

1 House BILL NO. 791
 2 INTRODUCED BY State Administration Committee

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE THE DEPARTMENT
 5 HEAD OF THE DEPARTMENT OF FISH AND GAME A DIRECTOR APPOINTED
 6 BY THE GOVERNOR IN ACCORDANCE WITH SECTION 82A-106, R.C.M.
 7 1947; TO REMOVE CERTAIN QUALIFICATIONS FOR THE DIRECTOR OF
 8 THE DEPARTMENT OF FISH AND GAME; TO REALLOCATE CERTAIN
 9 FUNCTIONS OF THE STATE FISH AND GAME COMMISSION TO THE
 10 DEPARTMENT OF FISH AND GAME; AND TO CHANGE THE NAME OF THE
 11 STATE FISH AND GAME COMMISSION; AMENDING SECTIONS 26-101.1,
 12 26-104, 26-104.4 THROUGH 26-104.7, 26-107 THROUGH 26-110,
 13 26-110.3, 26-114, 26-118, 26-119, 26-121, 26-123, 26-126
 14 THROUGH 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1,
 15 26-202.4 THROUGH 26-202.8, 26-204, 26-210, 26-212, 26-212.1,
 16 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230,
 17 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307,
 18 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334,
 19 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813,
 20 26-814, 26-909, 26-911 THROUGH 26-915, 26-918 THROUGH
 21 26-920, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206
 22 THROUGH 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 THROUGH
 23 26-1505, 26-1508, 26-1509, 26-1601 THROUGH 26-1603, 26-1605,
 24 26-1607 THROUGH 26-1610, 26-1612 THROUGH 26-1614, 26-1701,
 25 26-1702, 26-1704, 26-1802, 26-1804 THROUGH 26-1808, 46-1903,

INTRODUCED BILL

1 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304
 2 THROUGH 62-306, 62-308, 62-310, 62-311, 62-314, 62-401
 3 THROUGH 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518,
 4 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, AND 89-3449,
 5 R.C.M. 1947; AND REPEALING SECTIONS 26-103, 26-106, 26-124,
 6 AND 82A-2003, R.C.M. 1947."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 82A-2001, R.C.M. 1947, is amended
10 to read as follows:

11 "82A-2001. Department of fish and game -- creation --
 12 head. There is created a department of fish and game. The
 13 department head is the ~~state fish and game commission~~
 14 ~~provided for in section 82A-2804 of this chapter, but~~
 15 ~~section 82A-107 of this act does not apply to the commission~~
 16 ~~as a department head~~ director of fish and game appointed by
 17 the governor in accordance with 82A-106."

18 Section 2. Section 82A-2004, R.C.M. 1947, is amended
19 to read as follows:

20 "82A-2004. ~~State fish~~ Fish and game commission --
 21 composition -- qualifications -- designation. (1) There is
 22 a state fish and game commission.

23 (2) The commission consists of five (5) members. At
 24 least one member shall be experienced in the breeding and
 25 management of domestic livestock. The governor shall appoint

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1 one ~~††~~ member from each of the following districts:

2 (a) District No. 1, consisting of Lincoln, Flathead,
3 Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite,
4 and Lewis and Clark counties;

5 (b) District No. 2, consisting of Deer Lodge, Silver
6 Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin,
7 Park, and Sweetgrass counties;

8 (c) District No. 3, consisting of Glacier, Toole,
9 Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith
10 Basin, Fergus, Blaine, Meagher, and Wheatland counties;

11 (d) District No. 4, consisting of Phillips, Valley,
12 Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone,
13 Richland, Dawson, and Wibaux counties;

14 (e) District No. 5, consisting of Golden Valley,
15 Musselshell, Stillwater, Carbon, Yellowstone, Big Horn,
16 Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and
17 Prairie counties.

18 (3) Appointments shall be made without regard to
19 political affiliation and shall be made solely for the
20 welfare of the fish, game, and wildlife of this state. A
21 person may not be appointed to the commission unless he is
22 informed or interested and experienced in the subject of
23 wildlife, fish and game, and the requirements for the
24 conservation and protection of fish, game, and game birds
25 and animals.

1 (4) A vacancy occurring on the commission shall be
2 filled by the governor ~~with the consent of the senate~~ in the
3 same manner and from the district in which the vacancy
4 occurs.

5 (5) The ~~state~~ fish and game commission is designated
6 as a quasi-judicial board for purposes of ~~section 82A-112 of~~
7 ~~this act.~~

8 ~~(6) In addition to its designation as a quasi-judicial~~
9 ~~board, the commission is the policy and rule-making body for~~
10 ~~the department except where the department has been~~
11 ~~specifically delegated rule-making authority. The commission~~
12 ~~shall carry out such other duties as specified by law."~~

13 Section 3. Section 26-101.1, R.C.M. 1947, is amended
14 to read as follows:

15 "26-101.1. Definitions. Unless the context requires
16 otherwise, in Title 26 ~~the following definitions apply:~~

17 (1) "Department" means the department of fish and game
18 provided for in Title 82A, chapter 20~~†~~.

19 (2) "Director" means the director of fish and game
20 provided for in section ~~82A-2003†~~ 82A-2001.

21 (3) "Warden" means a state fish and game warden~~†~~.

22 (4) "Commission" means the ~~state~~ fish and game
23 commission provided for in section 82A-2004."

24 Section 4. Section 26-104.6, R.C.M. 1947, is amended
25 to read as follows:

1 *26-104.6. Acquisition and sale of lands or waters by
 2 ~~commission department.~~ (1) The ~~commission department~~ may
 3 acquire by purchase, condemnation, lease, agreement, gift,
 4 or devise, and may acquire easements upon lands or waters
 5 for the purposes listed in this subsection. The ~~commission~~
 6 ~~department~~ may acquire, develop, operate, and maintain
 7 acquired lands or waters:

8 (a) For ~~for~~ fish hatcheries, nursery ponds, or game
 9 farms;

10 (b) ~~As~~ ~~as~~ lands or water suitable for game, bird,
 11 fish, or fur-bearing animal restoration, propagation, or
 12 protection;

13 (c) For ~~for~~ public hunting, fishing, or trapping
 14 areas;

15 (d) ~~To~~ ~~to~~ capture, propagate, transport, buy, sell, or
 16 exchange any game, bird, fish, fish eggs, or fur-bearing
 17 animals needed for propagation or stocking purposes, or to
 18 exercise control measures of undesirable species;

19 (e) ~~To~~ ~~to~~ extend and consolidate by exchange, lands or
 20 waters suitable for these purposes.

21 (2) The ~~commission department~~ may dispose of lands and
 22 waters acquired by it on those terms after that public
 23 notice, and without regard to other laws which provide for
 24 sale or disposal of state lands, and with or without
 25 reservation, as it considers necessary and advisable. Notice

1 of sale describing the lands or waters to be disposed of
 2 shall be published once a week for ~~three--{3}~~ successive
 3 weeks in a newspaper with general circulation printed and
 4 published in the county where the lands or waters are
 5 situated, or if no newspaper is published in that county
 6 then in any newspaper with general circulation in that
 7 county. The notice shall advertise for cash bids to be
 8 presented to the ~~commission or the~~ director within ~~thirty~~
 9 ~~{30}~~ days from the date of the first publication. Each bid
 10 must be accompanied by a cashier's check or cash deposit in
 11 an amount equal to ~~ten-percent--{10%}~~ of the amount bid. The
 12 highest bid shall be accepted upon payment of the balance
 13 due within ~~ten--{10}~~ days after mailing notice by registered
 14 mail to the highest bidder. If that bidder defaults on
 15 payment of the balance due, then the next highest bidders
 16 shall be similarly notified in succession until a sale is
 17 completed. Deposits shall be returned to the unsuccessful
 18 bidders except bidders defaulting after notification. The
 19 ~~commission department~~ shall reserve the right to reject any
 20 bids which do not equal or exceed the full market value of
 21 the lands and waters as determined by the ~~commission~~
 22 ~~department~~. The ~~commission department~~ shall convey the lands
 23 and waters by deed without covenants of warranty, executed
 24 by the governor, or in his absence or disability by the
 25 lieutenant governor, attested by the secretary of state, and

1 further countersigned by the ~~chairman of the commission~~
 2 ~~director. The deed shall be attested by the secretary of~~
 3 ~~the commission but need not be acknowledged.~~

4 (3) Notwithstanding the provisions of section 82-1918,
 5 ~~R.C.M.-1947~~, the commission department is authorized to
 6 utilize the installment contract method to facilitate the
 7 acquisition of wildlife management areas, in which game and
 8 nongame fur-bearing animals, and game and nongame birds may
 9 breed and replenish, and areas which provide access to
 10 fishing sites for the public. In no case may the total cost
 11 of such installment contracts exceed the cost of purchases
 12 authorized by commission the department and appropriated by
 13 the legislature."

14 Section 5. Section 26-107, R.C.M. 1947, is amended to
 15 read as follows:

16 "26-107. State fish and game wardens -- appointment --
 17 qualifications. The ~~director, by and with the consent and~~
 18 ~~approval of the commission,~~ shall have the power to employ
 19 and appoint a deputy director, and a sufficient number of
 20 state fish and game wardens for the proper enforcement of
 21 the fish and game laws of the state, and the orders, rules
 22 and regulations of the commission department, and for such
 23 other purposes as the director may designate. State fish and
 24 game wardens shall be selected from applicants who have
 25 passed such an examination as may be required according to

1 the rules adopted and promulgated by the commission
 2 department. No person shall be appointed a state fish and
 3 game warden until a certificate shall have been issued to
 4 him by the commission department to the effect that he has
 5 passed the required examination and is a fit and proper
 6 person to perform the duties of the office. State fish and
 7 game wardens employed and appointed by virtue of this act
 8 shall be persons who have an interest in protection,
 9 conservation and propagation of wildlife, game and
 10 fur-bearing animals, fish and game birds; they shall devote
 11 all of their time to their official duties."

12 Section 6. Section 26-114, R.C.M. 1947, is amended to
 13 read as follows:

14 "26-114. Appointment of ex officio state fish and game
 15 wardens. All sheriffs and their deputies, constables, all
 16 peace officers of the state, or any subdivision thereof, and
 17 all state forest officers, and such other officers of the
 18 United States forest service or agents of the United States
 19 fish and wildlife service which are assigned to duty in this
 20 state, and field personnel ~~fish and game commission of the~~
 21 ~~department,~~ as the ~~director, with the approval of the state~~
 22 ~~fish and game commission,~~ may appoint are hereby made ex
 23 officio state fish and game wardens, without pay, except
 24 that the commission department may, in its discretion, allow
 25 traveling expenses, as provided for in sections 59-538,

1 59-539, and 59-801, which, if allowed, shall be paid upon
 2 proper vouchers from the state fish and game funds--and, Ex
 3 officio state fish and game wardens shall have the same
 4 powers with reference to the enforcement of the fish and
 5 game laws of this state as regularly appointed state fish
 6 and game wardens, and it is hereby made their duty to
 7 assist, whenever possible, in the enforcement of said laws."

8 Section 7. Section 26-119, R.C.M. 1947, is amended to
 9 read as follows:

10 "26-119. ~~Fish--and--game--commission~~ Department to
 11 procure plans for construction projects. It shall be the
 12 duty of the ~~state fish and game commission of the state of~~
 13 Montana department to procure suitable plans and
 14 specifications for any construction project under its
 15 authority of under authority of the state legislature, when
 16 the estimated value or cost of the same shall be more than
 17 ~~one--thousand--dollars--(\$1,000)~~ but less than ~~five--thousand~~
 18 ~~dollars--(\$5,000)~~ and ~~said--commission~~ the department shall
 19 cause said project to be constructed, but in accordance with
 20 such plans and specifications, by contract, said contract to
 21 be let after publishing a notice stating the time and place
 22 of letting the same, and where plans and specifications may
 23 be seen. ~~Said--notice~~ Notice shall be published not less
 24 than once a week for ~~two--(2)~~ weeks prior to the time of
 25 letting such contract, in some newspaper of general

1 circulation in the county in which said project is to be
 2 constructed, and elsewhere if deemed best by ~~said~~
 3 ~~commission,--and--said--commission~~ the department. The
 4 department, if not satisfied with the bids received, or for
 5 any other reason, may reject any and all bids received and
 6 readvertise as often as may be necessary. Only one bid need
 7 be received and the contract shall be let to the lowest
 8 responsible bidder. Any person to whom a contract may be
 9 given shall be required to give a good and sufficient bond,
 10 conditioned for the faithful performance and completion of
 11 such contract, the same to be approved by the ~~commission--or~~
 12 ~~some--member--of--the--commission~~ department. The ~~commission~~
 13 department may contract for construction projects estimated
 14 to cost ~~one--thousand--dollars--(\$1,000)~~ or less without
 15 providing for plans or specifications, notice, competitive
 16 bidding or performance bonds."

17 Section 8. Section 26-918, R.C.M. 1947, is amended to
 18 read as follows:

19 "26-918. Grounds for suspension or revocation of
 20 license. Every license, or right to apply for and hold such
 21 license, may be suspended or revoked ~~by--the--fish--and--game~~
 22 ~~commission~~ upon any of the following grounds:

- 23 (1) Having ceased to meet all of the qualifications
 24 for holding a license.
 25 (2) Fraud or deception in procuring a license.

1 (3) Fraudulent, untruthful or misleading advertising.

2 (4) Conviction of a felony, until civil rights are
3 restored or until time of any deferred sentence for a felony
4 has expired.

5 (5) Two ~~(2)~~ convictions, or bond forfeitures, of one
6 hundred-dollars ~~(\$100)~~ or more as to violations of the fish
7 and game or outfitting laws or regulations of the state of
8 Montana or of the United States.

9 (6) A substantial breach of any contract with any
10 person utilizing the services of the license holder provided
11 that such breach is established as a matter of final
12 judgment in a court of law.

13 (7) The willful employment of an unlicensed guide by
14 an outfitter.

15 (8) Negligence or misconduct while acting as an
16 outfitter or guide which negligence or misconduct causes a
17 danger or unreasonable risk of danger to person or property
18 of any client of such outfitter or guide."

19 Section 9. Section 26-919, R.C.M. 1947, is amended to
20 read as follows:

21 *26-919. Procedure for revocation or suspension of
22 license. Proceedings for the revocation or suspension of a
23 license issued hereunder may be taken upon charge or
24 recommendation of any person. All such charges or
25 recommendations must be made in writing, must state the

1 facts upon which such charge or recommendation is based and
2 must be signed and sworn to by the person making the charge
3 or recommendation. Any such charge or recommendation shall
4 be filed with the fish and game director. Thereupon, the
5 fish and game director shall initiate a preliminary
6 investigation of all facts in connection with the charge. A
7 copy of all information shall be transmitted to the advisory
8 council. The advisory council may make recommendation as to
9 the action to be taken provided that any such recommendation
10 shall be made, in writing and delivered to the director,
11 within ~~twenty-(20)~~ days after date of transmittal of such
12 information to the council. If the accusation be deemed to
13 be unfounded or trivial, the fish and game director shall
14 dismiss the same ~~and report his action to the fish and game~~
15 ~~commission~~ and will advise the licensee charged and the
16 complaining party of the action. Should the fish and game
17 director determine the charge or recommendation to have good
18 cause and to be sufficiently founded, he shall recommend to
19 the fish and game commission that the same be approved and
20 the revocation or suspension be effected. The fish and game
21 director thereupon shall cause a copy of the charge,
22 recommendation of the council, and a record of the
23 investigation to be served upon the licensee involved, not
24 less than ~~twenty-(20)~~ days prior to the day set for hearing
25 thereon which said hearing shall be before the fish and game

1 commission at a time and place set by such commission. At
 2 the hearing the licensee involved may be represented by
 3 counsel. After full, fair and impartial hearing, the fish
 4 and game commission may suspend the accused's license or his
 5 right to hold a license for a period not to exceed ~~three~~^{3}
 6 years or may order the license revoked or may dismiss the
 7 charge or recommendation based upon the facts shown at the
 8 hearing. A revoked or suspended license may be reissued or
 9 reinstated at the discretion of the commission."

10 Section 10. Section 26-920, R.C.M. 1947, is amended to
 11 read as follows:

12 "26-920. Appeal to district court. Any person who
 13 feels aggrieved by ~~any action of the director in denying~~
 14 the denial of issuance of a license, or ~~of the fish and~~
 15 ~~game commission in suspending or revoking his~~ suspension or
 16 revocation of a license as an outfitter or guide, may appeal
 17 to the district court of the county of his residence, within
 18 ~~thirty~~^{30} days after the date of such action by filing
 19 with the clerk of said court a notice of appeal briefly
 20 setting forth the action complained of and appealed from.
 21 Summons and copy of the notice of appeal shall be served on
 22 the commission and all proceedings shall conform to the code
 23 of civil procedure of the state of Montana. Upon such
 24 appeal, the action shall be by trial de novo and, upon
 25 demand in writing, either party shall be entitled to trial

1 by jury. The court may sustain or reverse the action of the
 2 commission or take such other action as the court may deem
 3 just and proper. If the commission or the court has ordered
 4 a stay of any revocation or suspension and the commission's
 5 revocation or suspension is thereafter sustained by the
 6 court the period of suspension or revocation shall begin
 7 with the first day after the court's action sustaining the
 8 decision of the commission."

9 Section 11. Section 26-1508, R.C.M. 1947, is amended
 10 to read as follows:

11 "26-1508. Reports and objections to federal actions
 12 injuring fish and wildlife -- files and records. The Montana
 13 state fish and game department shall observe ~~and report to~~
 14 ~~the Montana state fish and game commission concerning~~ acts
 15 and omissions on the part of the government of the United
 16 States and its agencies within the state of Montana which
 17 do, will or might affect adversely the fish and wildlife
 18 resources, including but not limited to the fishing streams
 19 within the state, and upon receiving such ~~reports~~
 20 information, the ~~said commission department~~ shall without
 21 delay send formal notification in writing, by certified
 22 mail, to the appropriate federal agency or agencies
 23 involved, setting forth in detail the appropriate objections
 24 of the state of Montana to the acts and omissions aforesaid.
 25 ~~Said commission~~ The department shall keep complete files and

1 records, available for public inspection, of all matters and
2 things done, and all communications and correspondence sent
3 and received, pursuant to this section."

4 Section 12. Section 26-1802, R.C.M. 1947, is amended
5 to read as follows:

6 "26-1802. Definitions. As used in this act ~~chapter the~~
7 following definitions apply:

8 (1) "~~department~~ Department" means the department of
9 fish and game~~s~~.

10 (2) "~~director~~ Director" means the director of the
11 state department of fish and game~~s~~.

12 ~~(3) "commission" means the fish and game commission~~

13 ~~(4) (3) "ecosystem~~ Ecosystem" means a system of living
14 organisms and their environment, each influencing the
15 existence of the other and both necessary for the
16 maintenance of life~~s~~.

17 ~~(5) (4) "endangered~~ Endangered species" means any
18 species or subspecies of wildlife actively threatened with
19 extinction due to any of the following factors:

20 (a) the destruction, drastic modification, or severe
21 curtailment of its habitat, or

22 (b) its overutilization for scientific, commercial or
23 sporting purposes, or

24 (c) the effect on it of disease, pollution, or
25 predation, or

1 (d) other natural or man-made factors affecting its
2 prospects of survival or recruitment within the state, or

3 (e) any combination of the foregoing factors. The
4 ~~commission~~ department shall have authority to recommend that
5 the legislature include any species or subspecies of fish
6 and wildlife appearing on the United States' list of
7 endangered native fish and wildlife as it appears on the
8 effective date of this chapter (part 17 of title 50 of the
9 Code of Federal Regulations, appendix D) as well as any
10 species or subspecies of fish and wildlife appearing on the
11 United States' list of endangered foreign fish and wildlife
12 (part 17 of title 50 of the Code of Federal Regulations,
13 appendix A), as such list may be modified hereafter~~s~~.

14 ~~(6) (5) "management~~ Management" means the collection
15 and application of biological information for the purposes
16 of increasing the number of individuals within species and
17 populations of wildlife up to the optimum carrying capacity
18 of their habitat and maintaining such levels. The term
19 includes the entire range of activities that constitute a
20 modern scientific resource program including, but not
21 limited to, research, census, law enforcement, habitat
22 acquisition and improvement, and education. Also included
23 within the term, when and where appropriate, is the periodic
24 or total protection of species or populations as well as
25 regulated taking~~s~~.

1 (7)(6) "nongame Nongame wildlife" means any wild
2 mammal, bird, amphibian, reptile, fish, mollusk, crustacean
3 or other wild animal not otherwise legally classified by
4 statute or regulation of this state. Animals designated by
5 statute or regulation of this state as predatory in nature
6 are not classified as "nongame wildlife" for purposes of
7 this act chapter.

8 (8)(7) "~~optimum~~ Optimum carrying capacity" means that
9 point at which a given habitat can support healthy
10 populations of wildlife species, having regard to the total
11 ecosystem, without diminishing the ability of the habitat to
12 continue that function.

13 (9)(8) "person Person" means any individual, firm,
14 corporation, association or partnership.

15 (10)(9) "take Take" means to harass, hunt, capture, or
16 kill or attempt to harass, hunt, capture, or kill wildlife.

17 (11)(10) "~~wildlife~~ Wildlife" means any wild mammal,
18 bird, reptile, amphibian, fish, mollusk, crustacean or other
19 wild animal or any part, product, egg or offspring or the
20 dead body or parts thereof.

21 Section 13. There is a new R.C.M. section that reads
22 as follows:

23 Uniform terminology. (1) Wherever the words "Montana
24 fish and game commission", "state fish and game commission",
25 "fish and game commission", "commission", "members of said

1 commission", or "chairman of the commission" appear in
2 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109,
3 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127,
4 26-128, 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1,
5 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204,
6 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225,
7 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302,
8 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324,
9 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501,
10 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912,
11 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124,
12 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402,
13 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509,
14 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608,
15 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701,
16 26-1702, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807,
17 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025,
18 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310,
19 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502,
20 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and
21 89-3449, R.C.M. 1947, the words "department of fish and
22 game" or "department", if it is clear which department is
23 involved, are substituted therefor.

24 (2) The code commissioner may make any required
25 grammatical changes necessitated by the replacement of

1 certain words under subsection (1).

2 Section 14. Section 26-324, R.C.M. 1947, is amended to
3 read as follows:

4 "26-324. Penalty. A person violating any state law
5 pertaining to fish and game thereto, or the orders, rules,
6 and regulations of the commission ~~or department~~ is, unless a
7 different punishment is expressly provided by law for the
8 violation, guilty of a misdemeanor and shall be fined not
9 less than ~~twenty-five dollars--(\$25)~~ nor more than ~~five~~
10 ~~hundred dollars--(\$500)~~, or imprisoned in the county jail
11 for not more than ~~six--(6)~~ months, or both fined and
12 imprisoned. In addition, the person shall, in the discretion
13 of the court, forfeit his license and privilege to hunt,
14 fish, or trap within this state for a period of ~~sixteen--(16)~~
15 months from the date of conviction."

16 Section 15. Repealer. Sections 26-103, 26-106, 26-124,
17 and 82A-2003, R.C.M. 1947, are repealed.

-End-

Approved by Committee
on State Administration

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16 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230,
17 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307,
18 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334,
19 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813,
20 26-814, 26-909, 26-911 THROUGH 26-915, 26-918 THROUGH
21 26-920, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206
22 THROUGH 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 THROUGH
23 26-1505, 26-1508, 26-1509, 26-1601 THROUGH 26-1603, 26-1605,
24 26-1607 THROUGH 26-1610, 26-1612 THROUGH 26-1614, 26-1701,
25 26-1702, 26-1704, 26-1802, 26-1804 THROUGH 26-1808, 46-1903,

1 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304
2 THROUGH 62-306, 62-308, 62-310, 62-311, 62-314, 62-401
3 THROUGH 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518,
4 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, AND 89-3449,
5 R.C.M. 1947; AND REPEALING SECTIONS 26-103, 26-106, 26-124,
6 AND 82A-2003, R.C.M. 1947."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 82A-2001, R.C.M. 1947, is amended
10 to read as follows:

11 "82A-2001. Department of fish and game -- creation --
12 head. There is created a department of fish and game. The
13 department head is the ~~state--fish--and--game--commission~~
14 ~~provided for in section 82A-2004 of this chapter but~~
15 ~~section 82A-107 of this act does not apply to the commission~~
16 ~~as a department head~~ director of fish and game appointed by
17 the governor in accordance with 82A-106."

18 Section 2. Section 82A-2004, R.C.M. 1947, is amended
19 to read as follows:

20 "82A-2004. State ~~fish~~ Fish and game commission --
21 composition -- qualifications -- designation. (1) There is
22 a state fish and game commission.

23 (2) The commission consists of five ~~(5)~~ members. At
24 least one member shall be experienced in the breeding and
25 management of domestic livestock. The governor shall appoint

SECOND READING

1 one ~~(1)~~ member from each of the following districts:

2 (a) District No. 1, consisting of Lincoln, Flathead,

3 Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite,

4 and Lewis and Clark counties;

5 (b) District No. 2, consisting of Deer Lodge, Silver

6 Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin,

7 Park, and Sweetgrass counties;

8 (c) District No. 3, consisting of Glacier, Toole,

9 Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith

10 Basin, Fergus, Blaine, Meagher, and Wheatland counties;

11 (d) District No. 4, consisting of Phillips, Valley,

12 Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone,

13 Richland, Dawson, and Wibaux counties;

14 (e) District No. 5, consisting of Golden Valley,

15 Musselshell, Stillwater, Carbon, Yellowstone, Big Horn,

16 Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and

17 Prairie counties.

18 (3) Appointments shall be made without regard to

19 political affiliation and shall be made solely for the

20 welfare of the fish, game, and wildlife of this state. A

21 person may not be appointed to the commission unless he is

22 informed or interested and experienced in the subject of

23 wildlife, fish and game, and the requirements for the

24 conservation and protection of fish, game, and game birds

25 and animals.

1 (4) A vacancy occurring on the commission shall be

2 filled by the governor ~~with the consent of the senate~~ in the

3 same manner and from the district in which the vacancy

4 occurs.

5 (5) The ~~state~~ fish and game commission is designated

6 as a quasi-judicial board for purposes of ~~section 82A-112 of~~

7 ~~this act.~~

8 (6) In addition to its designation as a quasi-judicial

9 board, the commission is the policy and rule-making body for

10 the department except where the department has been

11 specifically delegated rule-making authority. The commission

12 shall carry out such other duties as specified by law."

13 Section 3. Section 26-101.1, R.C.M. 1947, is amended

14 to read as follows:

15 "26-101.1. Definitions. Unless the context requires

16 otherwise, in Title 26 the following definitions apply:

17 (1) "Department" means the department of fish and game

18 provided for in Title 82A, chapter 201.

19 (2) "Director" means the director of fish and game

20 provided for in section ~~82A-2003~~, 82A-2001.

21 (3) "Warden" means a state fish and game warden1.

22 (4) "Commission" means the ~~state~~ fish and game

23 commission provided for in section 82A-2004."

24 Section 4. Section 26-104.6, R.C.M. 1947, is amended

25 to read as follows:

1 "26-104.6. Acquisition and sale of lands or waters by
 2 ~~commission department.~~ (1) The ~~commission department, WITH~~
 3 ~~THE CONSENT OF THE COMMISSION,~~ may acquire by purchase,
 4 condemnation, lease, agreement, gift, or devise, and may
 5 acquire easements upon lands or waters for the purposes
 6 listed in this subsection. The ~~commission department~~ may
 7 ~~acquire,~~ develop, operate, and maintain acquired lands or
 8 waters:

9 (a) ~~For for~~ fish hatcheries, nursery ponds, or game
 10 faras;

11 (b) ~~As as~~ lands or water suitable for game, bird,
 12 fish, or fur-bearing animal restoration, propagation, or
 13 protection;

14 (c) ~~For for~~ public hunting, fishing, or trapping
 15 areas;

16 (d) ~~To to~~ capture, propagate, transport, buy, sell, or
 17 exchange any game, bird, fish, fish eggs, or fur-bearing
 18 animals needed for propagation or stocking purposes, or to
 19 exercise control measures of undesirable species;

20 (e) ~~To to~~ extend and consolidate by exchange, lands or
 21 waters suitable for these purposes.

22 (2) The ~~commission department, WITH THE CONSENT OF THE~~
 23 ~~COMMISSION,~~ may dispose of lands and waters acquired by it
 24 on those terms after that public notice, and without regard
 25 to other laws which provide for sale or disposal of state

1 lands, and with or without reservation, as it considers
 2 necessary and advisable. Notice of sale describing the lands
 3 or waters to be disposed of shall be published once a week
 4 for ~~three--(3)~~ successive weeks in a newspaper with general
 5 circulation printed and published in the county where the
 6 lands or waters are situated, or if no newspaper is
 7 published in that county then in any newspaper with general
 8 circulation in that county. The notice shall advertise for
 9 cash bids to be presented to the ~~commission--or--the~~ director
 10 within ~~thirty--(30)~~ days from the date of the first
 11 publication. Each bid must be accompanied by a cashier's
 12 check or cash deposit in an amount equal to ~~ten-percent~~
 13 ~~(10%)~~ of the amount bid. The highest bid shall be accepted
 14 upon payment of the balance due within ~~ten--(10)~~ days after
 15 mailing notice by registered mail to the highest bidder. If
 16 that bidder defaults on payment of the balance due, then the
 17 next highest bidders shall be similarly notified in
 18 succession until a sale is completed. Deposits shall be
 19 returned to the unsuccessful bidders except bidders
 20 defaulting after notification. The ~~commission department~~
 21 shall reserve the right to reject any bids which do not
 22 equal or exceed the full market value of the lands and
 23 waters as determined by the ~~commission department.~~ The
 24 ~~commission department~~ shall convey the lands and waters by
 25 deed without covenants of warranty, executed by the

1 governor, or in his absence or disability by the lieutenant
 2 governor, attested by the secretary of state, and further
 3 countersigned by the ~~chairman of the commission~~ director.
 4 ~~The deed shall be attested by the secretary of the~~
 5 ~~commission but need not be acknowledged.~~

6 (3) Notwithstanding the provisions of section 82-1918,
 7 ~~R.C.M. 1947~~, the commission department, WITH THE CONSENT OF
 8 THE COMMISSION, is authorized to utilize the installment
 9 contract method to facilitate the acquisition of wildlife
 10 management areas, in which game and nongame fur-bearing
 11 animals, and game and nongame birds may breed and replenish,
 12 and areas which provide access to fishing sites for the
 13 public. In no case may the total cost of such installment
 14 contracts exceed the cost of purchases authorized by
 15 commission the department and appropriated by the
 16 legislature."

17 Section 5. Section 26-107, R.C.M. 1947, is amended to
 18 read as follows:

19 "26-107. State fish and game wardens -- appointment --
 20 qualifications. The ~~director~~ ~~by and with the consent and~~
 21 ~~approval of the commission~~, shall have the power to employ
 22 and appoint a deputy director, and a sufficient number of
 23 state fish and game wardens for the proper enforcement of
 24 the fish and game laws of the state, and the orders, rules
 25 and regulations of the commission department, and for such

1 other purposes as the director may designate. State fish and
 2 game wardens shall be selected from applicants who have
 3 passed such an examination as may be required according to
 4 the rules adopted and promulgated by the commission
 5 department. No person shall be appointed a state fish and
 6 game warden until a certificate shall have been issued to
 7 him by the commission department to the effect that he has
 8 passed the required examination and is a fit and proper
 9 person to perform the duties of the office. State fish and
 10 game wardens employed and appointed by virtue of this act
 11 shall be persons who have an interest in protection,
 12 conservation and propagation of wildlife, game and
 13 fur-bearing animals, fish and game birds; they shall devote
 14 all of their time to their official duties."

15 Section 6. Section 26-114, R.C.M. 1947, is amended to
 16 read as follows:

17 "26-114. Appointment of ex officio state fish and game
 18 wardens. All sheriffs and their deputies, constables, all
 19 peace officers of the state, or any subdivision thereof, and
 20 all state forest officers, and such other officers of the
 21 United States forest service or agents of the United States
 22 fish and wildlife service which are assigned to duty in this
 23 state, and field personnel ~~fish and game commission of the~~
 24 ~~department~~, as the ~~director~~ ~~with the approval of the state~~
 25 ~~fish and game commission~~ may appoint are hereby made ex

1 officio state fish and game wardens, without pay, except
 2 that the commission department may, in its discretion, allow
 3 traveling expenses, as provided for in sections 59-538,
 4 59-539, and 59-801, which, if allowed, shall be paid upon
 5 proper vouchers from the state fish and game funds, ~~and~~. Ex
 6 officio state fish and game wardens shall have the same
 7 powers with reference to the enforcement of the fish and
 8 game laws of this state as regularly appointed state fish
 9 and game wardens, and it is hereby made their duty to
 10 assist, whenever possible, in the enforcement of said laws."

11 Section 7. Section 26-119, R.C.M. 1947, is amended to
 12 read as follows:

13 "26-119. Fish ~~and game commission~~ Department to
 14 procure plans for construction projects. It shall be the
 15 duty of the ~~state fish and game commission of the state of~~
 16 Montana department to procure suitable plans and
 17 specifications for any construction project under its
 18 authority of under authority of the state legislature, when
 19 the estimated value or cost of the same shall be more than
 20 ~~one thousand dollars (\$1,000)~~ but less than ~~five thousand~~
 21 ~~dollars (\$5,000)~~ and ~~said commission~~ the department shall
 22 cause said project to be constructed, but in accordance with
 23 such plans and specifications, by contract, said contract to
 24 be let after publishing a notice stating the time and place
 25 of letting the same, and where plans and specifications may

1 be seen. ~~Said notice~~ Notice shall be published not less
 2 than once a week for ~~two (2)~~ weeks prior to the time of
 3 letting such contract, in some newspaper of general
 4 circulation in the county in which said project is to be
 5 constructed, and elsewhere if deemed best by ~~said~~
 6 ~~commission, and said commission~~ the department. The
 7 department, if not satisfied with the bids received, or for
 8 any other reason, may reject any and all bids received and
 9 readvertise as often as may be necessary. Only one bid need
 10 be received and the contract shall be let to the lowest
 11 responsible bidder. Any person to whom a contract may be
 12 given shall be required to give a good and sufficient bond,
 13 conditioned for the faithful performance and completion of
 14 such contract, the same to be approved by the ~~commission, or~~
 15 ~~some member of the commission~~ department. The commission
 16 department may contract for construction projects estimated
 17 to cost ~~one thousand dollars (\$1,000)~~ or less without
 18 providing for plans or specifications, notice, competitive
 19 bidding or performance bonds."

20 Section 8. Section 26-918, R.C.M. 1947, is amended to
 21 read as follows:

22 "26-918. Grounds for suspension or revocation of
 23 license. Every license, or right to apply for and hold such
 24 license, may be suspended or revoked ~~by the fish and game~~
 25 commission upon any of the following grounds:

1 (1) Having ceased to meet all of the qualifications
2 for holding a license.

3 (2) Fraud or deception in procuring a license.

4 (3) Fraudulent, untruthful or misleading advertising.

5 (4) Conviction of a felony, until civil rights are
6 restored or until time of any deferred sentence for a felony
7 has expired.

8 (5) Two ~~two~~ convictions, or bond forfeitures, of one
9 hundred--dollars ~~(\$100)~~ or more as to violations of the fish
10 and game or outfitting laws or regulations of the state of
11 Montana or of the United States.

12 (6) A substantial breach of any contract with any
13 person utilizing the services of the license holder provided
14 that such breach is established as a matter of final
15 judgment in a court of law.

16 (7) The willful employment of an unlicensed guide by
17 an outfitter.

18 (8) Negligence or misconduct while acting as an
19 outfitter or guide which negligence or misconduct causes a
20 danger or unreasonable risk of danger to person or property
21 of any client of such outfitter or guide."

22 Section 9. Section 26-919, R.C.M. 1947, is amended to
23 read as follows:

24 "26-919. Procedure for revocation or suspension of
25 license. Proceedings for the revocation or suspension of a

1 license issued hereunder may be taken upon charge or
2 recommendation of any person. All such charges or
3 recommendations must be made in writing, must state the
4 facts upon which such charge or recommendation is based and
5 must be signed and sworn to by the person making the charge
6 or recommendation. Any such charge or recommendation shall
7 be filed with the fish and game director. Thereupon, the
8 fish and game director shall initiate a preliminary
9 investigation of all facts in connection with the charge. A
10 copy of all information shall be transmitted to the advisory
11 council. The advisory council may make recommendation as to
12 the action to be taken provided that any such recommendation
13 shall be made, in writing and delivered to the director,
14 within ~~twenty~~ ~~(20)~~ days after date of transmittal of such
15 information to the council. If the accusation be deemed to
16 be unfounded or trivial, the fish and game director shall
17 dismiss the same ~~and report his action to the fish and game~~
18 ~~commission~~ and will advise the licensee charged and the
19 complaining party of the action. Should the fish and game
20 director determine the charge or recommendation to have good
21 cause and to be sufficiently founded, he shall recommend to
22 the fish and game commission that the same be approved and
23 the revocation or suspension be effected. The fish and game
24 director thereupon shall cause a copy of the charge,
25 recommendation of the council, and a record of the

1 investigation to be served upon the licensee involved, not
 2 less than ~~twenty~~(20) days prior to the day set for hearing
 3 thereon which said hearing shall be before the fish and game
 4 commission at a time and place set by such commission. At
 5 the hearing the licensee involved may be represented by
 6 counsel. After full, fair and impartial hearing, the fish
 7 and game commission may suspend the accused's license or his
 8 right to hold a license for a period not to exceed ~~three~~(3)
 9 years or may order the license revoked or may dismiss the
 10 charge or recommendation based upon the facts shown at the
 11 hearing. A revoked or suspended license may be reissued or
 12 reinstated at the discretion of the commission."

13 Section 10. Section 26-920, R.C.M. 1947, is amended to
 14 read as follows:

15 "26-920. Appeal to district court. Any person who
 16 feels aggrieved by ~~any action of the director in denying~~
 17 the denial of issuance of a license, or ~~of the fish and~~
 18 ~~game commission in suspending or revoking his~~ suspension or
 19 revocation of a license as an outfitter or guide, may appeal
 20 to the district court of the county of his residence, within
 21 ~~thirty~~(30) days after the date of such action by filing
 22 with the clerk of said court a notice of appeal briefly
 23 setting forth the action complained of and appealed from.
 24 Summons and copy of the notice of appeal shall be served on
 25 the commission and all proceedings shall conform to the code

1 of civil procedure of the state of Montana. Upon such
 2 appeal, the action shall be by trial de novo and, upon
 3 demand in writing, either party shall be entitled to trial
 4 by jury. The court may sustain or reverse the action of the
 5 commission or take such other action as the court may deem
 6 just and proper. If the commission or the court has ordered
 7 a stay of any revocation or suspension and the commission's
 8 revocation or suspension is thereafter sustained by the
 9 court the period of suspension or revocation shall begin
 10 with the first day after the court's action sustaining the
 11 decision of the commission."

12 Section 11. Section 26-1508, R.C.M. 1947, is amended
 13 to read as follows:

14 "26-1508. Reports and objections to federal actions
 15 injuring fish and wildlife -- files and records. The Montana
 16 state fish and game department shall observe ~~and report to~~
 17 ~~the Montana state fish and game commission concerning~~ acts
 18 and omissions on the part of the government of the United
 19 States and its agencies within the state of Montana which
 20 do, will or might affect adversely the fish and wildlife
 21 resources, including but not limited to the fishing streams
 22 within the state, and upon receiving such ~~reports~~
 23 information, the ~~said commission department~~ shall without
 24 delay send formal notification in writing, by certified
 25 mail, to the appropriate federal agency or agencies

1 involved, setting forth in detail the appropriate objections
 2 of the state of Montana to the acts and omissions aforesaid.
 3 ~~Said-commission~~ The department shall keep complete files and
 4 records, available for public inspection, of all matters and
 5 things done, and all communications and correspondence sent
 6 and received, pursuant to this section."

7 Section 12. Section 26-1802, R.C.M. 1947, is amended
 8 to read as follows:

9 "26-1802. Definitions. As used in this act ~~chapter~~ the
 10 following definitions apply:

11 (1) "~~department~~ Department" means the department of
 12 fish and game~~s~~.

13 (2) "~~director~~ Director" means the director of the
 14 state department of fish and game~~s~~.

15 ~~{3}--"commission"--means--the--fish--and--game--commission~~

16 ~~{4}{3}~~ "ecosystem Ecosystem" means a system of living
 17 organisms and their environment, each influencing the
 18 existence of the other and both necessary for the
 19 maintenance of life~~s~~.

20 ~~{5}{4}~~ "endangered Endangered species" means any
 21 species or subspecies of wildlife actively threatened with
 22 extinction due to any of the following factors:

23 (a) the destruction, drastic modification, or severe
 24 curtailment of its habitat, or

25 (b) its overutilization for scientific, commercial or

1 sporting purposes, or

2 (c) the effect on it of disease, pollution, or
 3 predation, or

4 (d) other natural or man-made factors affecting its
 5 prospects of survival or recruitment within the state, or

6 (e) any combination of the foregoing factors. The
 7 ~~commission~~ department shall have authority to recommend that
 8 the legislature include any species or subspecies of fish
 9 and wildlife appearing on the United States' list of
 10 endangered native fish and wildlife as it appears on the
 11 effective date of this chapter (part 17 of title 50 of the
 12 Code of Federal Regulations, appendix D) as well as any
 13 species or subspecies of fish and wildlife appearing on the
 14 United States' list of endangered foreign fish and wildlife
 15 (part 17 of title 50 of the Code of Federal Regulations,
 16 appendix A), as such list may be modified hereafter~~s~~.

17 ~~{6}{5}~~ "management Management" means the collection
 18 and application of biological information for the purposes
 19 of increasing the number of individuals within species and
 20 populations of wildlife up to the optimum carrying capacity
 21 of their habitat and maintaining such levels. The term
 22 includes the entire range of activities that constitute a
 23 modern scientific resource program including, but not
 24 limited to, research, census, law enforcement, habitat
 25 acquisition and improvement, and education. Also included

1 within the term, when and where appropriate, is the periodic
 2 or total protection of species or populations as well as
 3 regulated taking.

4 (7)(6) "nongame Nongame wildlife" means any wild
 5 mammal, bird, amphibian, reptile, fish, mollusk, crustacean
 6 or other wild animal not otherwise legally classified by
 7 statute or regulation of this state. Animals designated by
 8 statute or regulation of this state as predatory in nature
 9 are not classified as "nongame wildlife" for purposes of
 10 this act chapter.

11 (8)(7) "optimum Optimum carrying capacity" means that
 12 point at which a given habitat can support healthy
 13 populations of wildlife species, having regard to the total
 14 ecosystem, without diminishing the ability of the habitat to
 15 continue that function.

16 (9)(8) "person Person" means any individual, firm,
 17 corporation, association or partnership.

18 (10)(9) "take Take" means to harass, hunt, capture, or
 19 kill or attempt to harass, hunt, capture, or kill wildlife.

20 (11)(10) "wildlife Wildlife" means any wild mammal,
 21 bird, reptile, amphibian, fish, mollusk, crustacean or other
 22 wild animal or any part, product, egg or offspring or the
 23 dead body or parts thereof.

24 Section 13. There is a new R.C.M. section that reads
 25 as follows:

1 Uniform terminology. (1) Wherever the words "Montana
 2 fish and game commission", "state fish and game commission",
 3 "fish and game commission", "commission", "members of said
 4 commission", or "chairman of the commission" appear in
 5 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109,
 6 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127,
 7 26-128, 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1,
 8 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204,
 9 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225,
 10 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302,
 11 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324,
 12 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501,
 13 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912,
 14 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124,
 15 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402,
 16 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509,
 17 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608,
 18 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701,
 19 26-1702, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807,
 20 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025,
 21 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310,
 22 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502,
 23 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and
 24 89-3449, R.C.M. 1947, the words "department of fish and
 25 game" or "department", if it is clear which department is

1 involved, are substituted therefor.

2 (2) The code commissioner may make any required
3 grammatical changes necessitated by the replacement of
4 certain words under subsection (1).

5 Section 14. Section 26-324, R.C.M. 1947, is amended to
6 read as follows:

7 "26-324. Penalty. A person violating any state law
8 pertaining to fish and game thereto, or the orders, rules,
9 and regulations of the commission or department is, unless a
10 different punishment is expressly provided by law for the
11 violation, guilty of a misdemeanor and shall be fined not
12 less than ~~twenty-five--dollars--(\$25)~~ nor more than five
13 ~~hundred--dollars--(\$500)~~, or imprisoned in the county jail
14 for not more than ~~six--(6)~~ months, or both fined and
15 imprisoned. In addition, the person shall, in the discretion
16 of the court, forfeit his license and privilege to hunt,
17 fish, or trap within this state for a period of ~~sixteen--(16)~~
18 months from the date of conviction."

19 Section 15. Repealer. Sections 26-103, 26-106, 26-124,
20 and 82A-2003, R.C.M. 1947, are repealed.

-End-

1 HOUSE BILL NO. 791
 2 INTRODUCED BY STATE ADMINISTRATION COMMITTEE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE THE DEPARTMENT
 5 HEAD OF THE DEPARTMENT OF FISH AND GAME A DIRECTOR APPOINTED
 6 BY THE GOVERNOR IN ACCORDANCE WITH SECTION 82A-106, R.C.M.
 7 1947; TO REMOVE CERTAIN QUALIFICATIONS FOR THE DIRECTOR OF
 8 THE DEPARTMENT OF FISH AND GAME; TO REALLOCATE CERTAIN
 9 FUNCTIONS OF THE STATE FISH AND GAME COMMISSION TO THE
 10 DEPARTMENT OF FISH AND GAME; TO STATE THE POWERS OF THE
 11 STATE FISH AND GAME COMMISSION; TO PROVIDE A GRIEVANCE
 12 PROCEDURE FOR EMPLOYEES OF THE DEPARTMENT OF FISH AND GAME;
 13 AND TO CHANGE THE NAME OF THE STATE FISH AND GAME
 14 COMMISSION; AMENDING SECTIONS 26-101.1, 26-104, 26-104.4
 15 THROUGH 26-104.7, 26-107 THROUGH 26-110, 26-110.3, 26-114,
 16 26-118, 26-119, 26-121, 26-123, 26-126 THROUGH 26-129,
 17 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4 THROUGH
 18 26-202.8, 26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220,
 19 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301,
 20 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1,
 21 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335,
 22 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814,
 23 26-909, 26-911 THROUGH 26-915, 26-918 THROUGH 26-920,
 24 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206 THROUGH
 25 26-1208, 26-1210, 26-1402, 26-1403, 26-1507 THROUGH 26-1505,

THIRD READING

1 26-1508, 26-1509, 26-1601 THROUGH 26-1603, 26-1605, 26-1607
 2 THROUGH 26-1610, 26-1612 THROUGH 26-1614, 26-1701, 26-1702,
 3 26-1704, 26-1802, 26-1804 THROUGH 26-1808, 46-1903, 53-1012,
 4 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304 THROUGH
 5 62-306, 62-308, 62-310, 62-311, 62-314, 62-401 THROUGH
 6 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518,
 7 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, AND 89-3449,
 8 R.C.M. 1947; AND REPEALING SECTIONS ~~26-103~~, 26-106, 26-124,
 9 AND 82A-2003, R.C.M. 1947; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 82A-2001, R.C.M. 1947, is amended
 14 to read as follows:

15 "82A-2001. Department of fish and game -- creation --
 16 head. There is created a department of fish and game. The
 17 department head is the ~~state fish and game commission~~
 18 ~~provided for in section 82A-2004 of this chapter, but~~
 19 ~~section 82A-107 of this act does not apply to the commission~~
 20 as a department head director of fish and game appointed by
 21 the governor in accordance with 82A-106. THE DIRECTOR IS THE
 22 SECRETARY OF THE COMMISSION."

23 Section 2. Section 82A-2004, R.C.M. 1947, is amended
 24 to read as follows:

25 "82A-2004. ~~State fish and game commission --~~

1 composition -- qualifications -- designation. (1) There is
2 a state fish and game commission.

3 (2) The commission consists of five ~~(5)~~ members. At
4 least one member shall be experienced in the breeding and
5 management of domestic livestock. The governor shall appoint
6 one ~~(1)~~ member from each of the following districts:

7 (a) District No. 1, consisting of Lincoln, Flathead,
8 Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite,
9 and Lewis and Clark counties;

10 (b) District No. 2, consisting of Deer Lodge, Silver
11 Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin,
12 Park, and Sweetgrass counties;

13 (c) District No. 3, consisting of Glacier, Toole,
14 Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith
15 Basin, Fergus, Blaine, Meagher, and Wheatland counties;

16 (d) District No. 4, consisting of Phillips, Valley,
17 Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone,
18 Richland, Dawson, and Wibaux counties;

19 (e) District No. 5, consisting of Golden Valley,
20 Musselshell, Stillwater, Carbon, Yellowstone, Big Horn,
21 Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and
22 Prairie counties.

23 (3) Appointments shall be made without regard to
24 political affiliation and shall be made solely for the
25 welfare of the fish, game, and wildlife of this state. A

1 person may not be appointed to the commission unless he is
2 informed or interested and experienced in the subject of
3 wildlife, fish and game, and the requirements for the
4 conservation and protection of fish, game, and game birds
5 and animals.

6 (4) A vacancy occurring on the commission shall be
7 filled by the governor ~~with the consent of the senate~~ in the
8 same manner and from the district in which the vacancy
9 occurs.

10 (5) The state fish and game commission is designated
11 as a quasi-judicial board for purposes of section 82A-112 of
12 this act.

13 ~~(6) In addition to its designation as a quasi-judicial~~
14 ~~board, the commission is the policy and rule making body for~~
15 ~~the department except where the department has been~~
16 ~~specifically delegated rule making authority. The commission~~
17 ~~shall carry out such other duties as specified by law.~~

18 Section 3. Section 26-101.1, R.C.M. 1947, is amended
19 to read as follows:

20 "26-101.1. Definitions. Unless the context requires
21 otherwise, in Title 26 the following definitions apply:

22 (1) "Department" means the department of fish and game
23 provided for in Title 82A, chapter 20.

24 (2) "Director" means the director of fish and game
25 provided for in section 82A-2003, 82A-2001.

1 (3) "Warden" means a state fish and game warden.

2 (4) "Commission" means the state fish and game
3 commission provided for in section 82A-2004.

4 Section 4. Section 26-104.6, R.C.M. 1947, is amended
5 to read as follows:

6 "26-104.6. Acquisition and sale of lands or waters by
7 ~~commission department.~~ (1) ~~The commission department, WITH~~
8 ~~THE CONSENT OF THE COMMISSION,~~ may acquire by purchase,
9 condemnation, lease, agreement, gift, or devise, and may
10 acquire easements upon lands or waters for the purposes
11 listed in this subsection. The ~~commission department~~ may
12 acquire, develop, operate, and maintain acquired lands or
13 waters:

14 (a) ~~For for~~ fish hatcheries, nursery ponds, or game
15 farms;

16 (b) ~~As as~~ lands or water suitable for game, bird,
17 fish, or fur-bearing animal restoration, propagation, or
18 protection;

19 (c) ~~For for~~ public hunting, fishing, or trapping
20 areas;

21 (d) ~~To to~~ capture, propagate, transport, buy, sell, or
22 exchange any game, bird, fish, fish eggs, or fur-bearing
23 animals needed for propagation or stocking purposes, or to
24 exercise control measures of undesirable species;

25 (e) ~~To to~~ extend and consolidate by exchange, lands or

1 waters suitable for these purposes.

2 (2) ~~The commission department, WITH THE CONSENT OF THE~~
3 ~~COMMISSION,~~ may dispose of lands and waters acquired by it
4 on those terms after that public notice, and without regard
5 to other laws which provide for sale or disposal of state
6 lands, and with or without reservation, as it considers
7 necessary and advisable. Notice of sale describing the lands
8 or waters to be disposed of shall be published once a week
9 for ~~three--(3)~~ successive weeks in a newspaper with general
10 circulation printed and published in the county where the
11 lands or waters are situated, or if no newspaper is
12 published in that county then in any newspaper with general
13 circulation in that county. The notice shall advertise for
14 cash bids to be presented to the ~~commission-or-the~~ director
15 within ~~thirty--(30)~~ days from the date of the first
16 publication. Each bid must be accompanied by a cashier's
17 check or cash deposit in an amount equal to ~~ten-percent~~
18 ~~(10%)~~ of the amount bid. The highest bid shall be accepted
19 upon payment of the balance due within ~~ten--(10)~~ days after
20 mailing notice by registered mail to the highest bidder. If
21 that bidder defaults on payment of the balance due, then the
22 next highest bidders shall be similarly notified in
23 succession until a sale is completed. Deposits shall be
24 returned to the unsuccessful bidders except bidders
25 defaulting after notification. The ~~commission department~~

1 shall reserve the right to reject any bids which do not
 2 equal or exceed the full market value of the lands and
 3 waters as determined by the commission department. The
 4 commission department shall convey the lands and waters by
 5 deed without covenants of warranty, executed by the
 6 governor, or in his absence or disability by the lieutenant
 7 governor, attested by the secretary of state, and further
 8 countersigned by the ~~chairman of the commission~~ director.
 9 ~~The deed shall be attested by the secretary of the~~
 10 ~~commission but need not be acknowledged.~~

11 (3) Notwithstanding the provisions of section 82-1918,
 12 ~~R.C.M. 1947~~, the commission department, WITH THE CONSENT OF
 13 THE COMMISSION, is authorized to utilize the installment
 14 contract method to facilitate the acquisition of wildlife
 15 management areas, in which game and nongame fur-bearing
 16 animals, and game and nongame birds may breed and replenish,
 17 and areas which provide access to fishing sites for the
 18 public. In no case may the total cost of such installment
 19 contracts exceed the cost of purchases authorized by
 20 commission the department and appropriated by the
 21 legislature."

22 Section 5. Section 26-107, R.C.M. 1947, is amended to
 23 read as follows:

24 "26-107. State fish and game wardens -- appointment --
 25 qualifications. The ~~director--by-and-with-the-consent-and~~

1 ~~approval of the commission~~, shall have the power to employ
 2 and appoint a deputy director, and a sufficient number of
 3 state fish and game wardens for the proper enforcement of
 4 the fish and game laws of the state, and the orders, rules
 5 and regulations of the commission department, and for such
 6 other purposes as the director may designate. State fish and
 7 game wardens shall be selected from applicants who have
 8 passed such an examination as may be required according to
 9 the rules adopted and promulgated by the commission
 10 department. No person shall be appointed a state fish and
 11 game warden until a certificate shall have been issued to
 12 him by the commission department to the effect that he has
 13 passed the required examination and is a fit and proper
 14 person to perform the duties of the office. State fish and
 15 game wardens employed and appointed by virtue of this act
 16 shall be persons who have an interest in protection,
 17 conservation and propagation of wildlife, game and
 18 fur-bearing animals, fish and game birds; they shall devote
 19 all of their time to their official duties."

20 Section 6. Section 26-114, R.C.M. 1947, is amended to
 21 read as follows:

22 "26-114. Appointment of ex officio state fish and game
 23 wardens. All sheriffs and their deputies, constables, all
 24 peace officers of the state, or any subdivision thereof, and
 25 all state forest officers, and such other officers of the

1 United States forest service or agents of the United States
 2 fish and wildlife service which are assigned to duty in this
 3 state, and field personnel ~~fish-and-game-commission of the~~
 4 ~~department~~, as the director, ~~with the approval of the state~~
 5 ~~fish-and-game-commission~~, may appoint are hereby made ex
 6 officio state fish and game wardens, without pay, except
 7 that the ~~commission~~ department may, in its discretion, allow
 8 traveling expenses, as provided for in sections 59-538,
 9 59-539, and 59-801, which, if allowed, shall be paid upon
 10 proper vouchers from the state fish and game funds, ~~and~~. Ex
 11 officio state fish and game wardens shall have the same
 12 powers with reference to the enforcement of the fish and
 13 game laws of this state as regularly appointed state fish
 14 and game wardens, and it is hereby made their duty to
 15 assist, whenever possible, in the enforcement of said laws."

16 Section 7. Section 26-119, R.C.M. 1947, is amended to
 17 read as follows:

18 "26-119. ~~Fish-and-game-commission~~ Department to
 19 procure plans for construction projects. It shall be the
 20 duty of the ~~state fish and game commission of the state of~~
 21 Montana department to procure suitable plans and
 22 specifications for any construction project under its
 23 authority of under authority of the state legislature, when
 24 the estimated value or cost of the same shall be more than
 25 ~~one-thousand-dollars-(\$1,000)~~ but less than ~~five--thousand~~

1 ~~dollars--(\$5,000)~~ and ~~said-commission~~ the department shall
 2 cause said project to be constructed, but in accordance with
 3 such plans and specifications, by contract, said contract to
 4 be let after publishing a notice stating the time and place
 5 of letting the same, and where plans and specifications may
 6 be seen. ~~Said-notice~~ Notice shall be published not less
 7 than once a week for ~~two-(2)~~ weeks prior to the time of
 8 letting such contract, in some newspaper of general
 9 circulation in the county in which said project is to be
 10 constructed, and elsewhere if deemed best by ~~said~~
 11 ~~commission~~ ~~and~~ ~~said~~ ~~commission~~ the department. The
 12 department, if not satisfied with the bids received, or for
 13 any other reason, may reject any and all bids received and
 14 readvertise as often as may be necessary. Only one bid need
 15 be received and the contract shall be let to the lowest
 16 responsible bidder. Any person to whom a contract may be
 17 given shall be required to give a good and sufficient bond,
 18 conditioned for the faithful performance and completion of
 19 such contract, the same to be approved by the ~~commission~~ ~~or~~
 20 ~~some-member-of-the-commission~~ department. The commission
 21 department may contract for construction projects estimated
 22 to cost ~~one--thousand--dollars--(\$1,000)~~ or less without
 23 providing for plans or specifications, notice, competitive
 24 bidding or performance bonds."

25 Section 8. Section 26-918, R.C.M. 1947, is amended to

1 read as follows:

2 "26-918. Grounds for suspension or revocation of
3 license. Every license, or right to apply for and hold such
4 license, may be suspended or revoked by the fish and game
5 commission upon any of the following grounds:

6 (1) Having ceased to meet all of the qualifications
7 for holding a license.

8 (2) Fraud or deception in procuring a license.

9 (3) Fraudulent, untruthful or misleading advertising.

10 (4) Conviction of a felony, until civil rights are
11 restored or until time of any deferred sentence for a felony
12 has expired.

13 (5) Two ~~{2}~~ convictions, or bond forfeitures, of one
14 hundred ~~dollars~~ {100} or more as to violations of the fish
15 and game or outfitting laws or regulations of the state of
16 Montana or of the United States.

17 (6) A substantial breach of any contract with any
18 person utilizing the services of the license holder provided
19 that such breach is established as a matter of final
20 judgment in a court of law.

21 (7) The willful employment of an unlicensed guide by
22 an outfitter.

23 (8) Negligence or misconduct while acting as an
24 outfitter or guide which negligence or misconduct causes a
25 danger or unreasonable risk of danger to person or property

1 of any client of such outfitter or guide."

2 section 9. Section 26-919, R.C.M. 1947, is amended to
3 read as follows:

4 "26-919. Procedure for revocation or suspension of
5 license. Proceedings for the revocation or suspension of a
6 license issued hereunder may be taken upon charge or
7 recommendation of any person. All such charges or
8 recommendations must be made in writing, must state the
9 facts upon which such charge or recommendation is based and
10 must be signed and sworn to by the person making the charge
11 or recommendation. Any such charge or recommendation shall
12 be filed with the fish and game director. Thereupon, the
13 fish and game director shall initiate a preliminary
14 investigation of all facts in connection with the charge. A
15 copy of all information shall be transmitted to the advisory
16 council. The advisory council may make recommendation as to
17 the action to be taken provided that any such recommendation
18 shall be made, in writing and delivered to the director,
19 within ~~twenty~~ {20} days after date of transmittal of such
20 information to the council. If the accusation be deemed to
21 be unfounded or trivial, the fish and game director shall
22 dismiss the same ~~and report his action to the fish and game~~
23 ~~commission~~ and will advise the licensee charged and the
24 complaining party of the action. Should the fish and game
25 director determine the charge or recommendation to have good

1 cause and to be sufficiently founded, he shall recommend to
 2 the fish and game commission that the same be approved and
 3 the revocation or suspension be effected. The fish and game
 4 director thereupon shall cause a copy of the charge,
 5 recommendation of the council, and a record of the
 6 investigation to be served upon the licensee involved, not
 7 less than ~~twenty-(20)~~ days prior to the day set for hearing
 8 thereon which said hearing shall be before the fish and game
 9 commission at a time and place set by such commission. At
 10 the hearing the licensee involved may be represented by
 11 counsel. After full, fair and impartial hearing, the fish
 12 and game commission may suspend the accused's license or his
 13 right to hold a license for a period not to exceed ~~three-(3)~~
 14 years or may order the license revoked or may dismiss the
 15 charge or recommendation based upon the facts shown at the
 16 hearing. A revoked or suspended license may be reissued or
 17 reinstated at the discretion of the commission."

18 Section 10. Section 26-920, R.C.M. 1947, is amended to
 19 read as follows:

20 *26-920. Appeal to district court. Any person who
 21 feels aggrieved by ~~any action of the director in denying~~
 22 the denial of issuance of a license, or of ~~the fish and~~
 23 ~~game commission in suspending or revoking his~~ suspension or
 24 revocation of a license as an outfitter or guide, may appeal
 25 to the district court of the county of his residence, within

1 ~~thirty-(30)~~ days after the date of such action by filing
 2 with the clerk of said court a notice of appeal briefly
 3 setting forth the action complained of and appealed from.
 4 Summons and copy of the notice of appeal shall be served on
 5 the commission and all proceedings shall conform to the code
 6 of civil procedure of the state of Montana. Upon such
 7 appeal, the action shall be by trial de novo and, upon
 8 demand in writing, either party shall be entitled to trial
 9 by jury. The court may sustain or reverse the action of the
 10 commission or take such other action as the court may deem
 11 just and proper. If the commission or the court has ordered
 12 a stay of any revocation or suspension and the commission's
 13 revocation or suspension is thereafter sustained by the
 14 court the period of suspension or revocation shall begin
 15 with the first day after the court's action sustaining the
 16 decision of the commission."

17 Section 11. Section 26-1508, R.C.M. 1947, is amended
 18 to read as follows:

19 *26-1508. Reports and objections to federal actions
 20 injuring fish and wildlife -- files and records. The Montana
 21 state fish and game department shall observe ~~and report to~~
 22 ~~the Montana state fish and game commission concerning~~ acts
 23 and omissions on the part of the government of the United
 24 States and its agencies within the state of Montana which
 25 do, will or might affect adversely the fish and wildlife

1 resources, including but not limited to the fishing streams
 2 within the state, and upon receiving such reports
 3 information, the ~~said--commission department~~ shall without
 4 delay send formal notification in writing, by certified
 5 mail, to the appropriate federal agency or agencies
 6 involved, setting forth in detail the appropriate objections
 7 of the state of Montana to the acts and omissions aforesaid.
 8 ~~Said-commission~~ The department shall keep complete files and
 9 records, available for public inspection, of all matters and
 10 things done, and all communications and correspondence sent
 11 and received, pursuant to this section."

12 Section 12. Section 26-1802, R.C.M. 1947, is amended
 13 to read as follows:

14 "26-1802. Definitions. As used in this act chapter the
 15 following definitions apply:

16 (1) "~~department~~ Department" means the department of
 17 fish and game.

18 (2) "~~director~~ Director" means the director of the
 19 state department of fish and game.

20 ~~(3)--"commission"--means--the--fish--and--game--commission~~

21 ~~(4)(2)~~ "ecosystem Ecosystem" means a system of living
 22 organisms and their environment, each influencing the
 23 existence of the other and both necessary for the
 24 maintenance of life.

25 ~~(5)(4)~~ "endangered Endangered species" means any

1 species or subspecies of wildlife actively threatened with
 2 extinction due to any of the following factors:

3 (a) the destruction, drastic modification, or severe
 4 curtailment of its habitat, or

5 (b) its overutilization for scientific, commercial or
 6 sporting purposes, or

7 (c) the effect on it of disease, pollution, or
 8 predation, or

9 (d) other natural or man-made factors affecting its
 10 prospects of survival or recruitment within the state, or

11 (e) any combination of the foregoing factors. The
 12 commission department shall have authority to recommend that

13 the legislature include any species or subspecies of fish
 14 and wildlife appearing on the United States' list of
 15 endangered native fish and wildlife as it appears on the
 16 effective date of this chapter (part 17 of title 50 of the
 17 Code of Federal Regulations, appendix D) as well as any
 18 species or subspecies of fish and wildlife appearing on the
 19 United States' list of endangered foreign fish and wildlife
 20 (part 17 of title 50 of the Code of Federal Regulations,
 21 appendix A), as such list may be modified hereafter.

22 ~~(6)(5)~~ "management Management" means the collection
 23 and application of biological information for the purposes
 24 of increasing the number of individuals within species and
 25 populations of wildlife up to the optimum carrying capacity

1 of their habitat and maintaining such levels. The term
 2 includes the entire range of activities that constitute a
 3 modern scientific resource program including, but not
 4 limited to, research, census, law enforcement, habitat
 5 acquisition and improvement, and education. Also included
 6 within the term, when and where appropriate, is the periodic
 7 or total protection of species or populations as well as
 8 regulated taking.

9 (7)(6) "nongame ~~Nongame~~ wildlife" means any wild
 10 mammal, bird, amphibian, reptile, fish, mollusk, crustacean
 11 or other wild animal not otherwise legally classified by
 12 statute or regulation of this state. Animals designated by
 13 statute or regulation of this state as predatory in nature
 14 are not classified as "nongame wildlife" for purposes of
 15 this act ~~chapter~~.

16 (8)(7) "optimum ~~Optimum~~ carrying capacity" means that
 17 point at which a given habitat can support healthy
 18 populations of wildlife species, having regard to the total
 19 ecosystem, without diminishing the ability of the habitat to
 20 continue that function.

21 (9)(8) "person ~~Person~~" means any individual, firm,
 22 corporation, association or partnership.

23 (10)(9) "take ~~Take~~" means to harass, hunt, capture, or
 24 kill or attempt to harass, hunt, capture, or kill wildlife.

25 (11)(10) "wildlife ~~Wildlife~~" means any wild mammal,

1 bird, reptile, amphibian, fish, mollusk, crustacean or other
 2 wild animal or any part, product, egg or offspring or the
 3 dead body or parts thereof.

4 Section 13. There is a new R.C.M. section that reads
 5 as follows:

6 Uniform terminology. (1) Wherever the words "Montana
 7 fish and game commission", "state fish and game commission",
 8 "fish and game commission", "commission", "members of said
 9 commission", or "chairman of the commission" appear in
 10 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109,
 11 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127,
 12 26-128, 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1,
 13 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204,
 14 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225,
 15 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302,
 16 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324,
 17 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501,
 18 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912,
 19 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124,
 20 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402,
 21 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509,
 22 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608,
 23 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701,
 24 26-1792, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807,
 25 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025,

1 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310,
 2 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502,
 3 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and
 4 89-3449, R.C.M. 1947, the words "department of fish and
 5 game" or "department", if it is clear which department is
 6 involved, are substituted therefor.

7 (2) The code commissioner may make any required
 8 grammatical changes necessitated by the replacement of
 9 certain words under subsection (1).

10 Section 14. Section 26-324, R.C.M. 1947, is amended to
 11 read as follows:

12 "26-324. Penalty. A person violating any state law
 13 pertaining to fish and game thereto, or the orders, rules,
 14 and regulations of the commission or department is, unless a
 15 different punishment is expressly provided by law for the
 16 violation, guilty of a misdemeanor and shall be fined not
 17 less than ~~twenty-five dollars--(\$25)~~ nor more than five
 18 ~~hundred dollars,--(\$500)~~, or imprisoned in the county jail
 19 for not more than ~~six--(6)~~ months, or both fined and
 20 imprisoned. In addition, the person shall, in the discretion
 21 of the court, forfeit his license and privilege to hunt,
 22 fish, or trap within this state for a period of ~~sixteen--(16)~~
 23 months from the date of conviction."

24 Section 15. Repealer. Sections ~~26-103~~, 26-106, 26-124,
 25 and 82A-2003, R.C.M. 1947, are repealed.

1 SECTION 16. THERE IS A NEW R.C.M. SECTION THAT READS
 2 AS FOLLOWS:

3 Powers of the commission. The commission shall:

4 (1) set the policies for the protection, preservation,
 5 and propagation of the wildlife, fish, game, furbearers,
 6 waterfowl, nongame species and endangered species of the
 7 state, and for the fulfillment of all other responsibilities
 8 of the department as provided by law;

9 (2) establish the hunting, fishing, and trapping rules
 10 of the department;

11 (3) establish the rules of the department governing
 12 the use of lands owned or controlled by the department and
 13 waters under the jurisdiction of the department;

14 (4) have the power within the department to establish
 15 wildlife refuges and bird and game preserves;

16 (5) approve all acquisitions or transfers by the
 17 department of interests in land or water; and

18 (6) review and approve the budget of the department
 19 prior to its transmittal to the budget office.

20 SECTION 17. THERE IS A NEW R.C.M. SECTION THAT READS
 21 AS FOLLOWS:

22 Director to carry out policies. The director shall
 23 carry out the policies of the commission and shall adopt
 24 rules authorized by law to implement those policies.

25 SECTION 18. THERE IS A NEW R.C.M. SECTION THAT READS

1 AS FOLLOWS:

2 Grievance procedure. (1) An employee of the department,
3 aggrieved by a serious matter of his employment based upon
4 work conditions, supervision, or the result of an
5 administrative action, who has exhausted all administrative
6 remedies within the department, is entitled to a hearing
7 before the employee appeals board designated by the
8 department of administration, under the provisions of a
9 grievance procedure prescribed by the board, for the
10 resolution of his grievance.

11 (2) Direct or indirect interference, restraint,
12 coercion, or retaliation by an employees's supervisor or the
13 department against an aggrieved employee because the
14 employee has filed or attempted to file a grievance with the
15 board shall also be the basis for a grievance and shall
16 entitle the employee to a hearing before the board for
17 resolution.

18 (3) If, upon the preponderance of the evidence taken
19 at the hearing, the board is of the opinion that the
20 employee is aggrieved, it may issue an order to the
21 department requiring such action of the department as will
22 resolve the employee's grievance. The order of the board
23 shall be binding upon the department.

24 SECTION 19. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
25 ITS PASSAGE AND APPROVAL.

-End-

-21-

April 6, 1977

STANDING COMMITTEE REPORT
Senate Committee on Fish & Game

That House Bill No. 791 be amended as follows:

1. Amend page 9, section 7, line 18.
Following: "Department"
Insert: "and commission"
2. Amend page 9, section 7, line 21.
Following: "department"
Insert: ", with the consent of the commission"
3. Amend page 9, section 7, line 23.
Following: "authority"
Strike: "of"
Insert: "or"
4. Amend page 10, section 7, line 1.
Following: "department"
Insert: ", with the consent of the commission"
5. Amend page 10, section 7, line 11.
Following: "department."
Strike: "The"
Insert: "Upon concurrence of the commission, the"
6. Amend page 10, section 7, line 20.
Following: "department"
Insert: ", with the consent of the commission"
7. Amend page 20, section 16, line 17.
Following: " ; "
Strike: "and"
8. Amend page 20, section 16, line 19.
Following: "office"
Strike: "."
Insert: " ; and"
9. Amend page 20, section 16, line 20.
Following: line 19
Insert: "(7) review and approve construction projects whose estimated cost is more than \$1,000 but less than \$5,000."

1 HOUSE BILL NO. 791
 2 INTRODUCED BY STATE ADMINISTRATION COMMITTEE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE THE DEPARTMENT
 5 HEAD OF THE DEPARTMENT OF FISH AND GAME A DIRECTOR APPOINTED
 6 BY THE GOVERNOR IN ACCORDANCE WITH SECTION 82A-106, R.C.M.
 7 1947; TO REMOVE CERTAIN QUALIFICATIONS FOR THE DIRECTOR OF
 8 THE DEPARTMENT OF FISH AND GAME; TO REALLOCATE CERTAIN
 9 FUNCTIONS OF THE STATE FISH AND GAME COMMISSION TO THE
 10 DEPARTMENT OF FISH AND GAME; TO STATE THE POWERS OF THE
 11 STATE FISH AND GAME COMMISSION; TO PROVIDE A GRIEVANCE
 12 PROCEDURE FOR EMPLOYEES OF THE DEPARTMENT OF FISH AND GAME;
 13 AND TO CHANGE THE NAME OF THE STATE FISH AND GAME
 14 COMMISSION; AMENDING SECTIONS 26-101.1, 26-104, 26-104.4
 15 THROUGH 26-104.7, 26-107 THROUGH 26-110, 26-110.3, 26-114,
 16 26-118, 26-119, 26-121, 26-123, 26-126 THROUGH 26-129,
 17 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4 THROUGH
 18 26-202.8, 26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220,
 19 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301,
 20 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1,
 21 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335,
 22 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814,
 23 26-909, 26-911 THROUGH 26-915, 26-918 THROUGH 26-920,
 24 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206 THROUGH
 25 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 THROUGH 26-1505;

REFERENCE BILL

1 26-1508, 26-1509, 26-1601 THROUGH 26-1603, 26-1605, 26-1607
 2 THROUGH 26-1610, 26-1612 THROUGH 26-1614, 26-1701, 26-1702,
 3 26-1704, 26-1802, 26-1804 THROUGH 26-1808, 46-1903, 53-1012,
 4 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304 THROUGH
 5 62-306, 62-308, 62-310, 62-311, 62-314, 62-401 THROUGH
 6 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518,
 7 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, AND 89-3449,
 8 R.C.M. 1947; AND REPEALING SECTIONS ~~26-103~~, 26-106, 26-124,
 9 AND 82A-2003, R.C.M. 1947; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 82A-2001, R.C.M. 1947, is amended
 14 to read as follows:
 15 "82A-2001. Department of fish and game -- creation --
 16 head. There is created a department of fish and game. The
 17 department head is the ~~state fish and game commission~~
 18 ~~provided for in section 82A-2004 of this chapter~~ but
 19 ~~section 82A-107 of this act does not apply to the commission~~
 20 ~~as a department head~~ director of fish and game appointed by
 21 the governor in accordance with 82A-106. THE DIRECTOR IS THE
 22 SECRETARY OF THE COMMISSION."

23 Section 2. Section 82A-2004, R.C.M. 1947, is amended
 24 to read as follows:

25 "82A-2004. ~~State fish~~ Fish and game commission --

1 composition -- qualifications -- designation. (1) There is
2 a state fish and game commission.

3 (2) The commission consists of five ~~(5)~~ members. At
4 least one member shall be experienced in the breeding and
5 management of domestic livestock. The governor shall appoint
6 one ~~(1)~~ member from each of the following districts:

7 (a) District No. 1, consisting of Lincoln, Flathead,
8 Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite,
9 and Lewis and Clark counties;

10 (b) District No. 2, consisting of Deer Lodge, Silver
11 Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin,
12 Park, and Sweetgrass counties;

13 (c) District No. 3, consisting of Glacier, Toole,
14 Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith
15 Basin, Fergus, Blaine, Meagher, and Wheatland counties;

16 (d) District No. 4, consisting of Phillips, Valley,
17 Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone,
18 Richland, Dawson, and Wibaux counties;

19 (e) District No. 5, consisting of Golden Valley,
20 Musselshell, Stillwater, Carbon, Yellowstone, Big Horn,
21 Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and
22 Prairie counties.

23 (3) Appointments shall be made without regard to
24 political affiliation and shall be made solely for the
25 welfare of the fish, game, and wildlife of this state. A

1 person may not be appointed to the commission unless he is
2 informed or interested and experienced in the subject of
3 wildlife, fish and game, and the requirements for the
4 conservation and protection of fish, game, and game birds
5 and animals.

6 (4) A vacancy occurring on the commission shall be
7 filled by the governor ~~with the consent of the senate~~ in the
8 same manner and from the district in which the vacancy
9 occurs.

10 (5) The state fish and game commission is designated
11 as a quasi-judicial board for purposes of ~~section 82A-112 of~~
12 ~~this act.~~

13 ~~(6) In addition to its designation as a quasi-judicial~~
14 ~~board, the commission is the policy and rule-making body for~~
15 ~~the department except where the department has been~~
16 ~~specifically delegated rule-making authority. The commission~~
17 ~~shall carry out such other duties as specified by law."~~

18 Section 3. Section 26-101.1, R.C.M. 1947, is amended
19 to read as follows:

20 "26-101.1. Definitions. Unless the context requires
21 otherwise, in Title 26 the following definitions apply:

22 (1) "Department" means the department of fish and game
23 provided for in Title 82A, chapter 20.

24 (2) "Director" means the director of fish and game
25 provided for in section ~~82A-2003~~ 82A-2001.

1 (3) "Warden" means a state fish and game warden.

2 (4) "Commission" means the state fish and game
 3 commission provided for in section 82A-2004."

4 Section 4. Section 26-104.6, R.C.M. 1947, is amended
 5 to read as follows:

6 "26-104.6. Acquisition and sale of lands or waters by
 7 ~~commission department.~~ (1) ~~The commission department, WITH~~
 8 ~~THE CONSENT OF THE COMMISSION,~~ may acquire by purchase,
 9 condemnation, lease, agreement, gift, or devise, and may
 10 acquire easements upon lands or waters for the purposes
 11 listed in this subsection. The ~~commission department~~ may
 12 acquire, develop, operate, and maintain acquired lands or
 13 waters:

14 (a) For ~~for~~ fish hatcheries, nursery ponds, or game
 15 farms;

16 (b) ~~as~~ as lands or water suitable for game, bird,
 17 fish, or fur-bearing animal restoration, propagation, or
 18 protection;

19 (c) For ~~for~~ public hunting, fishing, or trapping
 20 areas;

21 (d) ~~To~~ to capture, propagate, transport, buy, sell, or
 22 exchange any game, bird, fish, fish eggs, or fur-bearing
 23 animals needed for propagation or stocking purposes, or to
 24 exercise control measures of undesirable species;

25 (e) ~~To~~ to extend and consolidate by exchange, lands or

1 waters suitable for these purposes.

2 (2) ~~The commission department, WITH THE CONSENT OF THE~~
 3 ~~COMMISSION,~~ may dispose of lands and waters acquired by it
 4 on those terms after that public notice, and without regard
 5 to other laws which provide for sale or disposal of state
 6 lands, and with or without reservation, as it considers
 7 necessary and advisable. Notice of sale describing the lands
 8 or waters to be disposed of shall be published once a week
 9 for ~~three-(3)~~ successive weeks in a newspaper with general
 10 circulation printed and published in the county where the
 11 lands or waters are situated, or if no newspaper is
 12 published in that county then in any newspaper with general
 13 circulation in that county. The notice shall advertise for
 14 cash bids to be presented to the ~~commission-or-the~~ director
 15 within ~~thirty--(30)~~ days from the date of the first
 16 publication. Each bid must be accompanied by a cashier's
 17 check or cash deposit in an amount equal to ~~ten--percent~~
 18 ~~(10%)~~ of the amount bid. The highest bid shall be accepted
 19 upon payment of the balance due within ~~ten-(10)~~ days after
 20 mailing notice by registered mail to the highest bidder. If
 21 that bidder defaults on payment of the balance due, then the
 22 next highest bidders shall be similarly notified in
 23 succession until a sale is completed. Deposits shall be
 24 returned to the unsuccessful bidders except bidders
 25 defaulting after notification. The ~~commission department~~

1 shall reserve the right to reject any bids which do not
 2 equal or exceed the full market value of the lands and
 3 waters as determined by the commission department. The
 4 commission department shall convey the lands and waters by
 5 deed without covenants of warranty, executed by the
 6 governor, or in his absence or disability by the lieutenant
 7 governor, attested by the secretary of state, and further
 8 countersigned by the ~~chairman of the commission~~ director.
 9 ~~The deed shall be attested by the secretary of the~~
 10 ~~commission but need not be acknowledged.~~

11 (3) Notwithstanding the provisions of section 82-1918,
 12 ~~R.C.M. 1947~~, the commission department, WITH THE CONSENT OF
 13 THE COMMISSION, is authorized to utilize the installment
 14 contract method to facilitate the acquisition of wildlife
 15 management areas, in which game and nongame fur-bearing
 16 animals, and game and nongame birds may breed and replenish,
 17 and areas which provide access to fishing sites for the
 18 public. In no case may the total cost of such installment
 19 contracts exceed the cost of purchases authorized by
 20 commission the department and appropriated by the
 21 legislature."

22 Section 5. Section 26-107, R.C.M. 1947, is amended to
 23 read as follows:

24 "26-107. State fish and game wardens -- appointment --
 25 qualifications. The ~~directory by and with the consent and~~

1 ~~approval of the commission~~, shall have the power to employ
 2 and appoint a deputy director, and a sufficient number of
 3 state fish and game wardens for the proper enforcement of
 4 the fish and game laws of the state, and the orders, rules
 5 and regulations of the commission department, and for such
 6 other purposes as the director may designate. State fish and
 7 game wardens shall be selected from applicants who have
 8 passed such an examination as may be required according to
 9 the rules adopted and promulgated by the commission
 10 department. No person shall be appointed a state fish and
 11 game warden until a certificate shall have been issued to
 12 him by the commission department to the effect that he has
 13 passed the required examination and is a fit and proper
 14 person to perform the duties of the office. State fish and
 15 game wardens employed and appointed by virtue of this act
 16 shall be persons who have an interest in protection,
 17 conservation and propagation of wildlife, game and
 18 fur-bearing animals, fish and game birds; they shall devote
 19 all of their time to their official duties."

20 Section 6. Section 26-114, R.C.M. 1947, is amended to
 21 read as follows:

22 "26-114. Appointment of ex officio state fish and game
 23 wardens. All sheriffs and their deputies, constables, all
 24 peace officers of the state, or any subdivision thereof, and
 25 all state forest officers, and such other officers of the

1 United States forest service or agents of the United States
 2 fish and wildlife service which are assigned to duty in this
 3 state, and field personnel ~~fish-and-game-commission of the~~
 4 ~~department,~~ as the director, ~~with the approval of the state~~
 5 ~~fish-and-game-commission,~~ may appoint are hereby made ex
 6 officio state fish and game wardens, without pay, except
 7 that the ~~commission department~~ may, in its discretion, allow
 8 traveling expenses, as provided for in sections 59-538,
 9 59-539, and 59-801, which, if allowed, shall be paid upon
 10 proper vouchers from the state fish and game funds. ~~Ex~~
 11 ~~officio state fish and game wardens~~ shall have the same
 12 powers with reference to the enforcement of the fish and
 13 game laws of this state as regularly appointed state fish
 14 and game wardens, and it is hereby made their duty to
 15 assist, whenever possible, in the enforcement of said laws."

16 Section 7. Section 26-119, R.C.M. 1947, is amended to
 17 read as follows:

18 "26-119. ~~Fish-and-game-commission~~ Department AND
 19 COMMISSION to procure plans for construction projects. It
 20 shall be the duty of the ~~state-fish-and-game-commission-of~~
 21 ~~the--state--of--Montana~~ department, WITH THE CONSENT OF THE
 22 COMMISSION to procure suitable plans and specifications for
 23 any construction project under its authority of OR under
 24 authority of the state legislature, when the estimated value
 25 or cost of the same shall be more than ~~one-thousand--dollars~~

1 ~~(\$1,000)~~ but less than ~~five-thousand-dollars~~ ~~(\$5,000)~~ and
 2 ~~said-commission~~ the department, WITH THE CONSENT OF THE
 3 COMMISSION shall cause said project to be constructed, but
 4 in accordance with such plans and specifications, by
 5 contract, said contract to be let after publishing a notice
 6 stating the time and place of letting the same, and where
 7 plans and specifications may be seen. ~~Said-notice~~ Notice
 8 shall be published not less than once a week for ~~two--(2)~~
 9 weeks prior to the time of letting such contract, in some
 10 newspaper of general circulation in the county in which said
 11 project is to be constructed, and elsewhere if deemed best
 12 by ~~said-commission--and-said-commission~~ the department, The
 13 UPON CONCURRENCE OF THE COMMISSION, THE department, if not
 14 satisfied with the bids received, or for any other reason,
 15 may reject any and all bids received and readvertise as
 16 often as may be necessary. Only one bid need be received and
 17 the contract shall be let to the lowest responsible bidder.
 18 Any person to whom a contract may be given shall be required
 19 to give a good and sufficient bond, conditioned for the
 20 faithful performance and completion of such contract, the
 21 same to be approved by the ~~commission--or-some-member-of-the~~
 22 commission department, WITH THE CONSENT OF THE COMMISSION.
 23 The ~~commission department~~ may contract for construction
 24 projects estimated to cost ~~one-thousand-dollars~~ ~~(\$1,000)~~ or
 25 less without providing for plans or specifications, notice,

1 competitive bidding or performance bonds."

2 Section 8. Section 26-918, R.C.M. 1947, is amended to
3 read as follows:

4 "26-918. Grounds for suspension or revocation of
5 license. Every license, or right to apply for and hold such
6 license, may be suspended or revoked by the fish and game
7 commission upon any of the following grounds:

8 (1) Having ceased to meet all of the qualifications
9 for holding a license.

10 (2) Fraud or deception in procuring a license.

11 (3) Fraudulent, untruthful or misleading advertising.

12 (4) Conviction of a felony, until civil rights are
13 restored or until time of any deferred sentence for a felony
14 has expired.

15 (5) Two ~~two~~ convictions, or bond forfeitures, of one
16 hundred dollars ~~(100)~~ or more as to violations of the fish
17 and game or outfitting laws or regulations of the state of
18 Montana or of the United States.

19 (6) A substantial breach of any contract with any
20 person utilizing the services of the license holder provided
21 that such breach is established as a matter of final
22 judgment in a court of law.

23 (7) The willful employment of an unlicensed guide by
24 an outfitter.

25 (8) Negligence or misconduct while acting as an

1 outfitter or guide which negligence or misconduct causes a
2 danger or unreasonable risk of danger to person or property
3 of any client of such outfitter or guide."

4 Section 9. Section 26-919, R.C.M. 1947, is amended to
5 read as follows:

6 "26-919. Procedure for revocation or suspension of
7 license. Proceedings for the revocation or suspension of a
8 license issued hereunder may be taken upon charge or
9 recommendation of any person. All such charges or
10 recommendations must be made in writing, must state the
11 facts upon which such charge or recommendation is based and
12 must be signed and sworn to by the person making the charge
13 or recommendation. Any such charge or recommendation shall
14 be filed with the fish and game director. Thereupon, the
15 fish and game director shall initiate a preliminary
16 investigation of all facts in connection with the charge. A
17 copy of all information shall be transmitted to the advisory
18 council. The advisory council may make recommendation as to
19 the action to be taken provided that any such recommendation
20 shall be made, in writing and delivered to the director,
21 within ~~twenty~~ ~~(20)~~ days after date of transmittal of such
22 information to the council. If the accusation be deemed to
23 be unfounded or trivial, the fish and game director shall
24 dismiss the same ~~and report his action to the fish and game~~
25 ~~commission~~ and will advise the licensee charged and the

1 complaining party of the action. Should the fish and game
 2 director determine the charge or recommendation to have good
 3 cause and to be sufficiently founded, he shall recommend to
 4 the fish and game commission that the same be approved and
 5 the revocation or suspension be effected. The fish and game
 6 director thereupon shall cause a copy of the charge,
 7 recommendation of the council, and a record of the
 8 investigation to be served upon the licensee involved, not
 9 less than ~~twenty-(20)~~ days prior to the day set for hearing
 10 thereon which said hearing shall be before the fish and game
 11 commission at a time and place set by such commission. At
 12 the hearing the licensee involved may be represented by
 13 counsel. After full, fair and impartial hearing, the fish
 14 and game commission may suspend the accused's license or his
 15 right to hold a license for a period not to exceed ~~three-(3)~~
 16 years or may order the license revoked or may dismiss the
 17 charge or recommendation based upon the facts shown at the
 18 hearing. A revoked or suspended license may be reissued or
 19 reinstated at the discretion of the commission."

20 Section 10. Section 26-920, R.C.M. 1947, is amended to
 21 read as follows:

22 "26-920. Appeal to district court. Any person who
 23 feels aggrieved by ~~any action of the director in denying~~
 24 the denial of issuance of a license, or ~~of the fish and~~
 25 ~~game commission in suspending or revoking his~~ suspension or

1 revocation of a license as an outfitter or guide, may appeal
 2 to the district court of the county of his residence, within
 3 ~~thirty-(30)~~ days after the date of such action by filing
 4 with the clerk of said court a notice of appeal briefly
 5 setting forth the action complained of and appealed from.
 6 Summons and copy of the notice of appeal shall be served on
 7 the commission and all proceedings shall conform to the code
 8 of civil procedure of the state of Montana. Upon such
 9 appeal, the action shall be by trial de novo and, upon
 10 demand in writing, either party shall be entitled to trial
 11 by jury. The court may sustain or reverse the action of the
 12 commission or take such other action as the court may deem
 13 just and proper. If the commission or the court has ordered
 14 a stay of any revocation or suspension and the commission's
 15 revocation or suspension is thereafter sustained by the
 16 court the period of suspension or revocation shall begin
 17 with the first day after the court's action sustaining the
 18 decision of the commission."

19 Section 11. Section 26-1508, R.C.M. 1947, is amended
 20 to read as follows:

21 "26-1508. Reports and objections to federal actions
 22 injuring fish and wildlife -- files and records. The Montana
 23 state fish and game department shall observe ~~and report to~~
 24 ~~the Montana state fish and game commission concerning~~ acts
 25 and omissions on the part of the government of the United

1 States and its agencies within the state of Montana which
 2 do, will or might affect adversely the fish and wildlife
 3 resources, including but not limited to the fishing streams
 4 within the state, and upon receiving such reports
 5 information, the ~~said-commission~~ department shall without
 6 delay send formal notification in writing, by certified
 7 mail, to the appropriate federal agency or agencies
 8 involved, setting forth in detail the appropriate objections
 9 of the state of Montana to the acts and omissions aforesaid.
 10 ~~Said-commission~~ The department shall keep complete files and
 11 records, available for public inspection, of all matters and
 12 things done, and all communications and correspondence sent
 13 and received, pursuant to this section."

14 Section 12. Section 26-1802, R.C.M. 1947, is amended
 15 to read as follows:

16 "26-1802. Definitions. As used in this act chapter the
 17 following definitions apply:

18 (1) "~~department~~ Department" means the department of
 19 fish and game~~s~~.

20 (2) "~~director~~ Director" means the director of the
 21 state department of fish and game~~s~~.

22 ~~(3)--"commission"--means--the--fish--and--game--commission~~s~~~~

23 ~~(4)~~ (3) "~~ecosystem~~ Ecosystem" means a system of living
 24 organisms and their environment, each influencing the
 25 existence of the other and both necessary for the

1 maintenance of life~~s~~.

2 ~~(5)~~ (4) "~~endangered~~ Endangered species" means any
 3 species or subspecies of wildlife actively threatened with
 4 extinction due to any of the following factors:

5 (a) the destruction, drastic modification, or severe
 6 curtailment of its habitat, or

7 (b) its overutilization for scientific, commercial or
 8 sporting purposes, or

9 (c) the effect on it of disease, pollution, or
 10 predation, or

11 (d) other natural or man-made factors affecting its
 12 prospects of survival or recruitment within the state, or

13 (e) any combination of the foregoing factors. The
 14 ~~commission~~ department shall have authority to recommend that

15 the legislature include any species or subspecies of fish
 16 and wildlife appearing on the United States' list of

17 endangered native fish and wildlife as it appears on the
 18 effective date of this chapter (part 17 of title 50 of the

19 Code of Federal Regulations, appendix D) as well as any
 20 species or subspecies of fish and wildlife appearing on the

21 United States' list of endangered foreign fish and wildlife
 22 (part 17 of title 50 of the Code of Federal Regulations,

23 appendix A), as such list may be modified hereafter~~s~~.

24 ~~(6)~~ (5) "~~management~~ Management" means the collection
 25 and application of biological information for the purposes

1 of increasing the number of individuals within species and
 2 populations of wildlife up to the optimum carrying capacity
 3 of their habitat and maintaining such levels. The term
 4 includes the entire range of activities that constitute a
 5 modern scientific resource program including, but not
 6 limited to, research, census, law enforcement, habitat
 7 acquisition and improvement, and education. Also included
 8 within the term, when and where appropriate, is the periodic
 9 or total protection of species or populations as well as
 10 regulated taking.

11 ~~(7)~~(6) "nongame ~~Nongame~~ wildlife" means any wild
 12 mammal, bird, amphibian, reptile, fish, mollusk, crustacean
 13 or other wild animal not otherwise legally classified by
 14 statute or regulation of this state. Animals designated by
 15 statute or regulation of this state as predatory in nature
 16 are not classified as "nongame wildlife" for purposes of
 17 this act ~~chapter~~.

18 ~~(8)~~(7) "optimum ~~Optimum~~ carrying capacity" means that
 19 point at which a given habitat can support healthy
 20 populations of wildlife species, having regard to the total
 21 ecosystem, without diminishing the ability of the habitat to
 22 continue that function.

23 ~~(9)~~(8) "person ~~Person~~" means any individual, firm,
 24 corporation, association or partnership.

25 ~~(10)~~(9) "take ~~Take~~" means to harass, hunt, capture, or

1 kill or attempt to harass, hunt, capture, or kill wildlife.

2 ~~(11)~~(10) "wildlife ~~Wildlife~~" means any wild mammal,
 3 bird, reptile, amphibian, fish, mollusk, crustacean or other
 4 wild animal or any part, product, egg or offspring or the
 5 dead body or parts thereof.

6 Section 13. There is a new R.C.M. section that reads
 7 as follows:

8 Uniform terminology. (1) Wherever the words "Montana
 9 fish and game commission", "state fish and game commission",
 10 "fish and game commission", "commission", "members of said
 11 commission", or "chairman of the commission" appear in
 12 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109,
 13 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127,
 14 26-128, 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1,
 15 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204,
 16 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225,
 17 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302,
 18 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324,
 19 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501,
 20 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912,
 21 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124,
 22 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402,
 23 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509,
 24 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608,
 25 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701,

1 26-1702, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807,
 2 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025,
 3 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310,
 4 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502,
 5 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and
 6 89-3449, R.C.M. 1947, the words "department of fish and
 7 game" or "department", if it is clear which department is
 8 involved, are substituted therefor.

9 (2) The code commissioner may make any required
 10 grammatical changes necessitated by the replacement of
 11 certain words under subsection (1).

12 Section 14. Section 26-324, R.C.M. 1947, is amended to
 13 read as follows:

14 "26-324. Penalty. A person violating any state law
 15 pertaining to fish and game thereto, or the orders, rules,
 16 and regulations of the commission or department is, unless a
 17 different punishment is expressly provided by law for the
 18 violation, guilty of a misdemeanor and shall be fined not
 19 less than ~~twenty-five dollars--(\$25)~~ nor more than five
 20 ~~hundred--dollars--(\$500)~~, or imprisoned in the county jail
 21 for not more than ~~six--(6)~~ months, or both fined and
 22 imprisoned. In addition, the person shall, in the discretion
 23 of the court, forfeit his license and privilege to hunt,
 24 fish, or trap within this state for a period of ~~sixteen--(16)~~
 25 months from the date of conviction."

1 Section 15. Repealer. Sections ~~26-103,~~ 26-106, 26-124,
 2 and 82A-2003, R.C.M. 1947, are repealed.

3 SECTION 16. THERE IS A NEW R.C.M. SECTION THAT READS
 4 AS FOLLOWS:

5 Powers of the commission. The commission shall:

6 (1) set the policies for the protection, preservation,
 7 and propagation of the wildlife, fish, game, furbearers,
 8 waterfowl, nongame species and endangered species of the
 9 state, and for the fulfillment of all other responsibilities
 10 of the department as provided by law;

11 (2) establish the hunting, fishing, and trapping rules
 12 of the department;

13 (3) establish the rules of the department governing
 14 the use of lands owned or controlled by the department and
 15 waters under the jurisdiction of the department;

16 (4) have the power within the department to establish
 17 wildlife refuges and bird and game preserves;

18 (5) approve all acquisitions or transfers by the
 19 department of interests in land or water; and

20 (6) review and approve the budget of the department
 21 prior to its transmittal to the budget officer; AND

22 (7) REVIEW AND APPROVE CONSTRUCTION PROJECTS WHOSE
 23 ESTIMATED COST IS MORE THAN \$1,000 BUT LESS THAN \$5,000.

24 SECTION 17. THERE IS A NEW R.C.M. SECTION THAT READS
 25 AS FOLLOWS:

1 Director to carry out policies. The director shall
 2 carry out the policies of the commission and shall adopt
 3 rules authorized by law to implement those policies.

4 SECTION 18. THERE IS A NEW R.C.M. SECTION THAT READS
 5 AS FOLLOWS:

6 Grievance procedure. (1) An employee of the department,
 7 aggrieved by a serious matter of his employment based upon
 8 work conditions, supervision, or the result of an
 9 administrative action, who has exhausted all administrative
 10 remedies within the department, is entitled to a hearing
 11 before the employee appeals board designated by the
 12 department of administration, under the provisions of a
 13 grievance procedure prescribed by the board, for the
 14 resolution of his grievance.

15 (2) Direct or indirect interference, restraint,
 16 coercion, or retaliation by an employee's supervisor or the
 17 department against an aggrieved employee because the
 18 employee has filed or attempted to file a grievance with the
 19 board shall also be the basis for a grievance and shall
 20 entitle the employee to a hearing before the board for
 21 resolution.

22 (3) If, upon the preponderance of the evidence taken
 23 at the hearing, the board is of the opinion that the
 24 employee is aggrieved, it may issue an order to the
 25 department requiring such action of the department as will

1 resolve the employee's grievance. The order of the board
 2 shall be binding upon the department.

3 SECTION 19. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
 4 ITS PASSAGE AND APPROVAL.

-End-