

HOUSE BILL NO. 389  
INTRODUCED BY D. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING DEVELOPMENT OF THE STATE ELK MANAGEMENT PLAN; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENSURE, AS PART OF AN ELK MANAGEMENT PLAN, THAT PUBLIC LANDS AND PUBLIC ROADS REMAIN OPEN TO PUBLIC ACCESS DURING THE BIG GAME HUNTING SEASON EXCEPT IN CASES OF EMERGENCY OR DISASTER; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO CONSIDER LANDOWNER TOLERANCE WHEN DECIDING WHETHER TO RESTRICT ELK HUNTING IN A HUNTING DISTRICT; AMENDING SECTIONS 87-1-201 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

**"87-1-201. 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.;

(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 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing an elk management plan, the department shall include a requirement that, as a method of managing elk, public lands and public roads remain open to public access during the big game hunting season unless ingress and egress are controlled pursuant to 10-3-104.

(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) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) 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) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter

reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

**Section 2.** Section 87-1-301, MCA, is amended to read:

**"87-1-301. 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, except as provided in 87-1-209(4);

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

(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 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(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 elk, deer, and antelope;
  - (ii) to control the impacts of those 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 87-1-321 through 87-1-325.
- (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; and
  - (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.
- (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."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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