

1 HOUSE BILL NO. 94

2 INTRODUCED BY Z. BROWN

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

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO HUNTING ACCESS PROGRAMS;
6 REORGANIZING PROVISIONS; PROVIDING NECESSARY LICENSE PREREQUISITES FOR FREE TO
7 LANDOWNERS PARTICIPATING IN THE BLOCK MANAGEMENT PROGRAM; PROVIDING RULEMAKING
8 AUTHORITY; AMENDING SECTIONS 27-1-754, 87-1-264, 87-1-265, 87-1-266, 87-1-269, 87-1-270, 87-1-271,
9 87-1-290, 87-2-116, AND 87-2-513, MCA; REPEALING SECTION 87-1-267, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 27-1-754, MCA, is amended to read:
15 **"27-1-754. Recreational activity -- applicability exceptions.** Sections 27-1-751 through 27-1-753 do
16 not apply to duties, responsibilities, liability, or immunity related to:
17 (1) recreational use of waters or land, as provided in 23-2-321;
18 (2) snowmobiling, as provided in 23-2-653 and 23-2-654;
19 (3) skiing, as provided in Title 23, chapter 2, part 7;
20 (4) off-highway vehicle operation, as provided in 23-2-822;
21 (5) instruction in firearms and hunter safety or hunter education, as provided in 27-1-721;
22 (6) equine activity, as provided in 27-1-727;
23 (7) sponsored rodeo and similar events, as provided in 27-1-733;
24 (8) amusement rides, as provided in 27-1-743 and 27-1-744;
25 (9) recreational use of land, as provided in 23-2-907, 70-16-302, 77-1-805, ~~87-1-266, 87-1-267,~~
26 ~~87-1-265,~~ and 87-1-286;
27 (10) wildcrafting, as provided in 76-10-106; and
28 (11) placement of a sign or marker warning of a hazard in water legally accessible to the public, as
29 provided in 87-1-287."

30

1 **Section 2.** Section 87-1-249, MCA, is amended to read:

2 **"87-1-249. Rules.** (1) The department shall adopt rules for the administration of the upland game bird
3 enhancement program created in 87-1-246 through 87-1-249.

4 (2) The rules must:

5 (a) provide for eligibility criteria for project applications, including project evaluation criteria that
6 incorporate the following factors:

7 (i) proposed project acreage of suitable size;

8 (ii) proposed project acreage and adjoining lands that are suitable for upland game bird habitat;

9 (iii) evidence that existing and potential species will benefit from the project;

10 (iv) the number of acres that will be open to and suitable for public bird hunting under the proposal; and

11 (v) in addition to the criteria in subsections (2)(a)(i) through (2)(a)(iv), preference to proposed projects

12 with:

13 (A) longer contract length and larger landowner cost share;

14 (B) lands with special or unique components, such as wetlands; and

15 (C) a landowner history of providing hunter access and habitat enhancement;

16 (b) be consistent with general requirements of the federal conservation reserve program, the agricultural
17 conservation program, ~~the state hunter management program, and the state hunting access enhancement~~
18 ~~program~~ programs established pursuant to 87-1-265 so that landowners who participate in those programs may
19 also be eligible for participation in the upland game bird enhancement program;

20 (c) specifically indicate specifications under which upland game birds will be released in project areas,
21 including but not limited to:

22 (i) habitat requirements;

23 (ii) number of upland game birds to be released;

24 (iii) health requirements;

25 (iv) banding requirements;

26 (v) time for release;

27 (vi) age of birds to be released; and

28 (vii) reimbursement amount for each bird released;

29 (d) establish application procedures for project funding and review and for approval or denial of
30 applications; and

1 (e) establish project monitoring and reporting procedures, including a requirement that payments for
 2 projects authorized pursuant to 87-1-247 be supported by contracts, invoices, receipts, or other supporting
 3 documentation."

4

5 **Section 3.** Section 87-1-264, MCA, is amended to read:

6 **"87-1-264. Expenditure of hunting access program funds on weed control.** The legislature
 7 recognizes that the ~~hunter management and hunting access enhancement~~ programs authorized in 87-1-265
 8 ~~through 87-1-267 have successfully encouraged~~ encourage landowners to increase public access to private and
 9 public lands for purposes of hunting, but that increased public access may also contribute to an increase in the
 10 spread of noxious weeds on public and private lands. Therefore, in an effort to improve management and services
 11 related to those programs, the department may offer up to 5% in additional incentive payments above the
 12 maximum annual payment established in 87-1-265 to landowners who agree to use those additional payments
 13 for specific weed management activities on lands under their control."

14

15 **Section 4.** Section 87-1-265, MCA, is amended to read:

16 **"87-1-265. ~~Hunter management and hunting~~ Hunting access enhancement programs created --**
 17 **block management program -- private landowner assistance to promote public hunting access -- rules**
 18 **-- restriction on landowner liability.** (1) ~~The department may establish within the~~ There is established a block
 19 management program ~~established by administrative rule pursuant to authority contained in 87-1-301 and~~
 20 ~~87-1-303 programs of~~ administered by the department to provide landowner assistance that ~~encourage~~
 21 encourages public access to private and public lands for hunting purposes ~~of hunting and may adopt rules to~~
 22 ~~carry out program purposes. Rules may address but are not limited to incentives provided under:~~

23 ~~----- (a) a hunter management program as set out in 87-1-266, consisting of a cooperative agreement~~
 24 ~~between a landowner and the department and including other resource management agencies when appropriate,~~
 25 ~~that allows public hunting with certain restrictions or use rules; and~~

26 ~~----- (b) a hunting access enhancement program as set out in 87-1-267, consisting of incentives for private~~
 27 ~~landowners who allow public hunting access on their lands.~~

28 (2) The department may also develop ~~similar efforts~~ and administer alternative programs to ~~outside the~~
 29 ~~scope of the block management program that are designed to promote public access to private~~ and public lands
 30 for hunting purposes.

1 (3) Participation in a hunting access program established under this section is voluntary. A lease,
 2 acquisition, or other arrangement for public access to or across private property that is initiated through a program
 3 ~~established under this part for hunting purposes~~ must be negotiated ~~on a cooperative basis and may only be~~
 4 ~~initiated with the voluntary participation of private landowners~~ through a cooperative agreement between the
 5 landowner and the department that will guarantee reasonable access for public hunting. Landowners may also
 6 form a voluntary association when development of a unified cooperative agreement is advantageous. A
 7 COOPERATIVE AGREEMENT MUST CONTAIN A DETAILED DESCRIPTION OF THE CONDITIONS FOR USE OF THE PRIVATE
 8 PROPERTY, INCLUDING BUT NOT LIMITED TO:

- 9 (A) HUNTING ACCESS MANAGEMENT;
 10 (B) SERVICES TO BE PROVIDED TO THE PUBLIC;
 11 (C) RANCH RULES AND OTHER RESTRICTIONS; AND
 12 (D) ANY OTHER MANAGEMENT INFORMATION TO BE GATHERED, WHICH MUST BE MADE AVAILABLE TO THE PUBLIC.

13 (4) ~~Programs may not be structured in a manner that provides assistance to a private landowner who~~
 14 ~~charges a fee for hunting access to private land that is enrolled in the program or who does not provide~~
 15 ~~reasonable public hunting access to private land that is enrolled in the program. The commission shall develop~~
 16 ~~criteria by which tangible benefits are allocated to participating landowners, and the department may distribute~~
 17 ~~the benefits to participating landowners. The department may by rule limit the number of licenses that can be~~
 18 ~~provided as incentives. Private land is not eligible for inclusion in a hunting access program if outfitting or~~
 19 ~~commercial hunting restricts public hunting opportunities or if the landowner charges a fee for hunting access ON~~
 20 ~~THAT LAND.~~

21 (5) If the department determines that an agreement may adversely influence game management
 22 decisions or wildlife habitat on public lands, then other public land agencies, interested sportspersons, and
 23 affected landowners must be consulted. An affected landowner's management goals and personal observations
 24 regarding game populations and habitat use must be considered in development of the agreement.

25 (6) The commission may adopt rules to implement the provisions of this section, including but not limited
 26 to rules that determine tangible benefits to be provided to a landowner who participates in a hunting access
 27 program. Benefits are intended to offset potential impacts associated with public hunting access, including but
 28 not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection,
 29 liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may
 30 include but are not limited to:

1 (a) the number of days of public hunting provided by a participating landowner;

2 (b) wildlife habitat provided;

3 (c) resident game populations;

4 (d) number, sex, and species of animals taken; and

5 (e) access provided to adjacent public lands.

6 (7) (a) Benefits earned by a landowner who participates in a hunting access program may include but
7 are not limited to those applied in the manner described in subsections (7)(b) and (7)(c).

8 (b) A landowner may receive direct payments:

9 (i) for weed control or may direct payments to be made directly to the county weed control board;

10 (ii) for fire protection or may direct fire protection payments to be made to the local fire district or the
11 county where the landowner resides; and

12 (iii) to offset insurance costs incurred for allowing public hunting access.

13 (c) The department may provide assistance in the construction and maintenance of roads, gates, and
14 parking facilities and in the signing of property.

15 (8) Except as provided in 87-1-264, payments to a landowner who participates in a hunting access
16 program through an annual agreement may not exceed \$15,000 per year.

17 (9) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies
18 to a landowner who participates in a hunting access program."

19

20 **Section 5.** Section 87-1-266, MCA, is amended to read:

21 **"87-1-266. ~~Hunter management program -- License benefits for providing hunting access~~**

22 **~~landowners enrolled in block management program -- nonresident landowner limitation -- restriction on~~**

23 **~~landowner liability rulemaking.~~ (1) As provided in 87-1-265, the department may establish a voluntary hunter**

24 **~~management program to provide tangible benefits to private landowners enrolled in the block management~~**

25 **~~program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter~~**

26 **~~management program is the responsibility of the department. Benefits may be granted as provided in this section~~**

27 **~~and by rule.~~**

28 **(2)(1) As a benefit for enrolling property in the ~~hunter~~ block management program established in**

29 **87-1-265, a resident landowner ~~who becomes a cooperator in the program and who agrees to provide public~~**

30 **hunting access may receive one Class AAA combination sports license and the necessary prerequisites, without**

1 charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season
2 in any district where it is valid. The license may not be transferred by gift or sale.

3 ~~(3)(2)~~ As a benefit for enrolling property in the hunter block management program, a nonresident
4 landowner ~~who becomes a cooperator in the program and who agrees to provide public hunting access~~ may
5 receive one Class B-10 nonresident big game combination license and the necessary prerequisites, without
6 charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season
7 in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this
8 subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a
9 license under this subsection does not affect the limits established under 87-2-505.

10 ~~(4)(3)~~ (a) Instead of receiving the benefits provided in subsection (1) or (2) or (3), a landowner of record
11 ~~who becomes a cooperator in the hunter~~ enrolls in the block management program ~~and who agrees to provide~~
12 ~~public hunting access~~ may designate an immediate family member or employee to receive, without charge, the
13 necessary prerequisites and:

14 (i) a Class AAA combination sports license, ~~without charge~~, if the family member designated person is
15 a resident; or

16 (ii) a Class B-10 nonresident big game combination license, ~~without charge~~, if the family member
17 designated person is a nonresident. ~~An employee rather than a family member may be designated to receive a~~
18 ~~license.~~

19 (b) For purposes of this subsection ~~(4) (3)~~, an immediate family member means a parent, grandparent,
20 child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the
21 cooperator or spouse, or a niece or nephew.

22 (c) For purposes of this subsection ~~(4) (3)~~, the term "employee" means a person who works full time and
23 year-round for the landowner as part of ~~an~~ the active farm or ranch operation enrolled in the block management
24 program.

25 (d) An immediate family member or employee who is designated to receive a license pursuant to this
26 subsection ~~(4) (3)~~ must be eligible for licensure under current Montana law and may not transfer the license by
27 gift or sale.

28 (e) The grant of a Class B-10 nonresident big game combination license to an immediate family member
29 or employee pursuant to this subsection ~~(4) (3)~~ does not affect the limits established in 87-2-505.

30 ~~(5) Any landowner who is enrolled in the block management program may receive the benefits provided~~

1 under the hunter management program, as outlined in this section, and the benefits provided under the hunting
 2 access enhancement program, as outlined in 87-1-267.

3 ~~—— (6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies~~
 4 ~~to a landowner who participates in the hunter management program.~~

5 (4) The department may by rule limit the overall number of licenses that can be provided to landowners
 6 pursuant to this section.

7 (5) For the purposes of this section, the term "necessary prerequisites" includes:

8 (a) the base hunting license established in 87-2-116;

9 (b) the aquatic invasive species prevention pass established in 87-2-130; and

10 (c) the wildlife conservation license established in 87-2-201."

11

12 **Section 6.** Section 87-1-269, MCA, is amended to read:

13 **"87-1-269. Report required -- review committee.** (1) The governor shall appoint a committee of
 14 persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to
 15 ~~the hunting access enhancement program~~ programs established pursuant to 87-1-265, the fishing access
 16 enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private
 17 lands and public wildlife. The committee must have broad representation of landowners, outfitters, and
 18 sportspersons. The department may provide administrative assistance as necessary to assist the review
 19 committee.

20 (2) (a) The review committee shall report to the governor and to each legislature regarding the success
 21 of various elements of the hunting access ~~enhancement program~~ programs, including a report of annual
 22 landowner participation, the number of acres annually enrolled in the ~~program~~ programs, hunter harvest success
 23 on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in
 24 funding, and an accounting of program expenditures, and make recommendations for funding, modification, or
 25 improvement needed to achieve the objectives of the ~~program~~ programs. The department shall provide fiscal
 26 analyses of all hunting access ~~enhancement~~ program funding sources to the review committee for review and
 27 recommendations.

28 (b) The review committee shall report to the governor and to each legislature regarding the success of
 29 the fishing access enhancement program and make recommendations for funding, modification, or improvement
 30 needed to achieve the objectives of the program. The department shall provide fiscal analyses of all fishing

1 access enhancement program funding sources to the review committee for review and recommendations.

2 (3) The director may appoint additional advisory committees that are considered necessary to assist in
3 the implementation of the hunting access ~~enhancement program~~ programs and the fishing access enhancement
4 program and to advise the commission regarding the development of rules implementing the hunting access
5 ~~enhancement program~~ programs and the fishing access enhancement program."

6

7 **Section 7.** Section 87-1-270, MCA, is amended to read:

8 **"87-1-270. (Temporary) Allocation of license fees to hunting access enhancement program**
9 **programs.** (1) Except as provided in 87-2-514 and 87-2-805(3), the department shall use \$55 from the sale of
10 each Class B-1 nonresident upland game bird license and \$25 from the sale of each Class B-2 3-day nonresident
11 upland game bird license to encourage public access to private lands for hunting purposes in accordance with
12 87-1-265 ~~through 87-1-267.~~

13 (2) The department shall use the hunting access ~~enhancement~~ fees collected pursuant to 87-2-116 to
14 encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 ~~through~~
15 ~~87-1-267.~~ (Terminates June 30, 2019--sec. 6, Ch. 204, L. 2013.)

16 **87-1-270. (Effective July 1, 2019) Allocation of license fees to hunting access enhancement**
17 **program programs.** (1) Except as provided in 87-2-514 and 87-2-805(3), the department shall use \$55 from the
18 sale of each Class B-1 nonresident upland game bird license to encourage public access to private lands for
19 hunting purposes in accordance with 87-1-265 ~~through 87-1-267.~~

20 (2) The department shall use the hunting access ~~enhancement~~ fees collected pursuant to 87-2-116 to
21 encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 ~~through~~
22 ~~87-1-267.~~"

23

24 **Section 8.** Section 87-1-271, MCA, is amended to read:

25 **"87-1-271. Annual lottery of hunting licenses -- proceeds dedicated to hunting access**
26 **enhancement.** (1) The commission may issue through a lottery one license each year for each of the following:

27 (a) deer;

28 (b) elk;

29 (c) shiras moose;

30 (d) mountain sheep;

1 (e) mountain goat;

2 (f) wild buffalo or bison;

3 (g) antelope; and

4 (h) mountain lion.

5 (2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep
6 special license is not eligible to receive another license for that species for the next 7 years does not apply to a
7 person who receives a license through a lottery conducted pursuant to this section.

8 (3) The commission shall establish rules regarding:

9 (a) the conduct of the lottery authorized in this section;

10 (b) the use of licenses issued through the lottery; and

11 (c) the price of lottery tickets.

12 (4) Except as provided in 87-2-903, all proceeds from a lottery conducted pursuant to this section must
13 be used by the department for hunting access ~~enhancement~~ programs and law enforcement."
14

15 **Section 9.** Section 87-1-290, MCA, is amended to read:

16 **"87-1-290. Hunting access account.** (1) There is a hunting access account in the state special revenue
17 fund. Funds deposited in this account must be used for the purpose of funding any hunting access program
18 ~~established by law or by the department through administrative rule.~~

19 (2) The following funds must be deposited in the account:

20 (a) 28.5% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505
21 and 28.5% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510;

22 (b) 28.5% of the fee for hunting licenses issued to nonresident relatives of a resident pursuant to
23 87-2-514; and

24 (c) the hunting access ~~enhancement~~ fees collected pursuant to 87-2-116.

25 (3) Any interest or income earned on the account must be deposited in the account."
26

27 **Section 10.** Section 87-2-116, MCA, is amended to read:

28 **"87-2-116. Base hunting license prerequisite for other hunting licenses -- fee.** (1) To be eligible to
29 apply for a hunting license or Class A-2 special bow and arrow license, a person must first obtain a base hunting
30 license as provided in this section. The base hunting license must be purchased once each license year.

1 (2) Resident base hunting licenses may be purchased for a fee of \$10, of which \$2 is a hunting access
 2 ~~enhancement~~ fee that must be used by the department to fund programs ~~established~~ authorized in 87-1-265
 3 ~~through 87-1-267~~.

4 (3) Nonresident base hunting licenses may be purchased for a fee of \$15, of which \$10 is a hunting
 5 access ~~enhancement~~ fee that must be used by the department to fund programs ~~established~~ authorized in
 6 87-1-265 ~~through 87-1-267~~."

7
 8 **Section 11.** Section 87-2-513, MCA, is amended to read:

9 **"87-2-513. Either-sex or antlerless elk permit for landowner who offers free public elk hunting --**
 10 **terms, conditions, and issuance of permit.** (1) In addition to any elk permits offered for sale, the department
 11 may, for wildlife management purposes, issue an either-sex or antlerless elk permit at no cost to a landowner who
 12 provides free public elk hunting on the landowner's property and who otherwise meets the conditions of this
 13 section. The department may issue elk permits to the public, at regular cost and in the number authorized in
 14 subsection (3), for hunting on the property of a landowner who opens property for public elk hunting for wildlife
 15 management purposes pursuant to this section.

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

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

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

21 (c) must have entered into a contractual public elk hunting access agreement with the department that
 22 allows public access for free public elk hunting on the landowner's property throughout the regular hunting season
 23 and that includes public hunting by permit holders using permits that are valid for the hunting district;

24 (d) may not receive cash payments under ~~87-1-267~~ 87-1-265; and

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

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

1 (4) A permit issued pursuant to this section:
 2 (a) is nontransferable and may not be sold; and
 3 (b) may only be used for hunting conducted on property that is opened to public access pursuant to this
 4 section.

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

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

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

15
 16 **NEW SECTION. Section 12. Repealer.** The following section of the Montana Code Annotated is
 17 repealed:

18 87-1-267. Hunting access enhancement program -- benefits for providing hunting access -- cooperative
 19 agreement -- factors for determining benefits earned -- restriction on landowner liability.

20

21 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

22 - END -