

## 1 HOUSE BILL NO. 42

2 INTRODUCED BY J. HINKLE

3 BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING QUALIFIED FISH, WILDLIFE, AND PARKS  
6 DEPARTMENT EMPLOYEES TO CARRY FIREARMS TO PERFORM THEIR ASSIGNED DUTIES;  
7 PROVIDING CRITERIA FOR WHEN AN EMPLOYEE IS ALLOWED TO CARRY A FIREARM; PROVIDING  
8 RULEMAKING AUTHORITY; AMENDING SECTION-SECTIONS 87-1-201, AND 87-1-622, MCA; AND  
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
1213 **Section 1.** Section 87-1-201, MCA, is amended to read:

14 **"87-1-201. Powers and duties.** (1) Except as provided in subsection ~~(12)~~ (13), the department shall  
15 supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing  
16 animals of the state and may implement voluntary programs that encourage hunting access on private lands  
17 and that promote harmonious relations between landowners and the hunting public. The department possesses  
18 all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state  
19 for the enforcement of the fish and game laws and the rules adopted by the department.

20 (2) Except as provided in subsection ~~(12)~~ (13), the department shall enforce all the laws of the  
21 state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals,  
22 and game and nongame birds within the state.

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

1 is available for appropriation to the department.

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

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

8 (6) ~~(A) The department may not issue permits to carry firearms within this state to anyone except;~~

9 ~~(i) \_\_\_\_\_ regularly appointed officers or wardens; and~~

10 ~~(ii) \_\_\_\_\_ other qualified employees identified, trained, and certified by the department where necessary~~  
11 ~~to perform assigned duties PURSUANT TO SUBSECTION (7).~~

12 ~~(B) \_\_\_\_\_ WARDENS, AS AUTHORIZED OFFICERS UNDER 87-1-502, ARE THE ONLY DEPARTMENT EMPLOYEES~~  
13 ~~WITH THE AUTHORITY TO ENFORCE PROVISIONS OF STATE LAW OR ADMINISTRATIVE RULE.~~

14 ~~(7) (A) DEPARTMENT EMPLOYEES MAY BE ISSUED A FIREARM AS ALLOWED IN SUBSECTION (6)(A)(II) ONLY~~  
15 ~~AFTER SUBMITTING A FORM OF FINAL APPROVAL AS DETERMINED AND APPROVED BY THE DEPARTMENT.~~

16 ~~(B) \_\_\_\_\_ DEPARTMENT-ISSUED FIREARMS MAY BE CARRIED BY AN EMPLOYEE OTHER THAN A WARDEN ONLY~~  
17 ~~WHEN THE EMPLOYEE IS ENGAGED IN WORK THAT REQUIRES THE CARRYING OF A FIREARM, AS DETERMINED BY THE~~  
18 ~~DEPARTMENT.~~

19 ~~(C) \_\_\_\_\_ WHEN A DEPARTMENT-ISSUED FIREARM IS NO LONGER NECESSARY TO PERFORM AN EMPLOYEE'S~~  
20 ~~REQUIRED DUTIES, THE EMPLOYEE SHALL RETURN THE ISSUED FIREARM TO SECURE STORAGE IN THE REGIONAL OFFICE~~  
21 ~~TO WHICH THE EMPLOYEE IS ATTACHED.~~

22 ~~(7)(8)~~ Except as provided in subsection ~~(42)~~ (13), the department is authorized to make, promulgate,  
23 and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in  
24 its judgment will accomplish the purpose of chapter 2.

25 ~~(8)(9)~~ The department is authorized to promulgate rules relative to tagging, possession, or  
26 transportation of bear within or outside of the state.

27 ~~(9)(10)~~ (a) The department shall implement programs that:

28 (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for

1 listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

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

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

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

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

17 (c) Any management plan developed by the department pursuant to this subsection ~~(9)~~(10) is  
18 subject to the requirements of Title 75, chapter 1, part 1.

19 (d) This subsection ~~(9)~~(10) does not affect the ownership or possession, as authorized under law,  
20 of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

21 ~~(10)~~(11) The department shall publish an annual game count, estimating to the department's best  
22 ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and  
23 administrative regions of the state. In preparing the publication, the department may incorporate field  
24 observations, hunter reporting statistics, or any other suitable method of determining game numbers. The  
25 publication must include an explanation of the basis used in determining the game count.

26 ~~(11)~~(12) The department shall report current sage grouse population numbers, including the number  
27 of leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality  
28 council in accordance with 5-11-210 on an annual basis. The report must include seasonal and historic

1 population data available from the department or any other source.

2 ~~(12)~~(13) 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 and the special muzzleloader heritage hunting season established in  
6 87-1-304;

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

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

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

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

12

13 **SECTION 2. SECTION 87-1-622, MCA, IS AMENDED TO READ:**

14 **"87-1-622. Forest management plan -- sustainable yield study required -- definition.** (1) The  
15 commission and the board shall adopt forest management plans for lands under their jurisdiction, based on an  
16 annual sustainable yield, to implement the provisions of 87-1-201~~(9)(a)(iv)~~(10)(a)(iv).

17 (2) The department, under the direction of the commission, shall, before July 1, 2012, commission  
18 a study by a qualified independent third party to determine, using scientific principles, the annual sustainable  
19 yield on forested department lands. The department shall direct the qualified independent third party to  
20 determine the annual sustainable yield pursuant to all state and federal laws.

21 (3) The annual timber sale requirement for the timber sale program administered by the  
22 department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed  
23 the annual sustainable yield.

24 (4) The commission and the board shall review and redetermine the annual sustainable yield for  
25 lands under their jurisdiction at least once every 5 years.

26 (5) Expenditures necessary to meet the requirements of this section are authorized to be made by  
27 the department pursuant to 87-1-601.

28 (6) For the purposes of this section, the term "annual sustainable yield" means the quantity of

1 timber that can be harvested from forested department lands each year, taking into account the ability of  
2 forested lands to generate replacement tree growth and in accordance with:  
3 (a) the provisions of ~~87-1-201(9)(a)(iv)~~10(a)(iv);  
4 (b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and  
5 maintenance of watersheds; and  
6 (c) water quality standards that protect fisheries and aquatic life and that are adopted under the  
7 provisions of Title 75, chapter 5."

8

9 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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