

HOUSE BILL NO. 160

INTRODUCED BY W. CURDY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE POSSESSION OF EXPLODING TARGETS ON STATE LANDS AND WATERS; DEFINING "EXPLODING TARGETS"; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 23-1-111, 77-1-804, 87-1-301, AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

**"23-1-111. Powers and duties of board -- rulemaking -- meetings.** (1) Except as provided in subsection (2) (3), 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, and 9, the board shall:

- (a) set the policies and provide direction to the department for:
  - (i) the management, protection, conservation, and preservation of these properties, lands, and waters and their appropriate role relative to tourism and the economic health of Montana; and
  - (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, boating, and swimming;
- (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 and lands. The rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating recreation, including picnicking, camping, and swimming, 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 of interest in these properties, lands, and waters by the department, except as provided in 87-1-209(4);
- (e) review and approve the budget of the department for the administration of these properties, lands,

1 and waters prior to its transmittal to the office of budget and program planning;

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

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

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

6 (2) The board shall adopt rules prohibiting the possession of exploding targets on properties managed  
7 by the board pursuant to subsection (1). For the purposes of this section, "exploding targets" means commercial  
8 targets that explode when impacted by a high-velocity projectile or targets created by combining components,  
9 including but not limited to ammonium nitrate and aluminum powder, that explode when impacted by a  
10 high-velocity projectile.

11 ~~(2)(3)~~ Pursuant to 87-1-301(1), the board does not oversee department activities related to the  
12 administration of fishing access sites.

13 ~~(3)(4)~~ The members of the board shall hold quarterly or other meetings for the transaction of business  
14 at times and places considered necessary and proper. The meetings must be called by the presiding officer or  
15 by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority  
16 of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all  
17 the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the  
18 board."

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

21 **"77-1-804. Rules for recreational use of state lands -- penalty.** (1) The board shall adopt rules  
22 authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local  
23 offices of the department to administer this program whenever practical.

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

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

- 4 (a) cabin site and home site leases and licenses;
- 5 (b) the seasonal presence of growing crops; and
- 6 (c) active military, commercial, or mineral leases.

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

10 (5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain  
11 reasons, including but not limited to:

- 12 (a) damage attributable to recreational use that diminishes the income-generating potential of the state  
13 lands;
- 14 (b) damage to surface improvements of the lessee;
- 15 (c) the presence of threatened, endangered, or sensitive species or plant communities;
- 16 (d) the presence of unique or special natural or cultural features;
- 17 (e) wildlife protection;
- 18 (f) noxious weed control; or
- 19 (g) the presence of buildings, structures, and facilities.

20 (6) The board shall adopt rules prohibiting the possession of exploding targets on state lands. For the  
21 purposes of this section, "exploding targets" means commercial targets that explode when impacted by a  
22 high-velocity projectile or targets created by combining components, including but not limited to ammonium nitrate  
23 and aluminum powder, that explode when impacted by a high-velocity projectile.

24 ~~(6)~~(7) Rules adopted under this section may impose restrictions ~~upon~~ on general recreational activities,  
25 including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the  
26 presence of livestock. The board may also by rule restrict access on state lands in accordance with a block  
27 management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by  
28 recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads  
29 designated by the department to be open to motorized vehicle use.

30 ~~(7)~~(8) The board shall adopt rules providing for the issuance of a recreational special use license.

1 Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs  
 2 under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational  
 3 special use license for recreational use that is not commercial, concentrated, or within the definition of general  
 4 recreational use.

5 ~~(8)~~(9) For a violation of rules adopted by the board pursuant to this section, the department may assess  
 6 a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and  
 7 opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection  
 8 must be deposited as provided in 87-1-601(8)."

9

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

11 **"87-1-301. Powers of commission.** (1) Except as provided in subsections (7) and (8), the commission:

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

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

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

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

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

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

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

26 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided  
 27 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as  
 28 provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider  
 29 landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular  
 30 hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal

1 opinion of an affected landowner regarding the impact ~~upon~~ on the landowner's property within the particular  
2 hunting district where a restriction on elk hunting on public property is proposed.

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

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

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

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

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

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

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

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

18 (iv) limit the number of licenses sold.

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

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

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

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

25 (5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license  
26 preference systems to distribute hunting licenses and permits:

27 (i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant  
28 who has been unsuccessful for a shorter period of time; and

29 (ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying  
30 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by

1 the commission.

2 (b) The commission shall square the number of points purchased by an applicant per species when  
3 conducting drawings for licenses and permits.

4 (6) (a) The commission may adopt rules to:

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

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

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

9 (i) harvest of lions by resident and nonresident hunters;

10 (ii) history of quota overruns;

11 (iii) composition, including age and sex, of the lion harvest;

12 (iv) historical outfitter use;

13 (v) conflicts among hunter groups;

14 (vi) availability of public and private lands; and

15 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

16 (7) The commission may not regulate the use or possession of firearms, firearm accessories, or  
17 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

18 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the  
19 establishment of special archery seasons;

20 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including  
21 bows and arrows, traditional handguns, and muzzleloading rifles;

22 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

23 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; ~~or~~

24 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h); or

25 (f) the prohibition on possession of exploding targets pursuant to 87-1-303.

26 (8) Pursuant to 23-1-111, the commission does not oversee department activities related to the  
27 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic  
28 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant  
29 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9."  
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1           **Section 4.** Section 87-1-303, MCA, is amended to read:

2           **"87-1-303. Rules for use of lands and waters.** (1) Except as provided in 23-1-111, 87-1-301(7), and  
3 subsection ~~(3)~~ (4) of this section, the commission may adopt and enforce rules governing uses of lands that are  
4 acquired or held under easement by the commission or lands that it operates under agreement with or in  
5 conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public  
6 health, public safety, and protection of property in regulating the use of these lands. All lease and easement  
7 agreements must itemize uses as listed in 87-1-209.

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

20           (3) The commission shall adopt rules prohibiting the possession of exploding targets on land owned  
21 pursuant to subsection (1) or public waters managed pursuant to subsections (1) and (2).

22           ~~(3)~~ ~~(a)~~ (4) (a) The commission may not regulate or classify domestic livestock trailing as a commercial  
23 activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing  
24 on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1  
25 through 3.

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

- 1 (i) require a fee for domestic livestock trailing or related activities; or  
2 (ii) prohibit or unreasonably interfere with domestic livestock trailing activities.  
3 ~~(4)~~(5) For the purposes of this section, the following definitions apply:  
4 (a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not  
5 limited to horses, cattle, sheep, goats, and dogs.  
6 (b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use  
7 of the lands for forage by domestic livestock for a maximum of 96 consecutive hours.  
8 (c) "Exploding targets" means commercial targets that explode when impacted by a high-velocity  
9 projectile or targets created by combining components, including but not limited to ammonium nitrate and  
10 aluminum powder, that explode when impacted by a high-velocity projectile."

11

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

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