

HOUSE BILL 575

IN THE HOUSE

February 5, 1979	Introduced and referred to Committee on Fish and Game.
February 20, 1979	Intent statement attached. Committee recommend bill, do pass.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, as amended
February 23, 1979	Correctly engrossed. Third reading, passed.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Fish and Game.
March 20, 1979	Committee recommended bill as amended.
March 22, 1979	Second reading, indefinitely postponed.

IN THE HOUSE

March 23, 1979	Returned from senate, indefinitely postponed.
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1 *HOUSE* BILL NO. *575*
 2 INTRODUCED BY *Ray Holt, Benjamin Thomas Smith*
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROPERTY
 5 DAMAGE REIMBURSEMENT PROGRAM WITHIN THE DEPARTMENT OF FISH
 6 AND GAME AND PROVIDE FOR THE MANNER AND METHOD OF
 7 ADMINISTRATION OF THAT PROGRAM; AND PROVIDING AN EFFECTIVE
 8 DATE AND PERIOD OF APPLICATION."
 9

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

11 Section 1. Purpose. (1) The purpose of [this act] is
 12 to accomplish the following:

13 (a) improve landowner-sportsman relations and access
 14 to and across private lands within the state for the
 15 purposes of hunting, fishing, and trapping; and

16 (b) provide reimbursement to private landowners for
 17 damage caused by hunters, fishermen, and trappers.

18 (2) It is the intent of the legislature that the
 19 existing executive branch system be utilized to carry out
 20 the purposes stated in subsection (1), and that the fish and
 21 game commission and department of fish and game seek to
 22 fulfill these purposes to the best of their abilities.

23 Section 2. Construction. It is the intent of the
 24 legislature that the provisions of [this act] relating to
 25 improvement of landowner-sportsman relations be liberally

1 construed and administered by the department of fish and
 2 game and the fish and game commission.

3 Section 3. Damage reimbursement stamp and fee. Any
 4 person who desires to hunt, fish, or trap in this state
 5 shall purchase a damage reimbursement stamp for the fee of
 6 \$2 prior to or at the same time as that person purchases any
 7 hunting, fishing, or trapping license. The stamp shall be
 8 affixed to the person's wildlife conservation license. It
 9 is necessary to purchase only one damage reimbursement stamp
 10 for any license year.

11 Section 4. Damage reimbursement account -- investment.
 12 (1) There is a damage reimbursement account in the earmarked
 13 revenue fund. The money collected by the department of fish
 14 and game as provided in [section 3] must be deposited in the
 15 earmarked revenue fund to the credit of the damage
 16 reimbursement account for use and disbursement as set forth
 17 in [this act].

18 (2) The department of fish and game may direct the
 19 board of investments to invest the money from the damage
 20 reimbursement account consistent with the unified investment
 21 program and the purposes of [this act]. The earnings on the
 22 investment must be used and allocated for administration of
 23 [this act] by the department. The fees collected under the
 24 provisions of [this act] may not be used for administrative
 25 purposes by any agency of state government.

1 Section 5. Damage claim -- falsification a
 2 misdemeanor. (1) A person who owns or controls land which
 3 provides habitat for game wildlife may apply for
 4 reimbursement for damage believed to be caused by a person
 5 who was hunting, fishing, or trapping on lands owned or
 6 controlled by the person claiming damage, even though the
 7 person responsible for the damage is not ascertainable.

8 (2) Any person who files or causes to be filed a false
 9 or fraudulent claim is guilty of a misdemeanor.

10 Section 6. Damages -- limitations and exceptions. (1)
 11 Damage which may be reimbursed and the maximum amounts of
 12 reimbursement are as follows:

13 (a) Livestock loss attributable to gunshot or arrow
 14 wound is reimbursable at the market rate per pound but no
 15 more than \$85 for each sheep or \$750 for each head of cattle
 16 or horses.

17 (b) Fence damage caused by a person hunting, fishing,
 18 or trapping, as supported by substantial evidence, is
 19 reimbursable to the owner of the fence in the amount spent
 20 for repair of the damage, but no more than \$500 for each
 21 claimant for each license year.

22 (c) Fire damage to grasslands, standing crops, or
 23 buildings caused by a person who was hunting, fishing, or
 24 trapping, as supported by substantial evidence, is
 25 reimbursable to the holder of the legal interest which was

1 diminished by the fire, but no more than \$2,000 may be
 2 reimbursed for any claimant in any license year for fire
 3 damage.

4 (d) Damage to other personal property owned by and
 5 located on the landowner's real property caused by a person
 6 hunting, fishing, or trapping, as supported by substantial
 7 evidence, is reimbursable to the landowner up to \$750 for
 8 each license year.

9 (2) No one landowner may receive more than \$5,000
 10 during any license year for all losses payable under this
 11 section.

12 (3) The provisions for damage set forth in [this act]
 13 are exclusive and limited to the amounts and types of
 14 damages.

15 (4) Damage caused by wildlife is not reimbursable
 16 under [this act].

17 (5) Damage caused to a gate in a landowner's fence is
 18 not reimbursable under [this act].

19 Section 7. Investigation and initial determination --
 20 review. (1) Investigation of each claim and an initial
 21 determination of the validity of the claim must be made by
 22 field personnel of the department of fish and game. If this
 23 determination is satisfactory to the landowner, then payment
 24 is authorized.

25 (2) If the landowner disagrees with the determination

1 of the field personnel of the department, the landowner may
 2 appeal to the fish and game commission. The decision of the
 3 fish and game commission is final. Any review of this
 4 determination and appeal by a court is limited to procedural
 5 questions. The provisions for reimbursement and the
 6 specific limitations on the amounts to be reimbursed for any
 7 type of damage set forth in [this act] may not be altered or
 8 changed except by appropriate legislative action.

9 Section 8. Rulemaking authority. The fish and game
 10 commission may adopt those rules necessary to implement the
 11 procedural requirements and intent of [this act].

12 Section 9. Cooperation with landowner. The department
 13 shall cooperate and assist in the prosecution of any person
 14 who is found to be causing damage to private property and,
 15 further, to assist in seeking restitution from such person.

16 Section 10. Administration concurrent with license
 17 years. The program set forth in [this act] shall be
 18 administered concurrently with the hunting and fishing
 19 license years as provided in Title 87.

20 Section 11. Limitation on fund. (1) The fees collected
 21 may be used to reimburse claims in the year collected and
 22 any subsequent year subject to the provisions of [this act].

23 (2) Payment for claims under [this act] may not be
 24 made until after July 1, 1979.

25 (3) Claims for reimbursement under [this act] may be

1 made only during the license year in which the damage
 2 occurred. Claims made in a license year subsequent to the
 3 year in which the damage occurred will not be recognized.

4 (4) Money in the damage reimbursement account must be
 5 paid to qualifying claimants on a first-come-first-served
 6 basis so long as the account is sufficient to make payment.
 7 If the account is insufficient to make payment to claimants
 8 during a license year, no more money may be paid out during
 9 that license year.

10 (5) Any balance on the damage reimbursement account at
 11 the end of any license year must be carried over into the
 12 next license year for reimbursement as provided in [this
 13 act].

14 (6) If upon termination of the provisions of [this
 15 act] there are funds available that have not been used for
 16 proper claims, these funds must be transferred to the
 17 department of fish and game for the specific purpose of
 18 purchase or lease of hunting or fishing access.

19 Section 12. Any holder of a Montana resident or
 20 nonresident fishing, hunting, or trapping license convicted
 21 of committing the offense of either criminal mischief, set
 22 forth in 45-6-101, the offense of criminal trespass to
 23 property, set forth in 45-6-203, or violation of [subsection
 24 (2) of section 5] shall forfeit his license and privilege to
 25 hunt, fish, or trap in Montana for a period of 1 year from

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1 the date of conviction.

2 Section 13. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

8 Section 14. Effective date and period of application.
9 This act is effective on passage and approval and applies to
10 the period beginning May 1, 1979, and ending April 30, 1983.

-End-

STATE OF MONTANA

Request No. 315-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 9, 1979, there is hereby submitted a Fiscal Note for House Bill 575 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 575 is legislation proposed to establish a property damage reimbursement program for landowners within the Department of Fish and Game and provides for the manner and method of administration of that program; and providing an effective date and period of application.

ASSUMPTIONS:

1. Assume an almost static conservation license sales quantity of 355,000 licenses per year.
2. Interest earnings at 8.5% are estimated which will provide \$60,000 per year for program administration costs.

	<u>FY 80</u>	<u>FY 81</u>
Increased revenues due to proposed legislation	\$770,000	\$770,000
Less: Operating Costs	<u>60,000</u>	<u>60,000</u>
Funds available for damage reimbursement	<u>\$710,000</u>	<u>\$710,000</u>

Richard L. Drury for
 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 2/15/79

1 STATEMENT OF INTENT RE: HB 575

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3

4 It is the intent of the legislature that when making
5 rules authorized by this enactment the Fish and Game
6 Commission makes rules for the procedures for the
7 presentation and investigation of claims and for appeal of
8 denials and such other rules necessary to fulfill the
9 purposes of this act.

10 First adopted by the HOUSE COMMITTEE ON FISH AND GAME
11 on February 20, 1979.

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Approved by Comm.
on Fish and Game

HOUSE BILL NO. 575

INTRODUCED BY DAY, GALT, BENGTSON, MOORE, C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROPERTY DAMAGE REIMBURSEMENT PROGRAM WITHIN THE DEPARTMENT OF FISH AND GAME AND PROVIDE FOR THE MANNER AND METHOD OF ADMINISTRATION OF THAT PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND PERIOD OF APPLICATION."

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

Section 1. Purpose. (1) The purpose of [this act] is to accomplish the following:

(a) improve landowner-sportsman relations and access to and across private lands within the state for the purposes of hunting, fishing, and trapping; and

(b) provide reimbursement to private landowners for damage caused by hunters, fishermen, and trappers.

(2) It is the intent of the legislature that the existing executive branch system be utilized to carry out the purposes stated in subsection (1), and that the fish and game commission and department of fish and game seek to fulfill these purposes to the best of their abilities.

Section 2. Construction. It is the intent of the legislature that the provisions of [this act] relating to improvement of landowner-sportsman relations be liberally

construed and administered by the department of fish and game and the fish and game commission.

Section 3. Damage reimbursement stamp and fee. Any person who desires to hunt, fish, or trap in this state shall purchase a damage reimbursement stamp for the fee of \$2 prior to or at the same time as that person purchases any hunting, fishing, or trapping license. The stamp shall be affixed to the person's wildlife conservation license. It is necessary to purchase only one damage reimbursement stamp for any license year.

Section 4. Damage reimbursement account -- investment. (1) There is a damage reimbursement account in the earmarked revenue fund. The money collected by the department of fish and game as provided in [section 3] must be deposited in the earmarked revenue fund to the credit of the damage reimbursement account for use and disbursement as set forth in [this act].

(2) The department of fish and game may direct the board of investments to invest the money from the damage reimbursement account consistent with the unified investment program and the purposes of [this act]. The earnings on the investment must be used and allocated for administration of [this act] by the department. The fees collected under the provisions of [this act] may not be used for administrative purposes by any agency of state government.

1 Section 5. Damage claim -- falsification a
 2 misdemeanor. (1) A person who owns or controls land which
 3 provides habitat for game wildlife may apply for
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 10 during any license year for all losses payable under this
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 22 any subsequent year subject to the provisions of [this act].

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1 made only during the license year in which the damage
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 7 If the account is insufficient to make payment to claimants
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10 (5) Any balance on the damage reimbursement account at
 11 the end of any license year must be carried over into the
 12 next license year for reimbursement as provided in [this
 13 act].

14 (6) If upon termination of the provisions of [this
 15 act] there are funds available that have not been used for
 16 proper claims, these funds must be transferred to the
 17 department of fish and game for the specific purpose of
 18 ~~purchase-or-lease-of-hunting-or-fishing-access~~ COMPENSATING
 19 LANDOWNERS FOR PROPERTY DAMAGE.

20 Section 12. Any holder of a Montana resident or
 21 nonresident fishing, hunting, or trapping license convicted
 22 of committing the offense of either criminal mischief, set
 23 forth in 45-6-101, the offense of criminal trespass to
 24 property, set forth in 45-6-203, or violation of [subsection
 25 (2) of section 5] shall forfeit his license and privilege to

1 hunt, fish, or trap in Montana for a period of 1 year from
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6 one or more of its applications, the part remains in effect
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8 invalid applications.

9 Section 14. Effective date and period of application.
10 This act is effective on passage and approval and applies to
11 the period beginning May 1, 1979 ~~1980~~, and ending April 30,
12 1983.

-End-

March 20, 1979

SENATE STANDING COMMITTEE REPORT
(Finance and Claims)

That House Bill No. 575, third reading bill, be amended as follows:

1. Page 1, line 13.
Following: "and"
Insert: "to improve"

2. Page 2, line 6.
Strike: "\$2"
Insert: "\$1"

3. Page 2, line 10.
Following: "year."
Insert: "Persons qualifying for a license under 87-2-801
are not required to purchase this stamp."

4. Page 2, lines 22 and 23.
Following: "administration" on line 22
Strike: "of [this act] by the department"
Insert: "expense or payment of any damage claim expense
arising under the provisions of [this act]"

5. Page 3, line 8.
Following: line 7
Insert: "(2) Any person receiving reimbursement from any
other source for damages under [section 6] is precluded
from payment from this fund; except if the actual cash
value of the loss was greater than the reimbursement,
recovery may be made from the fund subject to limits
provided in [section 6].
(3) Any person receiving payment under [this act] is
required, as a condition of payment, to be subrogated to
the amount of the payment."

Renumber: subsequent subsection

6. Page 4, line 20.
Following: "(1)"
Strike: "Investigation"
Insert: "The department shall contract for investigation"

7. Page 4, line 21.
Following: "claim"
Strike: "must"
Insert: "to"

8. Page 4, line 22.
Following: line 21
Strike: "field personnel of the department of fish and game"
Insert: "an independent insurance adjuster licensed under
Title 33, chapter 7, part 3"

9. Page 5, line 1.
Following: "of the"
Strike: "field personnel of the department"
Insert: "adjuster"
10. Page 5, line 24.
Following: "July 1,"
Strike: "1979"
Insert: "1980"
11. Page 5, line 25.
Following: "act]"
Strike: "may"
Insert: "must"
12. Page 6, lines 1 through 3.
Following: "made"
Strike: the remainder of line 1 through line 3 in their entirety
Insert: "in a timely manner."
13. Page 6, line 8.
Strike: "during a license year"
14. Page 6, line 9.
Following: "year."
Insert: "However, as soon as the fund is replenished from the sale of stamps, any outstanding claims from previous years shall be paid first."