

SENATE BILL NO. 245

INTRODUCED BY D. KARY, D. ANKNEY, M. BLASDEL, J. BRENDEN, B. BROWN, K. FLYNN, F. GARNER, B. HAMLETT, B. HARRIS, S. HESS, D. HOWARD, J. KEANE, B. KEENAN, S. LASZLOFFY, S. LAVIN, F. MANDEVILLE, K. MCCARTHY, G. MEYERS, M. NOLAND, A. OLSZEWSKI, Z. PERRY, K. REGIER, R. RIPLEY, N. SCHWADERER, C. SMITH, J. TAYLOR, F. THOMAS, G. VANCE, R. WEBB, J. WELBORN, J. WINDY BOY, D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR POSTSEASON ELK POPULATION MANAGEMENT THROUGH AN ANTLERLESS ELK HUNT; CLARIFYING THE DUTIES OF THE FISH AND WILDLIFE COMMISSION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; REQUIRING ANNUAL REPORTS FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS REGARDING SUSTAINABLE POPULATION NUMBERS FOR BIG GAME AND THE POSTSEASON HUNTS; AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-321, 87-1-323, 87-1-324, 87-1-325, 87-2-501, AND 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Postseason elk population management hunting season. (1) The

department may conduct a postseason population management hunting season for antlerless elk to ensure that the population of elk remains at or below the sustainable population number, as determined pursuant to 87-1-323.

(2) A resident, as defined in 87-2-102, or a nonresident, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and who possesses an unused Class A-5 resident elk tag license, an unused Class A-9 resident antlerless elk B tag license, an unused Class B-12 nonresident antlerless elk B tag license, or any unused nonresident elk tag license, may upon payment of a fee of \$10 receive a postseason management hunting season endorsement that entitles a holder who is 12 years of age or older to hunt antlerless elk and to possess the carcass of the elk as authorized by this section and department rules.

(3) The postseason population management hunting season:

(a) must follow the big game hunting season by no less than 2 weeks;

(b) may be conducted in hunting districts that are over population objectives for elk, as determined

1 pursuant to 87-1-323, or when the department determines other circumstances warrant a greater harvest; and
2 (c) may remain open until the population objectives for elk, as determined pursuant to 87-1-323, are met,
3 but no later than February 15.

4 (4) PRIOR TO JULY 1 OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE ENVIRONMENTAL QUALITY
5 COUNCIL ON THE EFFECTIVENESS OF THE POSTSEASON ELK POPULATION MANAGEMENT HUNTING SEASON.

6

7 **Section 2.** Section 87-1-201, MCA, is amended to read:

8 **"87-1-201. Powers and duties.** (1) Except as provided in subsection (11), 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 (11), 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 (11), 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~~ the
14 sustainable population numbers as provided in 87-1-323. In implementing an elk management plan, the
15 department shall, as necessary to achieve harvest and population objectives, request that land management
16 agencies open public lands and public roads to public 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 may not regulate the use or possession of firearms, firearm accessories, or
3 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

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

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

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

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

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

11

12 **Section 3.** Section 87-1-301, MCA, is amended to read:

13 **"87-1-301. Powers of commission.** (1) Except as provided in subsections (7) and (8), the commission:

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

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

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

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

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

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

25 (g) except as provided in 23-1-111, shall review and approve construction projects that have an
26 estimated cost of more than \$1,000 but less than \$5,000;

27 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided
28 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below ~~population estimates~~ the
29 sustainable population numbers as provided in 87-1-323. In developing or implementing an elk management plan,
30 the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding

1 public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the
2 written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's
3 property within the particular hunting district where a restriction on elk hunting on public property is proposed.

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

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

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

11 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,
12 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance
13 hunting by Montana's youth and persons with disabilities.

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

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

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

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

19 (iv) limit the number of licenses sold.

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

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

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

24 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321
25 through 87-1-325 and [section 1].

26 (5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license
27 preference systems to distribute hunting licenses and permits:

28 (i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant
29 who has been unsuccessful for a shorter period of time; and

30 (ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying

1 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
2 the commission.

3 (b) The commission shall square the number of points purchased by an applicant per species when
4 conducting drawings for licenses and permits.

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

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

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

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

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

11 (ii) history of quota overruns;

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

13 (iv) historical outfitter use;

14 (v) conflicts among hunter groups;

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

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

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

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

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

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

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

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

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

30

1 **Section 4.** Section 87-1-321, MCA, is amended to read:

2 **"87-1-321. Purpose.** The purpose of 87-1-321 through 87-1-325 and [section 1] is to require the
3 commission, with advice of the department, to manage elk, deer, and antelope populations in a sustainable
4 manner that keeps animal populations at a number that does not adversely affect Montana land."
5

6 **Section 5.** Section 87-1-323, MCA, is amended to read:

7 **"87-1-323. Viable elk, deer, and antelope populations based on habitat acreage -- reduction of**
8 **populations as necessary.** (1) Based on the habitat acreage that is determined pursuant to 87-1-322, the
9 commission shall determine the appropriate elk, deer, and antelope numbers that can be viably sustained.

10 (2) The department shall consider the specific concerns of private landowners when determining
11 sustainable population numbers pursuant to this section.

12 ~~(2)(3)~~ Once the sustainable population numbers are determined as provided in ~~subsection (1)~~
13 subsections (1) and (2), the department shall implement, through existing wildlife management programs,
14 necessary actions with the objective that the population of elk, deer, and antelope remains at or below the
15 sustainable population. The programs may include but are not limited to:

- 16 (a) liberalized harvests;
- 17 (b) game damage hunts;
- 18 (c) landowner permits; ~~or~~
- 19 (d) animal relocation;
- 20 (e) postseason antlerless elk hunts.

21 ~~(3)(4)~~ The department shall:

22 ~~(a) manage with the objective that populations of elk, deer, and antelope are at or below the sustainable~~
23 ~~population number by January 1, 2009; and~~

24 ~~— (b) evaluate the elk, deer, and antelope populations on an annual basis and provide that information to~~
25 ~~the public and the environmental quality council on or before September 1 of each year.~~"

26

27 **Section 6.** Section 87-1-324, MCA, is amended to read:

28 **"87-1-324. Sustainable elk, deer, and antelope populations program -- funding.** The department
29 shall use money from the fish and game fund, as described in 87-1-601(3), to implement 87-1-321 through
30 87-1-325 and [section 1]."

1

2 **Section 7.** Section 87-1-325, MCA, is amended to read:

3 **"87-1-325. Rulemaking.** (1) The department and the commission shall adjust existing wildlife
4 management rules and plans to implement 87-1-321 through 87-1-325 and [section 1].

5 (2) The department and the commission may adopt rules for determining sustainability. The commission
6 shall consider average carrying capacity and use generally accepted animal unit factors for each species in each
7 commission region.

8 (3) Any rules adopted by the department pursuant to subsection (2) must be adopted in a timely
9 manner."

10

11 **Section 8.** Section 87-2-501, MCA, is amended to read:

12 **"87-2-501. Class A-3, A-4, A-5, A-6, A-7, A-9--resident deer, elk, and bear licenses -- special Class**
13 **A-7 resident and nonresident license requirements and preference -- fees.** (1) Except as otherwise provided
14 in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk
15 license only and who is 12 years of age or older or who will turn 12 years old before or during the season for
16 which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the
17 following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game
18 animal or animals authorized by the license held and to possess the carcasses of those game animals as
19 authorized by department rules:

20 (a) Class A-3, deer A tag, \$16;

21 (b) Class A-4, deer B tag, \$10;

22 (c) Class A-5, elk tag, \$20;

23 (d) Class A-6, black bear tag, \$19;

24 (e) Class A-7, antlerless elk tag, \$20;

25 (f) Class A-9, resident antlerless elk B tag, \$20.

26 (2) (a) The holder of a Class A-7 antlerless elk license who is 12 years of age or older is entitled to hunt
27 antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the
28 commission.

29 (b) Subject to the management provisions provided in 87-1-321 through 87-1-325 and [section 1], a
30 person may not take more than two elk during any license year, only one of which may be antlered. A person

1 holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license
2 or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of
3 special elk permits.

4 (c) Subject to the management provisions provided in 87-1-321 through 87-1-325 and [section 1], a
5 nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

6 (3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres
7 or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses
8 are awarded under this section must be issued, upon application, a Class A-7 license.

9 (4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license
10 be issued to an immediate family member or a person employed by the landowner. A corporation owning
11 qualifying land under subsection (3) may designate one of its shareholders to receive the license.

12 (5) Subject to the management provisions provided in 87-1-321 through 87-1-325 and [section 1], 15%
13 of the Class A-7 licenses available each year under this section in a hunting district must be available to
14 landowners under subsection (3)."

15

16 **Section 9.** Section 87-2-513, MCA, is amended to read:

17 **"87-2-513. Either-sex or antlerless elk permit for landowner who offers free public elk hunting --**
18 **terms, conditions, and issuance of permit.** (1) In addition to any elk permits offered for sale, the department
19 may, for wildlife management purposes, issue an either-sex or antlerless elk permit at no cost to a landowner who
20 provides free public elk hunting on the landowner's property and who otherwise meets the conditions of this
21 section. The department may issue elk permits to the public, at regular cost and in the number authorized in
22 subsection (3), for hunting on the property of a landowner who opens property for public elk hunting for wildlife
23 management purposes pursuant to this section.

24 (2) To be eligible for a permit pursuant to this section, a landowner:

25 (a) must own occupied elk habitat that is large enough, in the department's determination, to
26 accommodate successful public hunting;

27 (b) may not have been issued a Class A-7 landowner license pursuant to 87-2-501(3) during the license
28 year;

29 (c) must have entered into a contractual public elk hunting access agreement with the department that
30 allows public access for free public elk hunting on the landowner's property throughout the regular hunting season

1 and that includes public hunting by permit holders using permits that are valid for the hunting district;

2 (d) may not receive cash payments under 87-1-267; and

3 (e) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's
4 property.

5 (3) Subject to the management provisions provided in 87-1-321 through 87-1-325 and [section 1], not
6 more than 20% of permits issued pursuant to this section may be issued at no cost to a landowner, an immediate
7 family member of a landowner, or an authorized full-time employee of a landowner. The remaining permits must
8 be issued to the public on a first-come, first-served basis.

9 (4) A permit issued pursuant to this section:

10 (a) is nontransferable and may not be sold; and

11 (b) may only be used for hunting conducted on property that is opened to public access pursuant to this
12 section.

13 (5) The department may prioritize distribution of the permits according to the areas the department
14 determines are most in need of management.

15 (6) If the department determines that a landowner or landowner's designee has not abided by the
16 restrictions and conditions of a permit issued pursuant to this section, that landowner or landowner's designee
17 is not eligible to receive another permit pursuant to this section during any subsequent license year.

18 (7) The department, through the commission, may authorize the issuance of permits under this section
19 to a landowner who enters into a contractual public elk hunting access agreement with the department that
20 defines the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed
21 on the property, and other factors that the department and the landowner consider necessary for the proper
22 management of elk on the landowner's property."
23

24 NEW SECTION. **Section 10. Codification instruction.** [Section 1] is intended to be codified as an
25 integral part of Title 87, chapter 1, part 3, and the provisions of Title 87, chapter 1, part 3, apply to [section 1].
26

27 NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.
28

- END -