

1 HOUSE BILL NO. 413

2 INTRODUCED BY B. HARRIS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT IDENTIFYING NET CLIENT HUNTER USE AS A PRIVATE
5 PROPERTY INTEREST THAT IS PROTECTABLE FROM GOVERNMENTAL TAKING WITHOUT JUST
6 COMPENSATION; AMENDING SECTION 70-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE AND A RETROACTIVE APPLICABILITY DATE."

8

9 WHEREAS, net client hunter use (NCHU) is the maximum number of clients served by an outfitter in any
10 1 year; and

11 WHEREAS, NCHU was created by the Legislature in response to concerns with outfitter expansion and
12 the perceived loss of public access for hunting as a consequence of unchecked expansion; and

13 WHEREAS, the Montana Board of Outfitters established three general categories in which NCHU may
14 be established, namely:

15 (1) category one, consisting of nonresident deer or elk clients holding B-10 or B-11 licenses (outfitter
16 sponsored);

17 (2) category two, consisting of all nonoutfitter sponsored big game species clients; and

18 (3) category three, consisting of upland game bird and migratory game bird clients; and

19 WHEREAS, once established, an outfitter cannot exceed, exchange, trade, or substitute between NCHU
20 categories without the approval of the Montana Board of Outfitters; and

21 WHEREAS, Montana law expressly allows an outfitter to purchase an existing outfitting business or any
22 portion thereof and to designate NCHU in an amount equal to the outfitter's historical use; and

23 WHEREAS, once established, NCHU represents a form of property that has significant value, is
24 transferrable, and, by virtue of the limits placed on NCHU, excludes others from the market; and

25 WHEREAS, Initiative Measure No. 161, passed by the citizens of Montana in November 2010, abolished
26 outfitter-sponsored nonresident big game and deer combination licenses; and

27 WHEREAS, Initiative Measure No. 161 negatively impacts the value of category one NCHU at the sole
28 expense of the outfitters who were required to establish them in order to participate in the market; and

29 WHEREAS, any economic loss suffered by outfitters due to changes in public regulation affecting
30 category one NCHU should be compensable; and

1 WHEREAS, it is the intent of the Legislature to provide that NCHU is a compensable property interest
2 for which just compensation must be paid pursuant to Article II, section 29, of the Montana Constitution.

3

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

5

6 **Section 1.** Section 70-1-104, MCA, is amended to read:

7 **"70-1-104. In what things property interests may exist.** There may be ownership of:

8 (1) all inanimate things ~~which~~ that are capable of appropriation or of manual delivery;

9 (2) all domestic animals;

10 (3) all obligations;

11 (4) ~~such~~ products of labor or skill such as the composition of an author, the goodwill of a business,
12 trademarks, and signs; ~~and~~

13 (5) net client hunter use as defined in 37-47-101; and

14 (5)(6) rights created or granted by statute."

15

16 NEW SECTION. Section 2. Net client hunter use as outfitter property. Net client hunter use is a
17 protectable private property interest under Article II, section 29, of the Montana constitution for which
18 compensation may be claimed by an outfitter and for which just compensation must be awarded to the outfitter
19 if a court finds that the property has been damaged or taken for a public use.

20

21 NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an
22 integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section 2].

23

24 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

25

26 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the
27 meaning of 1-2-109, to net client hunter use established after December 31, 1999.

28

- END -