

HOUSE BILL NO. 757

INTRODUCED BY S. GUNDERSON, T. FRANCE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENTS OF FISH, WILDLIFE, AND PARKS AND NATURAL RESOURCES AND CONSERVATION TO CONSIDER WILDLIFE-FRIENDLY FENCING ON LAND THE AGENCIES MANAGE; REQUIRING A LESSEE TO CONSULT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS REGARDING OPTIONS, TECHNICAL ASSISTANCE, AND COST SHARING; AMENDING SECTIONS 23-1-102, 77-1-301, AND 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. The department may:

(a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historic sites;

(b) with the consent of the board, acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2);

(c) with the consent of the board, enter into a contract pursuant to 18-4-313(2)(e);

(d) accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state; and

(e) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purposes of this part.

(2) The department may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation

1 incurred until money has been appropriated by the legislature or is otherwise available. If the contract or
2 obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board
3 of land commissioners shall specifically approve the acquisition.

4 (4) The department has jurisdiction, custody, and control of all state parks, recreational areas,
5 public camping grounds, historic sites, and monuments, except wayside camps and other public conveniences
6 acquired, improved, and maintained by the department of transportation and contiguous to the state highway
7 system. The department may designate lands under its control as state parks, state historic sites, state
8 monuments, or any other designation that it considers appropriate. The department may remove or change the
9 designation of any area or portion of an area and may name or change the name of any area.

10 (5) Prior to installing or replacing fences on lands subject to this chapter, the department shall
11 consider fences that contain livestock but mitigate possible harm to wildlife. The department shall also consult
12 with other agencies that manage public land when appropriate."

13

14 **Section 2.** Section 77-1-301, MCA, is amended to read:

15 **"77-1-301. Powers and duties of the department.** (1) (a) Under the direction of the board, the
16 department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or
17 other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the
18 department demands, or the statutes require.

19 (b) Prior to installing or replacing fences on state lands, the department shall consult with the
20 department of fish, wildlife, and parks regarding options for fences that contain livestock but mitigate possible
21 harm to wildlife. The department of fish, wildlife, and parks shall provide options for technical assistance and
22 cost-sharing options. The department shall also consult with other agencies that manage public land when
23 appropriate.

24 (2) It shall collect and receive all moneys payable to the state through its office as fees, rentals,
25 royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any
26 other source. It shall issue a receipt for each cash payment or whenever requested by the payer."

27

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

1 **"87-1-201. Powers and duties.** (1) Except as provided in subsection ~~(42)~~ (13), the department shall
 2 supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing
 3 animals of the state and may implement voluntary programs that encourage hunting access on private lands
 4 and that promote harmonious relations between landowners and the hunting public. The department possesses
 5 all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state
 6 for the enforcement of the fish and game laws and the rules adopted by the department.

7 (2) Except as provided in subsection ~~(42)~~ (13), the department shall enforce all the laws of the
 8 state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals,
 9 and game and nongame birds within the state.

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

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

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

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

25 (7) Except as provided in subsection ~~(42)~~ (13), the department is authorized to make, promulgate,
 26 and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in
 27 its judgment will accomplish the purpose of chapter 2.

28 (8) The department is authorized to promulgate rules relative to tagging, possession, or

1 transportation of bear within or outside of the state.

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

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

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

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

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

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

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

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

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

1 (11) The department shall report current sage grouse population numbers, including the number of
 2 leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality
 3 council in accordance with 5-11-210 on an annual basis. The report must include seasonal and historic
 4 population data available from the department or any other source.

5 (12) Prior to installing or replacing fences on lands subject to this title, the department shall consider
 6 fences that contain livestock but mitigate possible harm to wildlife. The department shall also consult with other
 7 agencies that manage public land when appropriate.

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

10 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
 11 establishment of special archery seasons and the special muzzleloader heritage hunting season established in
 12 87-1-304;

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

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

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

17 (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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19 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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