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*** Bill No. ***

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising management of commercial use of Class I Rivers; providing rulemaking authority; establishing a Class I river commercial use license; authorizing limitation of river trips; establishing values and fees; and amending section 37-47-310, MCA."

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

NEW SECTION. **Section 1. Class 1 River Commercial Use Management - rulemaking - definitions.** (1) Pursuant to Article IX, Section 3 of the Montana Constitution, all surface waters within the boundaries of the state are the property of the state for the use of its people.

(2) Commercial use of all surface waters is a privilege, not a right. Historical commercial use of a Class I river does not convey a property interest in or future right to conduct commercial use.

(3) ~~To~~ Except as provided in subsection (3) (b), to operate on a Class I river or a segment thereof or another river or

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segment designated by the commission through rulemaking, a commercial user shall first obtain a Class I river commercial use license and remain in compliance with its reporting requirements pursuant to [section 2].

(b) The following are not required to obtain a Class I river commercial use license:

(i) an outfitter's assistant or a guide as defined in 37-47-101;

(ii) an assistant or guide who is employed, retained, or contracted independently by a commercial user to physically accompany a client or clients while providing an on-the-water service of any kind on a river or segment thereof where a Class I river commercial use license is required to operate including but not limited to touring and rafting;
or

(iii) a person or business who rents equipment but does not physically accompany the renter of the equipment on the water.

(4) The Commission may adopt rules limiting commercial use on a river or segment thereof where a Class I license is required and the maximum number of river trips allocated to individual Class I license holders based on one or a combination of the following:

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(a) the historical use data or the annual use data for the river or segment as collected by the department pursuant to [section 2];

(b) the social conditions of the river or segment;

(c) the biological constraints of the river system, including, but not limited to, fish population and health as determined by the department; and

(d) data related to noncommercial use of the river or segment thereof, if available.

(5) If the commission establishes a maximum number of river trips for a river or segment thereof pursuant to subsection (4), the commission shall also establish the method or methods for allocating the trips in accordance with the following provisions:

(a) The commission shall give priority to Class I river commercial use license holders who submitted records pursuant to [section 2] as prescribed by the commission to demonstrate their historical commercial use of the relevant river or segment thereof prior to the January first preceding [the effective date of this act]. The commission is not prevented from establishing a maximum number of river trips that is less than the demonstrated historical commercial use.

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(b) Prior to July 1, 2026, Class I river commercial use license holders who meet the requirements of subsection (5) (a) are the only commercial users that may, upon payment of the fee established pursuant to subsection (8), obtain river trips from the department and operate on the relevant river or segment thereof for 2 years after the commission establishes a maximum number of trips for the river or segment pursuant to this section. After the first 2 years, subject to the considerations of subsection (4), the commission shall review and determine whether the maximum number of trips may be increased and additional trips allocated pursuant to the methodology adopted by the commission.

(c) Any Class I river commercial use license holder may be allocated a portion of river trips for a river or segment thereof where the commission establishes a maximum number of trips on or after July 1, 2026. The commission may still give preference to Class I river commercial use license holders who meet the requirements of subsection (5) (a). However, the commission shall include in its allocation methodology the opportunity for license holders who do not meet the requirements of subsection (5) (a) but have complied with the reporting requirements of [section 2].

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(6) (a) When a Class I river commercial use license holder concludes conducting business or no longer wishes to use its allocated trips for a river or segment thereof, the trips are transferred back to the department for reallocation subject to the provisions of subsection (7) and the river trip allocation methodology adopted by the commission.

(b) The department shall compensate the license holder who returned the river trips at the current per trip value as established pursuant to subsection (8).

(7) (a) A Class I river commercial use license holder who sells or transfers a business shall notify the new owner that issuance of river trips is subject to rules adopted by the commission pursuant to this section, that a property right does not attach to river trips, and that allocation of river trips must be conducted pursuant to this section.

(b) (i) If the purchaser of a business desires to obtain the river trips associated with the previous owner from the department after the trips are returned to the department, the prospective purchaser shall contact the department prior to purchasing the business to learn if the river trips will be available for reallocation or if there are limitations prescribed by the commission. The department may reallocate the river trips to the purchaser, upon

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payment of the fee established in subsection (8) to the department, if no limitations or other commission prescribed allocation requirements apply.

(ii) The previous owner and the purchaser must provide properly executed documents showing a bona fide conveyance of equipment and other assets previously used in the business, or documentation showing a bona fide change of controlling interest in the business before any river trips may be allocated to the new owner.

(8) The value of a river trip is established at 10% of the average retail price paid by a client per trip for that type of commercial service as set by the commission based on reporting submitted pursuant to [section 2]. There is no fee for a Class I license holder to obtain a river trip when trips are initially allocated after the commission establishes a maximum number of river trips for a river or segment thereof. When river trips are reallocated after they have been returned to the department by a license holder or the commission makes new trips available after the initial establishment of a maximum number of trips, then a Class I license holder shall pay a fee to the department for the value of each river trip obtained due to the reallocation or addition of new trips.

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(9) For the purposes of this section, the following terms apply:

(a) "Commercial user" means an outfitter licensed pursuant to Title 37, or a person or business who for consideration physically accompanies a client or clients while providing an on-the-water service of any kind on a river or segment thereof where a Class I river commercial use license is required to operate including but not limited to touring and rafting.

(b) "Consideration" has the same meaning provided in 37-47-101.

(c) "River trip" means an on-the-water service provided for two clients who are physically accompanied by a Class I river commercial use license holder or the license holder's representative on a river or segment thereof where the license is required to conduct commercial use regardless of whether the clients are being accompanied in a vessel, are fishing from the bank or while wading, or while floating individually or in a group on an innertube, float tube, sailboard, or other device used without mechanical propulsion.

(d) "Vessel" has the same meaning provided in 23-2-502.

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New Section. Section 2. Class 1 river commercial use license - reporting - revocation. (1) Subject to the provisions of subsection (4), a person who wants to conduct commercial activities on a Class I river or segment thereof or another river or segment designated by the commission pursuant to [section 1] as requiring a Class I river commercial use license shall first obtain the license from the department and remain in compliance with the requirements of subsection (6).

(2) The annual fee for a Class I commercial use river license is \$50 per river or segment thereof on which the holder operates.

(3) A Class I river commercial use license:

(a) entitles the holder to operate on specified rivers or segments thereof subject to the requirements of law and regulations adopted by the commission and department;

(b) must be renewed annually, is not transferrable, and may only be used by the holder of the license;

(d) must state:

(i) the holder's name. If the holder is a business, the license must state the name of the business' principal owner or controlling officer.

(ii) matching business information provided to the secretary of state;

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(iii) the applicable rivers or segments thereof that the license is valid for; and

(iv) the type or types of commercial use the license is valid for.

(4) (a) There are no restrictions on the number of Class I river commercial use licenses that may be issued for rivers or segments thereof where the commission has not established a maximum number of available river trips pursuant to [section 1] or adopted another restriction on use, prior to [the effective date of this act], pursuant to other rulemaking authorized under this title or Title 87.

(b) Prior to July 1, 2026, the department may not issue a Class I river commercial use license for a river or segment thereof where the commission established a maximum number of available river trips pursuant to [section 1] or adopted another restriction on use, prior to [the effective date of this act], pursuant to other rulemaking authorized under this title or Title 87, unless the applicant has submitted documentation, as prescribed by the commission, demonstrating historical commercial use on the relevant river or segment thereof prior to the January first preceding [the effective date of this act].

(c) On or after July 1, 2026, the department may issue a Class I river commercial use license for a river or segment

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thereof where the commission established a maximum number of available river trips pursuant to [section 1] or adopted another restriction on use, prior to [the effective date of this act], pursuant to other rulemaking authorized under this title or Title 87, contingent on allocation of available river trips pursuant to methodology adopted by the commission.

(5) Upon demonstration of eligibility as required by subsection (4), the department shall issue the license to the applicant indicating upon which rivers or segments thereof the holder is eligible to operate. When issued for fishing or hunting outfitting on a river or segment thereof, the Class I commercial use license may only be issued to an individual who holds a valid outfitting license under Title 37.

(6) A holder of a Class I river commercial use license shall submit annual reports to the department as prescribed by the commission including:

(a) the number of river trips recorded by the license holder for each commercial service type for which the license is valid; and

(b) the retail price paid by a client per river trip for each type of commercial service offered by the license

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holder. The retail price does not include any gratuity paid by the client.

(7) A holder of a Class I river commercial use license is not required to purchase a fishing access site commercial use permit but is still subject to applicable commercial use trip fees adopted by the commission.

(8) If a Class I river commercial use license holder is not operating in accordance with the requirements of [section 1], this section, or commission or department rule or regulation, the director may revoke the holder's license without the right of renewal. If a license is revoked, any river trips previously allocated to the license holder are immediately returned to the department for reallocation pursuant to [section 1].

Section 3 Section 37-47-310 , MCA, is amended to read:

"37-47-310. Transfer or amendment of outfitter's license -- partial sale of outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's operating plan amended to indicate that the license is being held for the use and benefit of a named business entity.

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(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4) (a) Except as provided in ~~subsections~~subsections
(4) (b) and (5), if changes are properly reflected in an operations plan, the partial sale or temporary transfer of a hunting or fishing outfitter's business may not be prohibited. Upon the sale or transfer of a fishing outfitter business, the outfitter who sells or transfers the business shall notify the new owner that issuance of river trips, as defined in [section 1], is subject to rules adopted by the fish and wildlife commission pursuant to [section 1], that a property right does not attach to a river trip, and that allocation of river trips must be conducted pursuant to [section 1].

(b) Transfer of river-use days for the Beaverhead and Big Hole Rivers may only be sold or transferred as part of a business in its entirety. On the sale or transfer of a

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fishing outfitter business on the Beaverhead or Big Hole Rivers, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish and wildlife commission and that a property right does not attach to the transferred river-use days."

(5) Smith River outfitters may lease, rent, or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

{*Internal References to 37-47-310:
87-4-131*}

Codification Note: Propose to codify in Title 23, chapter 2, part 3.

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