

HOUSE BILL NO. 191

1/15 Introduced
1/15 Referred to Fish & Game
1/16 Fiscal Note Requested
1/22 Fiscal Note Received
1/24 Hearing
2/20 Adverse Committee Report
2/21 Objection to Adverse Committee Report
2/25 Statement of Intent Attached
2/25 2nd Reading Do Not Pass
2/25 Bill Killed

1 HOUSE BILL NO. 191
 2 INTRODUCED BY Wayne McClellan
 3 John W. Patton Camille NATHAN Smith
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
 5 FOR REIMBURSEMENT TO A LANDHOLDER OR PERSON IN POSSESSION
 6 FOR CERTAIN PROPERTY DAMAGE BY WILD ANIMALS DUE TO DELAY OR
 7 DEFICIENT REMEDIAL ACTION BY THE DEPARTMENT OF FISH,
 8 WILDLIFE, AND PARKS; AMENDING SECTIONS 87-1-225 AND
 9 87-1-304, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
 11 WHEREAS, landholders or persons in possession of land
 12 within the state acquire ownership or possession with notice
 13 of the likely presence of wild animals and their propensity
 14 to inconvenience or cause property damage; and, therefore,
 15 landholders or persons in possession are expected to bear
 16 some inconvenience and property damage without recourse; and

17 WHEREAS, landholders or persons in possession of land
 18 within the state have a constitutional right to protect
 19 their property from substantial damage by wild animals; and

20 WHEREAS, good game management requires a balancing of
 21 nominal property damage and substantial property damage by
 22 appropriate and expeditious mitigation of damages through
 23 action of the department of fish, wildlife, and parks.

24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 Section 1. Section 87-1-225, MCA, is amended to read:
 2 "87-1-225. Regulation of wild animals damaging
 3 property -- procedure for claiming damages. (1) Upon the
 4 request or complaint of any landholder or person in
 5 possession and having charge of any land in the state that
 6 wild animals of the state, protected by the fish and game
 7 laws and regulations, are doing damage to the property or
 8 crops thereon, the department, subject to the time
 9 limitation in subsection (2), shall investigate and study
 10 the situation with respect to damage and depredation. The
 11 department may then decide to open a special season on the
 12 game or, if the special season method be not feasible, the
 13 department may destroy the animals causing the damage. The
 14 department may authorize and grant the holders of said
 15 property permission to kill or destroy a specified number of
 16 the animals causing the damage. No wild ferocious animal
 17 damaging property or endangering life shall be covered by
 18 this section.

19 (2) Within 48 hours of receiving a request or
 20 complaint under subsection (1), the department shall
 21 implement its decision as to the appropriate method to
 22 prevent further property damage. If the department fails to
 23 implement its decision within that time or if the department
 24 does not destroy or authorize the destruction of enough
 25 animals to prevent further property damage, the department



1 shall reimburse the landholder or person in possession for
 2 all property damage attributable to the department's delay
 3 or deficient remedial action.

4 (3) (a) A landholder or person in possession entitled
 5 to reimbursement for damages under subsection (2) may file a
 6 claim with the department's regional supervisor for the
 7 administrative region in which the damaged property is
 8 located. The claimant shall set forth with specificity the
 9 basis for his claim and file it promptly. The amount of
 10 damages must be determined by an appraisal committee
 11 consisting of the regional supervisor, a landholder in the
 12 region selected by the claimant, and a landholder in the
 13 region jointly selected by the first two committee members.
 14 If the first two committee members fail to agree on the
 15 third member, the claimant shall draw the name of the third
 16 member at random from the names selected by the first two
 17 committee members.

18 (b) The regional supervisor shall compile the
 19 appraisal committee's damage determination and submit the
 20 claim, together with such determination, to the department
 21 headquarters within 14 days of receiving the claim. The
 22 regional supervisor shall recommend approval or disapproval
 23 of the claim and state the reasons for the recommendation. A
 24 copy of the claim, damage appraisal, and recommendation must
 25 be provided to the claimant.

1 (4) Within 14 days of receiving a claim submitted
 2 under subsection (3), the department shall reimburse the
 3 claimant or notify him that his claim has been disapproved
 4 and that he may pursue the matter as a contested case under
 5 Title 2, chapter 4, part 6. The department shall include a
 6 copy of those provisions with the notification of
 7 disapproval of the claim.

8 (5) The department shall disapprove the claim of a
 9 landholder or person in possession having charge of land if
 10 he has not permitted hunting on his property for the species
 11 of animals causing the damage during the hunting season in
 12 which the damage is caused or, if the hunting season is
 13 closed, during the hunting season immediately preceding the
 14 time when the damage is caused. The landholder or person in
 15 possession having charge of land must execute an affidavit
 16 stating that he has permitted hunting in accordance with
 17 this subsection and attach it to a claim for damages filed
 18 under this section."

19 Section 2. Section 87-1-304, MCA, is amended to read:
 20 "87-1-304. Fixing of seasons and bag and possession
 21 limits. (1) The commission may fix seasons, bag limits,
 22 possession limits, and season limits; open or close or
 23 shorten or lengthen seasons on any species of game, bird,
 24 fish, or fur-bearing animal as defined by 87-2-101; and
 25 declare areas open to the hunting of deer, antelope, elk,

1 moose, sheep, and goat by bow and arrow permit holders and
 2 designate times when only bows and arrows may be used to
 3 hunt deer, antelope, elk, moose, sheep, and goat in those
 4 areas. It may declare areas open to deer hunting where
 5 shotguns only may be used to hunt or kill deer. It may
 6 declare areas open to special license holders only and issue
 7 special licenses in a limited number when it determines,
 8 after proper investigation, that such a season is necessary
 9 to assure the maintenance of an adequate supply of game
 10 birds, fish, or animals or fur-bearing animals. It may,
 11 subject to the time limitation in 87-1-225(2), declare a
 12 special season and issue special licenses when game birds or
 13 animals or fur-bearing animals are causing damage to private
 14 property or when written complaint of such damage has been
 15 filed with the commission by the owner landholder or person
 16 in possession of that property. In determining to whom those
 17 licenses shall be issued, it may, when more applications are
 18 received than the number of animals to be killed, award
 19 permits to those chosen under a drawing system. The
 20 procedures used for awarding the permits from the drawing
 21 system shall be determined by the commission.

22 (2) The commission may adopt rules governing the use
 23 of livestock and vehicles by archers during special archery
 24 seasons.

25 (3) It may divide the state into fish and game

1 districts and create fish, game, or fur-bearing animal
 2 districts throughout the state. It may declare closed season
 3 for hunting, fishing, or trapping in any of those districts
 4 and later may open those districts to hunting, fishing, or
 5 trapping.

6 (4) It may declare a closed season on any species of
 7 game, fish, game birds, or fur-bearing animals threatened
 8 with undue depletion from any cause. It may close any area
 9 or district of any stream, public lake, or public water or
 10 portions thereof to hunting, trapping, or fishing for
 11 limited periods of time, when necessary to protect a
 12 recently stocked area, district, water, spawning waters,
 13 spawn-taking waters, or spawn-taking stations or to prevent
 14 the undue depletion of fish, game and fur-bearing animals,
 15 and game and nongame birds. It later may open the area or
 16 district upon consent of a majority of the property owners
 17 affected.

18 (5) The commission may authorize the director to open
 19 or close any special season upon 12 hours' notice to the
 20 public.

21 (6) It may declare certain fishing waters closed to
 22 fishing except by persons under 13 years of age. The purpose
 23 of this subsection is to provide suitable fishing waters for
 24 the exclusive use and enjoyment of juveniles under 13 years
 25 of age, at times and in areas the commission in its

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1 discretion considers advisable and consistent with its
2 policies relating to fishing."
3 NEW SECTION. Section 3. Effective date. This act is
4 effective July 1, 1985.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 118-85

Form **BD-15**

In compliance with a written request received January 16, 19 85, there is hereby submitted a Fiscal Note for H.B. 191 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:

Provide a procedure for reimbursement to a landholder or person in possession for certain property damage by wild animals due to delay or deficient remedial action by the Department of Fish, Wildlife, and Parks.

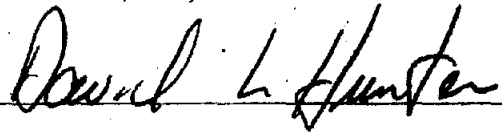
ASSUMPTIONS:

- A. Personal Services - It will take five hours of a Regional Supervisor's time to travel to, inspect, evaluate and submit a claim for payment.
- B. Operating Expenses - Each claim will require 150 miles of travel and a noon lunch in order to investigate.
- C. Claims - Colorado and Wyoming have a game damage reimbursement program. An average of their last two years' experience was used as the basis for this fiscal note.
- D. General fund monies have been requested since Montana's wildlife is held in trust for all the people of the state, a view upheld in Montana Supreme Court decision State V. Rathbone.

FICAL IMPACT:

Expenditures:

	<u>FY 86</u>		<u>FY 87</u>	
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
Personal Services	-0-	\$ 44,965	-0-	\$ 44,965
Operating Expenses	-0-	19,308	-0-	19,208
Benefits & Claims	-0-	705,250	-0-	705,250
Total Expenditure Increase	-0-	\$769,523	-0-	\$769,523



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 22, 1985

Request No. FNN 118-85
Form BD-15 page 2

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

None

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Experience in Colorado and Wyoming indicates that a game damage reimbursement program has not solved the problem of game damage.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

None.

COMM.
ON FISH AND GAME
RECOMMEND DO NOT PASS
OBJECTION RAISED TO
ADVERSE COMMITTEE REPORT

HOUSE BILL NO. 191

INTRODUCED BY ASAY, HANSON, DEVLIN, MCCALLUM, PATTERSON,
CAMPBELL, NATHE, SWIFT, SWITZER, MANUEL, C. SMITH,
MONTAYNE, GRADY, BRANDEWIE, JANET MOORE, COBB, JACK MOORE

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-End-