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SENATE BILL NO. 83
INTRODUCED BY D. LOGE
BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE FISH AND WILDLIFE COMMISSION TO ESTABLISH RULES GOVERNING THE PUBLIC USE OF PRIVATE PROPERTY UNDER AN ACTIVE PUBLIC ACCESS AGREEMENT WITH A PRIVATE LANDOWNER; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"87-1-301. Powers of commission. (1) Except as provided in subsections (6) and (7), the commission:

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

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

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

(d) shall establish the rules of the department governing the public use of private property managed by the department under active public access agreements with private landowners;

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

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

~~(f)~~(g) except as provided in 23-1-111, shall review and approve the budget of the department prior to

1 its transmittal to the office of budget and program planning;

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

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

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

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

15 ~~(k)~~(l) shall review and approve the issuance of an either-sex or antlerless elk license, permit, or
16 combination thereof to a landowner or a landowner's designee pursuant to 87-2-513.

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

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

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

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

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

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

28 (iv) limit the number of licenses sold.

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

- 3 (i) for the biologically sound management of big game populations of elk, deer, and antelope;
- 4 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property;
- 5 and
- 6 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-
7 1-321 through 87-1-325.

8 (5) (a) Subject to the provisions of subsection (5)(b), the commission may adopt rules to:

- 9 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and
- 10 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated
11 hunting districts.

12 (b) The commission shall adopt rules for the use of and set quotas for the sale of Class D-4
13 nonresident hound licenses by hunting district, portions of a hunting district, group of districts, or administrative
14 regions.

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

- 16 (i) harvest of lions by resident and nonresident hunters;
- 17 (ii) history of quota overruns;
- 18 (iii) composition, including age and sex, of the lion harvest;
- 19 (iv) historical outfitter use;
- 20 (v) conflicts among hunter groups;
- 21 (vi) availability of public and private lands; and
- 22 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all
23 hunters.

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

- 26 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
27 establishment of special archery seasons and the special muzzleloader heritage hunting season established in
28 87-1-304;

- 1 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms,
- 2 including bows and arrows, traditional handguns, and muzzleloading rifles;
- 3 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);
- 4 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or
- 5 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).
- 6 (7) Pursuant to 23-1-111, the commission does not oversee department activities related to the
- 7 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic
- 8 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant
- 9 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9."

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11 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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