

HOUSE BILL NO. 249

INTRODUCED BY BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CITIES, TOWNS, AND CONSOLIDATED
5 GOVERNMENTS TO ADOPT ~~ORDINANCES OR RESOLUTIONS RESTRICTING~~ PLANS TO CONTROL,
6 REMOVE, AND RESTRICT GAME ANIMALS ~~WITHIN ENFORCEMENT AREAS~~ WITHIN THE BOUNDARIES
7 OF A CITY, TOWN, OR PORTION OF A CONSOLIDATED GOVERNMENT THAT WAS ORIGINALLY A CITY
8 OR TOWN; PROVIDING AN EXEMPTION TO THE POWERS DENIED LOCAL GOVERNMENT WITH
9 RESPECT TO CONTROLLING, REMOVING, AND RESTRICTING GAME ANIMALS; PROVIDING AN
10 EXEMPTION TO THE RESTRICTION THAT A CONSOLIDATED GOVERNMENT MUST ADOPT EITHER A
11 CITY OR COUNTY PROVISION; REQUIRING APPROVAL BY THE DEPARTMENT OF FISH, WILDLIFE, AND
12 PARKS ~~TO DEVELOP AND IMPLEMENT~~ PRIOR TO DEVELOPING AND IMPLEMENTING A PROGRAM FOR
13 THE CONTROL, REMOVAL, AND RESTRICTION OF GAME ANIMALS FROM CITIES, TOWNS, OR
14 CONSOLIDATED GOVERNMENTS THAT HAVE ADOPTED AN ORDINANCE OR RESOLUTION; PROVIDING
15 FOR THE FUNDING OF THE REMOVAL OF GAME ANIMALS A PLAN; AMENDING SECTIONS 7-1-111,
16 7-3-1105, 7-3-1222, AND 7-5-201, ~~87-1-201, AND 87-1-242~~, MCA; AND PROVIDING AN IMMEDIATE
17 EFFECTIVE DATE."
18

19 ~~WHEREAS, the universal mission of all wildlife management agencies includes an implied objective to~~
20 ~~manage wildlife within acceptable levels to ensure that wildlife does not become a nuisance or a hazard; and~~

21 ~~WHEREAS, for over 70 years wildlife populations in Montana have continued to increase, and the~~
22 ~~damage to private land and private property as a result of this increased wildlife population has increased~~
23 ~~dramatically; and~~

24 ~~WHEREAS, the Department of Fish, Wildlife, and Parks' definition of wildlife habitat is not consistent~~
25 ~~with the type of habitat found within the boundaries of cities, towns, or consolidated governments; and~~

26 ~~WHEREAS, the Department of Fish, Wildlife, and Parks spends a considerable amount of money on~~
27 ~~conservation education for people regarding the building of homes in areas that are not wildlife habitat, yet they~~
28 ~~have done nothing to eliminate wildlife within areas that are primarily populated by humans; and~~

29 ~~WHEREAS, the Department of Fish, Wildlife, and Parks has managed one species to reach objective~~
30 ~~population levels without considering the effect on other species and how increasing the number of one species~~

1 causes other species to migrate into areas that are more heavily populated by humans; and
 2 ~~WHEREAS, it is time for the Department of Fish, Wildlife, and Parks to use the tools that it has had~~
 3 ~~available for many years, along with new tools to be implemented through this legislation, to manage Montana's~~
 4 ~~wildlife population in a sustainable manner.~~

5

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

7

8 NEW SECTION. Section 1. Restriction of wildlife. A city or town may adopt ~~an ordinance or~~
 9 ~~resolution restricting~~ A PLAN TO CONTROL, REMOVE, AND RESTRICT game animals, as defined in 87-2-101, within
 10 ~~enforcement areas with defined~~ THE boundaries that are within OF the city or town limits for public health and
 11 safety purposes. Upon adoption of ~~an ordinance or resolution~~ A PLAN, the city or town shall notify the department
 12 of fish, wildlife, and parks of the ~~adoption and effective date of the ordinance or resolution and the enforcement~~
 13 ~~areas to which the ordinance or resolution applies~~ PLAN. IF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
 14 APPROVES THE PLAN OR APPROVES THE PLAN WITH CONDITIONS, THE CITY OR TOWN MAY IMPLEMENT THE PLAN AS
 15 APPROVED OR AS APPROVED WITH CONDITIONS.

16

17 **Section 2.** Section 7-1-111, MCA, is amended to read:

18 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
 19 exercising the following:

20 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
 21 exercise of an independent self-government power;

22 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective
 23 bargaining for public employees, unemployment compensation, or workers' compensation), except that subject
 24 to those provisions, it may exercise any power of a public employer with regard to its employees;

25 (3) any power that applies to or affects the public school system, except that a local unit may impose
 26 an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall
 27 exercise any power that it is required by law to exercise regarding the public school system;

28 (4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

29 (5) any power that establishes a rate or price otherwise determined by a state agency;

30 (6) any power that applies to or affects any determination of the department of environmental quality

1 with regard to any mining plan, permit, or contract;

2 (7) any power that applies to or affects any determination by the department of environmental quality
3 with regard to a certificate of environmental compatibility and public need;

4 (8) any power that defines as an offense conduct made criminal by state statute, that defines an offense
5 as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months'
6 imprisonment, or both, except as specifically authorized by statute;

7 (9) any power that applies to or affects the right to keep or bear arms, except that a local government
8 has the power to regulate the carrying of concealed weapons;

9 (10) any power that applies to or affects a public employee's pension or retirement rights as established
10 by state law, except that a local government may establish additional pension or retirement systems;

11 (11) any power that applies to or affects the standards of professional or occupational competence
12 established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession
13 or occupation;

14 (12) except as provided in 7-3-1105, 7-3-1222, or [section 1], any power that applies to or affects Title
15 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); and

16 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended
17 to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70,
18 chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords
19 to comply with ordinances or provisions that are applicable to all other businesses or residences within the local
20 government's jurisdiction."

21

22 **Section 3.** Section 7-3-1105, MCA, is amended to read:

23 **"7-3-1105. Rules, ordinances, and resolutions of consolidated unit.** (1) Within 2 years after
24 ratification of the consolidation, the governing body of the consolidated unit of local government shall revise,
25 repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns
26 at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain
27 in force within the former geographic jurisdiction until superseded by action of the new governing body.
28 Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special
29 assessments may not be repealed.

30 (2) A consolidated government may adopt, for the portion of the consolidated government that was

1 ~~formerly a city or town, an ordinance or resolution restricting~~ A PLAN TO CONTROL, REMOVE, AND RESTRICT game
 2 ~~animals, as defined in 87-2-101, within enforcement areas with~~ THE defined boundaries ~~that are within~~ OF the
 3 ~~city or town limits for public health and safety purposes. Upon adoption of an ordinance or resolution~~ A PLAN, the
 4 ~~consolidated government shall notify the department of fish, wildlife, and parks of the adoption and effective date~~
 5 ~~of the ordinance or resolution and the enforcement areas to which the ordinance or resolution applies~~ PLAN. IF
 6 ~~THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS APPROVES THE PLAN OR APPROVES THE PLAN WITH CONDITIONS, THE~~
 7 ~~CONSOLIDATED GOVERNMENT MAY IMPLEMENT THE PLAN AS APPROVED OR AS APPROVED WITH CONDITIONS."~~

8

9 **Section 4.** Section 7-3-1222, MCA, is amended to read:

10 **"7-3-1222. Procedure to enact ordinances and resolutions.** (1) Ordinances and resolutions ~~shall~~
 11 must be introduced in the commission only in written or printed form. All ordinances or resolutions, except
 12 ordinances making appropriations, ~~shall~~ must be confined to one subject, which ~~shall~~ must be clearly expressed
 13 in the title, except as provided in 7-3-1226. Ordinances making appropriations ~~shall~~ must be confined to the
 14 subject of appropriations. ~~No~~ An ordinance ~~shall~~ may not be passed until it has been read on 3 separate days,
 15 unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than
 16 two-thirds of the members of the commission. The final reading ~~shall~~ must be in full unless a written or printed
 17 copy of the measure ~~shall have~~ has been furnished to each member of the commission prior to ~~such~~ final
 18 reading.

19 (2) The enacting clause of all ordinances passed by the commission ~~shall~~ must be: "Be it ordained by
 20 the city and county of", and the enacting clause of all ordinances submitted by the initiative ~~shall~~ must be: "Be
 21 it ordained by the people of the city and county of".

22 (3) ~~No~~ An ordinance, resolution, or section ~~thereof~~ of an ordinance or resolution may not be
 23 revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section
 24 ~~thereof~~ of the ordinance or resolution as revised or amended.

25 (4) Every ordinance, or resolution, upon its final passage, ~~shall~~ must be recorded in a book kept for that
 26 purpose and ~~shall~~ must be authenticated by the signatures of the president and clerk. Within 10 days after its
 27 final passage, each ordinance or resolution ~~shall~~ must be published at least once in ~~such~~ the manner ~~as~~ that
 28 the commission may provide by ordinance.

29 (5) Initiated ordinances adopted by the electors ~~shall~~ must be published and may be amended or
 30 repealed by the commission, as in the case of other ordinances.

1 (6) A consolidated government may adopt, for the portion of the consolidated government that was
 2 formerly a city or town, an ordinance or resolution restricting A PLAN TO CONTROL, REMOVE, AND RESTRICT game
 3 animals, as defined in 87-2-101, within enforcement areas with defined THE boundaries that are within the city
 4 or town limits for public health and safety purposes. Upon adoption of an ordinance or resolution A PLAN, the
 5 consolidated government shall notify the department of fish, wildlife, and parks of the adoption and effective date
 6 of the ordinance or resolution and the enforcement areas to which the ordinance or resolution applies PLAN. IF
 7 THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS APPROVES THE PLAN OR APPROVES THE PLAN WITH CONDITIONS, THE
 8 CONSOLIDATED GOVERNMENT MAY IMPLEMENT THE PLAN AS APPROVED OR AS APPROVED WITH CONDITIONS."

9
 10 **Section 5.** Section 7-5-201, MCA, is amended to read:

11 **"7-5-201. Operation of self-government consolidated units of local government.** (1) ~~Whenever~~
 12 Except as provided in 7-3-1105(2) and 7-3-1222(6), whenever existing law contains different provisions and
 13 procedures for the functioning of counties and municipalities, including but not limited to such areas as election
 14 procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision
 15 of services, the governing body of a self-government consolidated unit of local government which contains at
 16 least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The
 17 ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated
 18 unit. This subsection applies to self-government consolidated units only in those areas where ~~such~~ the units are
 19 subject to state law under 7-1-111 through 7-1-114.

20 (2) A combination of county and municipal offices in a self-government consolidated unit may be
 21 accomplished by ordinance whenever ~~such~~ a combination is necessary for carrying out a duty assigned by state
 22 law to the local government. Whenever state law imposes a duty upon a specific official or employee of a
 23 self-government consolidated unit of local government and the local government under its adopted alternative
 24 form of government does not have ~~such an~~ that official or employee, the governing body may by ordinance
 25 assign that duty to the appropriate official or employee of the local government. The governing body of any
 26 self-government consolidated unit of local government may by ordinance assign responsibility to carry out any
 27 function or provide any service required by state law to one or more departments, officers, or employees of the
 28 local government notwithstanding the fact that the state law may assign the function or service to a specific
 29 office."

30

1 ~~Section 6.~~ Section 87-1-201, MCA, is amended to read:

2 ~~"87-1-201. (Temporary) Powers and duties.~~ (1) The department shall supervise all the wildlife, fish,
3 ~~game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may~~
4 ~~implement voluntary programs that encourage hunting access on private lands and that promote harmonious~~
5 ~~relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties~~
6 ~~prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game~~
7 ~~laws and the rules adopted by the department.~~

8 ~~(2) The department shall enforce all the laws of the state respecting the protection, preservation, and~~
9 ~~propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.~~

10 ~~(3) The department has the exclusive power to spend for the protection, preservation, and propagation~~
11 ~~of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that~~
12 ~~purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or~~
13 ~~received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from~~
14 ~~fines or damages collected for violations of the fish and game laws, or from appropriations or received by the~~
15 ~~department from any other sources is appropriated to and under control of the department.~~

16 ~~(4) The department may discharge any appointee or employee of the department for cause at any time.~~

17 ~~(5) The department may dispose of all property owned by the state used for the protection, preservation,~~
18 ~~and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or~~
19 ~~use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish~~
20 ~~and game account in the state special revenue fund.~~

21 ~~(6) The department may not issue permits to carry firearms within this state to anyone except regularly~~
22 ~~appointed officers or wardens.~~

23 ~~(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations~~
24 ~~not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.~~

25 ~~(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation~~
26 ~~of bear within or outside of the state.~~

27 ~~(9) (a) The department shall implement programs that:~~

28 ~~(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing~~
29 ~~under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and~~

30 ~~(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under~~

1 ~~87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the~~
 2 ~~maintenance or recovery of those species.~~

3 ~~—— (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential~~
 4 ~~candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or~~
 5 ~~recovery of those species with the social and economic impacts of species maintenance or recovery.~~

6 ~~—— (c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a~~
 7 ~~privately held listed species, a sensitive species, or a species that is a potential candidate for listing.~~

8 ~~—— (10) Upon notification from a city, town, or consolidated government that has adopted an ordinance or~~
 9 ~~resolution as provided in 7-3-1105, 7-3-1222, or [section 1], the department shall develop a program and any~~
 10 ~~necessary rules for removing game animals, as defined in 87-2-101, from within enforcement areas with defined~~
 11 ~~boundaries that are within the boundaries of the city, town, or portion of the consolidated government that was~~
 12 ~~initially a city or town. The department shall implement the program in a timely manner. (Terminates March 1,~~
 13 ~~2006--sec. 6, Ch. 544, L. 1999.)~~

14 ~~—— **87-1-201. (Effective March 1, 2006) Powers and duties.** (1) The department shall supervise all the~~
 15 ~~wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state.~~
 16 ~~It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts~~
 17 ~~of this state for the enforcement of the fish and game laws and the rules adopted by the department.~~

18 ~~—— (2) The department shall enforce all the laws of the state respecting the protection, preservation, and~~
 19 ~~propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.~~

20 ~~—— (3) The department has the exclusive power to spend for the protection, preservation, and propagation~~
 21 ~~of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that~~
 22 ~~purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or~~
 23 ~~received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from~~
 24 ~~fines or damages collected for violations of the fish and game laws, or from appropriations or received by the~~
 25 ~~department from any other sources is appropriated to and under control of the department.~~

26 ~~—— (4) The department may discharge any appointee or employee of the department for cause at any time.~~

27 ~~—— (5) The department may dispose of all property owned by the state used for the protection, preservation,~~
 28 ~~and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or~~
 29 ~~use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish~~
 30 ~~and game account in the state special revenue fund.~~

1 ~~———(6) The department may not issue permits to carry firearms within this state to anyone except regularly~~
2 ~~appointed officers or wardens.~~

3 ~~———(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations~~
4 ~~not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.~~

5 ~~———(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation~~
6 ~~of bear within or outside of the state.~~

7 ~~———(9) (a) The department shall implement programs that:~~

8 ~~———(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing~~
9 ~~under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and~~

10 ~~———(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under~~
11 ~~87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the~~
12 ~~maintenance or recovery of those species.~~

13 ~~———(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential~~
14 ~~candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or~~
15 ~~recovery of those species with the social and economic impacts of species maintenance or recovery.~~

16 ~~———(c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a~~
17 ~~privately held listed species, a sensitive species, or a species that is a potential candidate for listing.~~

18 ~~———(10) Upon notification from a city, town, or consolidated government that has adopted an ordinance or~~
19 ~~resolution as provided in 7-3-1105, 7-3-1222, and [section 1], the department shall develop a program and any~~
20 ~~necessary rules for removing game animals, as defined in 87-2-101, from within enforcement areas with defined~~
21 ~~boundaries that are within the boundaries of the city, town, or portion of the consolidated government that was~~
22 ~~initially a city or town.~~

23

24 ~~———~~ **Section 7.** Section 87-1-242, MCA, is amended to read:

25 ~~———~~ **"87-1-242. (Temporary) Funding for wildlife habitat and removal of game animals.** (1) The amount
26 of money specified in this subsection from the sale of each hunting license or permit listed must be used
27 exclusively by the commission to secure, develop, and maintain wildlife habitat, or by the department for the
28 removal of game animals from a city, town, or portion of a consolidated government that was initially a city or
29 town, as provided in 87-1-201(10), subject to appropriation by the legislature.

30 ~~———~~ (a) Class B-10, nonresident combination, \$77;

- 1 ~~—— (b) Nonresident antelope, \$20;~~
 2 ~~—— (c) Nonresident moose, \$20;~~
 3 ~~—— (d) Nonresident mountain goat, \$20;~~
 4 ~~—— (e) Nonresident mountain sheep, \$20;~~
 5 ~~—— (f) Class D-1, nonresident mountain lion, \$20;~~
 6 ~~—— (g) Nonresident black bear, \$20;~~
 7 ~~—— (h) Nonresident wild turkey, \$10;~~
 8 ~~—— (i) Class AAA, combination sports, \$7;~~
 9 ~~—— (j) Class B-11 nonresident deer combination, \$200.~~
 10 ~~—— (2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed~~
 11 ~~in subsection (1), except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing~~
 12 ~~under 87-1-268, must be allocated for use as provided in subsection (1).~~
 13 ~~—— (3) Eighty percent of the money allocated by this section, together with the interest and income from~~
 14 ~~the money, must be used to secure wildlife habitat pursuant to 87-1-209 or for the removal of game animals from~~
 15 ~~a city, town, or portion of a consolidated government that was initially a city or town, as provided in 87-1-201(10).~~
 16 ~~—— (4) Twenty percent of the money allocated by this section must be used as follows:~~
 17 ~~—— (a) up to 50% a year may be used for development and maintenance of real property used for wildlife~~
 18 ~~habitat or for the removal of game animals from a city, town, or portion of a consolidated government that was~~
 19 ~~initially a city or town, as provided in 87-1-201(10); and~~
 20 ~~—— (b) the remainder and any money not allocated for development and maintenance under subsection~~
 21 ~~(4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for~~
 22 ~~use in the manner prescribed for the development and maintenance of real property used for wildlife habitat or~~
 23 ~~for the removal of game animals from a city, town, or portion of a consolidated government that was initially a~~
 24 ~~city or town, as provided in 87-1-201(10). (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch.~~
 25 ~~544, L. 1999.)"~~

26
 27 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an
 28 integral part of Title 7, chapter 31, part 41, and the provisions of Title 7, chapter 31, part 41, apply to [section 1].
 29

30 **NEW SECTION. Section 7. Saving clause.** [This act] does not affect rights and duties that matured,

1 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

2

3 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

4

- END -