

**HOUSE BILL NO. 377**

**INTRODUCED BY FABREGA, CRIPPEN, KEMMIS, BERTELSEN, REGAN,  
J. JENSEN, BERGENE, VINCENT, MILLER, FAGG, HEMSTAD,  
BERG, ECK, O'CONNELL, HALLIGAN, MAZUREK, FARRIS, HARRINGTON,  
PECK, BACHINI, BLAYLOCK, MCBRIDE, KADAS, METCALF, MARBUT,  
REAM, TOWE, HARPER, MUELLER, NILSON, TURNAGE, LORY, J. BROWN**

**IN THE HOUSE**

January 19, 1983	Introduced and referred to Committee on Fish and Game.
February 10, 1983	Committee recommend bill do pass as amended. Report adopted.
February 11, 1983	Bill printed and placed on members' desks.
February 12, 1983	Second reading, pass consideration.
February 14, 1983	Second reading, do pass.
February 15, 1983	Considered correctly engrossed.
February 16, 1983	Third reading, passed. Transmitted to Senate.

**IN THE SENATE**

February 17, 1983	Introduced and referred to Committee on Fish and Game.
March 24, 1983	Committee recommend bill be concurrent in as amended. Ayes, 25; Noes, 23. Report adopted.  Statement of Intent attached.

March 26, 1983

Second reading, concurred  
in as amended.

March 28, 1983

Third reading, concurred  
in. Ayes, 38; Noes, 8.

#### IN THE HOUSE

March 28, 1983

Returned to House with  
amendments and Statement of  
Intent.

April 1, 1983

Second reading, amendments  
not concurred in.

On motion Conference  
Committee requested.

Conference Committee  
appointed.

April 7, 1983

Conference Committee  
dissolved.

On motion Free Conference  
Committee requested.

April 8, 1983

Free Conference  
Committee appointed.

April 9, 1983

Free Conference  
Committee reported.

April 12, 1983

Second reading, Free  
Conference Committee  
report adopted.

April 13, 1983

Third reading, Free  
Conference Committee  
report adopted.

April 16, 1983

Free Conference Committee  
report adopted by Senate.

Sent to enrolling.

Reported correctly  
enrolled.

1 *J. Jensen* *House* BILL NO. *377* *Rogers*  
 2 INTRODUCED BY *James H. Jensen* *Kenneth A. Bortolin*  
 3 *Bernice Miller* *Christopher J. McConnell* *Jarvis R. Ruff*  
 4 *Frank Vincent* *F. A. Berg* *Walter J. Berg* *Walter J. Berg* *Walter J. Berg*  
 5 *Blaylock* *McCrack* *Kadish* *Melcoy* *Mahit*  
 6 THE PRESERVATION AND MANAGEMENT OF NONGAME WILDLIFE IN *Brian*  
 7 MONTANA; AMENDING SECTION 87-5-102, MCA. *Don Hays* *Muelley*  
 8 *G. Brown* *Tom* *Nelson*  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Tunney*  
 10 Section 1. Section 87-5-102, MCA, is amended to read:  
 11 "87-5-102. Definitions. As used in this part, the  
 12 following definitions apply:  
 13 (1) "Account" means the nongame wildlife account  
 14 established in [section 2].  
 15 (2) "Ecosystem" means a system of living organisms  
 16 and their environment, each influencing the existence of the  
 17 other and both necessary for the maintenance of life.  
 18 (3) "Endangered species" means any species or  
 19 subspecies of wildlife actively threatened with extinction  
 20 due to any of the following factors:  
 21 (a) the destruction, drastic modification, or severe  
 22 curtailment of its habitat;  
 23 (b) its overutilization for scientific, commercial, or  
 24 sporting purposes;  
 25 (c) the effect on it of disease, pollution, or  
 predation;

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.  
 4 (3)(4) "Management" means the collection and  
 5 application of biological information for the purposes of  
 6 increasing the number of individuals within species and  
 7 populations of wildlife up to the optimum carrying capacity  
 8 of their habitat and maintaining such levels. The term  
 9 includes the entire range of activities that constitute a  
 10 modern scientific resource program including but not limited  
 11 to research, census, law enforcement, habitat acquisition  
 12 and improvement, and education. Also included within the  
 13 term, when and where appropriate, is the periodic or total  
 14 protection of species or populations as well as regulated  
 15 taking.  
 16 (4)(5) "Nongame wildlife" means any wild mammal, bird,  
 17 amphibian, reptile, fish, mollusk, crustacean, or other wild  
 18 animal not otherwise legally classified by statute or  
 19 regulation of this state. Animals designated by statute or  
 20 regulation of this state as predatory in nature are not  
 21 classified as nongame wildlife for purposes of this part.  
 22 (5)(6) "Optimum carrying capacity" means that point at  
 23 which a given habitat can support healthy populations of  
 24 wildlife species, having regard to the total ecosystem,  
 25 without diminishing the ability of the habitat to continue

1 that function.  
 2 ~~(6)~~(7) "Person" means any individual, firm,  
 3 corporation, association, or partnership.

4 ~~(7)~~(8) "Take" means to harass, hunt, capture, or kill  
 5 or attempt to harass, hunt, capture, or kill wildlife.

6 ~~(8)~~(9) "Wildlife" means any wild mammal, bird,  
 7 reptile, amphibian, fish, mollusk, crustacean, or other wild  
 8 animal or any part, product, egg, or offspring or the dead  
 9 body or parts thereof."

10 NEW SECTION. Section 2. Nongame wildlife account. (1)  
 11 There is a nongame wildlife account in the earmarked revenue  
 12 fund provided for in 17-2-102.

13 (2) All money collected under [section 3] must be  
 14 deposited in the account.

15 (3) Money in the account must be used by the  
 16 department to provide adequate funding for the protection,  
 17 preservation, and propagation of the nongame wildlife of  
 18 Montana. The money is available to the department in the  
 19 same manner as provided in 87-1-601. Money derived from tax  
 20 checkoff contributions to the account is supplemental to any  
 21 other funding for nongame wildlife management and may not be  
 22 used to replace money that would otherwise be appropriated  
 23 for nongame wildlife management.

24 NEW SECTION. Section 3. Voluntary checkoff for  
 25 nongame wildlife management. (1) Each individual taxpayer

1 who is required to file an income tax return under Title 15,  
 2 chapter 30, and who is entitled to a refund may contribute  
 3 to the funding of management of nongame wildlife in Montana  
 4 by marking the appropriate box on the state income tax  
 5 return.

6 (2) The department of revenue shall include on each  
 7 Montana state individual income tax return form a clear and  
 8 conspicuous provision by which the taxpayer may indicate a  
 9 contribution to nongame wildlife management from the  
 10 taxpayer's refunded amount. The provision shall be in  
 11 substantially the following form:

12 Montana nongame wildlife funding. Check the appropriate  
 13 blank if you wish to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10 of  
 14 your tax refund to fund the management of nongame wildlife  
 15 in Montana. If a joint return, check the appropriate blank  
 16 if your spouse wishes to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10  
 17 for the same purpose.

18 (3) Money received under this section must be  
 19 deposited in the nongame wildlife account established by  
 20 [section 2].

21 NEW SECTION. Section 4. Report. The department shall  
 22 report to the 49th legislature the results of any program  
 23 using money from the nongame wildlife account and shall list  
 24 in detail how the money collected was used.

25 NEW SECTION. Section 5. Codification instruction. (1)

LC 0489/01

1 Section 2 is intended to be codified as an integral part of  
2 Title 87, chapter 5, part 1, and the provisions of Title 87,  
3 chapter 5, part 1, apply to section 2.

4 (2) Section 3 is intended to be codified as an  
5 integral part of Title 15, chapter 30, part 1, and the  
6 provisions of Title 15, chapter 30, apply to section 3.

-End-

## STATE OF MONTANA

REQUEST NO. 188-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 377 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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 377 proposes to fund a nongame wildlife management program in the Department of Fish, Wildlife, and Parks with taxpayer contributions of refunded income tax.

ASSUMPTIONS:

- 1) The state of Colorado and Oregon maintains a nongame wildlife management program similar to that proposed in this legislation. Taxpayer contributions provide funding for each program. We are assuming that Montana taxpayers would contribute to a nongame wildlife management program an amount proportional, based upon population to that received in Colorado and Oregon for a similar purpose.
- 2) Funding would not be available for expenditure until FY 1985 (from 1983 income tax returns filed in 1984).

FISCAL IMPACT:REVENUE:

The Department of Fish, Wildlife and Parks estimates that approximately \$100,000 to \$180,400 would be received from taxpayer contributions and available for expenditure in FY 1985.

EXPENDITURES:

The Department of Revenue estimates increased expenditures for forms, instructions, administration and data processing amounting to \$9,638 in FY 84 and \$6,238 in FY 85.

FISCAL NOTE 6:W/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-83

Approved by Comm  
on Fish and Game

## HOUSE BILL NO. 377

INTRODUCED BY FABREGA, CRIPPEN, KEMMIS, BERTELSEN, REGAN,  
J. JENSEN, BERGENE, VINCENT, MILLER, FAGG, HEMSTAD, BERG,  
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BACHINI, BLAYLOCK, MCBRIDE, KADAS, METCALF, MARBUT, REAM,  
TOME, HARPER, MUELLER, NILSON, TURNAGE, LORY, J. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FUNDS FOR  
THE PRESERVATION AND MANAGEMENT OF NONGAME WILDLIFE IN  
MONTANA; AMENDING SECTION 87-5-102, MCA."

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

Section 1. Section 87-5-102, MCA, is amended to read:  
"87-5-102. Definitions. As used in this part, the  
following definitions apply:

~~(1) "Account" means the nongame wildlife account  
established in [section 2].~~

~~(1)(2) "Ecosystem" means a system of living organisms  
and their environment, each influencing the existence of the  
other and both necessary for the maintenance of life.~~

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

~~(a) the destruction, drastic modification, or severe  
curtailment of its habitat;~~

~~(b) its overutilization for scientific, commercial, or  
sporting purposes;~~

~~(c) the effect on it of disease, pollution, or  
predation;~~

~~(d) other natural or man-made factors affecting its  
prospects of survival or recruitment within the state; or~~

~~(e) any combination of the foregoing factors.~~

~~(3)(4) "Management" means the collection and  
application of biological information for the purposes of  
increasing the number of individuals within species and  
populations of wildlife up to the optimum carrying capacity  
of their habitat and maintaining such levels. The term  
includes the entire range of activities that constitute a  
modern scientific resource program including but not limited  
to research, census, law enforcement, habitat acquisition  
and improvement, and education. Also included within the  
term, when and where appropriate, is the periodic or total  
protection of species or populations as well as regulated  
taking.~~

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

1       ~~(5)(6)~~ "Optimum carrying capacity" means that point at  
2       which a given habitat can support healthy populations of  
3       wildlife species, having regard to the total ecosystem,  
4       without diminishing the ability of the habitat to continue  
5       that function.

6       ~~(6)(7)~~ "Person" means any individual, firm,  
7       corporation, association, or partnership.

8       ~~(7)(8)~~ "Take" means to harass, hunt, capture, or kill  
9       or attempt to harass, hunt, capture, or kill wildlife.

10       ~~(8)(9)~~ "Wildlife" means any wild mammal, bird,  
11       reptile, amphibian, fish, mollusk, crustacean, or other wild  
12       animal or any part, product, egg, or offspring or the dead  
13       body or parts thereof."

14       NEW SECTION. Section 2. Nongame wildlife account. (1)  
15       There is a nongame wildlife account in the earmarked revenue  
16       fund provided for in 17-2-102.

17       (2) All money collected under [section 3] must be  
18       deposited in the account.

19       (3) Money in the account must be used by the  
20       department to provide adequate funding for the protection,  
21       preservation, and propagation of the nongame wildlife of  
22       Montana. The money is available to the department in the  
23       same manner as provided in 87-1-601, EXCEPT THAT NO MONEY  
24       COLLECTED UNDER [THIS ACT] MAY BE USED FOR THE PURCHASE OF  
25       ANY REAL PROPERTY. Money derived from tax checkoff

1       contributions to the account ~~is supplemental to any other~~  
2       ~~WILL REPLACE LICENSE FEE~~ funding for nongame wildlife  
3       management AFTER JUNE 30, 1985, and may not be used to  
4       replace money that would otherwise be appropriated for  
5       nongame wildlife management.

6       NEW SECTION. Section 3. Voluntary checkoff for  
7       nongame wildlife management. (1) Each individual taxpayer  
8       who is required to file an income tax return under Title 15,  
9       chapter 30, and who is entitled to a refund may contribute  
10       to the funding of management of nongame wildlife in Montana  
11       by marking the appropriate box on the state income tax  
12       return.

13       (2) The department of revenue shall include on each  
14       Montana state individual income tax return form a clear and  
15       conspicuous provision by which the taxpayer may indicate a  
16       contribution to nongame wildlife management from the  
17       taxpayer's refunded amount. The provision shall be in  
18       substantially the following form:

19       Montana nongame wildlife funding. Check the appropriate  
20       blank if you wish to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10 of  
21       your tax refund to fund the management of nongame wildlife  
22       in Montana. If a joint return, check the appropriate blank  
23       if your spouse wishes to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10  
24       for the same purpose.

25       (3) Money received under this section must be



1 deposited in the nongame wildlife account established by  
2 [section 2].

3 ~~NEW\_SECTION.~~ Section 4. Report. The department shall  
4 report to the 49th legislature the results of any program  
5 using money from the nongame wildlife account and shall list  
6 in detail how the money collected was used.

7 ~~NEW\_SECTION.~~ Section 5. Codification instruction. (1)  
8 Section 2 is intended to be codified as an integral part of  
9 Title 37, chapter 5, part 1, and the provisions of Title 87,  
10 chapter 5, part 1, apply to section 2.

11 (2) Section 3 is intended to be codified as an  
12 integral part of Title 15, chapter 30, part 1, and the  
13 provisions of Title 15, chapter 30, apply to section 3.

14 ~~SECTION 6. APPLICABILITY -- TERMINATION. (1) THIS ACT~~  
15 ~~APPLIES TO TAX RETURNS WHICH BY LAW ARE REQUIRED TO BE FILED~~  
16 ~~BEFORE JANUARY 1, 1984.~~

17 ~~(2) THIS ACT SHALL TERMINATE JULY 1, 1987.~~

-end-

## HOUSE BILL NO. 377

INTRODUCED BY FABREGA, CRIPPEN, KEMMIS, BERTELSEN, REGAN,  
J. JENSEN, BERGENE, VINCENT, MILLER, FAGG, HEMSTAD, BERG,  
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THE PRESERVATION AND MANAGEMENT OF NONGAME WILDLIFE IN  
MONTANA; AMENDING SECTION 87-5-102, MCA."

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

Section 1. Section 87-5-102, MCA, is amended to read:

"87-5-102. Definitions. As used in this part, the  
following definitions apply:

~~(1) "Account" means the nongame wildlife account  
established in [section 2].~~

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

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

~~(a) the destruction, drastic modification, or severe  
curtailment of its habitat;~~

~~(b) its overutilization for scientific, commercial, or  
sporting purposes;~~

~~(c) the effect on it of disease, pollution, or  
predation;~~

~~(d) other natural or man-made factors affecting its  
prospects of survival or recruitment within the state; or~~

~~(e) any combination of the foregoing factors.~~

~~(4) "Management" means the collection and  
application of biological information for the purposes of  
increasing the number of individuals within species and  
populations of wildlife up to the optimum carrying capacity  
of their habitat and maintaining such levels. The term  
includes the entire range of activities that constitute a  
modern scientific resource program including but not limited  
to research, census, law enforcement, habitat acquisition  
and improvement, and education. Also included within the  
term, when and where appropriate, is the periodic or total  
protection of species or populations as well as regulated  
taking.~~

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

1       ~~(5)(6)~~ "Optimum carrying capacity" means that point at  
2       which a given habitat can support healthy populations of  
3       wildlife species, having regard to the total ecosystem,  
4       without diminishing the ability of the habitat to continue  
5       that function.

6       ~~(6)(7)~~ "Person" means any individual, firm,  
7       corporation, association, or partnership.

8       ~~(7)(8)~~ "Take" means to harass, hunt, capture, or kill  
9       or attempt to harass, hunt, capture, or kill wildlife.

10       ~~(8)(9)~~ "Wildlife" means any wild mammal, bird,  
11       reptile, amphibian, fish, mollusk, crustacean, or other wild  
12       animal or any part, product, egg, or offspring or the dead  
13       body or parts thereof."

14       NEW SECTION. Section 2. Nongame wildlife account. (1)  
15       There is a nongame wildlife account in the earmarked revenue  
16       fund provided for in 17-2-102.

17       (2) All money collected under [section 3] must be  
18       deposited in the account.

19       (3) Money in the account must be used by the  
20       department to provide adequate funding for the protection,  
21       preservation, and propagation of the nongame wildlife of  
22       Montana. The money is available to the department in the  
23       same manner as provided in 87-1-601, EXCEPT THAT NO MONEY  
24       COLLECTED UNDER [THIS ACT] MAY BE USED FOR THE PURCHASE OF  
25       ANY REAL PROPERTY. Money derived from tax checkoff

1       contributions to the account ~~is supplemental to any other~~  
2       WILL REPLACE LICENSE FEE funding for nongame wildlife  
3       management AEIER JUNE 30, 1985, and may not be used to  
4       replace money that would otherwise be appropriated for  
5       nongame wildlife management.

6       NEW SECTION. Section 3. Voluntary checkoff for  
7       nongame wildlife management. (1) Each individual taxpayer  
8       who is required to file an income tax return under Title 15,  
9       chapter 30, and who is entitled to a refund may contribute  
10       to the funding of management of nongame wildlife in Montana  
11       by marking the appropriate box on the state income tax  
12       return.

13       (2) The department of revenue shall include on each  
14       Montana state individual income tax return form a clear and  
15       conspicuous provision by which the taxpayer may indicate a  
16       contribution to nongame wildlife management from the  
17       taxpayer's refunded amount. The provision shall be in  
18       substantially the following form:

19       Montana nongame wildlife funding. Check the appropriate  
20       blank if you wish to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10 of  
21       your tax refund to fund the management of nongame wildlife  
22       in Montana. If a joint return, check the appropriate blank  
23       if your spouse wishes to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10  
24       for the same purpose.

25       (3) Money received under this section must be

1 deposited in the nongame wildlife account established by  
2 [section 2].

3 ~~NEW\_SECTION.~~ Section 4. Report. The department shall  
4 report to the 49th legislature the results of any program  
5 using money from the nongame wildlife account and shall list  
6 in detail how the money collected was used.

7 ~~NEW\_SECTION.~~ Section 5. Codification instruction. (1)  
8 Section 2 is intended to be codified as an integral part of  
9 Title 87, chapter 5, part 1, and the provisions of Title 87,  
10 chapter 5, part 1, apply to section 2.

11 (2) Section 3 is intended to be codified as an  
12 integral part of Title 15, chapter 30, part 1, and the  
13 provisions of Title 15, chapter 30, apply to section 3.

14 ~~SECTION 6. APPLICABILITY --- TERMINATION. (1) THIS ACT~~  
15 ~~APPLIES TO TAX RETURNS WHICH BY LAW ARE REQUIRED TO BE FILED~~  
16 ~~AFTER JANUARY 1, 1984.~~

17 ~~(2) THIS ACT SHALL TERMINATE JULY 1, 1987.~~

-End-

SENATE STANDING COMMITTEE REPORT  
(Fish & Game)

That House Bill No. 377 be amended as follows:

1. Title, line 10.

Following: "MONTANA;"

Insert: "TO PROVIDE FOR FISH AND GAME COMMISSION APPROVAL OF THE  
USE OF SUCH FUNDS;"

2. Page 3, line 18.

Following: "account"

Insert: "except as provided in subsection (4)"

3. Page 3, line 20.

Following: "department"

Insert: ", upon the approval of the commission as determined under  
[section 4],"

4. Page 4, line 6.

Following: line 5

Insert: "(4) The department of revenue may deduct from collections  
an amount not to exceed \$9,638 in fiscal year 1984 and \$6,238 in  
fiscal year 1985 for administering the voluntary checkoff program.  
The department is authorized to spend the amounts and hire necessary  
personnel."

5. Page 5, line 3.

Following: line 2

Insert: "NEW SECTION. Section 4. Duties of commission. (1) The  
commission shall review and approve annually the nongame wildlife  
management projects recommended by the department for funding from  
the nongame wildlife account. The commission shall provide for  
public comment during the review and approval process.

(2) The commission may adopt rules governing:

(a) the use of the nongame wildlife account set forth in [section 2]  
and

(b) the review and approval process set forth in subsection (1)."

Renumber: subsequent sections

6. Page 5, line 4.

Strike: "49th"

Insert: "50th"

7. Page 5, line 8.

Strike: "Section"

Insert: "Sections"

Following: "2"

Strike: "is"

Insert: "and 4 are"

8. Page 5, line 10.

Strike: "section"

Insert: "sections"

Following: "2"

Insert: "and 4"

9. Page 5, line 17.

Strike: "July 1"

Insert: "December 31"

March 25, 1983

SENATE STANDING COMMITTEE REPORT  
(Fish & Game)

That Statement of Intent be added to House Bill No. 377:

A statement of intent is required of this bill because rule-making authority is granted to the Fish and Game Commission in section 4 for the use of the nongame wildlife account and for the review and approval process for nongame wildlife management projects.

It is intended that the rules promulgated by the Commission would include adequate provisions for public notice and comment during the review and approval process.

March 26, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 377 be amended as follows:

1. Title, line 9.

Strike: "THE PRESERVATION AND MANAGEMENT OF"

Following: "WILDLIFE"

Insert: "PROGRAMS"

2. Title, line 10.

Following: "MONTANA;"

Insert: "TO PROVIDE FOR CERTAIN RESTRICTIONS ON THE USE OF SUCH FUNDS;"

3. Page 3, line 20.

Following: "for"

Strike: Remainder of line 20 through "Montana" on line 22

Insert: ":

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management"

4. Page 3, line 22.

Following: "Montana."

Insert: "(4)"

5. Page 3, line 24.

Following: "USED"

Insert: ":

(a)"

6. Page 3, line 25.

Following: "PROPERTY"

Strike: "."

Insert: "; or

(b) in such a way as to interfere with the production on or management of private property.

(5)"

7. Page 4, line 3.

Strike: "management"

Insert: "programs"

8. Page 4, line 5.

Strike: "management"

Insert: "programs"

9. Page 4, line 7.

Strike: "management"

Insert: "programs"

10. Page 4, line 10.

Strike: "of management"

Following: "wildlife"

Insert: "programs"

11. Page 4, line 16.

Strike: "management"

Insert: "programs"

12. Page 4, line 21.

Strike: "the management of"

Following: "wildlife"

Insert: "programs"

13. Senate Fish and Game Standing Committee Amendments, March 24, 1983, amendment 5, subsection (1), line 3.

Strike: "management"

Insert: "programs"

14. Statement of Intent, Senate Fish and Game Standing Committee report, March 24, 1983.

Strike: "management" in paragraph 1, line 4

Insert: "program"

Following: "approval process." in paragraph 2, line 3

Insert: "In addition, it is intended that the Commission would provide for adequate consultation with the Department of Agriculture prior to and during the review and approval process for nongame wildlife program projects."



## CORRECTED REFERENCE

## HOUSE BILL NO. 377

INTRODUCED BY FABREGA, CRIPPEN, KEMMIS, BERTELSEN, REGAN,  
J. JENSEN, BERGENE, VINCENT, MILLER, FAGG, HEMSTAD, BERG,  
ECK, O'CONNELL, HALLIGAN, MAZUREK, FARRIS, HARRINGTON, PECK,  
BACHINI, BLAYLOCK, MCBRIDE, KADAS, METCALF, MARBUT, REAM,  
TOME, HARPER, MUELLER, NILSON, TURNAGE, LORY, J. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FUNDS FOR  
~~THE-PRESERVATION-AND-MANAGEMENT-OF NONGAME WILDLIFE PROGRAMS~~  
IN MONTANA; ~~TO PROVIDE FOR CERTAIN RESTRICTIONS ON THE USE~~  
~~OF SUCH FUNDS; TO PROVIDE FOR FISH AND GAME COMMISSION~~  
~~APPROVAL OF THE USE OF SUCH FUNDS;~~ AMENDING SECTION  
87-5-102, MCA."

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

Section 1. Section 87-5-102, MCA, is amended to read:

"87-5-102. Definitions. As used in this part, the  
following definitions apply:

~~(1) "Account" means the nongame wildlife account~~  
~~established in [section 2].~~

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

~~(3) "Endangered species" means any species or~~  
subspecies of wildlife actively threatened with extinction

due to any of the following factors:

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

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

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

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

(e) any combination of the foregoing factors.

~~(3)(4)~~ "Management" means the collection and  
application of biological information for the purposes of  
increasing the number of individuals within species and  
populations of wildlife up to the optimum carrying capacity  
of their habitat and maintaining such levels. The term  
includes the entire range of activities that constitute a  
modern scientific resource program including but not limited  
to research, census, law enforcement, habitat acquisition  
and improvement, and education. Also included within the  
term, when and where appropriate, is the periodic or total  
protection of species or populations as well as regulated  
taking.

~~(4)(5)~~ "Nongame wildlife" means any wild mammal, bird,  
amphibian, reptile, fish, mollusk, crustacean, or other wild  
animal not otherwise legally classified by statute or

regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

~~(5)~~(6) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

~~(6)~~(7) "Person" means any individual, firm, corporation, association, or partnership.

~~(7)~~(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

~~(8)~~(9) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts thereof."

NEW SECTION. Section 2. Nongame wildlife account. (1) There is a nongame wildlife account in the earmarked revenue fund provided for in 17-2-102.

(2) All money collected under [section 3] must be deposited in the account, EXCEPT AS PROVIDED IN SUBSECTION ~~(4)~~ (6).

(3) Money in the account must be used by the department, UPON THE APPROVAL OF THE COMMISSION AS DETERMINED UNDER [SECTION 4], to provide adequate funding

~~for the protection, preservation, and propagation of the nongame wildlife of Montana;~~

(A) RESEARCH AND EDUCATION PROGRAMS ON NONGAME WILDLIFE IN MONTANA, AS PROVIDED FOR IN 87-5-104; AND

(B) ANY MANAGEMENT PROGRAMS FOR NONGAME WILDLIFE APPROVED BY THE LEGISLATURE UNDER 87-5-105 AS SPECIES OR SUBSPECIES IN NEED OF MANAGEMENT.

(4) The money is available to the department in the same manner as provided in 87-1-601, EXCEPT THAT NO MONEY COLLECTED UNDER [THIS ACT] MAY BE USED:

(A) FOR THE PURCHASE OF ANY REAL PROPERTY; OR

(B) IN SUCH A WAY AS TO INTERFERE WITH THE PRODUCTION OR MANAGEMENT OF PRIVATE PROPERTY.

(5) Money derived from tax checkoff contributions to the account is supplemental to any other WILL REPLACE LICENSE FEE funding for nongame wildlife management PROGRAMS AFTER JUNE 30, 1985, and may not be used to replace money that would otherwise be appropriated for nongame wildlife management PROGRAMS.

~~(4)~~(6) THE DEPARTMENT OF REVENUE MAY DEDUCT FROM COLLECTIONS AN AMOUNT NOT TO EXCEED \$9,638 IN FISCAL YEAR 1984 AND \$6,238 IN FISCAL YEAR 1985 FOR ADMINISTERING THE VOLUNTARY CHECKOFF PROGRAM. THE DEPARTMENT IS AUTHORIZED TO SPEND THE AMOUNTS AND HIRE NECESSARY PERSONNEL.

NEW SECTION. Section 3. Voluntary checkoff for

1 nongame wildlife management ~~PROGRAMS~~. (1) Each individual  
 2 taxpayer who is required to file an income tax return under  
 3 Title 15, chapter 30, and who is entitled to a refund may  
 4 contribute to the funding ~~of management~~ of nongame wildlife  
 5 ~~PROGRAMS~~ in Montana by marking the appropriate box on the  
 6 state income tax return.

7 (2) The department of revenue shall include on each  
 8 Montana state individual income tax return form a clear and  
 9 conspicuous provision by which the taxpayer may indicate a  
 10 contribution to nongame wildlife management ~~PROGRAMS~~ from  
 11 the taxpayer's refunded amount. The provision shall be in  
 12 substantially the following form:

13 Montana nongame wildlife funding. Check the appropriate  
 14 blank if you wish to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10 of  
 15 your tax refund to fund ~~the management of~~ nongame wildlife  
 16 ~~PROGRAMS~~ in Montana. If a joint return, check the  
 17 appropriate blank if your spouse wishes to designate \_\_\_\$2,  
 18 \_\_\_\$5, or \_\_\_\$10 for the same purpose.

19 (3) Money received under this section must be  
 20 deposited in the nongame wildlife account established by  
 21 [section 2].

22 THERE IS A NEW MCA SECTION THAT READS:

23 Section 4. Duties of commission. (1) The commission  
 24 shall review and approve annually the nongame wildlife  
 25 management ~~PROGRAMS~~ projects recommended by the department

1 for funding from the nongame wildlife account. The  
 2 commission shall provide for public comment during the  
 3 review and approval process.

4 (2) The commission may adopt rules governing:

5 (a) the use of the nongame wildlife account set forth  
 6 in [section 2]; and

7 (b) the review and approval process set forth in  
 8 subsection (1).

9 NEW SECTION. Section 5. Report. The department shall  
 10 report to the 49th 50th legislature the results of any  
 11 program using money from the nongame wildlife account and  
 12 shall list in detail how the money collected was used.

13 NEW SECTION. Section 6. Codification instruction. (1)  
 14 ~~Section SECTIONS 2 + 4 ARE~~ intended to be codified as  
 15 an integral part of Title 87, chapter 5, part 1, and the  
 16 provisions of Title 87, chapter 5, part 1, apply to ~~section~~  
 17 SECTIONS 2 AND 4.

18 (2) Section 3 is intended to be codified as an  
 19 integral part of Title 15, chapter 30, part 1, and the  
 20 provisions of Title 15, chapter 30, apply to section 3.

21 SECTION 7. APPLICABILITY -- TERMINATION. (1) THIS ACT  
 22 APPLIES TO TAX RETURNS WHICH BY LAW ARE REQUIRED TO BE FILED  
 23 AFTER JANUARY 1, 1984.

24 (2) THIS ACT SHALL TERMINATE JULY 1 DECEMBER 31, 1987.

-End-

April 9, 1983

19

FREE CONFERENCE COMMITTEE  
ON HOUSE BILL 377  
(Report No. 1, 8:00 a.m.)

Mr. Speaker:

We, your Free Conference Committee on House Bill 377,  
met and considered:

Senate Fish and Game Committee amendments of March 24, 1983;  
Senate Fish and Game Committee amendment of March 25, 1983; and  
Senate Committee of the Whole amendments of March 26, 1983.

We recommend as follows:

That the House accede to Senate amendments of March 24,  
25 and 26;

That House Bill 377, Reference Copy (Salmon), be further  
amended as specified in Clerical Instructions 1 through 3; and

That this Free Conference Committee report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1) Page 4, line 21

Strike: "\$9,638"

Insert: "\$6,638"

2) Page 4, line 22

Strike: "\$6,238"

Insert: "\$4,238"

3) Page 4, line 24

Following: "PERSONNEL"

Insert: ", and shall provide an itemized accounting to the  
49th legislature of the cost of administering the checkoff  
program during fiscal years 1984 and 1985"

FOR THE HOUSE

Robert R. Ream  
REAM, CHAIR

W. J. Fabrega  
FABREGA

Lee Nilson  
NILSON

FOR THE SENATE

Ed B. Smith  
SMITH, CHAIR

Sam Crippen  
CRIPPEN

John Mohar  
MOHAR

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 377

3

4 A statement of intent is required of this bill because  
5 rulemaking authority is granted to the Fish and Game  
6 Commission in section 4 for the use of the nongame wildlife  
7 account and for the review and approval process for nongame  
8 wildlife management ~~PROGRAM~~ projects.

9 It is intended that the rules promulgated by the  
10 Commission would include adequate provisions for public  
11 notice and comment during the review and approval process.  
12 IN ADDITION, IT IS INTENDED THAT THE COMMISSION WOULD  
13 PROVIDE FOR ADEQUATE CONSULTATION WITH THE DEPARTMENT OF  
14 AGRICULTURE PRIOR TO AND DURING THE REVIEW AND APPROVAL  
15 PROCESS FOR NONGAME WILDLIFE PROGRAM PROJECTS.

## HOUSE BILL NO. 377

INTRODUCED BY FABREGA, CRIPPEN, KEMMIS, BERTELSEN, REGAN,  
J. JENSEN, BERGENE, VINCENT, MILLER, FAGG, HEMSTAD, BERG,  
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~~(2) "Ecosystem" means a system of living organisms~~  
and their environment, each influencing the existence of the  
other and both necessary for the maintenance of life.

~~(3) "Endangered species" means any species or~~  
subspecies of wildlife actively threatened with extinction

due to any of the following factors:

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

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

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

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prospects of survival or recruitment within the state; or

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application of biological information for the purposes of  
increasing the number of individuals within species and  
populations of wildlife up to the optimum carrying capacity  
of their habitat and maintaining such levels. The term  
includes the entire range of activities that constitute a  
modern scientific resource program including but not limited  
to research, census, law enforcement, habitat acquisition  
and improvement, and education. Also included within the  
term, when and where appropriate, is the periodic or total  
protection of species or populations as well as regulated  
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amphibian, reptile, fish, mollusk, crustacean, or other wild  
animal not otherwise legally classified by statute or

1 regulation of this state. Animals designated by statute or  
2 regulation of this state as predatory in nature are not  
3 classified as nongame wildlife for purposes of this part.

4 ~~(5)(6)~~ "Optimum carrying capacity" means that point at  
5 which a given habitat can support healthy populations of  
6 wildlife species, having regard to the total ecosystem,  
7 without diminishing the ability of the habitat to continue  
8 that function.

9 ~~(6)(7)~~ "Person" means any individual, firm,  
10 corporation, association, or partnership.

11 ~~(7)(8)~~ "Take" means to harass, hunt, capture, or kill  
12 or attempt to harass, hunt, capture, or kill wildlife.

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14 reptile, amphibian, fish, mollusk, crustacean, or other wild  
15 animal or any part, product, egg, or offspring or the dead  
16 body or parts thereof."

17 NEW SECTION. Section 2. Nongame wildlife account. (1)  
18 There is a nongame wildlife account in the earmarked revenue  
19 fund provided for in 17-2-102.

20 (2) All money collected under [section 3] must be  
21 deposited in the account, EXCEPT AS PROVIDED IN SUBSECTION  
22 ~~(4)(6)~~.

23 (3) Money in the account must be used by the  
24 department, UPON THE APPROVAL OF THE COMMISSION AS  
25 DETERMINED UNDER [SECTION 4], to provide adequate funding

1 ~~for the protection, preservation, and propagation of the~~  
2 ~~nongame wildlife of Montana;~~

3 (A) RESEARCH AND EDUCATION PROGRAMS ON NONGAME  
4 WILDLIFE IN MONTANA, AS PROVIDED FOR IN 87-5-104; AND

5 (B) ANY MANAGEMENT PROGRAMS FOR NONGAME WILDLIFE  
6 APPROVED BY THE LEGISLATURE UNDER 87-5-105 AS SPECIES OR  
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8 (4) The money is available to the department in the  
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10 COLLECTED UNDER [THIS ACT] MAY BE USED:

11 (A) FOR THE PURCHASE OF ANY REAL PROPERTY; OR

12 (B) IN SUCH A WAY AS TO INTERFERE WITH THE PRODUCTION  
13 ON OR MANAGEMENT OF PRIVATE PROPERTY.

14 (5) Money derived from tax checkoff contributions to  
15 the account is--supplemental--to--any--other WILL REPLACE  
16 LICENSE FEE funding for nongame wildlife management PROGRAMS  
17 AFTER JUNE 30, 1985, and may not be used to replace money  
18 that would otherwise be appropriated for nongame wildlife  
19 management PROGRAMS.

20 ~~(4)(6)~~ THE DEPARTMENT OF REVENUE MAY DEDUCT FROM  
21 COLLECTIONS AN AMOUNT NOT TO EXCEED \$9,638 \$6,638 IN FISCAL  
22 YEAR 1984 AND \$6,238 \$4,238 IN FISCAL YEAR 1985 FOR  
23 ADMINISTERING THE VOLUNTARY CHECKOFF PROGRAM. THE DEPARTMENT  
24 IS AUTHORIZED TO SPEND THE AMOUNTS AND HIRE NECESSARY  
25 PERSONNEL, AND SHALL PROVIDE AN ITEMIZED ACCOUNTING TO THE

1 49TH LEGISLATURE OF THE COST OF ADMINISTERING THE CHECKOFF  
 2 PROGRAM DURING FISCAL YEARS 1984 AND 1985.

3 NEW SECTION. Section 3. Voluntary checkoff for  
 4 nongame wildlife management PROGRAMS. (1) Each individual  
 5 taxpayer who is required to file an income tax return under  
 6 Title 15, chapter 30, and who is entitled to a refund may  
 7 contribute to the funding of management of nongame wildlife  
 8 PROGRAMS in Montana by marking the appropriate box on the  
 9 state income tax return.

10 (2) The department of revenue shall include on each  
 11 Montana state individual income tax return form a clear and  
 12 conspicuous provision by which the taxpayer may indicate a  
 13 contribution to nongame wildlife management PROGRAMS from  
 14 the taxpayer's refunded amount. The provision shall be in  
 15 substantially the following form:

16 Montana nongame wildlife funding. Check the appropriate  
 17 blank if you wish to designate \_\_\_\$2, \_\_\_\$5, or \_\_\_\$10 of  
 18 your tax refund to fund the management of nongame wildlife  
 19 PROGRAMS in Montana. If a joint return, check the  
 20 appropriate blank if your spouse wishes to designate \_\_\_\$2,  
 21 \_\_\_\$5, or \_\_\_\$10 for the same purpose.

22 (3) Money received under this section must be  
 23 deposited in the nongame wildlife account established by  
 24 [section 2].

25 THERE IS A NEW MCA SECTION THAT READS:

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 4 for funding from the nongame wildlife account. The  
 5 commission shall provide for public comment during the  
 6 review and approval process.

7 (2) The commission may adopt rules governing:

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 11 subsection (1).

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 13 report to the 49th 50TH legislature the results of any  
 14 program using money from the nongame wildlife account and  
 15 shall list in detail how the money collected was used.

16 NEW SECTION. Section 6. Codification instruction. (1)  
 17 ~~Section SECTIONS 2 is AND 4 ARE~~ intended to be codified as  
 18 an integral part of Title 87, chapter 5, part 1, and the  
 19 provisions of Title 87, chapter 5, part 1, apply to ~~section~~  
 20 SECTIONS 2 AND 4.

21 (2) Section 3 is intended to be codified as an  
 22 integral part of Title 15, chapter 30, part 1, and the  
 23 provisions of Title 15, chapter 30, apply to section 3.

24 SECTION 7. APPLICABILITY -- TERMINATION. (1) THIS ACT  
 25 APPLIES TO TAX RETURNS WHICH BY LAW ARE REQUIRED TO BE FILED



1 ~~AFTER JANUARY 1, 1984.~~

2 ~~(2) THIS ACT SHALL TERMINATE ~~JULY~~ DECEMBER 31, 1987.~~

-End-