

HOUSE BILL NO. 249
INTRODUCED BY D. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CITIES, TOWNS, AND CONSOLIDATED GOVERNMENTS TO ADOPT ORDINANCES OR RESOLUTIONS RESTRICTING GAME ANIMALS WITHIN ENFORCEMENT AREAS WITHIN THE BOUNDARIES OF A CITY, TOWN, OR PORTION OF A CONSOLIDATED GOVERNMENT THAT WAS ORIGINALLY A CITY OR TOWN; PROVIDING AN EXEMPTION TO THE POWERS DENIED LOCAL GOVERNMENT WITH RESPECT TO RESTRICTING GAME ANIMALS; PROVIDING AN EXEMPTION TO THE RESTRICTION THAT A CONSOLIDATED GOVERNMENT MUST ADOPT EITHER A CITY OR COUNTY PROVISION; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO DEVELOP AND IMPLEMENT A PROGRAM FOR THE REMOVAL OF GAME ANIMALS FROM CITIES, TOWNS, OR CONSOLIDATED GOVERNMENTS THAT HAVE ADOPTED AN ORDINANCE OR RESOLUTION; PROVIDING FOR THE FUNDING OF THE REMOVAL OF GAME ANIMALS; AMENDING SECTIONS 7-1-111, 7-3-1105, 7-3-1222, 7-5-201, 87-1-201, AND 87-1-242, 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 and private property as a result of this increased wildlife population has increased dramatically; and

WHEREAS, the Department of Fish, Wildlife, and Parks' definition of wildlife habitat is not consistent with the type of habitat found within the boundaries of cities, towns, or consolidated governments; and

WHEREAS, the Department of Fish, Wildlife, and Parks spends a considerable amount of money on conservation education for people regarding the building of homes in areas that are not wildlife habitat, yet they have done nothing to eliminate wildlife within areas that are primarily populated by humans; and

WHEREAS, the Department of Fish, Wildlife, and Parks has managed one species to reach objective population levels without considering the effect on other species and how increasing the number of one species causes other species to migrate into areas that are more heavily populated by humans; 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 population in a sustainable manner.

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

NEW SECTION. Section 1. Restriction of wildlife. A city or town may adopt an ordinance or resolution restricting game animals, as defined in 87-2-101, within enforcement areas with defined boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of an ordinance or resolution, the city or town shall notify the department of fish, wildlife, and parks of the adoption and effective date of the ordinance or resolution and the enforcement areas to which the ordinance or resolution applies.

Section 2. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government

has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or [section 1], any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); and

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction."

Section 3. Section 7-3-1105, MCA, is amended to read:

"7-3-1105. Rules, ordinances, and resolutions of consolidated unit. (1) Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(2) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, an ordinance or resolution restricting game animals, as defined in 87-2-101, within enforcement areas with defined boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of an ordinance or resolution, the consolidated government shall notify the department of fish, wildlife, and parks of the adoption and effective date of the ordinance or resolution and the enforcement areas to which the ordinance or resolution applies."

Section 4. Section 7-3-1222, MCA, is amended to read:

"7-3-1222. Procedure to enact ordinances and resolutions. (1) Ordinances and resolutions ~~shall~~ must

be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, ~~shall must~~ be confined to one subject, which ~~shall must~~ be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations ~~shall must~~ be confined to the subject of appropriations. ~~No An~~ ordinance ~~shall may not~~ be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading ~~shall must~~ be in full unless a written or printed copy of the measure ~~shall have~~ has been furnished to each member of the commission prior to ~~such final~~ reading.

(2) The enacting clause of all ordinances passed by the commission ~~shall must~~ be: "Be it ordained by the city and county of", and the enacting clause of all ordinances submitted by the initiative ~~shall must~~ be: "Be it ordained by the people of the city and county of".

(3) ~~No An~~ ordinance, resolution, or section ~~thereof shall~~ of an ordinance or resolution may not be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section ~~thereof of the ordinance or resolution~~ as revised or amended.

(4) Every ordinance; or resolution, upon its final passage, ~~shall must~~ be recorded in a book kept for that purpose and ~~shall must~~ be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution ~~shall must~~ be published at least once in ~~such the~~ manner ~~as that~~ the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors ~~shall must~~ be published and may be amended or repealed by the commission, as in the case of other ordinances.

(6) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, an ordinance or resolution restricting game animals, as defined in 87-2-101, within enforcement areas with defined boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of an ordinance or resolution, the consolidated government shall notify the department of fish, wildlife, and parks of the adoption and effective date of the ordinance or resolution and the enforcement areas to which the ordinance or resolution applies."

Section 5. Section 7-5-201, MCA, is amended to read:

"7-5-201. Operation of self-government consolidated units of local government. (1) ~~Whenever~~ Except as provided in 7-3-1105(2) and 7-3-1222(6), whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision

of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where ~~such~~ the units are subject to state law under 7-1-111 through 7-1-114.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever ~~such~~ a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have ~~such an~~ that official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office."

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, 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, 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, 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.

(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.

(10) Upon notification from a city, town, or consolidated government that has adopted an ordinance or resolution as provided in 7-3-1105, 7-3-1222, or [section 1], the department shall develop a program and any necessary rules for removing game animals, as defined in 87-2-101, from within enforcement areas with defined boundaries that are within the boundaries of the city, town, or portion of the consolidated government that was initially a city or town. The department shall implement the program in a timely manner. (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, 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, 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, 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.

(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.

(10) Upon notification from a city, town, or consolidated government that has adopted an ordinance or resolution as provided in 7-3-1105, 7-3-1222, and [section 1], the department shall develop a program and any necessary rules for removing game animals, as defined in 87-2-101, from within enforcement areas with defined boundaries that are within the boundaries of the city, town, or portion of the consolidated government that was initially a city or town."

Section 7. Section 87-1-242, MCA, is amended to read:

"87-1-242. (Temporary) Funding for wildlife habitat and removal of game animals. (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used ~~exclusively~~ by the commission to secure, develop, and maintain wildlife habitat; or by the department for the removal of game animals from a city, town, or portion of a consolidated government that was initially a city or town, as provided in 87-1-201(10). subject to appropriation by the legislature.

- (a) Class B-10, nonresident combination, \$77;
- (b) Nonresident antelope, \$20;
- (c) Nonresident moose, \$20;
- (d) Nonresident mountain goat, \$20;
- (e) Nonresident mountain sheep, \$20;
- (f) Class D-1, nonresident mountain lion, \$20;
- (g) Nonresident black bear, \$20;
- (h) Nonresident wild turkey, \$10;
- (i) Class AAA, combination sports, \$7;
- (j) Class B-11 nonresident deer combination, \$200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1), except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing under 87-1-268, must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209 or for the removal of game animals from a city, town, or portion of a consolidated government that was initially a city or town, as provided in 87-1-201(10).

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat or for the removal of game animals from a city, town, or portion of a consolidated government that was

initially a city or town, as provided in 87-1-201(10); and

(b) the remainder and any money not allocated for development and maintenance under subsection (4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat or for the removal of game animals from a city, town, or portion of a consolidated government that was initially a city or town, as provided in 87-1-201(10). (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999.)"

NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 31, part 41, and the provisions of Title 7, chapter 31, part 41, apply to [section 1].

NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

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