



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 MANAGE WITH THE OBJECTIVE THAT POPULATIONS OF ELK, DEER, AND ANTELOPE ARE AT OR BELOW THE POPULATION ESTIMATE; PROVIDING A FUNDING SOURCE; PROVIDING FOR ADJUSTMENTS BASED ON MANAGEMENT PROVISIONS IN THE MAXIMUM LICENSE NUMBERS THAT CAN BE ALLOCATED FOR RESIDENTS; AMENDING SECTIONS 87-1-201, 87-1-301, 87-2-104, 87-2-501, 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, 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:

**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 Montana land.

**Section 2. Calculation of available habitat.** When determining the total acreage that serves as habitat

for elk, deer, and antelope, the commission shall consider public land and private land 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.

**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. The department shall consider the specific concerns of private landowners when determining sustainable numbers pursuant to this section.

(2) Once the sustainable population numbers are determined as provided in subsection (1), the department shall implement, through existing wildlife management programs, necessary actions with the objective that the population of elk, deer, and antelope remains at or below the sustainable population. The programs may include but are not limited to:

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

(3) The department shall:

(a) manage with the objective 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.

**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].

**Section 5. Rulemaking.** (1) The department and the commission shall adjust existing wildlife management rules and plans to implement [sections 1 through 5].

(2) The department and the commission may adopt rules for determining sustainability. The commission shall consider average carrying capacity and use generally accepted animal unit factors for each species in each

commission region.

(3) Any rules adopted by the department pursuant to subsection (2) must be adopted in a timely manner.

**Section 6.** 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.

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to the fish and game account in the state special revenue fund.

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(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 7.** 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 8.** 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 9.** 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 10.** 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.)"

**Section 11. 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].

**Section 12. 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.

**Section 13. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0042, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 42  
INTRODUCED BY BARRETT

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 MANAGE WITH THE OBJECTIVE THAT POPULATIONS OF ELK, DEER, AND ANTELOPE ARE AT OR BELOW THE POPULATION ESTIMATE; PROVIDING A FUNDING SOURCE; PROVIDING FOR ADJUSTMENTS BASED ON MANAGEMENT PROVISIONS IN THE MAXIMUM LICENSE NUMBERS THAT CAN BE ALLOCATED FOR RESIDENTS; AMENDING SECTIONS 87-1-201, 87-1-301, 87-2-104, 87-2-501, AND 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.