

HOUSE BILL NO. 364
INTRODUCED BY MALCOLM, ESP

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD TO ADMINISTER PROGRAMS FOR THE MITIGATION AND REIMBURSEMENT OF LIVESTOCK LOSSES BY WOLVES; ESTABLISHING BOARD MEMBERSHIP, POWERS, DUTIES, AND REPORTING REQUIREMENTS; ESTABLISHING ~~AN ACCOUNT~~ ACCOUNTS AND A TRUST FUND TO FUND THE MITIGATION OF LIVESTOCK LOSSES BECAUSE OF WOLF PREDATION AND TO REIMBURSE LIVESTOCK OWNERS FOR LOSSES RELATED TO PREDATION BY WOLVES; ~~TRANSFERRING MONEY TO THE WOLF PREDATION MITIGATION AND REIMBURSEMENT TRUST FUND AND TO THE WOLF PREDATION MITIGATION AND REIMBURSEMENT ACCOUNT IN THE STATE SPECIAL REVENUE FUND; PROVIDING AN APPROPRIATION;~~ AND PROVIDING AN ~~IMMEDIATE EFFECTIVE DATE~~ EFFECTIVE DATES."

WHEREAS, wolves are firmly established in Montana, and the long-term presence of wolves depends on implementing a comprehensive program that balances the complex biological, social, economic, and political aspects of wolf management; and

WHEREAS, wolf depredation on livestock has the potential to negatively impact some individual livestock producers; and

~~WHEREAS, Governor Racicot's Wolf Advisory Council, representing a broad range of Montana interests, recommended that any Montana wolf management plan include provisions to reduce the risk of wolf depredation on livestock and to reimburse livestock producers for the impact of wolf predation; and~~

WHEREAS, the Montana Wolf Management Plan and Final EIS adopted by the Department of Fish, Wildlife, and Parks called for creation of a program to reduce the risk of losses of livestock to wolves and to reimburse livestock producers for losses; and

WHEREAS, a working group of more than 30 Montana citizens, state and federal agency personnel, and tribal representatives developed a comprehensive proposal for the "Montana Livestock Loss Reduction and Mitigation Program".

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

NEW SECTION. **Section 1. Livestock loss reduction and mitigation board -- purpose,**

membership, and qualifications. (1) There is a livestock loss reduction and mitigation board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in [sections 2 through 4], with funds provided through the ~~account~~ ACCOUNTS established in [section 5], in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

- (a) three members from a list of names recommended by the board of livestock;
- (b) three members from a list of names recommended by the fish, wildlife, and parks commission; and
- (c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

- (a) the raising of livestock in Montana;
- (b) livestock marketing, valuations, sales, or breeding associations;
- (c) the interaction of wolves with livestock and livestock mortality caused by wolves;
- (d) wildlife conservation;
- (e) administration; and
- (f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of ~~fish, wildlife, and parks~~ LIVESTOCK for administrative purposes only as provided in 2-15-121. ~~However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.~~

(6) THE BOARD SHALL ADOPT RULES TO IMPLEMENT THE PROVISIONS OF [SECTIONS 1 THROUGH 7].

NEW SECTION. **Section 2. Livestock ~~loss reduction and mitigation board~~ -- loss reduction program.** The livestock loss reduction and mitigation board shall ~~adopt rules as necessary to~~ establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf predation on livestock, including:

(1) eligibility requirements for program participation, ~~which must provide eligibility for any Montana livestock producer that applies;~~

(2) application procedures for program participation and procedures for awarding grants for wolf predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms, ~~which may be for 1 or more years~~, that clearly set out the obligations of the livestock producer AND THAT PROVIDE FOR A TERM OF UP TO 12 MONTHS SUBJECT TO RENEWAL BASED ON AVAILABILITY OF FUNDS, SATISFACTION OF PROGRAM REQUIREMENTS, AND PRIORITIZATION OF THE PROJECT;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant.

NEW SECTION. **Section 3. Livestock loss reduction and mitigation board -- loss mitigation program -- definitions.** The livestock loss reduction and mitigation board shall ~~adopt rules as necessary to~~ establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves to cattle, swine, horses, mules, sheep, goats, and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to [section 4(2)].

(2) Confirmed and probable livestock losses must be reimbursed at AN AMOUNT NOT TO EXCEED fair market value as determined by the board.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves may be responsible. The claim process must set out a clear and concise method for

documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board OR A PRODUCER may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt of the written appeal, allowing the staff adjuster and the producer to present their positions. ~~To allow the board to seek any necessary additional independent information regarding the appeal, a~~ A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, including but not limited to the presence of bite marks indicative of the spacing of canine tooth punctures of wolves and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for

animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred.

NEW SECTION. Section 4. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board ~~may employ or use the volunteer services of one or more staff adjusters to~~ SHALL:

- (a) process claims;
- (b) seek information necessary to ensure that claim documentation is complete;
- (c) provide ~~immediate~~ payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;
- (d) submit monthly and annual reports to the board summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;
- (e) provide information to the board regarding appealed claims and implement any decision by the board;
- (f) prepare the annual budget for the board; and
- (g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to [section 2] and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to [section 3].

(3) The livestock loss reduction and mitigation board shall:

- (a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;
- (b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;
- (c) perform or contract for the performance of periodic program audits and ~~review~~ REVIEWS OF PROGRAM expenditures of program staff and of, INCLUDING PAYMENTS TO individuals, INCORPORATED ENTITIES, AND PRODUCERS who receive mitigation LOSS REDUCTION grants and reimbursement payments;
- (d) adjudicate appeals of claims;
- (e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife OR LIVESTOCK organizations that have active livestock loss reimbursement programs in place;
- (f) meet as necessary to conduct business; and
- (g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in [sections 2 through 4].

NEW SECTION. Section 5. Wolf predation mitigation and reimbursement account LIVESTOCK LOSS REDUCTION AND MITIGATION ACCOUNTS. (1) There is a ~~ARE~~ ARE wolf predation mitigation and reimbursement LIVESTOCK LOSS REDUCTION AND MITIGATION special revenue ~~account~~ ACCOUNTS administered by the department within the state special revenue fund AND THE FEDERAL SPECIAL REVENUE FUND established in 17-2-102.

~~— (2) There must be deposited in the account~~ ACCOUNTS:

~~— (a) all~~ (2) (A) ALL state proceeds allocated or budgeted for ~~this account~~ THE PURPOSES OF [SECTIONS 1 THROUGH 6 7]; EXCEPT THOSE APPROPRIATED TO THE DEPARTMENT OF LIVESTOCK, MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT PROVIDED FOR IN SUBSECTION (1). ~~and~~

(b) ~~money~~ MONEY received by the ~~department or the livestock loss reduction and mitigation board, established in [section 1];~~ STATE in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of [sections 2 through 4] MUST BE DEPOSITED IN THE APPROPRIATE ACCOUNT PROVIDED FOR IN SUBSECTION (1).

(C) ALL FEDERAL FUNDS AWARDED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS STATE FOR COMPENSATION FOR WOLF DEPREDATIONS ON LIVESTOCK MUST BE DEPOSITED IN THE FEDERAL SPECIAL REVENUE ACCOUNT PROVIDED FOR IN SUBSECTION (1) FOR THE PURPOSES OF [SECTION 3].

(3) The livestock loss reduction and mitigation board may spend funds in the ~~account~~ ACCOUNTS only to carry out the provisions of [sections 2 through 4].

NEW SECTION. SECTION 6. WOLF PREDATION MITIGATION AND REIMBURSEMENT LIVESTOCK LOSS REDUCTION AND MITIGATION TRUST FUND. (1) THE LEGISLATURE SHALL PROVIDE FOR A FUND, TO BE KNOWN AS THE WOLF PREDATION MITIGATION AND REIMBURSEMENT LIVESTOCK LOSS REDUCTION AND MITIGATION TRUST FUND, TO BE FUNDED AS PROVIDED BY LAW WITH GIFTS, GRANTS, REIMBURSEMENTS, APPROPRIATIONS, OR ALLOCATIONS FROM ANY SOURCE.

(2) THE PRINCIPAL OF THE WOLF PREDATION MITIGATION AND REIMBURSEMENT LIVESTOCK LOSS REDUCTION AND MITIGATION TRUST FUND SHALL FOREVER REMAIN INVIOATE IN AN AMOUNT OF \$5 MILLION UNLESS APPROPRIATED BY A VOTE OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE.

(3) THE INTEREST AND INCOME GENERATED FROM THE WOLF PREDATION MITIGATION AND REIMBURSEMENT LIVESTOCK LOSS REDUCTION AND MITIGATION TRUST FUND MUST BE DEPOSITED IN THE WOLF PREDATION MITIGATION AND REIMBURSEMENT LIVESTOCK LOSS REDUCTION AND MITIGATION STATE SPECIAL REVENUE ACCOUNT PROVIDED FOR IN [SECTION 5]. THE INTEREST AND INCOME MAY BE APPROPRIATED BY A MAJORITY VOTE OF EACH HOUSE OF THE LEGISLATURE. APPROPRIATIONS OF THE INTEREST AND INCOME AND MAY BE USED ONLY TO FUND THE LIVESTOCK LOSS REDUCTION PROGRAM AND THE LIVESTOCK LOSS MITIGATION PROGRAM AS PROVIDED IN [SECTIONS 2 AND 3].

(4) (A) UNTIL THE PRINCIPAL OF THE FUND REACHES \$5 MILLION, AT THE END OF EACH BIENNIUM, ANY AMOUNT OF INTEREST AND INCOME FROM THE TRUST FUND THAT IS NOT USED FOR THE LIVESTOCK LOSS REDUCTION PROGRAM OR THE LIVESTOCK LOSS MITIGATION PROGRAM MUST BE USED TO REIMBURSE THE STATE GENERAL FUND UP TO \$120,000. ANY REMAINING INTEREST AND INCOME MUST BE DEPOSITED IN THE TRUST FUND AS PRINCIPAL.

(B) AFTER THE PRINCIPAL OF THE TRUST FUND REACHES \$5 MILLION, AT THE END OF EACH BIENNIUM, ANY AMOUNT OF INTEREST AND INCOME THAT IS NOT USED FOR THE LIVESTOCK LOSS REDUCTION PROGRAM OR THE LIVESTOCK LOSS MITIGATION PROGRAM MUST BE DEPOSITED IN THE GENERAL FUND.

~~NEW SECTION. SECTION 7. FUNDS TRANSFER.~~ (1) ~~THERE IS TRANSFERRED \$1 MILLION \$50,000 FROM THE GENERAL FUND TO THE WOLF PREDATION MITIGATION AND REIMBURSEMENT TRUST FUND FOR THE PURPOSE OF FUNDING THE LIVESTOCK LOSS REDUCTION PROGRAM AND THE LIVESTOCK LOSS MITIGATION PROGRAM AS PROVIDED IN [SECTIONS 2 AND 3].~~

~~(2) THERE IS TRANSFERRED \$100,000 IN FISCAL YEAR 2009 FROM THE GENERAL FUND TO THE STATE SPECIAL REVENUE ACCOUNT PROVIDED FOR IN [SECTION 5(1)] FOR GRANTS UNDER THE LOSS REDUCTION PROGRAM CREATED IN [SECTION 2] AND FOR PAYMENT OF CLAIMS MADE UNDER THE LOSS MITIGATION PROGRAM CREATED IN [SECTION 3].~~

NEW SECTION. SECTION 7. FUNDING OF PROGRAMS -- CONTINGENCY. THE AWARDING OF GRANTS AND REIMBURSEMENTS AND THE PERFORMANCE OF DUTIES PURSUANT TO [SECTIONS 2 THROUGH 4] ARE CONTINGENT UPON THE AMOUNT OF MONEY AVAILABLE IN THE ACCOUNTS PROVIDED FOR IN [SECTIONS 5 AND 6].

NEW SECTION. SECTION 8. APPROPRIATION. THERE IS APPROPRIATED FROM THE GENERAL FUND TO THE ~~LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD ESTABLISHED IN [SECTION 1]~~ DEPARTMENT OF LIVESTOCK:

(1) \$60,000 IN FISCAL YEAR 2008 FOR 1.0 FTE AND FOR OPERATING EXPENSES TO ESTABLISH THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD AND BOARD ACTIVITIES; AND

(2) \$60,000 IN FISCAL YEAR 2009 FOR 1.0 FTE AND FOR BOARD EXPENSES.

NEW SECTION. SECTION 9. 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 Chippewa tribe.

NEW SECTION. SECTION 10. Codification instruction. (1) [Sections 1 through 4 ~~AND 7~~] are intended to be codified as an integral part of Title 2, chapter 15, part ~~34~~ 31, and the provisions of Title 2, chapter 15, part ~~34~~ 31, apply to [sections 1 through 4 ~~AND 7~~].

(2) [~~Section 5~~] is [~~SECTIONS 5 AND 6~~] ARE intended to be codified as an integral part of Title ~~87~~ 81, chapter 1, part ~~2~~ 1, and the provisions of Title ~~87~~ 81, chapter 1, part ~~2~~ 1, apply to [~~section 5~~] [~~SECTIONS 5 AND 6~~].

~~NEW SECTION. SECTION 11. Effective date.~~ [~~This act~~] is effective on passage and approval.

NEW SECTION. SECTION 11. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE JULY 1, 2007.

(2) [SECTIONS 2 AND 3] ARE EFFECTIVE OCTOBER 1, 2007.

- END -