revenues for state parks of \$778,479 in FY 2013 (778,479 * \$1.00); \$777,644 in FY 2014 (777,644 * 1.00); and \$778,347 in FY 2015 (778,347 * \$1.00).

Fiscal Note Request – As Introduced

(continued)

Transfer FWP to DOC	FY 2012	FY 2013	FY 2014	FY 2015
	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>
<u>Fiscal Impact:</u>				
FTE - FWP	0.00	(102.89)	(102.89)	(102.89)
- Commerce	0.00	102.89	102.89	102.89
<u>Expenditures:</u>				
<i>Reduction in FWP</i>				
Personal Services	\$0	(\$5,449,336)	(\$5,558,323)	(\$5,669,489)
Operating Expenses	\$0	(\$2,600,435)	(\$2,650,244)	(\$2,701,049)
Equipment	\$0	(\$274,292)	(\$274,292)	(\$274,292)
Benefits	\$0	(\$437,037)	(\$437,037)	(\$437,037)
HB 5 Capital Projects	\$0	(\$6,417,030)	\$0	\$0
<i>Increase in DOC</i>				
Personal Services	\$0	\$5,449,336	\$5,558,323	\$5,669,489
Operating Expenses	\$0	\$2,600,435	\$2,650,244	\$2,701,049
Equipment	\$0	\$274,292	\$274,292	\$274,292
Benefits	\$0	\$437,037	\$437,037	\$437,037
HB 5 Capital Projects	\$0	\$6,417,030	\$0	\$0
TOTAL Expenditures	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue - FWP	\$0	(\$14,790,131)	(\$8,531,897)	(\$8,693,868)
Federal Special Revenue - FWP	\$0	(\$387,999)	(\$387,999)	(\$387,999)
State Special Revenue - DOC	\$0	\$14,790,131	\$8,531,897	\$8,693,868
Federal Special Revenue - DOC	\$0	\$387,999	\$387,999	\$387,999
TOTAL Funding of Exp.	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
<i>FWP</i>				
State Special Revenue	\$0	(\$11,062,416)	(\$11,096,440)	(\$11,187,389)
State Special (HB 5)	\$0	(\$6,417,030)	\$0	\$0
Federal Special Revenue	\$0	(\$387,999)	(\$387,999)	(\$387,999)
<i>DOC</i>				
State Special Revenue	\$0	\$11,062,416	\$11,096,440	\$11,187,389
State Special (HB 5)	\$0	\$6,417,030	\$0	\$0
Federal Special Revenue	\$0	\$387,999	\$387,999	\$387,999
State Special (Park Fee Increase)	\$0	\$778,479	\$777,644	\$778,347
TOTAL Revenues	<u>\$0</u>	<u>\$778,479</u>	<u>\$777,644</u>	<u>\$778,347</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$778,479	\$777,644	\$778,347
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

Fiscal Note Request – As Introduced*(continued)**Additional impacts for the “new” Department of Fish and Wildlife (DFW)*

9. For FY 2013 only, it is assumed that Parks will still require office and shop space from the Department of Fish and Wildlife. It is estimated that \$105,000 will be paid to cover this rent. It is unknown if these payments will be required in FY 2014 and beyond.
10. FWP assesses an overhead rate to Parks funds to recover the Parks portion of the indirect costs for the department. This overhead is non-budgeted. The overhead assessed to Parks partially covers the department's support functions which include information technology support, computers, database systems, website, and use of automated license system for the Smith River drawing, snowmobile and OHV registration, as well as office and shop space in Helena and the regional offices. The department will no longer receive overhead revenue of \$950,000 from Parks funding sources.
11. Overhead expenditures in the department are not reduced a like amount since agency overhead expenditures were not Parks specific. For instance, when a copier needs to be replaced, the expenditure for the copier will be the same regardless of whether the Parks Division is in the department or not. Therefore, it is expected that the overhead rate charged to the remaining fish and wildlife funds will need to be increased to cover this cost.
12. The new DFW will require 6.55 FTE and \$794,043 from the general license account to make game warden positions in 70 districts throughout the state whole due to the transfer of the parks, boating, snowmobile and OHV enforcement functions to DOC.
13. Several of the parks sites identified in Section 54 of the bill are not wholly owned by the Parks Division at this time. It is assumed the Department of Fish & Wildlife will be compensated in accordance with Federal law (50 CFR 80.5) for the portions of these properties that were purchased with either USFWS grant funding, or with hunting or fishing license revenue. It is further assumed that resolution for all of these jointly-owned sites will be completed and any federal restrictions satisfied prior to the bill's proposed effective date of July 1, 2012.
14. The Department of Fish and Wildlife requires a one-time only appropriation in the amount of \$1,000,000 in FY 2012 in order to initiate the process of contracting for property appraisals and surveys necessary to resolve issues of the jointly-owned parks issues described in assumption 13. This amount will also cover costs associated with the change in the agency name. These include signs at all sites, uniforms, vehicle license plates and decals.

Fiscal Note Request – As Introduced

(continued)

Additional FWP Impacts	FY 2012 Difference	FY 2013 Difference	FY 2014 Difference	FY 2015 Difference
<u>Fiscal Impact:</u>				
FTE (Increase for Enforcement)	0.00	6.55	6.55	6.55
<u>Expenditures:</u>				
<i>Increase for Enforcement</i>				
Personal Services	\$0	\$505,056	\$515,157	\$525,460
Operating Expenses	\$0	\$288,987	\$294,767	\$300,662
<i>Increase for Property Surveys</i>				
Operating Expenses	\$1,000,000	\$0	\$0	\$0
TOTAL Expenditures	\$1,000,000	\$794,043	\$809,924	\$826,122
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$1,000,000	\$794,043	\$809,924	\$826,122
TOTAL Funding of Exp.	\$1,000,000	\$794,043	\$809,924	\$826,122
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
Loss of Overhead-State Special	\$0	(\$950,000)	(\$950,000)	(\$950,000)
Office/Shop Space Rent - State Spec	\$0	\$105,000	\$0	\$0
TOTAL Revenues	\$0	(\$845,000)	(\$950,000)	(\$950,000)
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	(\$1,000,000)	(\$1,639,043)	(\$1,759,924)	(\$1,776,122)

Additional impacts for the Department of Commerce (DOC)

15. The DOC would create a Parks, Recreation, and Heritage division (Parks Division) which would include the properties in Virginia and Nevada Cities and Reeder's Alley in Helena that were formerly managed by the Montana Heritage Preservation and Development Commission which is eliminated in this bill.
16. HB 628 authorizes the Parks Division to enter into cooperative agreements with the Department of Fish and Wildlife and any other state, city, county, or other governmental unit to carry out the provisions enumerated in the bill. For the purposes of this fiscal note, it is assumed that the Parks Division staff would remain in their current locations, both in Helena and in their remote locations, and the Parks Division would do this by contracting with the Department of Fish and Wildlife and/or the Department of Administration.
17. Additionally, it is further assumed that the Parks Division would contract with the Department of Fish and Wildlife for information technology services for all remotely located staff.
18. The Parks Division uses an online application system for Smith River floating permits. For the purposes of this fiscal note it is also assumed the Parks Division would continue to contract with the Department of Fish and Wildlife to continue those services. It is estimated the expenses that DOC would pay to the Department of Fish and Wildlife for shared facilities, etc. is \$105,000 for fiscal year 2013. DOC will need additional authority to cover this cost.
19. The Parks Division is currently implementing an online reservation system for campsites, teepees, cabins, and yurts. For the purposes of this fiscal note, it is also assumed the Parks Division would continue to contract with the private vendor and the State of Idaho to continue those services

Fiscal Note Request – As Introduced*(continued)*

20. It is further assumed that Park Rangers would obtain firearms training from the Law Enforcement Academy and would contract with the Department of Fish and Wildlife and other law enforcement agencies for coordinated and cooperative law enforcement activities.
21. The DOC doesn't manage nor have a motor pool. For the purposes of this fiscal note it is assumed the Parks Division would purchase or lease the vehicles needed for its operations. Vehicles, including law enforcement vehicles, would be purchased through the Department of Administration, or leased from the Department of Transportation motor pool or the Department of Fish and Wildlife motor pool.
22. The Parks Division has remote locations that collect cash and incur expenses. For the purposes of this fiscal note, it is assumed that they will continue their current practice with the collection documents and payment requests being remitted to the DOC.
23. Beginning in FY 2012, the Parks Division would modify their financial reporting systems and structure to accurately reflect only that portion of the agency/programs being transferred to the DOC as a separate entity and allow DOC staff access to those financial reports. Fishing access sites would not be included in any FY 2012 financial reporting structure as they are not proposed to be transferred in the bill.
24. The DOC would establish a separate reporting system for the Park's Division, for unemployment, property and casualty, motor vehicle, and liability insurance purposes. According to State Fund staff, the DOC would have to establish a separate internal reporting system for workers compensation purposes.
25. Any fixed costs previously allocated to the Parks Division for FY 2013 by the Department of Fish and Wildlife would be paid by the Parks Division as budgeted for. The DOC would allocate a portion of its fixed costs to the Parks Division when budgeting for the 2015 biennium. Fixed costs are typically those budgeted items such as warrant writer, HRIS fees, workers compensation management fees, legislative audit, SABHRS, ITSD costs, deadhead service fees, the statewide cost allocation plan, and any other fixed costs the OBPP might revise and/or add for the 2015 biennium.
26. The addition of the Parks Division would increase the DOC's total FTE by approximately 50% and the addition of 54 state parks and the other associated duties and responsibilities enumerated in the bill would require an increase in staff needed to administratively support the Parks Division. The Director's Office would require 12.00 FTE to provide accounting and fiscal, budget, human resources, information technology, and legal support to the Parks Division. Personal services costs are estimated at \$689,701 and operating expenses (including one-time-only) are estimated at \$156,169 in FY 2013. FY 2014 and FY 2015 personal services expenses are inflated by 2%; or FY 2014 at \$703,495 and FY 2015 at \$717,565. FY 2014 operating expenses are estimated to be \$114,004 and FY 2015 at \$116,284.
27. It is assumed the Parks Division would be charged monthly, for the increased administrative support services provided by the DOC. FY 2013 is estimated at \$70,489 per month. Beginning in the 2015 biennium, the Parks Division would be included in the DOC indirect cost plan when a new indirect cost rate would be calculated.
28. The \$1.00 fee increase proposed in section 102 of the bill is allocated to state parks and for the purposes of this fiscal note, it is assumed any potential revenue increases would be addressed in the fiscal note prepared by the current Department of Fish, Wildlife, and Parks. There is no fiscal impact to the state owned properties in Virginia and Nevada Cities and Reeder's Alley in Helena.
29. The current Montana Heritage Preservation and Development Commission is statutorily appropriated and remains so if this bill were to pass. Therefore, it is assumed that any potential expenditure savings related to the elimination of the Commission would be redirected to operational and preservation activities in Virginia and Nevada Cities and Reeder's Alley in Helena.

Fiscal Note Request – As Introduced

(continued)

Additional DOC Impacts	FY 2012 Difference	FY 2013 Difference	FY 2014 Difference	FY 2015 Difference
<u>Fiscal Impact:</u>				
FTE	0.00	12.00	12.00	12.00
<u>Expenditures:</u>				
Personal Services	\$0	\$689,701	\$703,495	\$717,565
Operating Expenses	\$0	\$156,169	\$114,004	\$116,284
Operating Expenses - Parks Rental	\$0	\$105,000	\$0	\$0
Parks Transfer to FWP Overhead	\$0	(\$950,000)	(\$950,000)	(\$950,000)
Parks Transfer to DOC Overhead	\$0	\$845,870	\$817,499	\$833,849
TOTAL Expenditures	\$0	\$846,740	\$684,998	\$717,698
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$870	(\$132,501)	(\$116,151)
Other (Proprietary)	\$0	\$845,870	\$817,499	\$833,849
TOTAL Funding of Exp.	\$0	\$846,740	\$684,998	\$717,698
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Other (Proprietary)	\$0	\$845,870	\$817,499	\$833,849
TOTAL Revenues	\$0	\$845,870	\$817,499	\$833,849

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	(\$870)	\$132,501	\$116,151
Other (Proprietary)	\$0	\$0	\$0	\$0

30. 17-1-508, MCA requires analysis of the statutory appropriation relative to the guidance in 17-1-508(2), MCA, to be published in the fiscal note. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. Answer yes or no to each of the following guidelines regarding the statutory appropriation:

<u>State Parks Maintenance</u>	<u>YES</u>	<u>NO</u>
a. The fund or use requires an appropriation.	x	
b. The money is not from a continuing, reliable, and estimable source.		x
c. The use of the appropriation or the expenditure occurrence is not predictable and reliable.		x
d. The authority does not exist elsewhere.	x	
e. An alternative appropriation method is not available, practical, or effective.		x
f. Other than for emergency purposes, it does not appropriate money from the state general fund.	x	

Fiscal Note Request – As Introduced

(continued)

g. The money is dedicated for a specific use.	x	
h. The legislature wishes the activity to be funded on a continual basis.	x	
i. When feasible, an expenditure cap and sunset date are included.	x	

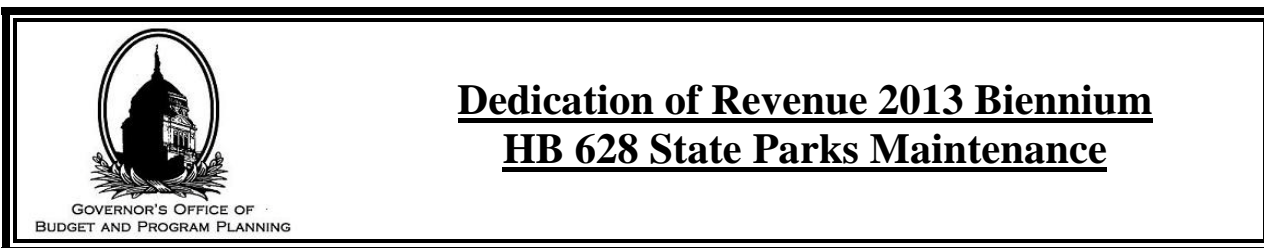
Forest Management**YES****NO**

a. The fund or use requires an appropriation.	x	
b. The money is not from a continuing, reliable, and estimable source.	x	
c. The use of the appropriation or the expenditure occurrence is not predictable and reliable.	x	
d. The authority does not exist elsewhere.	x	
e. An alternative appropriation method is not available, practical, or effective.	x	
f. Other than for emergency purposes, it does not appropriate money from the state general fund.	x	
g. The money is dedicated for a specific use.	x	
h. The legislature wishes the activity to be funded on a continual basis.	x	
i. When feasible, an expenditure cap and sunset date are included.	x	

Land Acquisition**YES****NO**

a. The fund or use requires an appropriation.	x	
b. The money is not from a continuing, reliable, and estimable source.	x	
c. The use of the appropriation or the expenditure occurrence is not predictable and reliable.	x	
d. The authority does not exist elsewhere.	x	
e. An alternative appropriation method is not available, practical, or effective.	x	
f. Other than for emergency purposes, it does not appropriate money from the state general fund.	x	
g. The money is dedicated for a specific use.	x	
h. The legislature wishes the activity to be funded on a continual basis.	x	
i. When feasible, an expenditure cap and sunset date are included.	x	

*Sponsor's Initials*_____
*Date*_____
*Budget Director's Initials*_____
Date



17-1-507-509, MCA.

State Parks Maintenance Account

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)** Beneficiaries of the state parks maintenance account would be persons who do not pay for parks privileges but would make use of sites managed by the department.
- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**
The state parks maintenance account would be earmarked by the legislature for specific purposes. In order to provide appropriate accountability a separate special revenue fund is needed.
- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**
The revenue generated will determine the level of maintenance activity performed in the state park system.
- d) **Does the need for this state special revenue provision still exist? Yes No (Explain)** In order to provide appropriate accountability, a separate special revenue fund is needed.
- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**
No, but typically statutory appropriations are in permanent law and not reviewed by the legislature on a biennial basis.
- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**
If HB 628 passes, the legislature has recognized the need for a state parks maintenance account. This fund will allow the agency to appropriately account for the funds.
- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**
It provides appropriate and efficient accountability to our users.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Dedication of Revenue 2011 Biennium HB 628 Forest Management Fund

17-1-507-509, MCA.

Forest Management Account

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**

Secondary beneficiaries of the forest management account would be persons who do not pay for parks privileges but would appreciate the forest management efforts of the department.

- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**

The forest management account would be earmarked by the legislature for specific purposes. In order to provide appropriate accountability, separate special revenue funds are needed.

- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**

The revenue generated from timber sales will determine the scope of forest management projects.

- d) **Does the need for this state special revenue provision still exist? Yes No (Explain)**

In order to provide appropriate accountability, a separate special revenue fund is needed.

- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**

No, but typically statutory appropriations are in permanent law and not reviewed by the legislature on a biennial basis.

- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**

If HB 628 passes, the legislature has recognized the need for a forest management account. This fund will allow the agency to appropriately account for the funds.

- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**

It provides appropriate and efficient accountability to our users.

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the state parks and recreation board; providing powers and duties; granting rulemaking authority; renaming the fish, wildlife, and parks commission; amending sections 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402, 2-15-3404, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403, 23-2-404, 23-2-408, 23-2-410, 23-2-502, 23-2-506, 23-2-525, 23-2-529, 23-2-531, 23-2-601, 23-2-641, 23-2-657, 23-2-801, 23-2-806, 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202, 87-1-209, 87-1-218, 87-1-301, 87-1-303, 87-1-306, 87-1-401, 87-1-622, and 87-4-432, MCA; repealing section 23-2-652, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. State parks and recreation board**

-- **composition.** (1) There is a state parks and recreation board.

(2) The board consists of five members appointed by the governor, as prescribed in 2-15-124. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

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As of: April 16, 2012 (3:25pm)

LC9000

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of state parks and outdoor recreational resources administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9.

(4) A person appointed to the board must be informed or experienced in the conservation and protection of state parks, heritage resources, natural resources, tourism promotion and development, or outdoor recreation.

(5) A vacancy on the board must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(6) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that the requirement that at least

one member be an attorney does not apply.

(7) The administrator of the division that oversees state parks is the secretary of the board.

NEW SECTION. **Section 2. Powers and duties of board -- rulemaking -- meetings.** (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the board shall:

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

(i) the management, protection, conservation, and preservation of these properties, lands, and waters in a way that promotes their importance to tourism and the economic health of Montana;

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

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

(c) establish the rules of the department governing the use of these properties, lands, and waters. The rules must be adopted in the interest of public health, public safety, and protection

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

of property and public resources in regulating swimming, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers by the department of interest in these properties, lands, and waters;

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

(f) review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000;

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

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

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

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board.

Section 3. Section 2-15-3110, MCA, is amended to read:

"2-15-3110. Livestock loss board -- purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, and wildlife, ~~and parks~~ commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

{*Internal References to 2-15-3110:*
2-15-3110 * a 81-1-110 * x}

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss board. (1) The livestock loss board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of

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As of: April 16, 2012 (3:25pm)

LC9000

livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, and wildlife, ~~and parks~~ commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

{*Internal References to 2-15-3113:*

2-15-3110 a 2-15-3110 * a 2-15-3112 x 2-15-3113 a
2-15-3113 * a 2-15-3114 x 81-1-110 x 81-1-110 * x
81-1-110 x 87-1-217x }

Section 5. Section 2-15-3401, MCA, is amended to read:

"2-15-3401. Department of fish, wildlife, and parks -- head. There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

director is the secretary of the fish and wildlife commission established in 2-15-3402."

{*Internal References to 2-15-3401:*

2-17-803 x 17-7-161 x 23-2-301 a 23-2-403 a
23-2-536 x 87-1-101 a 87-1-256x }

Section 6. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish, and wildlife, ~~and parks~~ commission. (1)

There is a fish, and wildlife, ~~and parks~~ commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of fish, and wildlife, ~~and state parks and other outdoor related~~ recreational resources of this state. A person may not be appointed to the commission unless the person is informed or interested and experienced in the subject of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreation and the requirements for the conservation and protection of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish, and wildlife, ~~and parks~~ commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."

{*Internal References to 2-15-3402:*

23-2-301a 23-2-403 a 75-1-220 a 85-2-102 a
87-1-101a }

Section 7. Section 2-15-3404, MCA, is amended to read:

"2-15-3404. Fish, wildlife, and parks crimestoppers board.

(1) There is a fish, wildlife, and parks crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(i) a person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of a hunter's, angler's, or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member of the public with an interest in parks and recreation.

(b) The fifth member is a member of the fish, and wildlife, ~~and parks~~ commission who must be designated by the commission.

(3) The board shall elect a presiding officer from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121."

{*Internal References to 2-15-3404:*
87-5-602x }

Section 8. Section 23-1-101, MCA, is amended to read:

"23-1-101. Purpose -- definitions. (1) For the ~~purpose~~ purposes of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state, ~~and~~

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

providing for their use and enjoyment, ~~thereby and~~ and contributing to the cultural, recreational, and economic life of the people and their health, the department of fish, wildlife, and parks (~~hereinafter referred to as department~~) is and board are hereby vested with the duties and powers ~~hereinafter~~ set forth in this part.

(2) For the purposes of this part, the following definitions apply:

(a) "Board" means the state parks and recreation board established in [section 1].

(b) "Commission" means the fish and wildlife commission established in 2-15-3402.

(c) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.

(d) "Director" means the director of the department of fish, wildlife, and parks as provided in 2-15-3401."

{*Internal References to 23-1-101:*
23-2-402 x 23-2-407 x}

Section 9. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~The~~ With the consent of the board, the department may:

(a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

parks, state recreational areas, state monuments, or state historical historic sites. ~~The department, with the consent of the commission, may~~

(b) acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2). ~~;~~

~~(2)(c)~~ The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. ~~;~~ and

(d) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part;

(2) ~~It~~ The department may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve the acquisition.

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical historic sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

highway system. The department may designate lands under its control as state parks, state ~~historical~~ historic sites, state monuments, or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area. ~~The department may lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part."~~

{*Internal References to 23-1-102:*

15-35-108x 15-35-108x 15-35-108 x 23-1-108 a
23-2-404 a 70-30-102x }

Section 10. Section 23-1-106, MCA, is amended to read:

"23-1-106. Rules -- penalties -- enforcement. (1) The department and board may make rules governing the use, occupancy, and protection of the property under its control.

(2) ~~Any~~ A person who violates ~~any of the rules made by the department~~ this section or a rule established pursuant to ~~subsection (1)~~ this section is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.

(3) ~~It is unlawful and a misdemeanor punishable as provided in subsection (2) to~~ A person may not refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the ~~fish, wildlife, and parks commission board~~; and

(c) to report violations to the county attorney of the county in which they occur."

{*Internal References to 23-1-106: None.*}

Section 11. Section 23-1-108, MCA, is amended to read:

"23-1-108. Acquisition of certain state parks, monuments, or ~~historical~~ historic sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department ~~of fish, wildlife, and parks~~ by July 1 of the year preceding the convening of a legislative session.

(2) The ~~fish, wildlife, and parks commission board~~ shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

monuments, or state ~~historical~~ historic sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased."

{*Internal References to 23-1-108: None.*}

Section 12. Section 23-1-110, MCA, is amended to read:

"23-1-110. Improvement or development of state park or fishing access site -- required public involvement -- rules. (1)

~~The fish, wildlife, and parks commission shall adopt rules establishing a policy whereby any~~ Any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal. Rules to govern the notice, meeting, and comment process must be adopted:

(a) for state parks by the board; and

(b) for fishing access sites by the commission.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

- (b) the capacity of the park or fishing access site for development;
- (c) environmental impacts associated with the improvement or development;
- (d) the long-range maintenance of the improvements;
- (e) the protection of natural, cultural, and historical park or fishing access site features;
- (f) potential impacts on tourism; and
- (g) site-specific modifications as they relate to the park or fishing access site system as a whole."

{*Internal References to 23-1-110:*
2-17-532x }

Section 13. Section 23-1-121, MCA, is amended to read:

"23-1-121. Park rangers -- qualifications -- powers and duties. (1) The department is authorized to establish a corps of park rangers and to select and appoint park rangers who must be qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall enforce the laws of this state and the rules of the department and the ~~fish, wildlife, and parks commission board~~ board that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system.

(3) Park rangers shall protect campers, picnickers, and other park users; keep the peace; supervise public use; and maintain public order in all units of the state parks system.

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(4) Park rangers shall perform all other duties prescribed by the department."

{*Internal References to 23-1-121:*
23-1-122a }

Section 14. Section 23-1-122, MCA, is amended to read:

"23-1-122. Enforcement powers of park rangers and game wardens. (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department, the board, or the ~~fish, wildlife, and parks~~ commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department, the board, and the ~~fish~~,

~~wildlife, and parks~~ commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c)."

{*Internal References to 23-1-122: None.*}

Section 15. Section 23-2-301, MCA, is amended to read:

"23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines of the waters;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

{*Internal References to 23-2-301:*

7-14-2615x 23-2-302 x 60-2-107 x 61-8-371 x
61-8-371 x 61-8-371 x }

Section 16. Section 23-2-403, MCA, is amended to read:

"23-2-403. Definitions. As used in this part, the following definitions apply:

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

~~(1) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

(1) "Board" means the state parks and recreation board established in [section 1].

(2) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401."

{*Internal References to 23-2-403: None.*}

Section 17. Section 23-2-404, MCA, is amended to read:

"23-2-404. Applicability. This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between the Camp Baker state ~~fishing access site~~ park in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102."

{*Internal References to 23-2-404:
23-2-407 x*}

Section 18. Section 23-2-408, MCA, is amended to read:

"23-2-408. Rulemaking authority. The ~~commission~~ board has authority to provide for the administration of the Smith River waterway. The ~~commission~~ board may adopt rules to:

(1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife,

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and commission board:

(a) for the purposes of safety, health, and protection of property;

(b) to preserve the experience of floating, fishing, and camping in a natural environment;

(c) to protect the river's fish, wildlife, water, and canyon resources; and

(d) to minimize conflicts between recreationists and private landowners; and

(4) establish recreational and commercial user fees for floating and camping on the Smith River waterway."

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

{*Internal References to 23-2-408:
23-2-409x* }

Section 19. Section 23-2-410, MCA, is amended to read:

"23-2-410. Penalty -- enforcement. (1) A person who violates a rule of the ~~commission~~ board adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than \$50 or more than \$500, ~~or~~ or by imprisonment in a county jail for not more than 6 months, or ~~by both fine and imprisonment.~~

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the commission and board; and

(c) to report violations to the county attorney of the county in which they occur."

{*Internal References to 23-2-410: None.*}

Section 20. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Board" means the state parks and recreation board established in [section 1]. For the purposes of this part, the

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

board has jurisdiction over all waters immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters administered pursuant to Title 23, chapter 2, part 4.

~~(1)~~(2) "Certificate of number" means the certificate issued by the department of justice, an authorized agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(3) "Commission" means the fish and wildlife commission established in 2-15-3402. For the purposes of this part, the commission has jurisdiction over all waters that are not immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters not administered pursuant to Title 23, chapter 2, part 4.

~~(2)~~(4) "Department" means the department of fish, wildlife, and parks ~~of the state of Montana~~ established in 2-15-3401.

~~(3)~~(5) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

~~(4)~~(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

~~(5)~~(7) "Lienholder" means a person holding a security interest.

~~(6)~~(8) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

new and unused outboard motors for the purpose of sale or trade.

~~(7)~~(9) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(8)~~(10) "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(9)~~(11) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(10)~~(12) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

~~(11)~~(13) "Passenger" means each person carried on board a vessel other than:

- (a) the owner or the owner's representative;
- (b) the operator;
- (c) bona fide members of the crew engaged in the business

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

~~(12)~~(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(13)~~(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(14)~~(16) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

~~(15)~~(17) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(16)~~(18) "Security interest" means an interest that is reserved or created by an agreement that secures payment or

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

performance of an obligation and is valid against third parties generally.

~~(17)~~(19) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(18)~~(20) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

~~(19)~~(21) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(20)~~(22) "Waters of this state" means any waters within the territorial limits of this state."

{*Internal References to 23-2-502:*

15-68-101 x 30-11-701 x 30-14-2501x 61-4-201 x
61-4-222 x 61-4-402x }

Section 21. Section 23-2-506, MCA, is amended to read:

"23-2-506. Enforcement. (1) The department is a criminal

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, ~~and the fish, wildlife, and parks~~ commission, and board; and

(c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended."

{*Internal References to 23-2-506: None.*}

Section 22. Section 23-2-525, MCA, is amended to read:

"23-2-525. Restricted areas. (1) A person may not anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a passageway ordinarily used by other vessels.

(2) A person may not operate a pleasure vessel within 20 feet of the exterior boundary of a water area that is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas must be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of the areas.

(3) A person may not operate a vessel within 75 feet of a

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

person engaged in fishing or hunting waterfowl, unless unavoidable. If unavoidable, the vessel must be operated at not greater than no-wake speed or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing or hunting waterfowl.

(4) (a) A person may not purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 200 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 200-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the operator.

(c) The ~~fish, wildlife, and parks~~ commission and board may by rule determine areas where establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic."

{*Internal References to 23-2-525:*
23-2-507x }

Section 23. Section 23-2-529, MCA, is amended to read:

"23-2-529. Waterskis and surfboards. (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device unless the operator is accompanied by an

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The ~~fish, wildlife, and parks~~ commission and board shall adopt rules regarding the proper observation and safe towing of persons on waterskis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed."

{*Internal References to 23-2-529: None.*}

Section 24. Section 23-2-531, MCA, is amended to read:

"23-2-531. Personal watercraft operation. In addition to applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless a person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

as is appropriate for the specific vessel;

(3) (a) except as provided for standup personal watercraft in subsection (3)(b) or when towing a waterskier from or to a dock or shore, at greater than no-wake speed within 200 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a lake or river;

(b) at greater than the minimum speed necessary to operate a personal watercraft when leaving or returning directly from or to a dock or shore for the purpose of launching or docking; or

(4) on any surface waters restricted in whole or in part by rule of the ~~fish, wildlife, and parks~~ commission and board;

(5) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation."

{*Internal References to 23-2-531: None.*}

Section 25. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state parks and recreation board established in [section 1].

~~(1)~~(2) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

~~(2)~~(3) "Certificate of title" means the document issued by

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

the department of justice as prima facie evidence of ownership.

(4) "Commission" means the fish and wildlife commission established in 2-15-3402.

~~(3)~~(5) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

~~(4)~~(6) "Department" means the department of fish, wildlife, and parks of the state of Montana.

~~(5)~~(7) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

~~(6)~~(8) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

~~(7)~~(9) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

~~(8)~~(10) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

~~(9)~~(11) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

~~(10)~~(12) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

~~(11)~~(13) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana.

(14) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(15) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and for the designation of open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(16) "Snowmobiler" means any person operating or riding a snowmobile."

{Internal References to 23-2-601:
15-1-122 x 23-2-601 a 23-2-614 x 23-2-614 x
23-2-614 x 23-2-631 x 23-2-631 x 23-2-631 x
23-2-634 x 23-2-634 x 23-2-641 a 23-2-641 a
23-2-642 x 23-2-642 x 23-2-642 x 23-2-644 x
23-2-652 r 30-11-701 x 30-14-2501 x 61-4-201 x
61-4-222 x 61-4-402 x}

Section 26. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621,~~

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

~~23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

{*Internal References to 23-2-641:*

15-1-122 * x 23-2-601 *a 23-2-614 *x 23-2-614 * x
23-2-614 *x 23-2-615 x 23-2-631 *x 23-2-631 * x
23-2-631 *x 23-2-634 * x 23-2-634 * x 23-2-641 * a
23-2-641 *a 23-2-642 * x 23-2-642 * x 23-2-642 * x
23-2-644 *x }

Section 27. Section 23-2-657, MCA, is amended to read:

"23-2-657. Environmental review compliance -- exemption.

(1) Except as provided in subsection (2), the department of fish, wildlife, and parks shall comply with the provisions of Title 75, chapter 1, parts 1 and 2, when:

(a) acting as a snowmobile area operator pursuant to ~~23-2-652~~ 23-2-653 through 23-2-655; or

(b) awarding a grant or other funding assistance to a snowmobile area operator.

(2) The department of fish, wildlife, and parks is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions as a snowmobile area operator pursuant to ~~23-2-652~~ 23-2-653 through 23-2-655 or when awarding a grant or other funding assistance to a snowmobile area operator if the action or award has been previously subject to environmental review under Title 75, chapter 1, parts 1 and 2, and there is no proposed change to the action or the use of the award."

{*Internal References to 23-2-657: None.*}

Section 28. Section 23-2-801, MCA, is amended to read:

"23-2-801. Definition. ~~(1)~~ As used in this part, the following definitions apply:

(1) "Board" means the state parks and recreation board established in [section 1].

(2) "Commission" means the fish and wildlife commission established in 2-15-3402.

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

~~(3)(a) "off-highway~~ "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

~~(2) Off-highway vehicle~~ (b) The term does not include:

~~(a)(i)~~ vehicles designed primarily for travel on, over, or in the water;

~~(b)(ii)~~ snowmobiles; or

~~(c)(iii)~~ except as provided in 23-2-804, vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands."

{*Internal References to 23-2-801:*

15-68-101 x 23-1-128 x 30-11-701x 61-4-201 x
61-4-222 x 61-4-402x }

Section 29. Section 23-2-806, MCA, is amended to read:

"23-2-806. Enforcement. (1) The department of fish, wildlife, and parks enforcement personnel, park rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and

(c) to report violations to the county attorney of the county in which they occur.

(3) Park rangers may not carry firearms in the execution of their duties."

{*Internal References to 23-2-806: None.*}

Section 30. Section 37-47-310, MCA, is amended to read:

"37-47-310. Transfer or amendment of outfitter's license -- transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4)(a) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, and wildlife, ~~and parks~~ commission and that a property right does not attach to the transferred river-use days.

(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted by the state parks and recreation board pursuant to 23-2-408."

{Internal References to 37-47-310: None.}

Section 31. Section 75-1-220, MCA, is amended to read:

"75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter

20.

(2) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, and wildlife, ~~and parks~~ commission, as provided for in 2-15-3402, and the state parks and recreation board, as provided for in [section 11];

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(3) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(4) "Cumulative impacts" means the collective impacts on

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, 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).

(7) "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan,

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."

{*Internal References to 75-1-220: None.*}

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

Section 32. Section 77-1-405, MCA, is amended to read:

"77-1-405. Island parks established -- development limited.

(1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the ~~fish, wildlife, and parks commission~~ state parks and recreation board established in [section 1];

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to

Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after April 30, 1997."

{*Internal References to 77-1-405: None.*}

Section 33. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452,

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

Laws of 1973.

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

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{*Internal References to 85-2-102:*

75-5-410 x 82-4-355 x 85-2-141x 85-2-340x }

Section 34. Section 87-1-101, MCA, is amended to read:

"87-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Board" means the state parks and recreation board provided for in [section 1].

~~(1)~~(2) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

~~(2)~~(3) "Department" means the department of fish, wildlife,

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

and parks provided for in Title 2, chapter 15, part 34.

~~(3)~~(4) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

~~(4)~~(5) "Warden" means a state fish and game warden."

{*Internal References to 87-1-101: None.*}

Section 35. Section 87-1-106, MCA, is amended to read:

"87-1-106. Fish, wildlife, and parks offices. The principal offices of the commission, board, and department shall be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water shall be furnished by the state of Montana."

{*Internal References to 87-1-106: None.*}

Section 36. Section 87-1-202, MCA, is amended to read:

"87-1-202. Publication of orders and rules. (1) Except as provided in subsection (2), annual and biennial rules adopted by the commission or board setting seasonal hunting, fishing, trapping, and land use regulations must be published in a pamphlet format that is made available to the public at all department offices and through all license providers.

(2) Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures for management purposes, must be indicated to the public by signs on

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

- (i) use of the department's website;
- (ii) use of a telephone hotline number; or
- (iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

{*Internal References to 87-1-202: None.*}

Section 37. Section 87-1-209, MCA, is amended to read:

"87-1-209. (Temporary) Acquisition and sale of land or water. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase,

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

lease, agreement, gift, or devise and may acquire easements upon land or water for the purposes listed in this subsection. Any acquisition of land or water rights for purposes of this subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above the purchase price to be used for maintenance of land or water acquired by the department. The additional amount above the purchase price or \$300,000, whichever is less, must be deposited in the account established in 87-1-230. As used in this subsection, "maintenance" means that term as defined in and consistent with the good neighbor policy in 23-1-127(2). The department may develop, operate, and maintain acquired land or water rights:

- (a) for fish hatcheries or nursery ponds;
- (b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, land or structures for the preservation of ~~historical~~

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of land and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission or board, may convey department land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the land or water right is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the land or water right as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey land and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land. (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value,

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries or nursery ponds;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of ~~historical~~ historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

considers necessary and advisable. The department, with the consent of the commission or board, may convey department lands and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

{*Internal References to 87-1-209:*
23-1-102 a 23-1-126 x 23-1-127 x 70-30-102 x
87-1-218 x 87-1-230 x 87-1-242 x 87-1-242 x
87-1-301a 87-1-301 a 87-1-303 x }

Section 38. Section 87-1-218, MCA, is amended to read:

"87-1-218. Notice of proposed land acquisitions. (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission or board for its consent.

(3) The notice must include:

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

(d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission or board and information on how the board of county commissioners may provide comment."

{*Internal References to 87-1-218:*

87-1-209 a 87-1-209a 87-1-209a 87-1-209a }

Section 39. Section 87-1-301, MCA, is amended to read:

~~"87-1-301. (Temporary) Powers of commission. (1) Except as provided in subsection (7), the commission:~~

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

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

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

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

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

~~— (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);~~

~~— (f) shall review and approve the budget of the department prior to its transmittal to the budget office;~~

~~— (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and~~

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

~~— (2) The commission may adopt rules regarding the use and~~

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

~~type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.~~

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

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

~~— (i) separate deer licenses from nonresident elk combination licenses;~~

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

~~— (iii) condition the use of the deer licenses; and~~

~~— (iv) limit the number of licenses sold.~~

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

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

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

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

~~— (5) Subject to the provisions of 87-2-115, the commission~~

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

~~may adopt rules establishing license preference systems to distribute hunting licenses and permits:~~

~~— (a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and~~

~~— (b) giving a qualifying landowner a preference in drawings.~~

~~As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.~~

~~— (6) (a) The commission may adopt rules to:~~

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

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

~~— (b) The commission shall consider, but is not limited to consideration of, the following factors:~~

~~— (i) harvest of lions by resident and nonresident hunters;~~

~~— (ii) history of quota overruns;~~

~~— (iii) composition, including age and sex, of the lion harvest;~~

~~— (iv) historical outfitter use;~~

~~— (v) conflicts among hunter groups;~~

~~— (vi) availability of public and private lands; and~~

~~— (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.~~

~~— (7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the~~

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

~~chemical elements of ammunition used for hunting. This does not prevent:~~

~~— (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;~~

~~— (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;~~

~~— (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);~~

~~— (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or~~

~~— (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).~~

87-1-301. (Effective March 1, 2012) Powers of commission.

(1) Except as provided in ~~subsection~~ subsections (7) and (8), the commission:

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

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

(c) except as provided in [section 2], 23-2-502(1), and 87-1-303(3), shall establish the rules of the department

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

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

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

(f) except as provided in [section 2], shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) except as provided in [section 2], shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

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

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and

fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

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

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

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

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

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

(iv) limit the number of licenses sold.

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

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

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

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

(5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

systems to distribute hunting licenses and permits:

(i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

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

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

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

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

(8) Pursuant to [section 2], the commission does not oversee department activities related to the administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9."

{*Internal References to 87-1-301:*

87-1-265 x 87-1-303a 87-1-304 x 87-1-304 x }

Section 40. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) Except as

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

provided in [section 2], 87-1-307(7), and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) Except as provided in [section 2], 23-2-502(1), and 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public.

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

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

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

(i) require a fee for domestic livestock trailing or related activities; or

(ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

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

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

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

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

{*Internal References to 87-1-303:*

23-2-302 x 87-1-265 x 87-1-301 a 87-1-301a }

Section 41. Section 87-1-306, MCA, is amended to read:

"87-1-306. Designation of certain river stretches as no-wake waters -- personal watercraft use prohibited. (1) In the interest of public health, safety, and welfare and protection of property and public resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their reservoirs.

(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.

(3) This section does not apply to the use of the designated waters for search and rescue, official patrol, or scientific purposes.

(4) This section may not be construed to limit the authority of the commission, board, or department to enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public health, safety, or welfare, the protection of property or public resources, or the resolution of conflicts between users of motorized and nonmotorized boats."

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

{*Internal References to 87-1-306: None.*}

Section 42. Section 87-1-401, MCA, is amended to read:

"87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and board and shall adopt rules authorized by law to implement those policies."

{*Internal References to 87-1-401: None.*}

Section 43. Section 87-1-622, MCA, is amended to read:

"87-1-622. Forest management plan -- sustainable yield study required -- definition. (1) The commission and board shall adopt a forest management ~~plan~~ plans for lands under their jurisdiction, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission and board shall review and redetermine the annual sustainable yield for lands under their jurisdiction

at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5."

{Internal References to 87-1-622:

87-1-201 x 87-1-621 x 87-1-621x 87-1-621 x
87-1-621x }

Section 44. Section 87-4-432, MCA, is amended to read:

"87-4-432. Alternative livestock advisory council -- appointment of members -- duties. (1) There is an alternative livestock advisory council to advise the department on the administration of alternative livestock ranches in this state.

(2) The alternative livestock advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department

of livestock;

(b) one member of the fish, and wildlife, ~~and parks~~ commission or the department;

(c) one member who is a representative of the alternative livestock industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the alternative livestock advisory council shall serve staggered 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The alternative livestock advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions."

{Internal References to 87-4-432: None.}

NEW SECTION. **Section 45. {standard} Repealer.** The following section of the Montana Code Annotated is repealed: 23-2-652. Definitions.

{Internal References to 23-2-652: 23-2-652 *r 23-2-657 *a 23-2-657 * a}

NEW SECTION. **Section 46. Name change -- directions to code commissioner.** (1) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the

commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to fish and wildlife, the code commissioner is directed to change it to an appropriate reference to the fish and wildlife commission.

(2) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to state parks or recreational resources under Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the code commissioner is directed to change it to an appropriate reference to the state parks and recreation board.

NEW SECTION. Section 47. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 34, and the provisions of Title 2, chapter 15, part 34, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 2].

NEW SECTION. Section 48. {standard} Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Unofficial Draft Copy

As of: April 16, 2012 (3:25pm)

LC9000

NEW SECTION. **Section 49. {standard} Effective date.** [This act] is effective July 1, 2013.

- END -

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As of: April 16, 2012 (3:32pm)

Appendix U

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the state parks, recreation, and heritage board; providing powers and duties; granting rulemaking authority; renaming the fish, wildlife, and parks commission; eliminating the Montana heritage preservation and development commission; amending sections 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402, 2-15-3404, 16-4-205, 16-4-305, 22-3-1001, 22-3-1003, 22-3-1004, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403, 23-2-404, 23-2-408, 23-2-410, 23-2-502, 23-2-506, 23-2-525, 23-2-529, 23-2-531, 23-2-601, 23-2-641, 23-2-801, 23-2-806, 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202, 87-1-209, 87-1-218, 87-1-301, 87-1-303, 87-1-306, 87-1-401, 87-1-622, and 87-4-432, MCA; repealing sections 22-3-1002 and 23-2-652, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. State parks, recreation, and heritage board -- composition. (1) There is a state parks, recreation, and heritage board.

(2) The board consists of five members appointed by the governor, as prescribed in 2-15-124. The governor shall appoint one member from each of the following districts:

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of state parks and outdoor recreational and heritage resources administered pursuant to Title 22, chapter 3, part 10, Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9.

(4) A person appointed to the board must be informed or experienced in the conservation and protection of state parks, heritage resources, natural resources, tourism promotion and development, or outdoor recreation.

(5) A vacancy on the board must be filled by the governor in the same manner and from the district in which the vacancy

occurs.

(6) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(7) The administrator of the division that oversees state parks is the secretary of the board.

NEW SECTION. Section 2. Powers and duties of board -- rulemaking. (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 22, chapter 3, part 10, Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the board shall:

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

(i) the management, protection, conservation, and preservation of these properties, lands, and waters in a way that promotes their importance to tourism and the economic health of Montana;

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

(b) work with the commission to maintain hunting and angling

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties, lands, and waters. The rules must be adopted in the interest of public health, public safety, and protection of property and public resources in regulating swimming, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers by the department of interest in these properties, lands, and waters;

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

(f) except for properties and lands administered pursuant to Title 22, chapter 3, part 10, review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000;

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

(h) encourage citizen involvement in management planning for

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

these properties, lands, and waters.

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

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

Section 3. Section 2-15-3110, MCA, is amended to read:

"2-15-3110. Livestock loss board -- purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(b) three members from a list of names recommended by the fish, and wildlife, ~~and parks~~ commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

{*Internal References to 2-15-3110:*
2-15-3110 * a 81-1-110 *x }

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss board. (1) The livestock loss board shall:

(a) process claims;

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, and wildlife, ~~and parks~~ commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

{*Internal References to 2-15-3113:*

2-15-3110 a 2-15-3110 * a 2-15-3112 x 2-15-3113 a
2-15-3113 * a 2-15-3114 x 81-1-110 x 81-1-110 * x
81-1-110 x 87-1-217x }

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

Section 5. Section 2-15-3401, MCA, is amended to read:

"2-15-3401. Department of fish, wildlife, and parks -- head. There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The director is the secretary of the fish and wildlife commission established in 2-15-3402."

{*Internal References to 2-15-3401:*

2-17-803 x 17-7-161 x 23-2-301 a 23-2-403 a
23-2-536 x 87-1-101 a 87-1-256 x }

Section 6. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish, and wildlife, ~~and parks~~ commission. (1)
There is a fish, and wildlife, ~~and parks~~ commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of fish, and wildlife, ~~and state parks and other outdoor~~ related recreational resources of this state. A person may not be appointed to the commission unless the person is informed or interested and experienced in the subject of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreation and the requirements for the conservation and protection of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish, and wildlife, ~~and parks~~ commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."

{*Internal References to 2-15-3402:*

23-2-301 a 23-2-403 a 75-1-220 a 85-2-102 a
87-1-101 a }

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

Section 7. Section 2-15-3404, MCA, is amended to read:

"2-15-3404. Fish, wildlife, and parks crimestoppers board.

(1) There is a fish, wildlife, and parks crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

(i) a person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of a hunter's, angler's, or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member of the public with an interest in parks and recreation.

(b) The fifth member is a member of the fish, and wildlife, ~~and parks~~ commission who must be designated by the commission.

(3) The board shall elect a presiding officer from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121."

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

{*Internal References to 2-15-3404:
87-5-602x* }

Section 8. Section 16-4-205, MCA, is amended to read:

"16-4-205. Limit one license to person -- business in name of licensee. (1) A person may not be issued more than one all-beverages license in any year, with the exception of a secured party issued an additional all-beverages license as the result of a default. A secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance. A business may not be carried on under any license issued under this chapter except in the name of the licensee.

(2) The provisions of this section do not apply to licenses held by the ~~Montana heritage preservation and development commission~~ department of fish, wildlife, and parks under the provisions of 16-4-305."

{*Internal References to 16-4-205: None.*}

Section 9. Section 16-4-305, MCA, is amended to read:

"16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota. (1) (a) The ~~Montana heritage preservation and development commission~~ department of fish, wildlife, and parks may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

retail liquor licenses.

(b) The department may issue a wine amendment pursuant to 16-4-105(2) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

(2) The ~~Montana heritage preservation and development commission~~ department of fish, wildlife, and parks may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail liquor licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that ~~have been~~ were transferred to the former Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999."

{*Internal References to 16-4-305:*
16-4-205a }

Section 10. Section 22-3-1001, MCA, is amended to read:

"22-3-1001. Purpose -- definitions. (1) The purpose of this part is to acquire and manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, are genuinely representative of the state's culture and history, and demonstrate the ability to become economically self-supporting. ~~The Montana heritage~~

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~preservation and development commission~~ Subject to 22-3-1003(8),
the board and department shall achieve this purpose by purchasing
fee title interests in real and personal property and by managing
those properties in a manner that protects the properties and
encourages economic independence.

(2) For the purposes of this part, the following
definitions apply:

(a) "Board" means the state parks, recreation, and heritage
board established in [section 1].

(b) "Department" means the department of fish, wildlife, and
parks established in 2-15-3401."

{*Internal References to 22-3-1001:*
22-3-1003 a}

Section 11. Section 22-3-1003, MCA, is amended to read:

**"22-3-1003. Powers of ~~commission~~ and duties of department
and board -- contracts -- rules.** (1) (a) The Montana heritage
~~preservation and development commission~~ department may contract
with private organizations to assist in carrying out the purpose
of 22-3-1001. The term of a contract may not exceed 20 years.

(b) The provisions of Title 18 may not be construed as
prohibiting contracts under this section from being let by direct
negotiation. The contracts may be entered into directly with a
vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do
not apply to the historic renovation projects or projects at
historic sites unless stated in specific state appropriations for
construction permitted under the ~~commission's~~ department's

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

jurisdiction pursuant to this part.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with ~~commission~~ board rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the ~~commission~~ department. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the ~~commission~~ department may not contract for the construction of a building, as defined in 18-2-101, in excess of \$300,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the ~~Montana department of fish, wildlife, and parks~~. Funding for these projects must pass through directly to the ~~commission~~ department.

(b) The ~~commission~~ department may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds \$300,000 without legislative consent if the ~~commission~~ board determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(3) (a) Subject to subsection (3)(b), the ~~commission~~ department, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the ~~commission~~ department.

(b) (i) Until the balance in the cultural and aesthetic trust reaches \$7,750,000, the ~~commission~~ department shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.

(ii) Once the balance in the cultural and aesthetic trust reaches \$7,750,000, the ~~commission~~ department shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

(c) It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.

(4) The ~~commission~~ department may solicit funds from other sources, including the federal government, for the purchase, management, and operation of properties.

(5) (a) The ~~commission~~ department may use volunteers to further the purposes of this part.

(b) The ~~commission~~ department and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The ~~commission~~ department shall provide each volunteer with workers'

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The ~~commission~~ department may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The ~~commission~~ board shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and ~~commission~~ board members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the ~~commission~~ board only if the recommendation is supported by a majority of the members of the subcommittee.

(8) The ~~commission~~ board shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition or sale will create significant

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the director of the Montana historical society;

(g) whether the ~~commission~~ department should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the ~~commission~~ department should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and

(i) other matters that the ~~commission~~ board considers necessary or appropriate.

(9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.

(10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition or sale of real property before a final decision to acquire or sell the property is made. The ~~commission~~ board shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the board of land commissioners.

(11) The ~~commission~~ department, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets ~~owned by the commission~~ controlled by the department pursuant to this part. Funds from the sale of personal property from the Bovey

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.

(12) Prior to the convening of each regular session, the ~~commission~~ department shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets."

{*Internal References to 22-3-1003:*
18-2-102 x}

Section 12. Section 22-3-1004, MCA, is amended to read:

"22-3-1004. Montana heritage preservation and development account. (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund and in the federal special revenue fund.

(b) The ~~Montana heritage preservation and development commission~~ department shall deposit any federal money that the ~~commission~~ department obtains into the appropriate account provided for in this section.

(2) Money deposited in the accounts must be used for:

(a) the purchase of properties in Virginia City and Nevada City;

(b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of preservation.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(3) The accounts are statutorily appropriated, as provided in 17-7-502, to the ~~commission~~ department to be used as provided in this section.

(4) Unless otherwise prohibited by law or agreement, all interest earned on money in the accounts must be deposited in the state special revenue fund to the credit of the ~~commission~~ department."

{*Internal References to 22-3-1004:*
15-65-121 x 17-7-502 x 22-3-1003 a}

Section 13. Section 23-1-101, MCA, is amended to read:

"23-1-101. Purpose -- definitions. (1) For the purpose of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing for their use and enjoyment, thereby contributing to the cultural, recreational, and economic life of the people and their health, the department of fish, wildlife, and parks (~~hereinafter referred to as department~~) is hereby vested with the duties and powers hereinafter set forth.

(2) For the purposes of this part, the following definitions apply:

(a) "Board" means the state parks, recreation, and heritage board established in [section 1].

(b) "Commission" means the fish and wildlife commission established in 2-15-3402.

(c) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.

(d) "Director" means the director of the department of fish,

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

wildlife, and parks as provided in 2-15-3401."

{*Internal References to 23-1-101:*
23-2-402 x 23-2-407 x}

Section 14. Section 23-1-102, MCA, is amended to read:

**"23-1-102. Powers and duties of department of ~~fish,~~
~~wildlife, and parks.~~** (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. The department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state ~~historical~~ historic sites. The department, with the consent of the ~~commission~~ board, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).

(2) The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve the acquisition.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, ~~historical~~ historic sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system.

(5)(a) The Except as provided in subsection (5)(b), the
department may:

(i) designate lands under its control as state parks, state ~~historical~~ historic sites, state monuments, or by any other designation that it considers appropriate.; ~~The department may~~

(ii) remove or change the designation of any area or portion of an area and may name or change the name of any area.; and The
~~department may~~

(iii) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part.

(b) The department may not designate state-owned facilities and properties at Virginia City and Nevada City as a state park."

{*Internal References to 23-1-102:*

15-35-108x 15-35-108x 15-35-108x 23-1-108 a
23-2-404 a 70-30-102x }

Section 15. Section 23-1-106, MCA, is amended to read:

"23-1-106. Rules -- penalties -- enforcement. (1) The department may make rules governing the use, occupancy, and protection of the property under its control.

(2) ~~Any~~ A person who violates ~~any of the rules made by the~~

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~department~~ this section or a rule established pursuant to ~~subsection (1)~~ this section is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.

(3) ~~It is unlawful and a misdemeanor punishable as provided in subsection (2) to~~ A person may not refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the ~~fish, wildlife, and parks commission~~ board; and

(c) to report violations to the county attorney of the county in which they occur."

{*Internal References to 23-1-106: None.*}

Section 16. Section 23-1-108, MCA, is amended to read:

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

"23-1-108. Acquisition of certain state parks, monuments, or ~~historical~~ historic sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department ~~of fish, wildlife, and parks~~ by July 1 of the year preceding the convening of a legislative session.

(2) The ~~fish, wildlife, and parks commission~~ board shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state ~~historical~~ historic sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased."

{*Internal References to 23-1-108: None.*}

Section 17. Section 23-1-110, MCA, is amended to read:

"23-1-110. Improvement or development of state park or fishing access site -- required public involvement -- rules. (1) ~~The fish, wildlife, and parks commission shall adopt rules establishing a policy whereby any~~ Any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both statewide and locally, and to opportunity for a public meeting

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

and public comment on the advisability and acceptability of the proposal. Rules to govern the notice, meeting, and comment process must be adopted:

(a) for state parks by the board; and

(b) for fishing access sites by the commission.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole."

{*Internal References to 23-1-110:*
2-17-532x }

Section 18. Section 23-1-121, MCA, is amended to read:

"23-1-121. Park rangers -- qualifications -- powers and duties. (1) The department is authorized to establish a corps of park rangers and to select and appoint park rangers who must be

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall enforce the laws of this state and the rules of the department and the ~~fish, wildlife, and parks commission board~~ that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system.

(3) Park rangers shall protect campers, picnickers, and other park users; keep the peace; supervise public use; and maintain public order in all units of the state parks system.

(4) Park rangers shall perform all other duties prescribed by the department."

{*Internal References to 23-1-121:*
23-1-122a }

Section 19. Section 23-1-122, MCA, is amended to read:

"23-1-122. Enforcement powers of park rangers and game wardens. (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part 7, or

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

rules of the department, the board, or the ~~fish, wildlife, and parks~~ commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department, the board, and the ~~fish, wildlife, and parks~~ commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c)."

{*Internal References to 23-1-122: None.*}

Section 20. Section 23-2-301, MCA, is amended to read:

"23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(a) lie within the officially recorded federal government survey meander lines of the waters;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

{*Internal References to 23-2-301:*

7-14-2615 x 23-2-302 x 60-2-107 x 61-8-371 x
61-8-371 x 61-8-371x }

Section 21. Section 23-2-403, MCA, is amended to read:

"23-2-403. Definitions. As used in this part, the following definitions apply:

~~(1) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

(1) "Board" means the state parks, recreation, and heritage board established in [section 1].

(2) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401."

{*Internal References to 23-2-403: None.*}

Section 22. Section 23-2-404, MCA, is amended to read:

"23-2-404. Applicability. This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between the Camp Baker state ~~fishing access site~~ park in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102."

{*Internal References to 23-2-404:*

23-2-407 x }

Section 23. Section 23-2-408, MCA, is amended to read:

"23-2-408. Rulemaking authority. The ~~commission~~ board has authority to provide for the administration of the Smith River waterway. The ~~commission~~ board may adopt rules to:

(1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~commission~~ board:

(a) for the purposes of safety, health, and protection of property;

(b) to preserve the experience of floating, fishing, and camping in a natural environment;

(c) to protect the river's fish, wildlife, water, and canyon resources; and

(d) to minimize conflicts between recreationists and private landowners; and

(4) establish recreational and commercial user fees for floating and camping on the Smith River waterway."

{*Internal References to 23-2-408:*
23-2-409x }

Section 24. Section 23-2-410, MCA, is amended to read:

"23-2-410. Penalty -- enforcement. (1) A person who violates a rule of the ~~commission~~ board adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than \$50 or more than \$500, or by imprisonment in a county jail for not more than 6 months, or ~~by both fine and imprisonment.~~

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the commission and

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

board; and

(c) to report violations to the county attorney of the county in which they occur."

{*Internal References to 23-2-410: None.*}

Section 25. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board established in [section 1]. For the purposes of this part, the board has jurisdiction over all waters immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters administered pursuant to Title 23, chapter 2, part 4.

~~(1)~~(2) "Certificate of number" means the certificate issued by the department of justice, an authorized agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(3) "Commission" means the fish and wildlife commission established in 2-15-3402. For the purposes of this part, the commission has jurisdiction over all waters that are not immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters not administered pursuant to Title 23, chapter 2, part 4.

~~(2)~~(4) "Department" means the department of fish, wildlife,

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

and parks of ~~the state of Montana~~ established in 2-15-3401.

~~(3)~~(5) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

~~(4)~~(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

~~(5)~~(7) "Lienholder" means a person holding a security interest.

~~(6)~~(8) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

~~(7)~~(9) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(8)~~(10) "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(9)~~(11) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(10)~~(12) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

~~(11)~~(13) "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

~~(12)~~(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(13)~~(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(14)~~(16) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

~~(15)~~(17) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(16)~~(18) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

~~(17)~~(19) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(18)~~(20) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~(19)~~(21) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(20)~~(22) "Waters of this state" means any waters within the territorial limits of this state."

{*Internal References to 23-2-502:*

15-68-101 x 30-11-701 x 30-14-2501x 61-4-201 x
61-4-222 x 61-4-402x }

Section 26. Section 23-2-506, MCA, is amended to read:

"23-2-506. Enforcement. (1) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, ~~and the fish, wildlife, and parks~~ commission, and board; and

(c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended."

{*Internal References to 23-2-506: None.*}

Section 27. Section 23-2-525, MCA, is amended to read:

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

"23-2-525. Restricted areas. (1) A person may not anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a passageway ordinarily used by other vessels.

(2) A person may not operate a pleasure vessel within 20 feet of the exterior boundary of a water area that is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas must be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of the areas.

(3) A person may not operate a vessel within 75 feet of a person engaged in fishing or hunting waterfowl, unless unavoidable. If unavoidable, the vessel must be operated at not greater than no-wake speed or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing or hunting waterfowl.

(4) (a) A person may not purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 200 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 200-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the operator.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(c) The ~~fish, wildlife, and parks~~ commission and board may by rule determine areas where establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic."

{*Internal References to 23-2-525:*
23-2-507x }

Section 28. Section 23-2-529, MCA, is amended to read:

"23-2-529. Waterskis and surfboards. (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device unless the operator is accompanied by an observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The ~~fish, wildlife, and parks~~ commission and board shall adopt rules regarding the proper observation and safe towing of persons on waterskis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed."

{*Internal References to 23-2-529: None.*}

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

Section 29. Section 23-2-531, MCA, is amended to read:

"23-2-531. Personal watercraft operation. In addition to applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless a person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel;

(3) (a) except as provided for standup personal watercraft in subsection (3)(b) or when towing a waterskier from or to a dock or shore, at greater than no-wake speed within 200 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a lake or river;

(b) at greater than the minimum speed necessary to operate a personal watercraft when leaving or returning directly from or to a dock or shore for the purpose of launching or docking; or

(4) on any surface waters restricted in whole or in part by rule of the ~~fish, wildlife, and parks~~ commission and board;

(5) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation."

{*Internal References to 23-2-531: None.*}

Section 30. Section 23-2-601, MCA, is amended to read:

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

"23-2-601. Definition of terms. As used in ~~23-2-601,~~
~~23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621,~~
~~23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through~~
~~23-2-644~~ this part, unless the context requires otherwise, the
following definitions apply:

(1) "Board" means the state parks, recreation, and heritage
board established in [section 1].

~~(1)~~(2) "Certificate of registration" means the owner's
receipt evidencing payment of fees due in order for the
snowmobile to be validly registered.

~~(2)~~(3) "Certificate of title" means the document issued by
the department of justice as prima facie evidence of ownership.

(4) "Commission" means the fish and wildlife commission
established in 2-15-3402.

~~(3)~~(5) "dbA" means sound pressure level measured on the "A"
weight scale in decibels.

~~(4)~~(6) "Department" means the department of fish, wildlife,
and parks of the state of Montana.

~~(5)~~(7) "New snowmobile" means a snowmobile that has not
been previously sold to an owner.

~~(6)~~(8) "Operator" includes each person who operates or is
in actual physical control of the operation of a snowmobile.

~~(7)~~(9) "Owner" includes each person, other than a
lienholder or person having a security interest in a snowmobile,
that holds a certificate of title to a snowmobile and is entitled
to the use or possession of the snowmobile.

~~(8)~~(10) "Person" means an individual, partnership,

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

~~(9)~~(11) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

~~(10)~~(12) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

~~(11)~~(13) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana.

(14) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(15) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and for the designation of open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(16) "Snowmobiler" means any person operating or riding a snowmobile."

{Internal References to 23-2-601:

15-1-122 x	23-2-601 a	23-2-614 x	23-2-614 x
23-2-614 x	23-2-631 x	23-2-631 x	23-2-631 x
23-2-634 x	23-2-634 x	23-2-641 a	23-2-641 a
23-2-642 x	23-2-642 x	23-2-642 x	23-2-644 x
23-2-652 r	30-11-701 x	30-14-2501 x	61-4-201 x
61-4-222 x	61-4-402 x}		

Section 31. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

- (i) of search, seizure, and arrest;
- (ii) to investigate activities in this state regulated by

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

{*Internal References to 23-2-641:*

15-1-122 * x 23-2-601 * a 23-2-614 * x 23-2-614 * x
23-2-614 * x 23-2-615 x 23-2-631 * x 23-2-631 * x
23-2-631 * x 23-2-634 * x 23-2-634 * x 23-2-641 * a
23-2-641 * a 23-2-642 * x 23-2-642 * x 23-2-642 * x
23-2-644 * x}

Section 32. Section 23-2-801, MCA, is amended to read:

"23-2-801. Definition. ~~(1)~~ As used in this part, the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board established in [section 1].

(2) "Commission" means the fish and wildlife commission established in 2-15-3402.

(3)(a) ~~"off-highway~~ "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

~~(2) Off-highway vehicle~~ (b) The term does not include:

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~(a)(i)~~ vehicles designed primarily for travel on, over, or in the water;

~~(b)(ii)~~ snowmobiles; or

~~(c)(iii)~~ except as provided in 23-2-804, vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands."

{*Internal References to 23-2-801:*

15-68-101 x 23-1-128 x 30-11-701x 61-4-201 x
61-4-222 x 61-4-402x }

Section 33. Section 23-2-806, MCA, is amended to read:

"23-2-806. Enforcement. (1) The department of fish, wildlife, and parks enforcement personnel, park rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and

(c) to report violations to the county attorney of the county in which they occur.

(3) Park rangers may not carry firearms in the execution of

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

their duties."

{*Internal References to 23-2-806: None.*}

Section 34. Section 37-47-310, MCA, is amended to read:

"37-47-310. Transfer or amendment of outfitter's license -- transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4)(a) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

transferred river-use days is subject to change pursuant to rules adopted by the fish, and wildlife, ~~and parks~~ commission and that a property right does not attach to the transferred river-use days.

(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted by the state parks, recreation, and heritage board pursuant to 23-2-408."

{*Internal References to 37-47-310: None.*}

Section 35. Section 75-1-220, MCA, is amended to read:

"75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

(2) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, and wildlife, ~~and parks~~ commission, as provided for in 2-15-3402, and the state parks, recreation, and heritage board, as provided for

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

in [section 1];

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(3) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(4) "Cumulative impacts" means the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, 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).

(7) "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies;
or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."

{*Internal References to 75-1-220: None.*}

Section 36. Section 77-1-405, MCA, is amended to read:

"77-1-405. Island parks established -- development limited.

(1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the ~~fish, wildlife, and parks commission~~ state parks, recreation, and heritage board established in [section 1];

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after April 30, 1997."

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

{*Internal References to 77-1-405: None.*}

Section 37. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

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

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{*Internal References to 85-2-102:*

75-5-410x 82-4-355x 85-2-141 x 85-2-340 x }

Section 38. Section 87-1-101, MCA, is amended to read:

"87-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board provided for in [section 1].

~~(1)~~(2) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

~~(2)~~(3) "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.

~~(3)~~(4) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

~~(4)~~(5) "Warden" means a state fish and game warden."

{*Internal References to 87-1-101: None.*}

Section 39. Section 87-1-106, MCA, is amended to read:

"87-1-106. Fish, wildlife, and parks offices. The principal

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

offices of the commission, board, and department shall be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water shall be furnished by the state of Montana."

{*Internal References to 87-1-106: None.*}

Section 40. Section 87-1-202, MCA, is amended to read:

"87-1-202. Publication of orders and rules. (1) Except as provided in subsection (2), annual and biennial rules adopted by the commission or board setting seasonal hunting, fishing, trapping, and land use regulations must be published in a pamphlet format that is made available to the public at all department offices and through all license providers.

(2) Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures for management purposes, must be indicated to the public by signs on the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

- (i) use of the department's website;
- (ii) use of a telephone hotline number; or
- (iii) any other method that is readily available to the

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

{*Internal References to 87-1-202: None.*}

Section 41. Section 87-1-209, MCA, is amended to read:

"87-1-209. (Temporary) Acquisition and sale of land or water. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon land or water for the purposes listed in this subsection. Any acquisition of land or water rights for purposes of this subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above the purchase price to be used for maintenance of land or water acquired by the department. The additional amount above the purchase price or \$300,000, whichever is less, must be deposited

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

in the account established in 87-1-230. As used in this subsection, "maintenance" means that term as defined in and consistent with the good neighbor policy in 23-1-127(2). The department may develop, operate, and maintain acquired land or water rights:

- (a) for fish hatcheries or nursery ponds;
- (b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, land or structures for the preservation of ~~historical~~ historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of land and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state land and with or without reservation, as it

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

considers necessary and advisable. The department, with the consent of the commission or board, may convey department land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the land or water right is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the land or water right as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey land and water rights without covenants of warranty by deed executed by the governor or

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land. (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries or nursery ponds;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of ~~historical~~ historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission or board, may convey department lands and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

{*Internal References to 87-1-209:*

23-1-102 a	23-1-126 x	23-1-127 x	70-30-102 x
87-1-218 x	87-1-230 x	87-1-242 x	87-1-242 x
87-1-301 a	87-1-301 a	87-1-303 x	

Section 42. Section 87-1-218, MCA, is amended to read:

"87-1-218. Notice of proposed land acquisitions. (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission or board for its consent.

(3) The notice must include:

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

(d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission or board and information on how the board of county commissioners may provide comment."

{*Internal References to 87-1-218:*

87-1-209 a 87-1-209a 87-1-209a 87-1-209a }

Section 43. Section 87-1-301, MCA, is amended to read:

~~"87-1-301. (Temporary) Powers of commission. (1) Except as provided in subsection (7), the commission:~~

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

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

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

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

~~— (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in~~

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~87-1-209(4);~~

~~— (f) shall review and approve the budget of the department prior to its transmittal to the budget office;~~

~~— (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and~~

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

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

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

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

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

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

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

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

~~(iv) limit the number of licenses sold.~~

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

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

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

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

~~(5) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:~~

~~(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and~~

~~(b) giving a qualifying landowner a preference in drawings.~~

~~As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit~~

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~for wildlife, as determined by the commission.~~

~~—— (6) (a) The commission may adopt rules to:~~

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

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

~~—— (b) The commission shall consider, but is not limited to consideration of, the following factors:~~

~~—— (i) harvest of lions by resident and nonresident hunters;~~

~~—— (ii) history of quota overruns;~~

~~—— (iii) composition, including age and sex, of the lion harvest;~~

~~—— (iv) historical outfitter use;~~

~~—— (v) conflicts among hunter groups;~~

~~—— (vi) availability of public and private lands; and~~

~~—— (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.~~

~~—— (7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:~~

~~—— (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;~~

~~—— (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;~~

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

~~— (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);~~

~~— (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or~~

~~— (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).~~

87-1-301. (Effective March 1, 2012) Powers of commission.

(1) Except as provided in ~~subsection~~ subsections (7) and (8), the commission:

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

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

(c) except as provided in [section 2], 23-2-502(1), and 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

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

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

(f) except as provided in [section 2], shall review and

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

approve the budget of the department prior to its transmittal to the budget office;

(g) except as provided in [section 2], shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

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

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

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

(4) (a) The commission may adopt rules regarding

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

nonresident big game combination licenses to:

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

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

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

(iv) limit the number of licenses sold.

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

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

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

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

(5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

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

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

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

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

(8) Pursuant to [section 2], the commission does not oversee department activities related to the administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9."

{*Internal References to 87-1-301:*

87-1-265 x 87-1-303 a 87-1-304 x 87-1-304x }

Section 44. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) Except as provided in [section 2], 87-1-307(7), and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

listed in 87-1-209.

(2) Except as provided in [section 2], 23-2-502(1), and 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

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

(i) require a fee for domestic livestock trailing or related activities; or

(ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

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

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

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

{*Internal References to 87-1-303:*

23-2-302 x 87-1-265 x 87-1-301 a 87-1-301a }

Section 45. Section 87-1-306, MCA, is amended to read:

"87-1-306. Designation of certain river stretches as

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

no-wake waters -- personal watercraft use prohibited. (1) In the interest of public health, safety, and welfare and protection of property and public resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their reservoirs.

(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.

(3) This section does not apply to the use of the designated waters for search and rescue, official patrol, or scientific purposes.

(4) This section may not be construed to limit the authority of the commission, board, or department to enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public health, safety, or welfare, the protection of property or public resources, or the resolution of conflicts between users of motorized and nonmotorized boats."

{*Internal References to 87-1-306: None.*}

Section 46. Section 87-1-401, MCA, is amended to read:

"87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and board and shall adopt rules authorized by law to implement those policies."

{*Internal References to 87-1-401: None.*}

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

Section 47. Section 87-1-622, MCA, is amended to read:

"87-1-622. Forest management plan -- sustainable yield study required -- definition. (1) The commission and board shall adopt a forest management ~~plan~~ plans for lands under their jurisdiction, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission and board shall review and redetermine the annual sustainable yield for lands under their jurisdiction at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5."

{*Internal References to 87-1-622:*

87-1-201 x 87-1-621 x 87-1-621x 87-1-621 x
87-1-621x }

Section 48. Section 87-4-432, MCA, is amended to read:

"87-4-432. Alternative livestock advisory council -- appointment of members -- duties. (1) There is an alternative livestock advisory council to advise the department on the administration of alternative livestock ranches in this state.

(2) The alternative livestock advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

(b) one member of the fish, and wildlife, ~~and parks~~ commission or the department;

(c) one member who is a representative of the alternative livestock industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons

of Montana.

(3) Members of the alternative livestock advisory council shall serve staggered 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The alternative livestock advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions."

{*Internal References to 87-4-432: None.*}

NEW SECTION. **Section 49. {standard} Repealer.** The following sections of the Montana Code Annotated are repealed:

22-3-1002. Montana heritage preservation and development commission.

23-2-652. Definitions.

{*Internal References to 22-3-1002: None.*}

*Internal References to 23-2-652: 23-2-652 *r 23-2-657 *a 23-2-657 * a }*

NEW SECTION. **Section 50. Name change -- directions to code commissioner.** (1) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to fish and wildlife, the code commissioner is directed to change it to an appropriate reference to the fish and wildlife commission.

(2) Unless otherwise provided, wherever a reference to the

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

fish, wildlife, and parks commission, meaning the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to state parks or recreational resources under Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the code commissioner is directed to change it to an appropriate reference to the state parks, recreation, and heritage board.

(3) Unless otherwise provided, wherever a reference to the Montana heritage preservation and development commission, meaning the commission established in 22-3-1002, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to heritage resources under Title 22, chapter 3, part 10, the code commissioner is directed to change it to an appropriate reference to the state parks, recreation, and heritage board.

NEW SECTION. **Section 51. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 34, and the provisions of Title 2, chapter 15, part 34, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 2].

NEW SECTION. **Section 52. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the

Unofficial Draft Copy

As of: April 16, 2012 (3:32pm)

LC9001

effective date of this act].

NEW SECTION. **Section 53. {standard} Effective date.** [This act] is effective July 1, 2013.

- END -

{Name : Hope E. Stockwell
Title : Research Analyst
Agency: LEPO
Phone : 444-1640
E-Mail: hstockwell@mt.gov}

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the state parks, recreation, and heritage board; providing powers and duties; granting rulemaking authority; renaming the fish, wildlife, and parks commission; transforming the Montana heritage preservation and development commission into an advisory council; amending sections 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402, 2-15-3404, 16-4-205, 16-4-305, 22-3-1001, 22-3-1002, 22-3-1003, 22-3-1004, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403, 23-2-404, 23-2-408, 23-2-410, 23-2-502, 23-2-506, 23-2-525, 23-2-529, 23-2-531, 23-2-601, 23-2-641, 23-2-801, 23-2-806, 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202, 87-1-209, 87-1-218, 87-1-301, 87-1-303, 87-1-306, 87-1-401, 87-1-622, and 87-4-432, MCA; repealing section 23-2-652, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. State parks, recreation, and heritage board -- composition.** (1) There is a state parks, recreation, and heritage board.

(2) The board consists of five members appointed by the governor, as prescribed in 2-15-124. The governor shall appoint one member from each of the following districts:

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of state parks and outdoor recreational and heritage resources administered pursuant to Title 22, chapter 3, part 10, Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9.

(4) A person appointed to the board must be informed or experienced in the conservation and protection of state parks, heritage resources, natural resources, tourism promotion and development, or outdoor recreation.

(5) A vacancy on the board must be filled by the governor in the same manner and from the district in which the vacancy

occurs.

(6) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(7) The administrator of the division that oversees state parks is the secretary of the board.

NEW SECTION. **Section 2. Powers and duties of board -- rulemaking.** (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 22, chapter 3, part 10, Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the board shall:

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

(i) the management, protection, conservation, and preservation of these properties, lands, and waters in a way that promotes their importance to tourism and the economic health of Montana;

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

(b) work with the commission to maintain hunting and angling

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties, lands, and waters. The rules must be adopted in the interest of public health, public safety, and protection of property and public resources in regulating swimming, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers by the department of interest in these properties, lands, and waters;

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

(f) except for properties and lands administered pursuant to Title 22, chapter 3, part 10, review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000;

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

(h) encourage citizen involvement in management planning for

these properties, lands, and waters.

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

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

Section 3. Section 2-15-3110, MCA, is amended to read:

"2-15-3110. Livestock loss board -- purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(b) three members from a list of names recommended by the fish, and wildlife, ~~and parks~~ commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

{*Internal References to 2-15-3110:*
2-15-3110 *a 81-1-110 * x}

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss board. (1) The livestock loss board shall:

(a) process claims;

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, and wildlife, ~~and parks~~ commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

{*Internal References to 2-15-3113:*

2-15-3110a	2-15-3110 *a	2-15-3112x	2-15-3113 a
2-15-3113 *a	2-15-3114 x	81-1-110 x	81-1-110 * x
81-1-110 x	87-1-217 x		

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

Section 5. Section 2-15-3401, MCA, is amended to read:

"2-15-3401. Department of fish, wildlife, and parks -- head. There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The director is the secretary of the fish and wildlife commission established in 2-15-3402."

{*Internal References to 2-15-3401:*

2-17-803 x 17-7-161 x 23-2-301 a 23-2-403 a
23-2-536 x 87-1-101 a 87-1-256x }

Section 6. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish, and wildlife, ~~and parks~~ commission. (1)
There is a fish, and wildlife, ~~and parks~~ commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of fish, and wildlife, ~~and state parks~~ and ~~other outdoor~~ related recreational resources of this state. A person may not be appointed to the commission unless the person is informed or interested and experienced in the subject of fish, wildlife, ~~parks~~, and ~~outdoor~~ recreation and the requirements for the conservation and protection of fish, wildlife, ~~parks~~, and ~~outdoor~~ recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish, and wildlife, ~~and parks~~ commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."

{*Internal References to 2-15-3402:*

23-2-301a 23-2-403a 75-1-220 a 85-2-102 a
87-1-101a }

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

Section 7. Section 2-15-3404, MCA, is amended to read:

"2-15-3404. Fish, wildlife, and parks crimestoppers board.

(1) There is a fish, wildlife, and parks crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

(i) a person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of a hunter's, angler's, or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member of the public with an interest in parks and recreation.

(b) The fifth member is a member of the fish, and wildlife, ~~and parks~~ commission who must be designated by the commission.

(3) The board shall elect a presiding officer from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121."

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

{*Internal References to 2-15-3404:
87-5-602 x*}

Section 8. Section 16-4-205, MCA, is amended to read:

"16-4-205. Limit one license to person -- business in name of licensee. (1) A person may not be issued more than one all-beverages license in any year, with the exception of a secured party issued an additional all-beverages license as the result of a default. A secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance. A business may not be carried on under any license issued under this chapter except in the name of the licensee.

(2) The provisions of this section do not apply to licenses held by the ~~Montana heritage preservation and development commission~~ department of fish, wildlife, and parks under the provisions of 16-4-305."

{*Internal References to 16-4-205: None.*}

Section 9. Section 16-4-305, MCA, is amended to read:

"16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota. (1) (a) The ~~Montana heritage preservation and development commission~~ department of fish, wildlife, and parks may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

retail liquor licenses.

(b) The department may issue a wine amendment pursuant to 16-4-105(2) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

(2) The ~~Montana heritage preservation and development commission~~ department of fish, wildlife, and parks may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail liquor licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that ~~have been~~ were transferred to the former Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999."

{*Internal References to 16-4-305:*
16-4-205a }

Section 10. Section 22-3-1001, MCA, is amended to read:

"22-3-1001. Purpose -- definitions. (1) The purpose of this part is to acquire and manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, are genuinely representative of the state's culture and history, and demonstrate the ability to become economically self-supporting. ~~The Montana heritage~~

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~preservation and development commission~~ Subject to 22-3-1003(8),
the department shall achieve this purpose by purchasing fee title
interests in real and personal property and by managing those
properties in a manner that protects the properties and
encourages economic independence.

(2) For the purposes of this part, the following
definitions apply:

(a) "Board" means the state parks, recreation, and heritage
board established in [section 1].

(b) "Department" means the department of fish, wildlife, and
parks established in 2-15-3401."

{*Internal References to 22-3-1001:*
22-3-1003 a}

Section 11. Section 22-3-1002, MCA, is amended to read:

**"22-3-1002. ~~Montana heritage~~ Heritage preservation and
development commission advisory council.** (1) There is a Montana
heritage preservation and development ~~commission~~ advisory
council. ~~The commission is attached to the department of commerce
for administrative purposes only, pursuant to 2-15-121. The
commission and the department shall negotiate a specific indirect
administrative rate annually, with biennial review by a
designated, appropriate legislative interim committee.~~

(2) The ~~commission~~ advisory council consists of 14 members.
The members shall broadly represent the state. Nine members must
be appointed by the ~~governor~~ department, one member must be
appointed by the president of the senate, and one member must be
appointed by the speaker of the house. The director of the

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

Montana historical society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce shall serve as members. Of the members appointed by the ~~governor~~ department:

(a) one member must have extensive experience in managing facilities that cater to the needs of tourists;

(b) one member must have experience in community planning;

(c) one member must have experience in historic preservation;

(d) two members must have broad experience in business;

(e) one member must be a member of the tourism advisory council established in 2-15-1816;

(f) one member must be a Montana historian; and

(g) two members must be from the public at large.

(3) Except for the initial appointments, members appointed by the ~~governor~~ department shall serve 3-year terms. Legislative appointees shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) The advisory council shall review and make recommendations to the board regarding:

(a) the management, use, conservation, and preservation of artifact collections, historic sites, and heritage resources administered by the board; and

(b) the acquisition or sale of properties and lands administered pursuant to this part.

~~(4) (a) The commission may employ:~~

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~(i) an executive director who has general responsibility for the selection and management of commission staff, developing recommendations for the purchase of property, and overseeing the management of acquired property;~~

~~(ii) a curator who is responsible for the display and preservation of the acquired property; and~~

~~(iii) other staff that the commission and the executive director determine are necessary to manage and operate commission properties.~~

~~(b) The commission shall prescribe the duties and annual salary of the executive director, the curator, and other commission staff."~~

{Internal References to 22-3-1002: None.}

Section 12. Section 22-3-1003, MCA, is amended to read:

"22-3-1003. Powers of commission and duties of department and board -- contracts -- rules. (1) (a) The Montana heritage preservation and development commission department may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) The provisions of Title 18 may not be construed as prohibiting contracts under this section from being let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects or projects at historic sites unless stated in specific state appropriations for

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

construction permitted under the ~~commission's~~ department's jurisdiction pursuant to this part.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with ~~commission~~ department rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the ~~commission~~ department. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the ~~commission~~ department may not contract for the construction of a building, as defined in 18-2-101, in excess of \$300,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the ~~Montana department of fish, wildlife, and parks~~. Funding for these projects must pass through directly to the ~~commission~~ department.

(b) The ~~commission~~ department may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds \$300,000 without legislative consent if the ~~commission~~ department determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in

the future.

(3) (a) Subject to subsection (3)(b), the ~~commission~~ department, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the ~~commission~~ department.

(b) (i) Until the balance in the cultural and aesthetic trust reaches \$7,750,000, the ~~commission~~ department shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.

(ii) Once the balance in the cultural and aesthetic trust reaches \$7,750,000, the ~~commission~~ department shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

(c) It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.

(4) The ~~commission~~ department may solicit funds from other sources, including the federal government, for the purchase, management, and operation of properties.

(5) (a) The ~~commission~~ department may use volunteers to further the purposes of this part.

(b) The ~~commission~~ department and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The ~~commission~~

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

department shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The ~~commission~~ department may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The ~~commission~~ board shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and ~~commission~~ board members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the ~~commission~~ board only if the recommendation is supported by a majority of the members of the subcommittee.

(8) The ~~commission~~ board shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(e) whether the acquisition or sale will create significant social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the director of the Montana historical society;

(g) whether the ~~commission~~ board should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the ~~commission~~ board should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and

(i) other matters that the ~~commission~~ board considers necessary or appropriate.

(9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.

(10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition or sale of real property before a final decision to acquire or sell the property is made. The ~~commission~~ board shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the board of land commissioners.

(11) The ~~commission~~ department, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets ~~owned by the commission~~ controlled by the department pursuant to this

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

part. Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.

(12) Prior to the convening of each regular session, the ~~commission~~ department shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets."

{*Internal References to 22-3-1003:*
18-2-102 x}

Section 13. Section 22-3-1004, MCA, is amended to read:

"22-3-1004. Montana heritage preservation and development account. (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund and in the federal special revenue fund.

(b) The ~~Montana heritage preservation and development~~ ~~commission~~ department shall deposit any federal money that the ~~commission~~ department obtains into the appropriate account provided for in this section.

(2) Money deposited in the accounts must be used for:

(a) the purchase of properties in Virginia City and Nevada City;

(b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of

preservation.

(3) The accounts are statutorily appropriated, as provided in 17-7-502, to the ~~commission~~ department to be used as provided in this section.

(4) Unless otherwise prohibited by law or agreement, all interest earned on money in the accounts must be deposited in the state special revenue fund to the credit of the ~~commission~~ department."

{Internal References to 22-3-1004:
15-65-121 x 17-7-502 x 22-3-1003x }

Section 14. Section 23-1-101, MCA, is amended to read:

"23-1-101. Purpose -- definitions. (1) For the purpose of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing for their use and enjoyment, thereby contributing to the cultural, recreational, and economic life of the people and their health, the department of fish, wildlife, and parks (~~hereinafter referred to as department~~) is hereby vested with the duties and powers hereinafter set forth.

(2) For the purposes of this part, the following definitions apply:

(a) "Board" means the state parks, recreation, and heritage board established in [section 1].

(b) "Commission" means the fish and wildlife commission established in 2-15-3402.

(c) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(d) "Director" means the director of the department of fish, wildlife, and parks as provided in 2-15-3401."

{*Internal References to 23-1-101:*
23-2-402x 23-2-407x }

Section 15. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of ~~fish, wildlife, and parks~~. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. The department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state ~~historical~~ historic sites. The department, with the consent of the ~~commission~~ board, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).

(2) The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

the acquisition.

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, ~~historical~~ historic sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system.

(5)(a) The Except as provided in subsection (5)(b), the
department may:

(i) designate lands under its control as state parks, state ~~historical~~ historic sites, state monuments, or by any other designation that it considers appropriate.; ~~The department may~~

(ii) remove or change the designation of any area or portion of an area and may name or change the name of any area.; and The
~~department may~~

(iii) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part.

(b) The department may not designate state-owned facilities and properties at Virginia City and Nevada City as a state park."

{*Internal References to 23-1-102:*
15-35-108 x 15-35-108 x 15-35-108 x 23-1-108 a
23-2-404 a 70-30-102 x}

Section 16. Section 23-1-106, MCA, is amended to read:

"23-1-106. Rules -- penalties -- enforcement. (1) The department may make rules governing the use, occupancy, and protection of the property under its control.

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(2) ~~Any~~ A person who violates ~~any of the rules made by the department~~ this section or a rule established pursuant to ~~subsection (1)~~ this section is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.

(3) ~~It is unlawful and a misdemeanor punishable as provided in subsection (2) to~~ A person may not refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the ~~fish, wildlife, and parks commission~~ board; and

(c) to report violations to the county attorney of the county in which they occur."

{*Internal References to 23-1-106: None.*}

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

Section 17. Section 23-1-108, MCA, is amended to read:

"23-1-108. Acquisition of certain state parks, monuments, or ~~historical~~ historic sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department ~~of fish, wildlife, and parks~~ by July 1 of the year preceding the convening of a legislative session.

(2) The ~~fish, wildlife, and parks commission~~ board shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state ~~historical~~ historic sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased."

{*Internal References to 23-1-108: None.*}

Section 18. Section 23-1-110, MCA, is amended to read:

"23-1-110. Improvement or development of state park or fishing access site -- required public involvement -- rules. (1) ~~The fish, wildlife, and parks commission shall adopt rules establishing a policy whereby any~~ Any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal. Rules to govern the notice, meeting, and comment process must be adopted:

(a) for state parks by the board; and

(b) for fishing access sites by the commission.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole."

{*Internal References to 23-1-110:*
2-17-532 x}

Section 19. Section 23-1-121, MCA, is amended to read:

"23-1-121. Park rangers -- qualifications -- powers and duties. (1) The department is authorized to establish a corps of

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

park rangers and to select and appoint park rangers who must be qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall enforce the laws of this state and the rules of the department and the ~~fish, wildlife, and parks commission board~~ that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system.

(3) Park rangers shall protect campers, picnickers, and other park users; keep the peace; supervise public use; and maintain public order in all units of the state parks system.

(4) Park rangers shall perform all other duties prescribed by the department."

{*Internal References to 23-1-121:*
23-1-122a }

Section 20. Section 23-1-122, MCA, is amended to read:

"23-1-122. Enforcement powers of park rangers and game wardens. (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department, the board, or the ~~fish, wildlife, and parks~~ commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department, the board, and the ~~fish, wildlife, and parks~~ commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c)."

{*Internal References to 23-1-122: None.*}

Section 21. Section 23-2-301, MCA, is amended to read:

"23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

lakes, that:

(a) lie within the officially recorded federal government survey meander lines of the waters;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

{*Internal References to 23-2-301:*

7-14-2615 x 23-2-302 x 60-2-107 x 61-8-371 x
61-8-371 x 61-8-371 x}

Section 22. Section 23-2-403, MCA, is amended to read:

"23-2-403. Definitions. As used in this part, the following definitions apply:

~~(1) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

(1) "Board" means the state parks, recreation, and heritage board established in [section 1].

(2) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401."

{*Internal References to 23-2-403: None.*}

Section 23. Section 23-2-404, MCA, is amended to read:

"23-2-404. Applicability. This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between the Camp Baker state ~~fishing access site~~ park in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102."

{Internal References to 23-2-404:
23-2-407x }

Section 24. Section 23-2-408, MCA, is amended to read:

"23-2-408. Rulemaking authority. The ~~commission~~ board has authority to provide for the administration of the Smith River waterway. The ~~commission~~ board may adopt rules to:

(1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

river corridor that is under the control of the department and commission board:

(a) for the purposes of safety, health, and protection of property;

(b) to preserve the experience of floating, fishing, and camping in a natural environment;

(c) to protect the river's fish, wildlife, water, and canyon resources; and

(d) to minimize conflicts between recreationists and private landowners; and

(4) establish recreational and commercial user fees for floating and camping on the Smith River waterway."

{*Internal References to 23-2-408:*
23-2-409 x }

Section 25. Section 23-2-410, MCA, is amended to read:

"23-2-410. Penalty -- enforcement. (1) A person who violates a rule of the commission board adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than \$50 or more than \$500, or by imprisonment in a county jail for not more than 6 months, or ~~by both fine and imprisonment.~~

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by

this part and rules of the department and the commission and board; and

(c) to report violations to the county attorney of the county in which they occur."

{*Internal References to 23-2-410: None.*}

Section 26. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board established in [section 1]. For the purposes of this part, the board has jurisdiction over all waters immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters administered pursuant to Title 23, chapter 2, part 4.

~~(1)~~(2) "Certificate of number" means the certificate issued by the department of justice, an authorized agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(3) "Commission" means the fish and wildlife commission established in 2-15-3402. For the purposes of this part, the commission has jurisdiction over all waters that are not immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters not administered pursuant to Title 23, chapter 2, part 4.

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~(2)~~(4) "Department" means the department of fish, wildlife, and parks ~~of the state of Montana~~ established in 2-15-3401.

~~(3)~~(5) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

~~(4)~~(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

~~(5)~~(7) "Lienholder" means a person holding a security interest.

~~(6)~~(8) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

~~(7)~~(9) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(8)~~(10) "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(9)~~(11) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(10)~~(12) (a) "Owner" means a person, other than a

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

~~(11)~~(13) "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

~~(12)~~(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(13)~~(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(14)~~(16) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

~~(15)~~(17) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(16)~~(18) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

~~(17)~~(19) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(18)~~(20) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard

numbering system.

~~(19)~~(21) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(20)~~(22) "Waters of this state" means any waters within the territorial limits of this state."

{Internal References to 23-2-502:

15-68-101 x 30-11-701 x 30-14-2501x 61-4-201 x
61-4-222 x 61-4-402x }

Section 27. Section 23-2-506, MCA, is amended to read:

"23-2-506. Enforcement. (1) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, ~~and the fish, wildlife, and parks~~ commission, and board; and

(c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended."

{Internal References to 23-2-506: None.}

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

Section 28. Section 23-2-525, MCA, is amended to read:

"23-2-525. Restricted areas. (1) A person may not anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a passageway ordinarily used by other vessels.

(2) A person may not operate a pleasure vessel within 20 feet of the exterior boundary of a water area that is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas must be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of the areas.

(3) A person may not operate a vessel within 75 feet of a person engaged in fishing or hunting waterfowl, unless unavoidable. If unavoidable, the vessel must be operated at not greater than no-wake speed or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing or hunting waterfowl.

(4) (a) A person may not purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 200 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 200-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the

operator.

(c) The ~~fish, wildlife, and parks~~ commission and board may by rule determine areas where establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic."

{*Internal References to 23-2-525:*
23-2-507x }

Section 29. Section 23-2-529, MCA, is amended to read:

"23-2-529. Waterskis and surfboards. (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device unless the operator is accompanied by an observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The ~~fish, wildlife, and parks~~ commission and board shall adopt rules regarding the proper observation and safe towing of persons on waterskis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed."

{Internal References to 23-2-529: None.}

Section 30. Section 23-2-531, MCA, is amended to read:

"23-2-531. Personal watercraft operation. In addition to applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless a person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel;

(3) (a) except as provided for standup personal watercraft in subsection (3)(b) or when towing a waterskier from or to a dock or shore, at greater than no-wake speed within 200 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a lake or river;

(b) at greater than the minimum speed necessary to operate a personal watercraft when leaving or returning directly from or to a dock or shore for the purpose of launching or docking; or

(4) on any surface waters restricted in whole or in part by rule of the ~~fish, wildlife, and parks~~ commission or board;

(5) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation."

{Internal References to 23-2-531: None.}

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

Section 31. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in ~~23-2-601,~~
~~23-2-602,~~ ~~23-2-611,~~ ~~23-2-614 through 23-2-618,~~ ~~23-2-621,~~
~~23-2-622,~~ ~~23-2-631 through 23-2-635,~~ and ~~23-2-641 through~~
~~23-2-644~~ this part, unless the context requires otherwise, the
following definitions apply:

(1) "Board" means the state parks, recreation, and heritage
board established in [section 1].

~~(1)~~(2) "Certificate of registration" means the owner's
receipt evidencing payment of fees due in order for the
snowmobile to be validly registered.

~~(2)~~(3) "Certificate of title" means the document issued by
the department of justice as prima facie evidence of ownership.

(4) "Commission" means the fish and wildlife commission
established in 2-15-3402.

~~(3)~~(5) "dbA" means sound pressure level measured on the "A"
weight scale in decibels.

~~(4)~~(6) "Department" means the department of fish, wildlife,
and parks of the state of Montana.

~~(5)~~(7) "New snowmobile" means a snowmobile that has not
been previously sold to an owner.

~~(6)~~(8) "Operator" includes each person who operates or is
in actual physical control of the operation of a snowmobile.

~~(7)~~(9) "Owner" includes each person, other than a
lienholder or person having a security interest in a snowmobile,
that holds a certificate of title to a snowmobile and is entitled
to the use or possession of the snowmobile.

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~(8)~~(10) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

~~(9)~~(11) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

~~(10)~~(12) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

~~(11)~~(13) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana.

(14) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(15) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and for the designation of open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

grooming contractors.

(16) "Snowmobiler" means any person operating or riding a snowmobile."

{Internal References to 23-2-601:

15-1-122 x	23-2-601 a	23-2-614 x	23-2-614 x
23-2-614 x	23-2-631 x	23-2-631 x	23-2-631 x
23-2-634 x	23-2-634 x	23-2-641 a	23-2-641 a
23-2-642 x	23-2-642 x	23-2-642 x	23-2-644 x
23-2-652 r	30-11-701 x	30-14-2501 x	61-4-201 x
61-4-222 x	61-4-402 x}		

Section 32. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(ii) to investigate activities in this state regulated by this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

{*Internal References to 23-2-641:*

15-1-122 * x 23-2-601 * a 23-2-614 * x 23-2-614 * x
23-2-614 * x 23-2-615 x 23-2-631 * x 23-2-631 *x
23-2-631 * x 23-2-634 * x 23-2-634 * x 23-2-641 * a
23-2-641 * a 23-2-642 *x 23-2-642 * x 23-2-642 *x
23-2-644 * x}

Section 33. Section 23-2-801, MCA, is amended to read:

"23-2-801. Definition. ~~(1)~~ As used in this part, the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board established in [section 1].

(2) "Commission" means the fish and wildlife commission established in 2-15-3402.

(3)(a) ~~"off-highway~~ "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~(2) Off-highway vehicle~~ (b) The term does not include:

~~(a)(i)~~ vehicles designed primarily for travel on, over, or in the water;

~~(b)(ii)~~ snowmobiles; or

~~(c)(iii)~~ except as provided in 23-2-804, vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands."

{*Internal References to 23-2-801:*

15-68-101 x 23-1-128 x 30-11-701x 61-4-201 x
61-4-222 x 61-4-402x }

Section 34. Section 23-2-806, MCA, is amended to read:

"23-2-806. Enforcement. (1) The department of fish, wildlife, and parks enforcement personnel, park rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and

(c) to report violations to the county attorney of the county in which they occur.

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(3) Park rangers may not carry firearms in the execution of their duties."

{*Internal References to 23-2-806: None.*}

Section 35. Section 37-47-310, MCA, is amended to read:

"37-47-310. Transfer or amendment of outfitter's license -- transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4)(a) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the

business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, and wildlife, ~~and parks~~ commission and that a property right does not attach to the transferred river-use days.

(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted by the state parks, recreation, and heritage board pursuant to 23-2-408."

{*Internal References to 37-47-310: None.*}

Section 36. Section 75-1-220, MCA, is amended to read:

"75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

(2) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, and wildlife, ~~and parks~~ commission, as provided for in 2-15-3402, and

the state parks, recreation, and heritage board, as provided for in [section 1];

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(3) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(4) "Cumulative impacts" means the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, 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).

(7) "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."

{*Internal References to 75-1-220: None.*}

Section 37. Section 77-1-405, MCA, is amended to read:

"77-1-405. Island parks established -- development limited.

(1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the ~~fish, wildlife, and parks commission~~ state parks, recreation, and heritage board established in [section 1];

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises

before, on, or after April 30, 1997."

{*Internal References to 77-1-405: None.*}

Section 38. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery

project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

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

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3,

chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{*Internal References to 85-2-102:*

75-5-410 82-4-355 85-2-141 85-2-340 }

Section 39. Section 87-1-101, MCA, is amended to read:

"87-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board provided for in [section 1].

~~(1)~~(2) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

~~(2)~~(3) "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.

~~(3)~~(4) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

~~(4)~~(5) "Warden" means a state fish and game warden."

{*Internal References to 87-1-101: None.*}

Section 40. Section 87-1-106, MCA, is amended to read:

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

"87-1-106. Fish, wildlife, and parks offices. The principal offices of the commission, board, and department shall be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water shall be furnished by the state of Montana."

{*Internal References to 87-1-106: None.*}

Section 41. Section 87-1-202, MCA, is amended to read:

"87-1-202. Publication of orders and rules. (1) Except as provided in subsection (2), annual and biennial rules adopted by the commission or board setting seasonal hunting, fishing, trapping, and land use regulations must be published in a pamphlet format that is made available to the public at all department offices and through all license providers.

(2) Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures for management purposes, must be indicated to the public by signs on the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

- (i) use of the department's website;
- (ii) use of a telephone hotline number; or

(iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

{*Internal References to 87-1-202: None.*}

Section 42. Section 87-1-209, MCA, is amended to read:

"87-1-209. (Temporary) Acquisition and sale of land or water. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon land or water for the purposes listed in this subsection. Any acquisition of land or water rights for purposes of this subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above the purchase price to be used for maintenance of land or water acquired by the department. The additional amount above the

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

purchase price or \$300,000, whichever is less, must be deposited in the account established in 87-1-230. As used in this subsection, "maintenance" means that term as defined in and consistent with the good neighbor policy in 23-1-127(2). The department may develop, operate, and maintain acquired land or water rights:

- (a) for fish hatcheries or nursery ponds;
- (b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, land or structures for the preservation of ~~historical~~ historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of land and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

disposal of state land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission or board, may convey department land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the land or water right is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the land or water right as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey land and water rights

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land. (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries or nursery ponds;
- (b) as lands or water suitable for game, bird, fish, or

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of ~~historical~~ historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission or board, may convey department lands and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

{*Internal References to 87-1-209:*
23-1-102 23-1-126 23-1-127 70-30-102
87-1-218 87-1-230 87-1-242 87-1-242
87-1-301 87-1-301 87-1-303 }

Section 43. Section 87-1-218, MCA, is amended to read:

"87-1-218. Notice of proposed land acquisitions. (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission or board for its consent.

(3) The notice must include:

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

(d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission or board and information on how the board of county commissioners may provide comment."

{*Internal References to 87-1-218:*
87-1-209 a 87-1-209a 87-1-209a 87-1-209a }

Section 44. Section 87-1-301, MCA, is amended to read:

~~"87-1-301. (Temporary) Powers of commission. (1) Except as provided in subsection (7), the commission:~~

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

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

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

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

~~— (e) shall approve all acquisitions or transfers by the~~

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~department of interests in land or water, except as provided in 87-1-209(4);~~

~~— (f) shall review and approve the budget of the department prior to its transmittal to the budget office;~~

~~— (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and~~

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

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

~~— (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's~~

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~youth and persons with disabilities.~~

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

~~—— (i) separate deer licenses from nonresident elk combination licenses;~~

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

~~—— (iii) condition the use of the deer licenses; and~~

~~—— (iv) limit the number of licenses sold.~~

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

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

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

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

~~—— (5) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:~~

~~—— (a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and~~

~~—— (b) giving a qualifying landowner a preference in drawings.~~

~~As used in this subsection (5)(b), "qualifying landowner" means~~

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.~~

~~—— (6) (a) The commission may adopt rules to:~~

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

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

~~—— (b) The commission shall consider, but is not limited to consideration of, the following factors:~~

~~—— (i) harvest of lions by resident and nonresident hunters;~~

~~—— (ii) history of quota overruns;~~

~~—— (iii) composition, including age and sex, of the lion harvest;~~

~~—— (iv) historical outfitter use;~~

~~—— (v) conflicts among hunter groups;~~

~~—— (vi) availability of public and private lands; and~~

~~—— (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.~~

~~—— (7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:~~

~~—— (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;~~

~~—— (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and~~

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

~~arrows, traditional handguns, and muzzleloading rifles;~~

~~— (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);~~

~~— (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or~~

~~— (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).~~

87-1-301. (Effective March 1, 2012) Powers of commission.

(1) Except as provided in ~~subsection~~ subsections (7) and (8), the commission:

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

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

(c) except as provided in [section 2], 23-2-502(1), and 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

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

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

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(f) except as provided in [section 2], shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) except as provided in [section 2], shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

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

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

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

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

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

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

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

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

(iv) limit the number of licenses sold.

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

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

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

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

(5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

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

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

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

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

(8) Pursuant to [section 2], the commission does not oversee department activities related to the administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9."

{*Internal References to 87-1-301:*

87-1-265 87-1-303 87-1-304 87-1-304 }

Section 45. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) Except as provided in [section 2], 87-1-307(7), and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) Except as provided in [section 2], 23-2-502(1), and 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

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

(i) require a fee for domestic livestock trailing or related activities; or

(ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

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

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

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

{*Internal References to 87-1-303:*

23-2-302 x 87-1-265 x 87-1-301 a 87-1-301a }

Section 46. Section 87-1-306, MCA, is amended to read:

"87-1-306. Designation of certain river stretches as no-wake waters -- personal watercraft use prohibited. (1) In the interest of public health, safety, and welfare and protection of property and public resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their reservoirs.

(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.

(3) This section does not apply to the use of the designated waters for search and rescue, official patrol, or scientific purposes.

(4) This section may not be construed to limit the authority of the commission, board, or department to enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public health, safety, or welfare, the protection of property or public resources, or the resolution of conflicts between users of motorized and nonmotorized boats."

{*Internal References to 87-1-306: None.*}

Section 47. Section 87-1-401, MCA, is amended to read:

"87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and board and shall adopt rules authorized by law to implement those policies."

{*Internal References to 87-1-401: None.*}

Section 48. Section 87-1-622, MCA, is amended to read:

"87-1-622. Forest management plan -- sustainable yield study required -- definition. (1) The commission and board shall adopt a forest management ~~plan~~ plans for lands under their jurisdiction, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission and board shall review and redetermine the annual sustainable yield for lands under their jurisdiction at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into

Unofficial Draft Copy

As of: April 16, 2012 (3:35pm)

LC9002

account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5."

{*Internal References to 87-1-622:*

87-1-201 x 87-1-621 x 87-1-621x 87-1-621 x
87-1-621x }

Section 49. Section 87-4-432, MCA, is amended to read:

"87-4-432. Alternative livestock advisory council -- appointment of members -- duties. (1) There is an alternative livestock advisory council to advise the department on the administration of alternative livestock ranches in this state.

(2) The alternative livestock advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

(b) one member of the fish, and wildlife, ~~and parks~~ commission or the department;

(c) one member who is a representative of the alternative livestock industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the alternative livestock advisory council shall serve staggered 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The alternative livestock advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions."

{*Internal References to 87-4-432: None.*}

NEW SECTION. Section 50. {standard} Repealer. The following section of the Montana Code Annotated is repealed: 23-2-652. Definitions.

{*Internal References to 23-2-652: 23-2-652 * r 23-2-657 *a 23-2-657 *a*}

NEW SECTION. Section 51. Name change -- directions to code commissioner. (1) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to fish and wildlife, the code commissioner is directed to change it to an appropriate reference to the fish and wildlife commission.

(2) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission

established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to state parks or recreational resources under Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the code commissioner is directed to change it to an appropriate reference to the state parks, recreation, and heritage board.

(3) Unless otherwise provided, wherever a reference to the Montana heritage preservation and development commission, meaning the commission established in 22-3-1002, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to heritage resources under Title 22, chapter 3, part 10, the code commissioner is directed to change it to an appropriate reference to the state parks, recreation, and heritage board.

NEW SECTION. Section 52. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 34, and the provisions of Title 2, chapter 15, part 34, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 2].

NEW SECTION. Section 53. {standard} Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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As of: April 16, 2012 (3:35pm)

LC9002

NEW SECTION. **Section 54. {standard} Effective date.** [This act] is effective July 1, 2013.

- END -

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As of: June 21, 2012 (9:46am)

**** Joint Resolution No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of ways to improve the marketing, management, operation, maintenance, and funding of state-owned sites at Virginia City and Nevada City.

WHEREAS, the state-owned historic sites at Virginia City and Nevada City are among the most valuable and fascinating historic sites in Montana and are a tremendous resource for all residents, families, schools, surrounding communities, and Montana's economy; and

WHEREAS, the proximity of Virginia City and Nevada City to Yellowstone national park make them ripe to capitalize on the millions of visitors that travel to or through the area each year; and

WHEREAS, the 1997 legislature authorized the purchase of these properties in Virginia City and Nevada City, including 248 buildings, 160 acres, and over one-million artifacts for \$6.5 million dollars; and

WHEREAS, the 1997 legislature stipulated that the state-owned sites in Virginia City and Nevada City must be managed to become self-sufficient and profitable and that no general fund monies are to be given to them in the future; and

WHEREAS, subsequent legislatures have not altered that

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As of: June 21, 2012 (9:46am)

LC9010

statutory directive; and

WHEREAS, the Montana heritage preservation and development commission, which manages the sites, has struggled to achieve that goal of self-sufficiency for many reasons, including extensive preservation, stabilization, and maintenance needs; and

WHEREAS, the commission employs only two full-time maintenance workers and the commission's repair and maintenance budget, as approved by the 2011 legislature, was just \$23,890 for fiscal years 2012 and 2013; and

WHEREAS, long range building program monies were not appropriated to the commission by the 2011 Legislature; and

WHEREAS, the commission reorganized in August 2011 due to a \$400,000 budget shortfall, resulting in a reduction in force of five FTE; and

WHEREAS, the commission, as part of that reorganization is placing a greater emphasis on business planning and has hired a full-time business development manager; and

WHEREAS, the Legislative Environmental Quality Council reviewed the commission and its work as part of the House Joint Resolution No. 32 study of state parks and outdoor recreation and heritage resource programs during the 2011-2012 interim; and

WHEREAS, the council found much opportunity and greater need for state support to improve the commission's marketing, operation, preservation, and maintenance of Virginia City and Nevada City; and

WHEREAS, the council recognizes the changes and improvements that are being made under the commission's new organizational

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As of: June 21, 2012 (9:46am)

LC9010

structure and business plan; and

WHEREAS, the council feels that while integrating the administration of Virginia City and Nevada City with other recreational and heritage resources, including state parks, might be desirable due to seemingly natural alliances between their missions, operations, and resource needs, it does not seem appropriate to do so at this time.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to 5-5-217, MCA, or direct sufficient staff resources to:

(1) provide continued oversight of the Montana heritage preservation and development commission and its management and operation of state-owned sites at Virginia City and Nevada City;

(2) review the implementation and impacts of the commission's restructuring and newly-adopted business plan;

(3) review in greater detail the myriad properties and artifacts the state purchased at Virginia City and Nevada City to determine whether the statutory mission for the sites should be redefined or recommendations made regarding the deaccession of any properties or artifacts;

(4) identify overall preservation needs at Virginia City and Nevada City and make recommendations regarding the scale and scope of those efforts based on available resources;

(5) review marketing efforts and identify other ways to make

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As of: June 21, 2012 (9:46am)

LC9010

Virginia City and Nevada City better known to residents and nonresidents alike;

(6) review the commission's funding and revenues and make recommendations for improving overall finances, especially funding for preservation and maintenance work;

(7) identify opportunities to integrate and better coordinate the administration of state-owned sites at Virginia City and Nevada City with other recreational and heritage resources, including state parks; and

(8) evaluate the makeup of the commission and whether its membership, powers, and duties should be restructured or redefined, including whether some duties should be transferred to the department of commerce to which the commission is attached.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

- END -

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