

SENATE BILL NO. 153

INTRODUCED BY J. WELBORN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE ADMINISTRATION OF LANDS AND WATERS OWNED OR CONTROLLED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; ~~TRANSFERRING ADMINISTRATION OF FISHING ACCESS SITES AND ADMINISTRATION OF RECREATIONAL AND COMMERCIAL USE OF WILDLIFE MANAGEMENT AREAS TO THE STATE PARKS AND RECREATION BOARD~~; REQUIRING TWO STATE PARKS AND RECREATION BOARD MEMBERS TO BE BUSINESS OWNERS; ~~REVISING ENFORCEMENT PROVISIONS~~; REVISING REQUIREMENTS FOR CONSTRUCTION PROJECT AND BUDGET APPROVAL; ~~REQUIRING IMPROVEMENTS AT FISHING ACCESS SITES TO BE REVIEWED FOR HABITAT IMPACTS~~; REVISING ~~RULEMAKING AUTHORITY~~; REQUIRING PURCHASE OF A WILDLIFE CONSERVATION LICENSE FOR CERTAIN LAND USE AND DECREASING ITS PRICE; AMENDING SECTIONS 2-15-3406, ~~23-1-106, 23-1-110, 23-1-111, 23-2-301, 23-2-302, 23-2-502, 23-2-506, 23-2-525, 23-2-529, 23-2-531, 23-2-641, 23-2-806, 87-1-209, 87-1-269, 87-1-285, 87-1-286, 87-1-294, 87-1-301, 87-1-303, 87-1-306, 87-1-502, 87-1-506, 87-2-201, AND 87-2-202, AND 87-6-201~~, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 2-15-3406, MCA, is amended to read:

"2-15-3406. 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;

(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, 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. Two members must be business owners, one of whom must have a business specializing in 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."

Section 2. ~~Section 23-1-106, MCA, is amended to read:~~

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

~~(2) A person who violates subsection (3) or a rule established pursuant to 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) 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 shall employ all necessary and qualified personnel for enforcement purposes.~~

1 ~~(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance~~
2 ~~and support services provided by the board of crime control under the provisions of 44-7-101. Authorized~~
3 ~~officers of the department are granted peace officer status with the power:~~

4 ~~(a) of search, seizure, and arrest;~~

5 ~~(b) to investigate activities in this state regulated by this chapter and rules of the a, department, and~~
6 ~~the board, and the commission; and~~

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

8
9 **Section 3.** ~~Section 23-1-110, MCA, is amended to read:~~

10 ~~"23-1-110. Improvement or development of state park or fishing access site -- required public~~
11 ~~involvement -- rules. (1) Any proposed improvement or development of a state park or fishing access site that~~
12 ~~significantly changes park or fishing access site features or use patterns is subject to notice of proposed~~
13 ~~modifications, both statewide and locally, and to opportunity for a public meeting and public comment on the~~
14 ~~advisability and acceptability of the proposal. Rules to govern the notice, meeting, and comment process must~~
15 ~~be adopted:~~

16 ~~(a) for state parks by the board; and~~

17 ~~(b) for fishing access sites by the commission.~~

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

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

21 ~~(b) the capacity of the park or fishing access site for development;~~

22 ~~(c) environmental impacts associated with the improvement or development, including biological~~
23 ~~review of impacts to fish and wildlife habitat;~~

24 ~~(d) the long-range maintenance of the improvements;~~

25 ~~(e) the protection of natural, cultural, and historical park or fishing access site features;~~

26 ~~(f) potential impacts on tourism; and~~

27 ~~(g) site-specific modifications as they relate to the park or fishing access site system as a whole."~~

1 **Section 4.** Section 23-1-111, MCA, is amended to read:

2 ~~"23-1-111. Powers and duties of board -- rulemaking -- meetings.~~ (1) Except as provided in
3 subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, wildlife
4 management areas, fishing access, sites, state historic sites, state monuments, and other heritage and
5 recreational resources, land lands, and water waters administered pursuant to Title 23, chapter 1, and Title 23,
6 chapter 2, parts 1, 3, 4, 5, and 9, the board shall:

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

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

10 ~~(ii)~~ coordinating, integrating, promoting, and furthering opportunities for education and recreation at
11 these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback
12 riding, mountain biking, boating, and swimming, as appropriate and in accordance with the purposes for which
13 the sites were purchased or donated;

14 ~~(b)~~ work with the commission to maintain hunting and angling opportunities and to provide input
15 regarding hunting and fishing regulations on these properties, lands, and waters;

16 ~~(c)~~ ~~(i)~~ establish the rules of the department governing the recreational use of these properties, and
17 lands, and waters. The rules must be adopted in the interest of public health, public safety, public welfare, and
18 protection of property and public resources in regulating recreation, including but not limited to:

19 ~~(A)~~ picnicking;

20 ~~(B)~~ a, camping; and

21 ~~(C)~~ swimming; and

22 ~~(D)~~ sanitation;

23 ~~(E)~~ boating, including but not limited to speed regulations, the operation of a, motorboats, as defined
24 in 23-2-502, the resolution of conflicts between users of motorized and nonmotorized vessels, waterskiing, and
25 surfboarding; and

26 ~~(F)~~ use of firearms on the waters or at designated areas along the shore of the waters.

27 ~~(ii)~~ These rules are subject to review and approval by the department of public health and human
28 services with regard to issues of public health and sanitation before becoming effective. Copies of the rules

1 must show that endorsement.

2 ~~(d) except as provided in 87-1-303(2), establish the rules of the department governing the commercial~~
3 ~~use of these properties, lands, and waters;~~

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

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

10 ~~(f)(g) except for construction projects proposed for the primary purpose of protecting, conserving, and~~
11 ~~preserving habitat on wildlife management areas, review and approve construction projects that have an~~
12 ~~estimated cost of more than \$50,000;~~

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

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

16 ~~(2) Pursuant to 87-1-301(1), the The board does not establish: oversee department activities related~~
17 ~~to the administration of fishing access sites~~

18 ~~(a) hunting, fishing, or trapping regulations; or~~

19 ~~(b) rules for the block management program or alternative programs designed to promote public~~
20 ~~access to private and public lands for hunting purposes pursuant to 87-1-265.~~

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

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

1 neighboring landowners.

2 ~~(b)(5) For the purposes of this subsection (4) section, the term following definitions apply:~~

3 ~~(a) "affiliated lands" means lands owned by the department but:~~

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

5 ~~(ii) managed by another entity;~~

6 ~~(b) "motorboat" has the same meaning as provided in 23-2-502;~~

7 ~~(c) "vessel" has the same meaning as provided in 23-2-502;~~

8 ~~(d) "waters" mean all public fishing reservoirs, public lakes, all class I and class II waters that are~~
9 ~~legally accessible for recreational use pursuant to Title 23, chapter 2, part 3, and reservoirs and lakes that the~~
10 ~~department administers by agreement or in conjunction with a federal or state agency or private owner."~~

11
12 **Section 5.** Section 23-2-301, MCA, is amended to read:

13 **"23-2-301. Definitions.** For purposes of this part, the following definitions apply:

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

18 ~~(2) "Board" means the state parks and recreation board established in 2-15-3406.~~

19 ~~(2)(3) "Class I waters" means surface waters, other than lakes, that:~~

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

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

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

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

~~(3)(4) "Class II waters" means all surface waters that are not class I waters, except lakes.~~

~~(4) "Commission" means the fish and wildlife 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 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."~~

Section 6. Section 23-2-302, MCA, is amended to read:

~~"23-2-302. Recreational use permitted -- limitations -- exceptions -- RULEMAKING. (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.~~

~~(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:~~

~~(a) the operation of all terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;~~

~~(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;~~

~~(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;~~

~~(d) big game hunting;~~

~~(e) overnight camping unless it is necessary for the enjoyment of the surface water and the campsite is not within sight of any occupied dwelling or the campsite is more than 500 yards from any occupied dwelling, whichever is less;~~

~~(f) the placement or creation of any permanent duck blind, boat moorage, or any other permanent object;~~

~~(g) the placement or creation of any seasonal object, such as a duck blind or boat moorage, unless necessary for the enjoyment of that particular surface water and unless the seasonal objects are placed out of sight of any occupied dwelling or more than 500 yards from any occupied dwelling, whichever is less;~~

~~(h) use of a streambed as a right-of-way for any purpose when water is not flowing in the streambed.~~

~~(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:~~

~~(a) big game hunting;~~

~~(b) overnight camping;~~

1 ~~(c) the placement or creation of any seasonal object; or~~

2 ~~(d) other activities that are not primarily water-related pleasure activities as defined in 23-2-301(10).~~

3 ~~(4) The right of the public to make recreational use of surface waters does not grant any easement or~~
4 ~~right to the public to enter onto or cross private property in order to use those waters for recreational purposes.~~

5 ~~(5) The commission board shall adopt rules pursuant to 87-1-303 23-1-111, in the interest of public~~
6 ~~health, public safety, or the protection of public and private property, governing recreational use of class I and~~
7 ~~class II waters. These rules must include the following:~~

8 ~~(a) the establishment of procedures by which any person may request an order from the commission~~
9 ~~board:~~

10 ~~(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface~~
11 ~~water; or~~

12 ~~(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by~~
13 ~~the commission board;~~

14 ~~(b) provisions requiring the issuance of written findings and a decision whenever a request is made~~
15 ~~pursuant to the rules adopted under subsection (5)(a); and~~

16 ~~(c) a procedure for the identification of streams within class II waters that are not capable of~~
17 ~~recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to~~
18 ~~the actual capacity of the water.~~

19 ~~(6) The provisions of this section do not affect any rights of the public with respect to state-owned~~
20 ~~lands that are school trust lands or any rights of lessees of those lands."~~

21
22 **Section 7.** Section 23-2-502, MCA, is amended to read:

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

25 ~~(1) "Board" means the state parks and recreation board established in 2-15-3406.~~

26 ~~(1)(2) "Certificate of number" means the certificate issued by the department of justice, an authorized~~
27 ~~agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the~~
28 ~~motorboat or sailboat an identifying number and containing other information as required by the department of~~

1 justice.

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

3 ~~(2)(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.~~

4 ~~(3)(5) "Documented vessel" means a vessel that has and is required to have a valid marine document~~
5 ~~as a vessel of the United States.~~

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

8 ~~(5)(7) "Lienholder" means a person holding a security interest.~~

9 ~~(6)(8) "Manufacturer" means a person engaged in the business of manufacturing or importing new~~
10 ~~and unused vessels or new and unused outboard motors for the purpose of sale or trade.~~

11 ~~(7)(9) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any~~
12 ~~machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal~~
13 ~~source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.~~

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

16 ~~(8)(10) "Operate" means to navigate or otherwise use a motorboat or a vessel.~~

17 ~~(9)(11) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a~~
18 ~~motorboat or vessel.~~

19 ~~(10)(12) (a) "Owner" means a person, other than a lienholder, having the property in or title to a~~
20 ~~motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel~~
21 ~~subject to an interest in another person, reserved or created by an agreement securing payment or~~
22 ~~performance of an obligation.~~

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

24 ~~(11)(13) "Passenger" means each person carried on board a vessel other than:~~

25 ~~(a) the owner or the owner's representative;~~

26 ~~(b) the operator;~~

27 ~~(c) bona fide members of the crew engaged in the business of the vessel who have not contributed~~
28 ~~any consideration for their carriage and who are paid for their services; or~~

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

3 ~~(12)(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.~~

4 ~~(13)(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine~~
5 ~~powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person~~
6 ~~sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the~~
7 ~~vessel.~~

8 ~~(14)(16) "Registration decal" means an adhesive sticker produced by the department of justice and~~
9 ~~issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the~~
10 ~~owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees imposed on the motorboat,~~
11 ~~sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department~~
12 ~~of justice under 61-3-101.~~

13 ~~(15)(17) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.~~

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

15 ~~(16)(18) "Security interest" means an interest that is reserved or created by an agreement that secures~~
16 ~~payment or performance of an obligation and is valid against third parties generally.~~

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

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

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

21 ~~(18)(20) "Validation decal" means an adhesive sticker produced by the department and issued by the~~
22 ~~department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the~~
23 ~~identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the~~
24 ~~owner to meet requirements of the federal standard numbering system.~~

25 ~~(19)(21) "Vessel" means every description of watercraft, unless otherwise defined by the department,~~
26 ~~other than a seaplane on the water, used or capable of being used as a means of transportation on water.~~

27 ~~(20)(22) "Waters of this state" means any waters within the territorial limits of this state."~~

1 **Section 8.** Section 23-2-506, MCA, is amended to read:

2 ~~"23-2-506. — Enforcement. (1) The department is a criminal justice agency for the purpose of obtaining~~
3 ~~the technical assistance and support services provided by the board of crime control under the provisions of 44-~~
4 ~~7-101. Authorized officers of the department are granted peace officer status with the power:~~

5 ~~(a) of search, seizure, and arrest;~~

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

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

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

11
12 **Section 9.** Section 23-2-525, MCA, is amended to read:

13 ~~"23-2-525. — Restricted areas. (1) A person may not anchor a vessel or other obstacle for fishing or~~
14 ~~pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a~~
15 ~~passageway ordinarily used by other vessels.~~

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

20 ~~(3) A person may not operate a vessel within 75 feet of a person engaged in fishing or hunting~~
21 ~~waterfowl, unless unavoidable. If unavoidable, the vessel must be operated at not greater than no wake speed~~
22 ~~or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in~~
23 ~~fishing or hunting waterfowl.~~

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

27 ~~(b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if~~
28 ~~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 and wildlife commission 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."~~

Section 10. 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 and wildlife commission 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."~~

Section 11. 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,~~

1 swimming raft, nonmotorized boat, or anchored vessel on a lake or river;

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

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

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

8
9 **Section 12.** Section 23-2-641, MCA, is amended to read:

10 **"23-2-641. Enforcement.** (1) ~~With respect to the sale of any new snowmobile that is subject to the~~
11 ~~provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through~~
12 ~~23-2-635, and 23-2-641 through 23-2-644 THIS PART, the attorney general shall, upon the request of the~~
13 ~~department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining~~
14 ~~order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that~~
15 ~~does not satisfy the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-~~
16 ~~617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 THIS PART.~~

17 (2) (a) ~~The department is a criminal justice agency for the purpose of obtaining the technical~~
18 ~~assistance and support services provided by the board of crime control under the provisions of 44-7-101.~~

19 ~~Authorized officers of the department are granted peace officer status with the power:~~

20 (i) ~~of search, seizure, and arrest;~~

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

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

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

27
28 **Section 13.** Section 23-2-806, MCA, is amended to read:

1 ~~"23-2-806. — Enforcement.~~ (1) The department of fish, wildlife, and parks enforcement personnel, park
2 rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall
3 enforce the provisions of this part.

4 ~~(2) — The department is a criminal justice agency for the purpose of obtaining the technical assistance~~
5 ~~and support services provided by the board of crime control under the provisions of 44-7-101. Authorized~~
6 ~~officers of the department are granted peace officer status with the power:~~

7 ~~(a) — of search, seizure, and arrest;~~

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

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

11 ~~(3) — Park rangers may not carry firearms in the execution of their duties."~~

12
13 **Section 14.** Section 87-1-209, MCA, is amended to read:

14 ~~"87-1-209. — Acquisition and sale of lands or waters.~~(1) Subject to 87-1-218 and subsection (8) of
15 this section, the department, with the consent of the commission or the board and, in the case of land
16 acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land
17 commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon
18 lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain
19 acquired lands or waters:

20 ~~(a) — for fish hatcheries or nursery ponds;~~

21 ~~(b) — as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or~~
22 ~~protection;~~

23 ~~(c) — for public hunting, fishing, or trapping areas;~~

24 ~~(d) — to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-~~
25 ~~bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable~~
26 ~~species;~~

27 ~~(e) — for state parks and outdoor recreation;~~

28 ~~(f) — to extend and consolidate by exchange, lands or waters suitable for these purposes.~~

~~(2) The department, with the consent of the board, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of 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 the 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 the 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 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 the 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 the 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) (a) Subject to 87-1-218, the department, with the consent of the i, commission, is authorized to utilize the installment contract method to facilitate the acquisition of:~~

~~(i) wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish with the consent of the commission; and~~

~~(ii) areas that provide access to fishing sites for the public with the consent of the board.~~

~~(b) 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.~~

~~(8) Approval of the board for the acquisition or disposal of land or water pursuant to this section is required only for land and water administered under Title 23, chapter 1, or Title 23, chapter 2, parts 1 and 4 pursuant to 23-1-111."~~

Section 15. Section 87-1-269, MCA, is amended to read:

"87-1-269. Private land/public wildlife advisory committee -- duties -- reports.(1) There is a private land/public wildlife advisory committee composed of persons interested in issues related to hunters,

1 anglers, landowners, and outfitters, including but not limited to hunting access programs established pursuant
2 to 87-1-265, the fishing access enhancement program, landowner hunter relations, outfitting industry issues,
3 public access land agreements, and other issues related to private lands and public wildlife. The committee
4 must have broad representation of landowners, outfitters, and sportspersons. The department may provide
5 administrative assistance as necessary to assist the private land/public wildlife advisory committee.

6 ~~(2) The governor shall appoint the members of the private land/public wildlife advisory committee.~~

7 ~~(3) (a) The private land/public wildlife advisory committee shall report to the governor and to each~~
8 ~~legislature, in accordance with 5-11-210, regarding the success of various elements of the hunting access~~
9 ~~programs, including a report of annual landowner participation, the number of acres annually enrolled in the~~
10 ~~programs, hunter harvest success on enrolled lands, the number of qualified applicants who were denied~~
11 ~~enrollment because of a shortfall in funding, and an accounting of program expenditures, and make~~
12 ~~recommendations for funding, modification, or improvement needed to achieve the objectives of the programs.~~
13 ~~The department shall provide fiscal analyses of all hunting access program funding sources to the review~~
14 ~~committee for review and recommendations.~~

15 ~~(b) The private land/public wildlife advisory committee shall report to the governor and to each~~
16 ~~legislature, in accordance with 5-11-210, regarding the success of the fishing access enhancement program~~
17 ~~and make recommendations for funding, modification, or improvement needed to achieve the objectives of the~~
18 ~~program. The department shall provide fiscal analyses of all fishing access enhancement program funding~~
19 ~~sources to the review committee for review and recommendations.~~

20 ~~(4) The private land/public wildlife advisory committee shall review public access land agreement~~
21 ~~proposals pursuant to 87-1-295 and recommend to the department whether to grant public access land~~
22 ~~agreements.~~

23 ~~(5) The director may appoint additional advisory committees that are considered necessary to assist~~
24 ~~in the implementation of the hunting access programs, public access land agreements, and the fishing access~~
25 ~~enhancement program and to advise the commission and board regarding the development of rules~~
26 ~~implementing the hunting access programs, public access land agreements, and the fishing access~~
27 ~~enhancement program."~~

1 **Section 16.** Section 87-1-285, MCA, is amended to read:

2 ~~"87-1-285. Fishing access enhancement program created -- private landowner assistance to~~
3 ~~promote public fishing access -- rules.~~ (1) The department may establish programs of landowner assistance
4 that encourage public access to and across private lands for purposes of fishing and may adopt rules to carry
5 out program purposes. Rules may address but are not limited to incentives for private landowners who allow
6 public fishing access on or across their lands, where legal access does not presently exist. Participation in the
7 fishing access enhancement program is established through a cooperative agreement between a landowner
8 and the department, including other resource management agencies when appropriate, that allows access for
9 public fishing with certain restrictions or use rules.

10 ~~(2) The department may also develop similar voluntary programs that are designed to promote public~~
11 ~~access across private lands for fishing purposes.~~

12 ~~(3) Participation in a program established under subsection (1) is voluntary. Programs may not be~~
13 ~~structured in a manner that provides assistance to a private landowner who charges a fee for fishing access to~~
14 ~~private land that is enrolled in the program or who does not provide reasonable public fishing access to private~~
15 ~~land that is enrolled in the program. The commission board shall develop criteria by which tangible benefits are~~
16 ~~allocated to participating landowners, and the department may distribute the benefits to participating~~
17 ~~landowners.~~

18 ~~(4) Funds from the account established pursuant to 87-1-605 may be used to purchase or lease public~~
19 ~~fishing access at county road bridge crossings or for necessary parking facilities, trails, or ramps to facilitate~~
20 ~~fishing access to public waters at bridge crossings."~~

21
22 **Section 17.** Section 87-1-286, MCA, is amended to read:

23 ~~"87-1-286. Fishing access enhancement program -- benefits for providing fishing access --~~
24 ~~cooperative agreement -- factors for determining benefits earned -- restriction on landowner liability.~~ (1)
25 As provided in 87-1-285, the department may establish and administer a voluntary program to enhance fishing
26 access. The program must be designed to provide tangible benefits to participating private landowners who
27 grant access to or across their land for public fishing.

28 ~~(2) A contract for participation in the fishing access enhancement program is established through a~~

1 cooperative agreement between the landowner and the department that will guarantee reasonable access for
2 public fishing, which may include leases, easements, or rights of way to rivers, streams, ponds, or lakes on the
3 landowner's property and leases or easements for access along the banks or shorelines of rivers, streams,
4 ponds, or lakes on the property. Landowners may also form a voluntary association when development of a
5 unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description
6 of the plan developed by the landowner and the department and may include but is not limited to:

7 (a) ~~fishing access management, which may include off-road parking, foot trails, and vehicle access~~
8 ~~roads;~~

9 (b) ~~services to be provided to the public;~~

10 (c) ~~landowner property rules and other restrictions;~~

11 (d) ~~any other management information to be gathered, which must be made available to the public;~~

12 and

13 (e) ~~notice to adjacent landowners.~~

14 (3) ~~If the department determines that the plan referred to in subsection (2) may adversely influence~~
15 ~~fish management decisions or fishing habitat on public lands, then other public land agencies, interested~~
16 ~~sportspersons, and affected landowners must be consulted. An affected landowner's management goals and~~
17 ~~personal observations regarding fish populations and habitat use must be considered in developing the plan.~~

18 (4) ~~The commission board shall develop rules for determining tangible benefits to be provided to a~~
19 ~~landowner for providing public fishing access. Benefits will be provided to offset potential impacts associated~~
20 ~~with public fishing access, including but not limited to those associated with general property maintenance,~~
21 ~~conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area~~
22 ~~maintenance. Program priority must be given to properties that provide the greatest fishing access for the~~
23 ~~lowest costs. Factors used in determining benefits may include but are not limited to:~~

24 (a) ~~the number of days of public fishing provided by a participating landowner;~~

25 (b) ~~fish habitat provided; and~~

26 (c) ~~access provided to adjacent public lands.~~

27 (5) ~~Benefits earned by a landowner under this section may be applied in, but application is not limited~~
28 ~~to, the following manner:~~

(a) ~~A landowner may receive direct monetary compensation for providing fishing access.~~

(b) ~~A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.~~

(c) ~~A landowner may direct fire protection payments to be made directly to the local fire district or the county where the landowner resides or may elect to receive payments directly.~~

(d) ~~A landowner may receive direct payment to offset insurance costs incurred for allowing public fishing access.~~

(e) ~~The department may provide assistance in the construction and maintenance of roads, fencing, gates, and parking facilities and in the signing of property.~~

(6) ~~The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the fishing access enhancement program."~~

Section 18. Section 87-1-294, MCA, is amended to read:

"87-1-294. (Temporary) Unlocking public lands program -- purpose -- commission rulemaking authority. (1) ~~The legislature finds that increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing, and other recreational activities as determined by the commission board.~~

(2) ~~The department may establish and administer a voluntary program to encourage access through private land to parcels not previously deemed legally accessible to be known as the unlocking public lands program.~~

(3) ~~Private land is not eligible for the unlocking public lands program if outfitting or commercial hunting restricts public hunting opportunities on that land.~~

(4) ~~If the parcel not previously deemed legally accessible is leased state land under Title 77, chapter 1, only the lessee with a qualified access to that state land under 15-30-2380 is eligible for the unlocking public lands program.~~

(5) (a) ~~A contract for participation in the unlocking public lands program is established through a cooperative agreement between the landowner and the department that guarantees reasonable access to public land through the landowner's private land. This contract serves as certification that the landowner is~~

1 providing qualified access to public land and is eligible for the tax credit identified in 15-30-2380. The contract
2 must include a certification number for identification purposes. The department shall provide a copy of the
3 contract to the landowner and notify the department of revenue of the certification number. Contracts may be
4 established with landowners:

5 (i) to provide direct access across a landowner's land to a public parcel; or

6 (ii) who own land adjacent to the point where the corners of two parcels of public land meet. A
7 landowner with a contract pursuant to this subsection (5)(a)(ii) shall grant access through the landowner's land
8 to establish a corridor between the two parcels of public land. At least one of the parcels of public land must be
9 accessible by a public road, waterway, or access granted by a landowner.

10 (b) Contracts under subsection (5) may be established with landowners who, prior to January 1, 2016,
11 provided access to public land that was otherwise not legally accessible under subsection (9). Landowners who
12 establish contracts under this subsection (5)(b) are eligible to receive the tax credit identified in 15-30-2380.

13 (6) The commission board shall develop rules for establishing contracts under this section regarding:

14 (a) duration of access;

15 (b) types of qualified access; and

16 (c) reasonable landowner-imposed limitations.

17 (7) The department shall provide public notice of any available qualified access to public land
18 established through the unlocking public lands program.

19 (8) Recreational users of access established by the unlocking public lands program shall remain in
20 the prescribed access route or corridor as defined by the contract in subsection (5).

21 (9) For purposes of this section:

22 (a) "parcels not previously deemed legally accessible" means public land that cannot be accessed by:

23 (i) public road, right of way, or easement;

24 (ii) public waters;

25 (iii) adjacent federal, state, county, or municipal land that is open to public use; or

26 (iv) adjacent private land because that landowner has not granted permission to cross; and

27 (b) "public land" means:

28 (i) state land, as defined in 77-1-101; or

(ii) federal land managed by the U.S. forest service or the bureau of land management. (Terminates December 31, 2027--secs. 1, 2, Ch. 139, L. 2017.)"

Section 19. Section 87-1-301, MCA, is amended to read:

~~"87-1-301. Powers of commission.~~ (1) Except as provided in subsections (6) and (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 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 23-1-111 and 87-1-303(3) 87-1-303(2), 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 23-1-111 and 87-1-209(2) and (4);~~

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

(g) ~~except as provided in 23-1-111, shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000 \$50,000;~~

(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.~~

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

2 ~~(j) shall comply with, adopt policies that comply with, and ensure the department implements in each~~
3 ~~region the provisions of state wildlife management plans adopted following an environmental review conducted~~
4 ~~pursuant to Title 75, chapter 1, parts 1 through 3.~~

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

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

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

12 ~~(i) separate deer licenses from nonresident elk combination licenses;~~

13 ~~(ii) set the fees for the separated deer combination licenses and the elk combination licenses without~~
14 ~~the deer tag;~~

15 ~~(iii) condition the use of the deer licenses; and~~

16 ~~(iv) limit the number of licenses sold.~~

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

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

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

21 ~~(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-~~
22 ~~321 through 87-1-325.~~

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

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

25 ~~(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting~~
26 ~~districts.~~

27 ~~(b) The commission shall adopt rules for the use of and set quotas for the sale of Class D-4~~
28 ~~nonresident hound handler licenses by hunting district, portions of a hunting district, group of districts, or~~

administrative regions. However, no more than two Class D-4 licenses may be issued in any one hunting district per license year.

~~(c) 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.~~

~~(6) 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).~~

~~(7) Pursuant to 23-1-111, the commission does not oversee department activities related to:~~

~~(a) the administration of state parks, primitive parks, state recreational areas, public camping grounds, fishing access sites, state historic sites, state monuments, and other heritage and recreational resources, land lands, and water waters administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 3, 4, 5, and 9; or~~

~~(b) the commercial and recreational use of wildlife management areas unless for the regulation of hunting, trapping, and fishing."~~

SECTION 2. SECTION 87-1-301, MCA, IS AMENDED TO READ:

1 **"87-1-301. Powers of commission.** (1) Except as provided in subsections (6) and (7), the
2 commission:
3 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
4 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
5 of all other responsibilities of the department related to fish and wildlife as provided by law;
6 (b) shall establish the hunting, fishing, and trapping rules of the department;
7 (c) except as provided in 23-1-111 and 87-1-303(3), shall establish the rules of the department
8 governing the use of lands owned or controlled by the department and waters under the jurisdiction of the
9 department;
10 (d) must have the power within the department to establish wildlife refuges and bird and game
11 preserves;
12 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
13 provided in 23-1-111 and 87-1-209(2) and (4);
14 (f) ~~except as provided in 23-1-111,~~ shall review and approve the budget of the department prior to its
15 transmittal to the office of budget and program planning;
16 (g) except as provided in 23-1-111, shall review and approve construction projects that have an
17 estimated cost of more than ~~\$1,000 but less than \$5,000~~ \$50,000;
18 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as
19 provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates
20 as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall
21 consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a
22 particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or
23 documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within
24 the particular hunting district where a restriction on elk hunting on public property is proposed.
25 (i) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to 87-3-145; and
26 (j) shall comply with, adopt policies that comply with, and ensure the department implements in each
27 region the provisions of state wildlife management plans adopted following an environmental review conducted
28 pursuant to Title 75, chapter 1, parts 1 through 3.

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

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

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

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

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

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

12 (iv) limit the number of licenses sold.

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

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

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

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

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

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

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

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

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

28 (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.

(6) 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).

(7) Pursuant to 23-1-111, 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, and 9."

Section 20. ~~Section 87-1-303, MCA, is amended to read:~~

~~"**87-1-303. Rules for use of lands and waters.** (1) Except as provided in 23-1-111, 87-1-301(6), and subsection (3)(2) 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 87-1-301(6), the commission may adopt and enforce rules governing~~

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

13 ~~(3)(2)~~ (a) The commission and board may not regulate or classify domestic livestock trailing as a
14 commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic
15 livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75,
16 chapter 1, parts 1 through 3.

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

22 ~~(i)~~ require a fee for domestic livestock trailing or related activities; or

23 ~~(ii)~~ prohibit or unreasonably interfere with domestic livestock trailing activities.

24 ~~(4)(3)~~ For the purposes of this section, the following definitions apply:

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

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

1

2 **Section 21.** Section 87-1-306, MCA, is amended to read:

3 ~~"87-1-306. Designation of certain river stretches as no-wake waters -- personal watercraft use~~
4 ~~prohibited.~~ (1) In the interest of public health, safety, and welfare and protection of property and public
5 resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to
6 its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their
7 reservoirs.

8 ~~(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake~~
9 ~~speed.~~

10 ~~(3) This section does not apply to the use of the designated waters for search and rescue, official~~
11 ~~patrol, or scientific purposes.~~

12 ~~(4) This section may not be construed to limit the authority of the commission board or department to~~
13 ~~enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public~~
14 ~~health, safety, or welfare, the protection of property or public resources, or the resolution of conflicts between~~
15 ~~users of motorized and nonmotorized boats."~~

16

17 **Section 22.** Section 87-1-502, MCA, is amended to read:

18 ~~"87-1-502. Qualifications, powers, and duties.~~ (1) Wardens must be qualified by their experience,
19 training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and
20 game birds and interested in this work. They shall devote all of their time for which they are appointed to their
21 official duties.

22 ~~(2) They shall enforce the laws of this state and the rules of the department, the board, and the~~
23 ~~commission with reference to the protection, preservation, and propagation of game and fur-bearing animals,~~
24 ~~fish, and game birds, and for the protection of the lands and waters owned or controlled by the department.~~

25 ~~(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or~~
26 ~~fish and that those persons who make recreational use of lands and waters owned or controlled by the~~
27 ~~department or hunt or fish on state lands, as defined in 77-1-101f, or hunting and h, fishing, have the necessary~~
28 ~~licenses.~~

1 ~~(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing~~
2 ~~animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game,~~
3 ~~fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the~~
4 ~~destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the~~
5 ~~department and make a monthly report to the department correctly informing the department of their activities~~
6 ~~on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where~~
7 ~~their duties called them and what they did. The reports must contain any pertinent recommendations the~~
8 ~~wardens may see fit to make.~~

9 ~~(5) A warden may not compromise or settle violations of fish and game laws out of court.~~

10 ~~(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game~~
11 ~~animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling.~~
12 ~~Upon request therefor for inspection, all persons having in their possession any fish, game and nongame birds,~~
13 ~~waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof them to the warden for~~
14 ~~such inspection.~~

15 ~~(7) The department is a criminal justice agency for the purpose of obtaining the technical assistance~~
16 ~~and support services provided by the board of crime control under the provisions of 44-7-101. Authorized~~
17 ~~officers of the department are granted peace officer status with the power:~~

18 ~~(a) of search, seizure, and arrest;~~

19 ~~(b) to investigate activities in this state regulated by this title and rules of the department, the board,~~
20 ~~and the commission; and~~

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

22
23 **Section 23.** ~~Section 87-1-506, MCA, is amended to read:~~

24 ~~**"87-1-506. Enforcement powers of wardens. (1) A warden may:**~~

25 ~~(a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;~~

26 ~~(b) conduct a search, with a search warrant, in accordance with Title 46, chapter 5;~~

27 ~~(c) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed~~
28 ~~in violation of the law or the rules of the department;~~

(d) ~~seize and hold, subject to law or the orders of the department, devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;~~

(e) ~~arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;~~

(f) ~~enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to the operation of motorboats on all waters of the state;~~

(g) ~~as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state;~~

(h) ~~enforce the provisions of Title 80, chapter 7, part 10, and rules adopted under Title 80, chapter 7, part 10, for those invasive species that are under the department's jurisdiction; and~~

(i) ~~exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, the board, and the commission, and judgments obtained for violation of those laws or rules.~~

(2) ~~The meat of game animals that are seized pursuant to subsection (1)(c) must be donated directly to the Montana food bank network or to public or charitable institutions to the extent reasonably feasible. Any meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2)."~~

Section 3. Section 87-2-201, MCA, is amended to read:

"87-2-201. Wildlife conservation license prerequisite for other licenses and certain land use.

~~Except (1) A person shall first obtain a wildlife conservation license pursuant to 87-2-202, in order to:~~

~~(1) except as provided in 87-2-803(6) and 87-2-815, it is unlawful for any person to purchase or apply for a hunting, fishing, or trapping license; or without first having obtained a wildlife conservation license as provided in this part~~

~~(2) except for state parks, use lands owned or controlled by the department.~~

~~(A) USE LANDS OWNED OR CONTROLLED BY THE DEPARTMENT, EXCEPT FOR STATE PARKS; OR~~

~~(B) TO PURCHASE OR APPLY FOR A HUNTING, FISHING, OR TRAPPING LICENSE, EXCEPT AS PROVIDED IN 87-2-803(6) AND 87-2-815.~~

1 (2) SUBSECTION (1)(A) APPLIES ONLY TO A PERSON 17 YEARS OF AGE OR OLDER.

2 (3) A FINE OF \$25 MAY BE CHARGED TO A VIOLATOR OF SUBSECTION (1)(A)."

3
4 **Section 4.** Section 87-2-202, MCA, is amended to read:

5 **"87-2-202. Application -- fee.** (1) Except as provided in 87-2-817(2), a wildlife conservation license
6 must be sold upon written application. The application must contain the applicant's name, age, [last four digits
7 of the applicant's social security number,] occupation, street address of permanent residence, mailing address,
8 qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as
9 an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a
10 Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the
11 department to substantiate the required information when applying for a wildlife conservation license. It is the
12 applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase
13 a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-817(2).

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

16 (3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~\$8~~ \$6, of which 25 cents
17 is a search and rescue surcharge.

18 (b) Nonresident wildlife conservation licenses may be purchased for a fee of \$10, of which 25 cents is
19 a search and rescue surcharge.

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

23 (5) The department shall delete the applicant's social security number in any electronic database [5
24 years after the date that application is made for the most recent license]. (Bracketed language terminates or is
25 amended on occurrence of contingency--sec. 3, Ch. 321, L. 2001. The \$2 wildlife conservation license fee
26 increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency--
27 sec. 8, Ch. 596, L. 2003.)"

~~Section 26.~~ ~~Section 87-6-201, MCA, is amended to read:~~

~~"87-6-201. Violation of BOARD, commission, or department order or rule. A person who purposely, knowingly, or negligently violates an order or rule of the board, the commission, or the department shall be fined not less than \$50 or more than \$500. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use lands owned or controlled by the department or state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court."~~

NEW SECTION. **Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2021.

(2) ~~[Section 25 4]~~ is [SECTIONS 3(3) AND 4] ARE effective March 1, 2022.

- END -