

1 SENATE BILL NO. 83

2 INTRODUCED BY J. BRENDEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
5 TO REIMBURSE THE DEPARTMENT OF TRANSPORTATION FOR COSTS RELATED TO WILDLIFE
6 CARCASS REMOVAL AND DISPOSAL FROM CERTAIN PUBLIC HIGHWAYS; REQUIRING THE
7 DEPARTMENT OF TRANSPORTATION TO KEEP A RECORD OF WILDLIFE CARCASSES REMOVED;
8 AMENDING SECTIONS 60-2-203 AND 87-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

9

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

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12 **Section 1.** Section 60-2-203, MCA, is amended to read:

13 **"60-2-203. Maintenance responsibility.** (1) The department shall maintain all public highways or
14 portions of public highways that it maintained on July 1, 1976.

15 (2) The department shall assume the maintenance responsibilities for paved secondary roads as roads
16 are identified cooperatively by the department and the county or counties in which a paved secondary road or
17 paved secondary road segment is located. The department may phase in maintaining the paved secondary roads
18 but must have completely assumed the responsibilities by January 1, 2001.

19 (3) The department shall keep a record of the number of wildlife carcasses removed from any road or
20 public highway for which the department is responsible for maintenance or the cost of maintenance pursuant to
21 60-2-204. The department must be reimbursed by the department of fish, wildlife, and parks for any costs
22 incurred for the removal and disposal of those wildlife carcasses pursuant to 87-1-201."

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24 **Section 2.** Section 87-1-201, MCA, is amended to read:

25 **"87-1-201. Powers and duties.** (1) The department shall supervise all the wildlife, fish, game, game and
26 nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary
27 programs that encourage hunting access on private lands and that promote harmonious relations between
28 landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed
29 by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and
30 the rules adopted by the department.

1 (2) The department shall enforce all the laws of the state regarding the protection, preservation,
2 management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

3 (3) The department has the exclusive power to spend for the protection, preservation, management, and
4 propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired
5 for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or
6 received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from
7 fines or damages collected for violations of the fish and game laws, or from appropriations or received by the
8 department from any other sources is under the control of the department and is available for appropriation to
9 the department.

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

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

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

17 (7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations
18 not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of
19 chapter 2.

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

22 (9) (a) The department shall implement programs that:

23 (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under
24 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

25 (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under
26 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the
27 maintenance or recovery of those species;

28 (iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in
29 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided
30 in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest

1 and population objectives, request that land management agencies open public lands and public roads to public
2 access during the big game hunting season.

3 (iv) address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to
4 forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management
5 area under the department's jurisdiction.

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

9 (c) Any management plan developed by the department pursuant to this subsection (9) is subject to the
10 requirements of Title 75, chapter 1, part 1.

11 (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a
12 privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

13 (10) The department shall publish an annual game count, estimating to the department's best ability the
14 numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative
15 regions of the state. In preparing the publication, the department may incorporate field observations, hunter
16 reporting statistics, or any other suitable method of determining game numbers. The publication must include an
17 explanation of the basis used in determining the game count.

18 (11) The department shall reimburse the department of transportation for any costs incurred for the
19 removal and disposal of any wildlife carcass that is found along a road or public highway for which the department
20 of transportation is responsible for maintenance or the cost of maintenance pursuant to 60-2-203 or 60-2-204."
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22 NEW SECTION. SECTION 3. CONTINGENT VOIDNESS. (1) IF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
23 RECEIVES A WRITTEN DETERMINATION FROM THE UNITED STATES FISH AND WILDLIFE SERVICE THAT THE PROVISIONS OF
24 [THIS ACT] CONSTITUTE A DIVERSION OF LICENSE FEES, [THIS ACT] IS VOID.

25 (2) THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS SHALL NOTIFY THE CODE COMMISSIONER OF THE RECEIPT
26 OF THE WRITTEN DOCUMENTATION MADE PURSUANT TO SUBSECTION (1).
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28 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2011.
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