

SENATE BILL NO. 284

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AUTHORIZATION OF THE BOARD OF COUNTY  
COMMISSIONERS BEFORE WILD BUFFALO OR WILD BISON ARE RELEASED INTO A COUNTY;  
REQUIRING RELEASE OF WILD BUFFALO OR WILD BISON TO MEET CERTAIN CONDITIONS; AMENDING  
SECTIONS 7-1-111, 76-1-605, 81-2-120, AND 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE AND AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Transplantation or relocation of wild buffalo or bison into county --  
authorization.** (1) A board of county commissioners shall review any proposal made by the department of  
livestock or the department of fish, wildlife, and parks under 81-2-120 or 87-1-216 to authorize the transplantation  
or relocation of any wild buffalo or wild bison certified by the state veterinarian as brucellosis-free into that county.

(2) A board of county commissioners may not authorize a wild buffalo or wild bison to be released,  
transplanted, or relocated into a county unless:

(a) the animal is certified as brucellosis-free;

(b) the board finds the transplantation or relocation does not threaten the public health, safety, and  
welfare of the citizens of the county; and

(c) the board finds the transplantation or relocation is consistent with the elements of a growth policy  
adopted pursuant to Title 76, chapter 1.

**(3) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO PROPOSALS MADE BY THE DEPARTMENT OF LIVESTOCK  
OR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS UNDER 81-2-120 OR 87-1-216 TO TRANSPLANT OR RELOCATE WILD  
BUFFALO OR WILD BISON CERTIFIED BY THE STATE VETERINARIAN AS BRUCELLOSIS-FREE TO A QUALIFIED TRIBAL ENTITY  
PURSUANT TO 81-2-120(1)(A)(II).**

**SECTION 2. SECTION 7-1-111, MCA, IS AMENDED TO READ:**



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

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

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

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

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

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

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

15           (7) any power that applies to or affects any determination by the department of environmental quality  
16 with regard to a certificate of compliance;

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

20           (9) any power that applies to or affects the right to keep or bear arms, except that a local government  
21 has the power to regulate the carrying of concealed weapons;

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

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

27           (12) except as provided in 7-3-1105, 7-3-1222, [section 1], or 7-31-4110, any power that applies to or  
28 affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

29           (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended  
30 to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70,

1 chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords  
 2 to comply with ordinances or provisions that are applicable to all other businesses or residences within the local  
 3 government's jurisdiction.

4 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

5 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,  
 6 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may  
 7 enter into a cooperative agreement with the department of agriculture concerning the use and application of  
 8 commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local  
 9 government from adopting or implementing zoning regulations or fire codes governing the physical location or  
 10 siting of fertilizer manufacturing, storage, and sales facilities;

11 (16) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,  
 12 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired  
 13 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal  
 14 communications commission of the United States;

15 (17) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna  
 16 at heights and dimensions sufficient to accommodate amateur radio service communications by a person who  
 17 holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or  
 18 higher class, issued by the federal communications commission of the United States."

19

20 **Section 3.** Section 76-1-605, MCA, is amended to read:

21 **"76-1-605. Use of adopted growth policy.** (1) Subject to subsection (2), after adoption of a growth  
 22 policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by  
 23 and give consideration to the general policy and pattern of development set out in the growth policy in the:

24 (a) authorization, construction, alteration, or abandonment of public ways, public places, public  
 25 structures, or public utilities;

26 (b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

27 and

28 (c) adoption of zoning ordinances or resolutions.

29 (2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that  
 30 is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

1 (b) ~~A~~ Except for the authorization required by [section 1], a governing body may not withhold, deny, or  
 2 impose conditions on any land use approval or other authority to act based solely on compliance with a growth  
 3 policy adopted pursuant to this chapter."  
 4

5 **Section 4.** Section 81-2-120, MCA, is amended to read:

6 **"81-2-120. Management of wild buffalo or wild bison for disease control.** (1) Whenever a publicly  
 7 owned wild buffalo or wild bison from a herd that is infected with a dangerous disease enters the state of Montana  
 8 on public or private land and the disease may spread to persons or livestock or whenever the presence of wild  
 9 buffalo or wild bison may jeopardize Montana's compliance with other state-administered or federally  
 10 administered livestock disease control programs, the department may, under a plan approved by the governor,  
 11 use any feasible method in taking one or more of the following actions:

12 (a) The live wild buffalo or wild bison may be captured, tested, quarantined, and vaccinated. Wild buffalo  
 13 or wild bison that are certified by the state veterinarian as brucellosis-free may be:

14 (i) sold to help defray the costs that the department incurs in building, maintaining, and operating  
 15 necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or wild bison.  
 16 Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or wild bison must be deposited in the  
 17 state special revenue fund to the credit of the department. Any revenue generated in excess of the costs referred  
 18 to in this subsection (1)(a)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).

19 (ii) transferred to a qualified tribal entity that participates in the disease control program provided for in  
 20 this subsection (1)(a). Acquisition of wild buffalo or wild bison by a qualified tribal entity must be done in a manner  
 21 that does not jeopardize compliance with a state-administered or federally administered livestock disease control  
 22 program. The department may adopt rules consistent with this section governing tribal participation in the program  
 23 or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control  
 24 program.

25 ~~(a)~~(b) The live wild buffalo or wild bison may be physically removed by the safest and most expeditious  
 26 means from within the state boundaries, including but not limited to hazing and aversion tactics or capture,  
 27 transportation, quarantine, or delivery to a department-approved slaughterhouse.

28 ~~(b)~~(c) The live wild buffalo or wild bison may be destroyed by the use of firearms. If a firearm cannot be  
 29 used for reasons of public safety or regard for public or private property, the animal may be relocated to a place  
 30 that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

1           ~~(e)(d)~~ The live wild buffalo or wild bison may be taken through limited public hunts pursuant to 87-2-730  
2 when authorized by the state veterinarian and the department.

3           ~~(d)~~ The live wild buffalo or wild bison may be captured, tested, quarantined, and vaccinated. Wild buffalo  
4 or wild bison that are certified by the state veterinarian as brucellosis-free may be:

5           ~~———(i)~~ sold to help defray the costs that the department incurs in building, maintaining, and operating  
6 necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or wild bison; or

7           ~~———(ii)~~ transferred to qualified tribal entities that participate in the disease control program provided for in this  
8 subsection (1)(d). Acquisition of wild buffalo or wild bison by a qualified tribal entity must be done in a manner  
9 that does not jeopardize compliance with a state-administered or federally administered livestock disease control  
10 program. The department may adopt rules consistent with this section governing tribal participation in the program  
11 or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control  
12 program.

13           ~~———(e)~~ Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or wild bison must be  
14 deposited in the state special revenue fund to the credit of the department.

15           ~~———(f)~~ Any revenue generated in excess of the costs referred to in subsection (1)(d)(i) must be deposited  
16 in the state special revenue fund provided for in 87-1-513(2).

17           (2) Whenever the department is responsible for the death of a wild buffalo or wild bison, either  
18 purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means,  
19 including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a  
20 department-approved slaughterhouse or slaughter destination.

21           (3) In disposing of the carcass, the department:

22           (a) as first priority, may donate a wild buffalo or wild bison carcass to a charity or to an Indian tribal  
23 organization; or

24           (b) may sell a wild buffalo or wild bison carcass to help defray expenses of the department. If the carcass  
25 is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or wild  
26 bison carcass to the state special revenue fund to the credit of the department.

27           (4) The department may adopt rules with regard to management of publicly owned wild buffalo or wild  
28 bison that enter Montana on private or public land and that are from a herd that is infected with a contagious  
29 disease that may spread to persons or livestock and may jeopardize compliance with other state-administered  
30 or federally administered livestock disease control programs.

1           (5) Except for a transfer to a qualified tribal entity pursuant to subsection (1)(a)(ii), after a wild buffalo  
 2 or wild bison has been certified as brucellosis-free by the state veterinarian, the department may authorize its  
 3 transplantation or relocation into any Montana county pursuant to this section only if the department first receives  
 4 the authorization of the board of county commissioners of the affected county or counties pursuant to [section  
 5 11]."  
 6

7           **Section 5.** Section 87-1-216, MCA, is amended to read:

8           **"87-1-216. Wild buffalo or bison as species in need of management -- policy -- department duties.**

9           (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or  
 10 livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this  
 11 section:

12           (a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a  
 13 species requiring disease control;

14           (b) to designate other wild buffalo or bison as a species in need of management; and

15           (c) to set out specific duties for the department for management of the species.

16           (2) The department:

17           (a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison  
 18 in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten  
 19 persons or property;

20           (b) shall consult and coordinate with the department of livestock on implementation of the provisions of  
 21 subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease-free; and

22           (c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that  
 23 enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in  
 24 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions  
 25 of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock  
 26 in Montana through the transmission of contagious disease. The department may, after agreement and  
 27 authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been  
 28 exposed to or infected with a contagious disease, pursuant to 87-2-730. The department may, following  
 29 consultation with the department of livestock, adopt rules to authorize the taking of bison where and when  
 30 necessary to prevent the transmission of a contagious disease.

1 (3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to  
2 or infected with a contagious disease but are in need of management because of potential damage to persons  
3 or property.

4 (4) The department may not:

5 (a) release, transplant, relocate, or allow wild buffalo or bison on any private or public land in Montana  
6 that has not been authorized for that use by the private or public owner; or

7 (b) pursuant to [section 1] EXCEPT FOR A TRANSFER TO A QUALIFIED TRIBAL ENTITY PURSUANT TO  
8 81-2-120(1)(A)(II), release, transplant, or relocate any wild buffalo or bison into any Montana county without first  
9 receiving the authorization of the board of county commissioners of the affected county or counties PURSUANT TO  
10 [SECTION 1].

11 (5) Subject to subsection (4), the department shall develop and adopt a management plan before any  
12 wild buffalo or bison under the department's jurisdiction may be released or transplanted onto private or public  
13 land in Montana. A plan must include but is not limited to:

14 (a) measures to comply with any applicable animal health protocol required under Title 81, under  
15 subsection (2)(b), or by the state veterinarian;

16 (b) any animal identification and tracking protocol required by the department of livestock to identify the  
17 origin and track the movement of wild buffalo or bison for the purposes of subsections (2)(b) and (5)(c);

18 (c) animal containment measures that ensure that any animal ~~transplanted or released~~, transplanted,  
19 or relocated on private or public land will be contained in designated areas. Containment measures must include  
20 but are not limited to:

21 (i) any fencing required;

22 (ii) contingency plans to expeditiously relocate wild buffalo or bison that enter private or public property  
23 where the presence of the animals is not authorized by the private or public owner;

24 (iii) contingency plans to expeditiously fund and construct more effective containment measures in the  
25 event of an escape; and

26 (iv) contingency plans to eliminate or decrease the size of designated areas, including the expeditious  
27 relocation of wild buffalo or bison if the department is unable to effectively manage or contain the wild buffalo or  
28 bison.

29 (d) a reasonable means of protecting public safety and emergency measures to be implemented if public  
30 safety may be threatened;

1 (e) a reasonable maximum carrying capacity for any proposed designated area using sound  
 2 management principles, including but not limited to forage-based carrying capacity, and methods for not  
 3 exceeding that carrying capacity; and

4 (f) identification of long-term, stable funding sources that would be dedicated to implementing the  
 5 provisions of the management plan for each designated area.

6 (6) When developing a management plan in accordance with subsection (5), the department shall  
 7 provide the opportunity for public comment and hold a public hearing in the affected county or counties. Prior to  
 8 making a decision to release, ~~or transplant,~~ or relocate wild buffalo or bison onto private or public land in  
 9 Montana, the department shall respond to all public comment received and publish a full record of the  
 10 proceedings at any public hearing.

11 (7) The department is liable for all costs incurred, including costs arising from protecting public safety,  
 12 and any damage to private property that occurs as a result of the department's failure to meet the requirements  
 13 of subsection (5).

14 (8) When adopting and implementing rules regarding the special wild buffalo or bison license issued  
 15 pursuant to 87-2-730, the department shall consult and cooperate with the department of livestock regarding  
 16 when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to  
 17 minimize the potential for spreading any contagious disease to persons or to livestock."  
 18

19 **NEW SECTION. Section 6. Notification to tribal governments.** The secretary of state shall send a  
 20 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
 21 Chippewa tribe.  
 22

23 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an  
 24 integral part of Title 7, chapter 5, part 21, and the provisions of Title 7, chapter 5, part 21, apply to [section 1].  
 25

26 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
 27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
 28 remains in effect in all valid applications that are severable from the invalid applications.  
 29

30 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.



1

2 NEW SECTION. SECTION 10. APPLICABILITY. [THIS ACT] APPLIES TO RELEASES, TRANSPLANTATIONS,

3 RELOCATIONS, OR TRANSFERS OF WILD BUFFALO OR WILD BISON ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

4 - END -