

HOUSE BILL NO. 752

INTRODUCED BY B. HAMLETT

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SAGE GROUSE CONSERVATION; REQUIRING DEVELOPMENT OF A PREDATOR MITIGATION PLAN; ESTABLISHING A COMPENSATORY MITIGATION REVIEW FEE AND STATE SPECIAL REVENUE ACCOUNT; REQUIRING RECONSIDERATION OF HUNTING REGULATIONS; AMENDING SECTIONS 76-22-105, 87-1-201, AND 87-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES."

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

**NEW SECTION. Section 1. Compensatory mitigation review fee -- state special revenue account.**

(1) A project developer requiring consultation from the state to determine whether compensatory mitigation is necessary to offset the debits of a proposed action shall pay a \$500 compensatory mitigation review fee.

(2) Fees collected pursuant to this section must be deposited in an account in the state special revenue fund established in 17-2-102 to the credit of the department of natural resources and conservation.

(3) Money in the account may only be used to implement a predator mitigation plan developed pursuant to 76-22-105.

(4) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of the fiscal year must remain in the account.

**Section 2.** Section 76-22-105, MCA, is amended to read:

**"76-22-105. Montana sage grouse oversight team -- duties -- powers.** (1) The oversight team shall:

(a) cooperate with organizations to maintain, enhance, restore, expand, and benefit sage grouse habitat and populations;

(b) identify and map core areas, connectivity areas, and general habitat, subject to the approval of the governor;

(c) evaluate grant applications. As part of its evaluation, the oversight team shall solicit and consider the views of interested and affected persons and entities, including local, state, tribal, and federal governmental agencies, and boards, commissions, and other political subdivisions of the state;

1 (d) subject to the provisions of 76-22-109, select grant applications to receive funding from the sage  
 2 grouse stewardship account. The oversight team has the discretion to determine the amount of each grant in  
 3 accordance with the provisions of this part and may attach conditions of use to the grant.

4 (e) review and decide whether to approve proposals for the transfer to or acceptance by the state of a  
 5 fee simple interest in real property. The oversight team shall recommend an approved proposal to the board of  
 6 land commissioners for a final determination. Prior to making a recommendation, the oversight team shall publish  
 7 a notice in a newspaper of general circulation in the county in which the real property is located and provide an  
 8 opportunity for public comment.

9 (f) review and decide whether to accept offers, from any source, in the form of grants, gifts, transfers,  
 10 bequests, or donations of money, personal property, or an interest in real property other than a fee simple  
 11 interest; ~~and~~

12 (g) review compensatory mitigation plans proposed under 76-22-111. If the plan includes a financial  
 13 contribution to the sage grouse stewardship account established in 76-22-109, the oversight team shall, using  
 14 the habitat quantification tool, determine how to secure enough credits with the financial contribution to offset the  
 15 debits of the project; and

16 (h) develop a predator mitigation plan for immediate implementation in the event that the sage grouse  
 17 population estimate reported by the department of fish, wildlife, and parks pursuant to 87-1-201 experiences a  
 18 20% decline from the previous year:

19 (i) in one or more of the department's administrative regions, in which case the predator mitigation plan  
 20 must be implemented in the affected region or regions; or

21 (ii) at one or more active leks, in which case the predator mitigation plan must be implemented within a  
 22 20-mile perimeter of the affected lek or leks.

23 (2) If a habitat exchange is authorized in Montana by the United States fish and wildlife service, the  
 24 oversight team may transfer credits it is tracking pursuant to 76-22-104(3) to the habitat exchange, provided that:

25 (a) the habitat exchange uses the habitat quantification tool to quantify and calculate the value of credits  
 26 available for purchase; and

27 (b) if the United States fish and wildlife service revokes authorization of the habitat exchange, the  
 28 balance of the credits held by the exchange that were transferred to it by the oversight team are transferred back  
 29 to the oversight team or to another habitat exchange authorized by the United States fish and wildlife service.

30 (3) The oversight team shall retroactively calculate and make available credits for leases and

1 conservation easements purchased with funds disbursed pursuant to this part after May 7, 2015, but prior to the  
2 adoption of rules under 76-22-104.

3 (4) The oversight team shall seek a depredation order from the United States fish and wildlife service  
4 under the Migratory Bird Treaty Act of 1918, as necessary, to control common raven (*Corvus corax*) or  
5 black-billed magpie (*Pica hudsonia*) to reduce depredation on sage grouse populations and their nests."  
6

7 **Section 3.** Section 87-1-201, MCA, is amended to read:

8 **"87-1-201. Powers and duties.** (1) Except as provided in subsection (12), the department shall  
9 supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals  
10 of the state and may implement voluntary programs that encourage hunting access on private lands and that  
11 promote harmonious relations between landowners and the hunting public. The department possesses all powers  
12 necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the  
13 enforcement of the fish and game laws and the rules adopted by the department.

14 (2) Except as provided in subsection (12), the department shall enforce all the laws of the state regarding  
15 the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and  
16 nongame birds within the state.

17 (3) The department has the exclusive power to spend for the protection, preservation, management, and  
18 propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired  
19 for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or  
20 received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from  
21 fines or damages collected for violations of the fish and game laws, or from appropriations or received by the  
22 department from any other sources is under the control of the department and is available for appropriation to  
23 the department.

24 (4) The department may discharge any appointee or employee of the department for cause at any time.

25 (5) The department may dispose of all property owned by the state used for the protection, preservation,  
26 management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no  
27 further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited  
28 to the fish and game account in the state special revenue fund.

29 (6) The department may not issue permits to carry firearms within this state to anyone except regularly  
30 appointed officers or wardens.

1 (7) Except as provided in subsection (12), the department is authorized to make, promulgate, and  
2 enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its  
3 judgment will accomplish the purpose of chapter 2.

4 (8) The department is authorized to promulgate rules relative to tagging, possession, or transportation  
5 of bear within or outside of the state.

6 (9) (a) The department shall implement programs that:

7 (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under  
8 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

9 (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under  
10 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the  
11 maintenance or recovery of those species;

12 (iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in  
13 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided  
14 in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest  
15 and population objectives, request that land management agencies open public lands and public roads to public  
16 access during the big game hunting season.

17 (iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine  
18 beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous  
19 acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

20 (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential  
21 candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery  
22 of those species with the social and economic impacts of species maintenance or recovery.

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

25 (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a  
26 privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

27 (10) The department shall publish an annual game count, estimating to the department's best ability the  
28 numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative  
29 regions of the state. In preparing the publication, the department may incorporate field observations, hunter  
30 reporting statistics, or any other suitable method of determining game numbers. The publication must include an

1 explanation of the basis used in determining the game count.

2 (11) The department shall report current sage grouse population numbers, including the number of leks,  
3 to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality council,  
4 established in 5-16-101, on an annual basis. The report must include seasonal and historic population data  
5 available from the department or any other source as well as population data by administrative region and lek.

6 (12) The department may not regulate the use or possession of firearms, firearm accessories, or  
7 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

8 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the  
9 establishment of special archery seasons;

10 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including  
11 bows and arrows, traditional handguns, and muzzleloading rifles;

12 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

13 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

14 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."

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16 **Section 4.** Section 87-1-301, MCA, is amended to read:

17 **"87-1-301. Powers of commission.** (1) Except as provided in subsections (6) and (7) and subject to  
18 the provisions of subsection (8), the commission:

19 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,  
20 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment  
21 of all other responsibilities of the department related to fish and wildlife as provided by law;

22 (b) shall establish the hunting, fishing, and trapping rules of the department;

23 (c) except as provided in 23-1-111 and 87-1-303(3), shall establish the rules of the department governing  
24 the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

25 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;

26 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as  
27 provided in 23-1-111 and 87-1-209(2) and (4);

28 (f) except as provided in 23-1-111, shall review and approve the budget of the department prior to its  
29 transmittal to the office of budget and program planning;

30 (g) except as provided in 23-1-111, shall review and approve construction projects that have an

1 estimated cost of more than \$1,000 but less than \$5,000;

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

9 (i) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to 87-3-145; and

10 (j) shall comply with, adopt policies that comply with, and ensure the department implements in each  
11 region the provisions of state wildlife management plans adopted following an environmental review conducted  
12 pursuant to Title 75, chapter 1, parts 1 through 3.

13 (2) The commission may adopt rules regarding the use and type of archery equipment that may be  
14 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in  
15 archery equipment change.

16 (3) ~~The~~ Subject to the provisions of subsection (8), the commission may adopt rules regarding the  
17 establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the  
18 commission considers appropriate to promote or enhance hunting by Montana's youth and persons with  
19 disabilities.

20 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

21 (i) separate deer licenses from nonresident elk combination licenses;

22 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the  
23 deer tag;

24 (iii) condition the use of the deer licenses; and

25 (iv) limit the number of licenses sold.

26 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and  
27 appropriate to regulate the harvest by nonresident big game combination license holders:

28 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

29 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

30 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321

1 through 87-1-325.

2 (5) (a) The commission may adopt rules to:

3 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

4 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting  
5 districts.

6 (b) The commission shall consider, but is not limited to consideration of, the following factors:

7 (i) harvest of lions by resident and nonresident hunters;

8 (ii) history of quota overruns;

9 (iii) composition, including age and sex, of the lion harvest;

10 (iv) historical outfitter use;

11 (v) conflicts among hunter groups;

12 (vi) availability of public and private lands; and

13 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

14 (6) The commission may not regulate the use or possession of firearms, firearm accessories, or  
15 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

16 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the  
17 establishment of special archery seasons;

18 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including  
19 bows and arrows, traditional handguns, and muzzleloading rifles;

20 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

21 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

22 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

23 (7) Pursuant to 23-1-111, the commission does not oversee department activities related to the  
24 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic  
25 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant  
26 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9.

27 (8) If a sage grouse predator mitigation plan is implemented pursuant to 76-22-105, then the commission  
28 shall reconsider the regulations for the hunting of sage grouse in the area where the mitigation plan is in effect."

29

30 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an

1 integral part of Title 76, chapter 22, part 1, and the provisions of Title 76, chapter 22, part 1, apply to [section 1].

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3 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2019.

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5 NEW SECTION. **Section 7. Applicability.** (1) [Section 1] applies to requests for consultation received  
6 on or after July 1, 2019.

7 (2) [Sections 2 and 3] apply to the boundaries of the administrative regions of the department of fish,  
8 wildlife, and parks as they existed on July 1, 2019.

9

- END -