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HOUSE BILL NO. 492

INTRODUCED BY P. CLARK, GUTSCHE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE THE PRAIRIE DOG AS A SPECIES IN NEED OF MANAGEMENT; AMENDING SECTION 87-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

WHEREAS, Montana has a responsibility to ensure that a viable prairie dog population is maintained in the state for the long term, as well as to ensure the long-term existence of species associated with prairie dogs; and

WHEREAS, the Montana Prairie Dog Working Group is developing a conservation plan for prairie dogs in Montana to provide for management of populations and habitats in order to ensure both the long-term existence of prairie dogs and the control of prairie dogs to protect existing land uses; and

WHEREAS, the only existing statutory authority for prairie dog management is to control them as rodents under Title 7, chapter 22, part 22, MCA, and as vertebrate pests under section 80-7-1101, MCA; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) has found that the black-tailed prairie dog is warranted for listing under the federal Endangered Species Act (ESA) over an 11-state area that includes Montana, but that listing of this species is precluded at the present time because other candidate species have a higher priority for listing; and

WHEREAS, the USFWS finding is based in part on the inadequacy of regulatory mechanisms that Montana and other states currently possess to ensure maintenance of viable prairie dog populations for the long term; and

WHEREAS, Montana and 10 other states have entered into an agreement to jointly develop management plans that address the needs of the species across virtually its entire range, thus improving the status of the black-tailed prairie dog to the point that it can be removed from consideration for listing under the ESA; and

WHEREAS, the USFWS will review the status of the black-tailed prairie dog on an annual basis; and

1 WHEREAS, it is desirable to enable the Department of Fish, Wildlife, and Parks AND THE DEPARTMENT
 2 OF AGRICULTURE to implement management actions contained in Montana's prairie dog conservation plan
 3 while specifically protecting the current ability of landowners to manage prairie dogs on their lands; and

4 WHEREAS, it is desirable to facilitate long-term conservation of prairie dogs according to the
 5 conservation plan for prairie dogs in Montana while simultaneously reducing the likelihood that the
 6 black-tailed prairie dog will be listed under the ESA.

7

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

9

10 **Section 1.** Section 87-5-102, MCA, is amended to read:

11 **"87-5-102. Definitions.** As used in this part, the following definitions apply:

12 (1) "Account" means the nongame wildlife account established in 87-5-121.

13 (2) "Ecosystem" means a system of living organisms and their environment, each influencing the
 14 existence of the other and both necessary for the maintenance of life.

15 (3) "Endangered species" means ~~any~~ a species or subspecies of wildlife that is actively threatened
 16 with extinction due to any of the following factors:

17 (a) the destruction, drastic modification, or severe curtailment of its habitat;

18 (b) its overutilization for scientific, commercial, or sporting purposes;

19 (c) the effect on it of disease, pollution, or predation;

20 (d) other natural or ~~man-made~~ artificial factors affecting its prospects of survival or recruitment
 21 within the state; or

22 (e) any combination of the foregoing factors.

23 (4) "Management" means the collection and application of biological information for the purposes
 24 ~~of increasing the number of individuals within species and populations of wildlife up to the optimum~~
 25 ~~carrying capacity of their habitat and maintaining such levels~~ conserving populations of wildlife consistent
 26 with other uses of land and habitat. The term includes the entire range of activities that constitute a
 27 modern scientific resource program, including but not limited to research, census, law enforcement, habitat
 28 improvement, CONTROL, and education. ~~Also included within the term, when and where appropriate, is The~~
 29 term also includes the periodic ~~or total~~ protection of species or populations as well as regulated taking.

30 (5) "Nongame wildlife" means ~~any~~ a wild mammal, bird, amphibian, reptile, fish, mollusk,

1 crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state.
 2 Animals designated by statute or regulation of this state as predatory in nature are not classified as
 3 nongame wildlife for purposes of this part. Prairie dogs are nongame wildlife and may be managed,
 4 CONTROLLED, and regulated under this part. Management and control by counties and the department of
 5 agriculture pursuant to Title 7, chapter 22, part 22 or 25, and Title 80, chapter 7, part 11, is AND CONTROL
 6 BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON STATE TRUST LANDS ARE permitted as long as
 7 the management and control are consistent with any management plan approved by both the department,
 8 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, and the department of agriculture. UPON
 9 ATTAINMENT OF POPULATION DISTRIBUTION GOALS OF THE MANAGEMENT PLAN, PRAIRIE DOGS MAY NOT BE MANAGED BY
 10 THE DEPARTMENT AS A SPECIES IN NEED OF MANAGEMENT. NOTHING IN THIS PART MAY BE INTERPRETED TO LIMIT A
 11 LANDOWNER'S ABILITY TO CONTROL PRAIRIE DOG CONCENTRATIONS IN UNACCEPTABLE LOCATIONS, AS DETERMINED BY
 12 THE LANDOWNER, ON PRIVATE LANDS.

13 (6) "Optimum carrying capacity" means that point at which a given habitat can support healthy
 14 populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the
 15 habitat to continue that function.

16 (7) "Person" means ~~any~~ an individual, firm, corporation, association, or partnership.

17 (8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill
 18 wildlife.

19 (9) "Wildlife" means ~~any~~ a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or
 20 other wild animal or any part, product, egg, or offspring or the dead body or parts ~~thereof~~ of the animal."

21

22 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

23

24 NEW SECTION. SECTION 3. TERMINATION. [THIS ACT] TERMINATES OCTOBER 1, 2007.

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- END -