

HOUSE BILL NO. 42
INTRODUCED BY D. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CALCULATE THE AMOUNT OF HABITAT AVAILABLE FOR ELK, DEER, AND ANTELOPE IN MONTANA; REQUIRING A DETERMINATION OF SUSTAINABLE POPULATIONS BASED ON THE HABITAT CALCULATION; REQUIRING THE DEPARTMENT TO ENSURE THAT POPULATIONS OF ELK, DEER, AND ANTELOPE ARE AT OR BELOW THE POPULATION ESTIMATE; PROVIDING A FUNDING SOURCE AND A STATUTORY APPROPRIATION; PROVIDING FOR ADJUSTMENTS BASED ON MANAGEMENT PROVISIONS IN THE MAXIMUM LICENSE NUMBERS THAT CAN BE ALLOCATED; AMENDING SECTIONS 17-7-502, 87-1-201, 87-1-268, 87-1-301, 87-2-104, 87-2-501, 87-2-504, 87-2-505, 87-2-510, 87-2-511, 87-2-512, AND 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

WHEREAS, the Department of Fish, Wildlife, and Parks has historically included private land as part of the habitat equation in determining how much habitat is available for wildlife use in Montana; and

WHEREAS, the amount of habitat that is available for use by wildlife should be recalculated to accurately reflect the amount of habitat that is available without causing game damage to agricultural crops; and

WHEREAS, when determining wildlife habitat, private land acreage should be excluded from the equation and public land should be considered based on a multiple use policy; and

WHEREAS, it is time for the Department of Fish, Wildlife, and Parks to use the tools that it has had available for many years, along with new tools to be implemented through this legislation, to manage Montana's wildlife populations in a sustainable manner.

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

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 5] is to require the commission, with advice of the department, to manage elk, deer, and antelope populations in a sustainable

manner that keeps animal populations at a number that does not adversely affect private property owners.

NEW SECTION. Section 2. Calculation of available habitat. When determining the total acreage that serves as habitat for elk, deer, and antelope, the commission shall consider only public land and private land that is under contract with the department for wildlife management or habitat enhancement purposes. This calculation must be reconsidered and provided to the public by October 1 of each odd-numbered year.

NEW SECTION. Section 3. Viable elk, deer, and antelope populations based on habitat acreage -- reduction of populations as necessary. (1) Based on the habitat acreage that is determined pursuant to [section 2], the commission shall determine the appropriate elk, deer, and antelope numbers that can be viably sustained.

(2) Once the sustainable population numbers are determined as provided in subsection (1), the department shall implement, through the rulemaking process and other applicable programs, a program to ensure that the population of elk, deer, and antelope remains at or below the sustainable population. The program implemented by the department may include but is not limited to:

- (a) liberalized harvests;
- (b) game damage hunts;
- (c) landowner permits;
- (d) herd dispersal; or
- (e) animal relocation.

(3) The department shall:

(a) ensure that populations of elk, deer, and antelope are at or below the sustainable population number by January 1, 2009; and

(b) evaluate the elk, deer, and antelope populations on an annual basis and provide that information to the public.

NEW SECTION. Section 4. Sustainable elk, deer, and antelope populations program -- funding. The department shall use money from the fish and game fund, as described in 87-1-601(3), to implement [sections 1 through 5]. That portion of the money in the fund that the department determines is necessary for the purpose of implementing [sections 1 through 5] is statutorily appropriated, as provided in 17-7-502.

NEW SECTION. Section 5. Rulemaking. (1) The department and the commission may adopt rules that are necessary to implement [sections 1 through 5].

(2) In adopting rules for determining sustainability, the commission shall consider average carrying capacity and use generally accepted animal unit factors for each species in each commission district.

Section 6. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; [section 4]; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates

July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 7. Section 87-1-201, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

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

(c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing. (Terminates March 1, 2006--sec. 6, Ch. 544, L. 1999.)

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

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

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

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

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

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

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

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

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

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

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

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

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

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

Section 8. Section 87-1-268, MCA, is amended to read:

"87-1-268. (Temporary) Variable pricing of outfitter-sponsored Class B-10 and B-11 licenses. The commission shall annually set fees for outfitter-sponsored Class B-10 and Class B-11 licenses allowed under 87-2-505 and 87-2-510. Subject to the management provisions provided in [sections 1 through 5], the ~~The~~ fees must be set at a market rate intended to sell as close to but not more than an average of 5,500 Class B-10 licenses and 2,300 Class B-11 licenses each year, calculated over a 5-year period. The sale period for the licenses must be established so that by the last date in the established period, those licenses that are unsold, up to 5,500 Class B-10 licenses and 2,300 Class B-11 licenses or more if additional licenses are authorized pursuant to the management provisions provided in [sections 1 through 5], may be reallocated by the commission for a drawing at a price set by the commission. (Terminates March 1, 2006--sec. 6, Ch. 544, L. 1999.)"

Section 9. Section 87-1-301, MCA, is amended to read:

"87-1-301. (Temporary) Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office; ~~and~~

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders;

(i) for the biologically sound management of big game populations of ~~deer and elk~~, deer, and antelope;

and

(ii) to control the impacts of those ~~deer and elk~~, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in [sections 1 through 5].

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts in the administrative region designated by the department as region 1; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts in the administrative region designated by the department as region 1, which may include limiting the number of nonresident hound handler permits.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(Terminates April 30, 2004--sec. 3, Ch. 575, L. 2001.)

87-1-301. (Effective May 1, 2004) Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

- (b) shall establish the hunting, fishing, and trapping rules of the department;
- (c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;
- (d) must have the power within the department to establish wildlife refuges and bird and game preserves;
- (e) shall approve all acquisitions or transfers by the department of interests in land or water;
- (f) shall review and approve the budget of the department prior to its transmittal to the budget office; ~~and~~
- (g) shall review and approve construction projects whose estimated cost is more than \$1,000 but less than \$5,000; ~~and~~
- (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

- (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:
- (i) separate deer licenses from nonresident elk combination licenses;
 - (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;
 - (iii) condition the use of the deer licenses; and
 - (iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders;

- (i) for the biologically sound management of big game populations of ~~deer and elk, deer, and antelope;~~
~~and~~
- (ii) to control the impacts of those ~~deer and elk, deer, and antelope~~ populations on uses of private property; and
- (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in [sections 1 through 5].

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission."

Section 10. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed -- fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class A-5, Class A-7, Class B-7, Class B-8, Class B-10, Class B-11, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species."

Section 11. Section 87-2-501, MCA, is amended to read:

"87-2-501. Class A-3, A-4, A-5, A-6, A-7--resident deer, elk, and bear licenses -- special Class A-7 resident and nonresident license requirements and preference. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department

rules:

- (a) Class A-3, deer A tag, \$13;
- (b) Class A-4, deer B tag, \$8;
- (c) Class A-5, elk tag, \$16;
- (d) Class A-6, black bear tag, \$15;
- (e) Class A-7, antlerless elk tag, \$16.

(2) (a) The holder of a Class A-7 antlerless elk license who is 12 years of age or older is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.

(b) Subject to the management provisions provided in [sections 1 through 5], a ~~A~~ person may not take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) Subject to the management provisions provided in [sections 1 through 5], a ~~A~~ nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Subject to the management provisions provided in [sections 1 through 5], 15% ~~Fifteen percent~~ of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 12. Section 87-2-504, MCA, is amended to read:

"87-2-504. (Temporary) Class B-7 and B-8--nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, wildlife, and parks office, Helena,

Montana, to purchase one each of the following licenses:

- (i) Class B-7, deer A tag, \$250;
- (ii) Class B-8, deer B tag, \$75.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). Subject to the management provisions provided in [sections 1 through 5], not ~~Not~~ more than 5,000 Class B-7 licenses may be sold in any license year.

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993.)

87-2-504. (Effective March 1, 2006) Class B-7 and B-8--nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, wildlife, and parks office, Helena, Montana, to purchase one each of the following licenses:

- (i) Class B-7, deer A tag, \$250;
- (ii) Class B-8, deer B tag, \$75.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d).

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions."

Section 13. Section 87-2-505, MCA, is amended to read:

"87-2-505. (Temporary) Class B-10--nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of \$625 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Subject to the management provisions provided in [sections 1 through 5], not ~~Not~~ more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)

87-2-505. (Effective March 1, 2006) Class B-10--nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of \$550 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Subject to the management provisions provided in [sections 1 through 5], not ~~Not~~ more than 17,000 Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission."

Section 14. Section 87-2-510, MCA, is amended to read:

"87-2-510. (Temporary) Class B-11--nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of \$325 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter or upon payment of the fee of \$325 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Subject to the management provisions provided in [sections 1 through 5], not ~~Not~~ more than 2,300 unreserved Class B-11 licenses may be sold in any 1 license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)

87-2-510. (Effective March 1, 2006) Class B-11--nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of \$300, purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. The fee for a Class B-11 license is \$300 if the license is one of the 4,000 reserved pursuant to 87-2-511 or if additional licenses are authorized pursuant to the management provisions provided in [sections 1 through 5] for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor. The license is subject to the limitations prescribed by law and department regulation. A person may apply for a license to the fish, wildlife, and parks office, Helena, Montana. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Subject to the management provisions provided in [sections 1 through 5], 6,000 ~~Six thousand~~ Class B-11 licenses are authorized for sale each license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission."

Section 15. Section 87-2-511, MCA, is amended to read:

"87-2-511. (Temporary) Sale and use of Class B-10 and Class B-11 licenses. (1) ~~The~~ Subject to the management provisions provided in [sections 1 through 5], the department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

- (a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;
- (b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and
- (c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

- (a) accompany the applicant;
- (b) provide guiding services for the species hunted by the applicant;
- (c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;
- (d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and
- (e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.

(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.

(9) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses. (Terminates March 1, 2006--sec. 6, Ch. 544, L. 1999.)

87-2-511. (Effective March 1, 2006) Sale of Class B-10 and Class B-11 licenses. (1) The Subject to the management provisions provided in [sections 1 through 5], the department shall offer the Class B-10 and

Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and 2,000 Class B-11 licenses reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

- (a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;
- (b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and
- (c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

- (a) accompany the applicant;
- (b) provide guiding services for the species hunted by the applicant;
- (c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;
- (d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and
- (e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the

affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor.

(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all unsold reserved licenses that are available under subsection (6) must be issued by a drawing among all applicants for the respective unreserved licenses."

Section 16. Section 87-2-512, MCA, is amended to read:

"87-2-512. Separation of Class B-7 license from Class B-10 license for deer management purposes -- disposition of license revenue. (1) The commission may by rule separate the Class B-7 license from the Class B-10 license and sell the separated Class B-7 license, giving a preference to any Class B-10 license holder to purchase one of the separated Class B-7 licenses. In the case of separated Class B-7 licenses that are not purchased by Class B-10 license holders, the commission, for purposes of sound deer management:

(a) subject to the management provisions provided in [sections 1 through 5], may authorize the sale of not more than 5,000 Class B-7 licenses that have been separated from the Class B-10 licenses, as limited by 87-2-504;

(b) may authorize all or a portion of the separated Class B-7 licenses to be sold as Class B-11 combination licenses;

(c) shall set the fees for the separated licenses as follows:

(i) the fee for a Class B-10 license without the deer tag may not be more than the fee set in 87-2-505 for licenses in the general category and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268; and

(ii) the fee for the separated Class B-11 licenses may not be more than the fees specified in 87-2-510 for licenses in the general and landowner-sponsored categories and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268;

(d) may assign the separated Class B-7 or Class B-11 licenses for use in specific administrative regions,

portions of administrative regions, hunting districts, or portions of hunting districts;

(e) may allocate a portion of the separated Class B-7 or Class B-11 licenses among the general and landowner-sponsored categories established in 87-2-510 and 87-2-511 but not count those licenses as part of the statutory quotas, with the Class B-7 licenses then subject to the requirements and procedures of 87-2-511;

(f) may allocate a portion of the separated Class B-7 or Class B-11 licenses to the outfitter-sponsored category subject to the requirements and procedures of 87-2-511; ~~except that.~~ Subject to the management provisions provided in [sections 1 through 5], licenses in the outfitter-sponsored category may not comprise more than one-third of the licenses issued pursuant to this section and the number issued, when added to the number of Class B-11 licenses issued under 87-1-268, may not exceed 2,300 in any license year; and

(g) may condition the separated Class B-7 and Class B-11 licenses as appropriate and necessary to manage the harvest of deer, including restricting the use of a license to either mule deer or whitetail deer.

(2) The revenue from any Class B-11 licenses that have been separated from Class B-10 licenses must be deposited in the state special revenue account to the credit of the department and not allocated pursuant to other statutory requirements generally applicable to Class B-11 licenses. The revenue from Class B-10 licenses sold without a deer tag must be allocated in the same manner as revenue from Class B-10 licenses sold with a deer tag."

Section 17. Section 87-2-513, MCA, is amended to read:

"87-2-513. (Temporary) Either-sex or antlerless elk permit for landowner who offers free public elk hunting -- terms, conditions, and issuance of permit. (1) In addition to any elk permits offered for sale, the department may, for wildlife management purposes, issue an either-sex or antlerless elk permit at no cost to a landowner who provides free public elk hunting on the landowner's property and who otherwise meets the conditions of this section. The department may issue elk permits to the public, at regular cost and in the number authorized in subsection (3), for hunting on the property of a landowner who opens property for public elk hunting for wildlife management purposes pursuant to this section.

(2) To be eligible for a permit pursuant to this section, a landowner:

(a) must own occupied elk habitat that is large enough, in the department's determination, to accommodate successful public hunting;

(b) may not have been issued a Class A-7 landowner license pursuant to 87-2-501(3) during the license year;

(c) must have entered into a contractual public elk hunting access agreement with the department that

allows public access for free public elk hunting on the landowner's property throughout the regular hunting season and that includes public hunting by permit holders using permits that are valid for the hunting district;

(d) may not receive cash payments under 87-1-267; and

(e) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's property.

(3) Subject to the management provisions provided in [sections 1 through 5], not ~~Not~~ more than 20% of permits issued pursuant to this section may be issued at no cost to a landowner, an immediate family member of a landowner, or an authorized full-time employee of a landowner. The remaining permits must be issued to the public on a first-come, first-serve basis.

(4) A permit issued pursuant to this section:

(a) is nontransferable and may not be sold; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of the permits according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another permit pursuant to this section during any subsequent license year.

(7) The department, through the commission, may authorize the issuance of permits under this section to a landowner who enters into a contractual public elk hunting access agreement with the department that defines the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property. (Terminates March 1, 2006--sec. 4, Ch. 519, L. 2001.)"

NEW SECTION. Section 18. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [sections 1 through 5].

NEW SECTION. Section 19. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 20. Effective date.** [This act] is effective on passage and approval.

- END -

