HOUSE BILL NO. 302

INTRODUCED BY J. KASSMIER

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 wild 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 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:

"**7-1-111. (Subsection (21) effective October 1, 2021) 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, 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 compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(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 compliance;

(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;

(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 as prerequisites to the carrying on of a profession or occupation;

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

(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.

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

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

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

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

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

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a

highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12."

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

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

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

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

(c) adoption of zoning ordinances or resolutions.

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

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

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

"**81-2-120. Management of wild buffalo or wild bison for disease control.** (1) Whenever a publicly owned wild buffalo or wild bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or wild bison may jeopardize Montana's compliance with other state-administered or federally administered livestock disease control programs, the department may, under a plan approved by the

governor, use any feasible method in taking one or more of the following actions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Except for a transfer to a qualified tribal entity pursuant to subsection (1)(a)(ii), after a wild buffalo or wild bison is certified brucellosis-free by the state veterinarian, the department may authorize its transplantation or relocation into any state county pursuant to this section after the department receives the authorization of the board of county commissioners of the affected county or counties pursuant to [section 1]."

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

"**87-1-216. Wild buffalo or bison as species in need of management -- policy -- department duties.** (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

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

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

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

(2) The department:

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

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

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

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

(4) The department may not:

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

(b) except for a transfer to a qualified tribal entity pursuant to 81-2-120(1)(a)(ii), release, transplant, or relocate any wild buffalo or bison into any state county without authorization of the board of county commissioners of the affected county or counties pursuant to [section 1].

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

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

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

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

(i) any fencing required;

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

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

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

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

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

exceeding that carrying capacity, including in years of drought or severe winters. The carrying capacity must be based on a forage analysis conducted in accordance with standards contained in the most recent natural resources conservation service field office technical guide by a range scientist who is on the staff of:

(i) the Montana state university-Bozeman college of agriculture;

(ii) the United States natural resources conservation service; or

(iii) a technical service provider certified by either the natural resources conservation service or the society for range management.

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

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

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

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

NEW SECTION. **Section 6. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, part 21, and the provisions of Title 75, chapter 5, part 21, apply to [section 1].

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

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

NEW SECTION. **Section 10. Applicability.** [This act] applies to releases, transplantation, relocations, or transfers of wild buffalo or wild bison on or after [the effective date of this act].

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