

SENATE BILL NO. 173

INTRODUCED BY

Klaump

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO GAME FARMS; PLACING A MORATORIUM ON THE ISSUANCE OF NEW GAME FARM LICENSES; PHASING OUT EXISTING GAME FARM OPERATIONS BY JANUARY 1, 1997; PROHIBITING FURTHER IMPORTATION OF GAME FARM ANIMALS; PROVIDING THAT A GAME FARM LICENSE IS NONTRANSFERABLE; REQUIRING PRESENT GAME FARM LICENSE FEES TO BE SET COMMENSURATE WITH ADMINISTRATIVE COSTS; PROVIDING FOR LIMITED COMPENSATION FOR CERTAIN GAME FARM PROPERTY; REVISING GAME FARM LICENSING REQUIREMENTS AND PENALTIES; ENCOURAGING STATE-TRIBAL NEGOTIATIONS WITH REGARD TO GAME FARMS AND THE PROTECTION OF WILD GAME POPULATIONS; PROVIDING STATE IMMUNITY FROM SUIT FOR DAMAGES ARISING FROM THE SPREAD OF DISEASE FROM A GAME FARM ANIMAL TO LIVESTOCK; AMENDING SECTIONS 81-3-102, 81-3-104, 87-4-406, 87-4-407, 87-4-409, 87-4-411, 87-4-412, 87-4-413, 87-4-414, 87-4-415, 87-4-416, 87-4-417, 87-4-418, 87-4-422, 87-4-423, 87-4-424, 87-4-426, 87-4-427, AND 87-4-428, MCA; REPEALING SECTIONS 87-4-410, 87-4-411, 87-4-412, 87-4-413, 87-4-414, 87-4-415, 87-4-416, 87-4-419, 87-4-420, 87-4-423, 87-4-426, 87-4-427, AND 87-4-428, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, wildlife and big game constitute one of the greatest natural resources in the State of Montana, contributing in a unique way to the ecological, aesthetic, recreational, and economic enrichment of Montanans' way of life; and

WHEREAS, under Article IX, section 1(1), of the Montana Constitution, the public and the state are entrusted with the duty to "maintain and improve a clean and healthful environment in Montana for present and future generations"; and

WHEREAS, under Article IX, section 1(3), of the Montana Constitution, the "legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources"; and

WHEREAS, the U.S. Supreme Court held in *Lacoste v. Department of Conservation of Louisiana*, 263 US 545, 68 L Ed 437, 44 S Ct 186 (1924), that "wildlife within the borders of a state are owned by the state in its sovereign capacity for the common benefit of all its people"; and

1 WHEREAS, the enlightened concept of this ownership is one of a trustee with the power and duty
2 to protect, preserve, and nurture wild game; and

3 WHEREAS, the U.S. Supreme Court also held, in *Baldwin v. Montana Fish and Game Commission*,
4 436 US 371, 56 L Ed 2d 354, 98 S Ct 1852 (1978), that "the state has great latitude in determining what
5 means, including police power, are appropriate for the protection of wildlife" and that "the state need not
6 always share those things held in trust for its own people"; and

7 WHEREAS, despite the Legislature's best efforts to regulate and control the importation and
8 propagation of exotic wildlife species through the licensing of commercial game farm activities, game farm
9 animals have escaped into the wild or otherwise have come in contact with wild game animals, threatening
10 the natural big game populations with disease and genetic dilution, which constitute unreasonable depletion
11 and degradation of the resource; and

12 WHEREAS, evidence of communicable disease in the wild big game population, which may be linked
13 to the presence of disease in a game farm operation, also presents a threat of harm to the public health,
14 safety, and welfare, and it is a valid exercise of the state's power to regulate activities that present such
15 a threat; and

16 WHEREAS, revenue received by the state in game farm license fees should be commensurate with
17 the state's costs in administering the game farm industry but in fact is greatly disproportionate to the actual
18 costs incurred in licensing and inspecting game farm operations and in enforcing game farm laws; and

19 WHEREAS, it is the intent of the Legislature that the Department of Fish, Wildlife, and Parks contact
20 each reservation tribal government and work cooperatively with tribal authorities to protect wild game
21 populations located on state and tribal land; and

22 WHEREAS, it is the finding of the Legislature that the protection of the public health, safety, and
23 welfare and of the big game resource for all the people clearly overrides the limited private ownership of
24 game farm animals in commercial game farm operations.

25 THEREFORE, the Legislature finds it necessary to exercise its mandate to protect both the public
26 trust and this important natural resource by enforcing an immediate moratorium on the licensing of new
27 game farm activity and by phasing out all game farm activity in order to prevent, to the greatest extent
28 possible, any depletion or degradation of the big game resource and to eliminate any threat to the public
29 health, safety, and welfare.

30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the department of fish, wildlife, and parks to ensure proper implementation of the bill. It is intended that the department use its rulemaking authority to:

(1) accomplish an orderly phaseout of commercial game farm licenses by January 1, 1997;

(2) establish a license renewal fee that will ensure that the fee to be paid by licensees is commensurate with the department's administrative costs in administering the game farm statutes until game farm operations are concluded; and

(3) establish appropriate levels of compensation as provided in [section 18].

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

Section 1. Section 87-4-406, MCA, is amended to read:

"87-4-406. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of fish, wildlife, and parks.

(2) "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of game farm animals.

(3) "Game animals" means game animals, as defined in 87-2-101, that are not the lawful property of any private person.

(4) "Game farm" means the enclosed land area upon which game farm animals ~~may be~~ are kept for purposes of obtaining, rearing in captivity, keeping, or selling game farm animals or parts of game farm animals, as authorized under this part prior to January 1, 1997, and as prohibited under this part after January 1, 1997.

(5) "Game farm animal" means a privately owned caribou, black bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana or any other cloven-hoofed ungulate as classified by the department.

(6) "Person" means an individual, firm, corporation, association, or partnership."

Section 2. Section 87-4-407, MCA, is amended to read:

"87-4-407. License required -- moratorium -- ~~penalty penalties~~ -- seizure of illegally possessed

1 **animals.** (1) A Prior to January 1, 1997, a person may not operate a game farm in this state without first
 2 obtaining a game farm license from the department. After January 1, 1997, the operation of a game farm
 3 in this state is prohibited.

4 (2)(a) A person who operates a game farm without a license prior to January 1, 1997, or who
 5 possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to
 6 87-4-424 is guilty of a misdemeanor and is subject to the penalties provided in 87-4-427(4).

7 (b) A person who purposely or knowingly operates a game farm after January 1, 1997, or who
 8 possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to
 9 87-4-424 is guilty of a felony and upon conviction shall be fined not less than \$50,000 or more than
 10 \$500,000 or be imprisoned in the state prison for a term not to exceed 15 years, or both. In addition, a
 11 person convicted under this subsection (b) or who pleads guilty to a violation of this subsection (b) shall
 12 lose all hunting, fishing, and trapping permits and license privileges for a minimum of 15 years or up to a
 13 maximum of a lifetime revocation from the date of conviction.

14 (3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be
 15 immediately seized by the department and is subject to disposal by the department. Costs of seizure may
 16 be charged to the person in possession of the animal."
 17

18 **Section 3.** Section 87-4-409, MCA, is amended to read:

19 "~~87-4-409. Application for license—limitations~~ **Limitations on issuance and renewal of game farm**
 20 **license.** (1) ~~A person desiring to obtain a game farm license shall make written application to the~~
 21 ~~department on forms provided by the department. The application shall specify:~~

- 22 (a) ~~the applicant's name;~~
 23 (b) ~~the applicant's address;~~
 24 (c) ~~the name and address of the individual who will be the principal manager of the game farm;~~
 25 (d) ~~the exact legal description of the land upon which the game farm is to be located, together with~~
 26 ~~the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or~~
 27 ~~otherwise;~~
 28 (e) ~~the species of game farm animals proposed to be kept or reared on the game farm;~~
 29 (f) ~~the type of facilities contemplated and the location of perimeter fencing;~~
 30 (g) ~~the source from which the applicant intends to acquire the game animals;~~

1 ~~(h) if the applicant is not a Montana resident, the name and address of a Montana resident~~
 2 ~~designated by the applicant as the applicant's local agent;~~

3 ~~(i) if the applicant is a corporation, the full names and addresses of all stockholders owning more~~
 4 ~~than 10% of the stock in the corporation; and~~

5 ~~(j) information demonstrating that the applicant is responsible.~~

6 ~~(2) Within 30 days of receipt of an application, the department shall notify the applicant in writing~~
 7 ~~whether the application:~~

8 ~~(a) is in compliance and is accepted as complete; or~~

9 ~~(b) is not in compliance and shall list any deficiencies that must be corrected before the application~~
 10 ~~is in compliance. The department shall return any noncomplying application to the applicant, who may~~
 11 ~~resubmit the application upon correction of the deficiencies.~~

12 ~~(3) Within 120 days of the acceptance of a complete application, the department shall notify the~~
 13 ~~applicant of its proposed decision to approve, approve with stipulations, or deny the application. If the~~
 14 ~~department determines that the preparation of an environmental impact statement is required by Title 75,~~
 15 ~~chapter 1, and by department rules adopted pursuant to the Montana Environmental Policy Act, then the~~
 16 ~~department has an additional 180 days to act on the completed application. If required fencing has not been~~
 17 ~~completed, the department shall approve the application subject to completion and approval of the fencing.~~
 18 ~~If the application is denied or approved with stipulations, the department shall specify the reasons for denial~~
 19 ~~or stipulations. The department may not accept an application for or issue a license for a new game farm~~
 20 ~~after [the effective date of this section]. Until January 1, 1997, game farm licensing is restricted to the~~
 21 ~~annual renewal of licenses issued prior to [the effective date of this section]. After January 1, 1997, a~~
 22 ~~game farm license may not be issued or renewed.~~

23
 24 **Section 4.** Section 87-4-411, MCA, is amended to read:

25 **"87-4-411. License and renewal fees fee -- deposit of fees fee.** (1) The department shall charge
 26 ~~an initial game farm license fee of \$200 and shall charge an annual renewal fee of \$50 that is~~
 27 ~~commensurate with the department's costs of administering this part, as determined by department rule.~~

28 (2) The ~~fees fee~~ must be deposited in the state special revenue fund for the use of the department
 29 for purposes of this part."
 30

1 **Section 5.** Section 87-4-412, MCA, is amended to read:

2 "**87-4-412. Term of license -- renewal -- ~~transferability~~ nontransferability.** (1) A game farm license
3 expires on January ~~31~~ 1 of the year succeeding the year of issuance. Application for renewal must be made
4 before a license expires. The department shall renew the license, subject to the provisions of 87-4-409,
5 upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements
6 and the provisions of this section. Whenever new statutes, rules, or regulations are adopted regarding the
7 operation of a game farm, the game farm licensee shall comply with all provisions of the new statutes,
8 rules, or regulations within 2 years after adoption.

9 (2) A game farm license for a specific facility is not transferable ~~with the consent of the~~
10 ~~department. The department's consent must be given if:~~

11 ~~(a) the transferee meets the requirements of 87-4-426(1);~~

12 ~~(b) the game farm and facilities are in compliance with requirements in place at the time the license~~
13 ~~was issued;~~

14 ~~(c) the game farm is not under quarantine by the department of livestock;~~

15 ~~(d) game farm animals to be transferred are not prohibited under this part and department rules;~~

16 ~~and~~

17 ~~(e) the transfer is not proposed as a means to evade a requirement imposed on the licensee."~~

18

19 **Section 6.** Section 87-4-413, MCA, is amended to read:

20 "**87-4-413. Inspection.** (1) ~~Upon receipt of an application for a game farm license, the department~~
21 ~~shall inspect the land proposed to be covered by the license.~~

22 (2) After ~~issuance~~ annual renewal of a game farm license, the department may inspect the game
23 farm or the licensee's game farm books on a scheduled basis or ~~on such~~ other reasonable basis as ~~may be~~
24 ~~determined~~ necessary."

25

26 **Section 7.** Section 87-4-414, MCA, is amended to read:

27 "**87-4-414. Game farm animals as private property -- source.** (1) All game farm animals lawfully
28 possessed on a licensed game farm are private property for which the licensee is responsible as provided
29 by law.

30 (2) The licensee may acquire, breed, grow, keep, pursue, capture, harvest, use, sell, or dispose

1 of the game farm animals and their progeny in any quantity and at any time of year as long as the licensee
2 complies with the requirements of this part.

3 (3) A licensee shall mark each game farm animal in a manner approved by the department and the
4 department of livestock that indicates ownership and provides individual identification of animals for
5 inspection, transportation, reporting, and taxation purposes. In order to readily distinguish between a game
6 animal and a game farm animal, each game farm animal must be clearly and visibly marked in a manner that
7 allows identification from a distance of not less than 50 yards. As an additional means of identification, the
8 licensee shall provide a DNA sample of each game farm animal for filing with the Montana DNA database
9 registry.

10 (4) Game farm animals must be lawfully acquired by the licensee. Only a licensee may own or lease
11 a game farm animal.

12 (5) Except for importation permits and health certificates required under 81-2-703, laws applicable
13 to game animals do not apply to game farm animals raised on a licensed game farm."
14

15 **Section 8.** Section 87-4-415, MCA, is amended to read:

16 "**87-4-415. Transportation and sale of game farm animals -- quarantine -- necropsy -- annual**
17 **inspection.** (1) Prior to selling, transferring, transporting, or disposing of one or more game farm animals,
18 the game farm licensee shall contact the department of livestock to request an inspection by a department
19 of livestock stock inspector for all game farm animals except carnivores and omnivores. In the case of
20 carnivores and omnivores, the game farm licensee shall contact the department to request an inspection
21 by a department official. This section applies to all game farm animals, whether alive or dead. A necropsy
22 must be performed on every dead game farm animal by a veterinarian employed by the department of
23 livestock or by another entity certified by the department of livestock. The presence of tuberculosis,
24 brucellosis, or other disease designated by the department of livestock must be reported immediately to the
25 department and the department of livestock.

26 (2) (a) Inspection under subsection (1) must include examination of the game farm animal and all
27 marks, tags, and tattoos to identify ownership prior to issuance of a certificate of inspection.

28 (b) A certificate of inspection must be made in triplicate and must specify:

29 (i) the date of inspection;

30 (ii) the place of origin and destination of the shipment;

1 (iii) the name and address of the owner of the game farm animals and of the purchaser or
2 transferee;

3 (iv) the number, species, age, and sex of game farm animals transported or disposed of;

4 (v) ear tag numbers and tattoos on each animal; and

5 (vi) any other information that the department of livestock may require.

6 (c) A copy of the certificate must be:

7 (i) retained by the inspector;

8 (ii) furnished by the inspector to the owner or shipper of the game farm animals, to accompany the
9 animals to their destination;

10 (iii) filed by the inspector with the department of livestock within 5 days of inspection; and

11 (iv) provided by the department of livestock to the department within 10 days of inspection.

12 (3) The department of livestock ~~may~~ shall quarantine any game farm animal pending inspection and
13 health certification. The department shall advise the department of livestock regarding the importation or
14 transportation of any game farm animal that the department reasonably believes may be infected with a
15 disease specific to wildlife. In order to prevent the spread of communicable disease, each game farm animal
16 must be tested annually by the department of livestock to ensure that the game farm animal is not infected
17 with tuberculosis, brucellosis, or any other disease designated by the state veterinarian. If the presence of
18 disease is detected, all animals that may have come into contact with the diseased animal must be
19 quarantined and tested and proper remedial actions must be taken to ensure that the disease does not
20 spread.

21 (4) The importation of game farm animals after [the effective date of this section] is prohibited. Live
22 game farm animals may be exported from this state for purposes of out-of-state sale after [the effective
23 date of this section], subject to the inspection provisions of this section. The sale and transfer of live game
24 farm animals between licensed game farms within this state after [the effective date of this section] and
25 before January 1, 1997, are not prohibited. The transportation and transfer of dead game farm animals and
26 their parts or byproducts are subject to the provisions of 87-4-416."

27

28 **Section 9.** Section 87-4-416, MCA, is amended to read:

29 **"87-4-416. Sale of game parts, meats, and byproducts.** (1) A game farm licensee may sell or
30 otherwise dispose of the carcass, parts, or byproducts of a properly identified dead game farm animal taken

1 from a game farm in accordance with the provisions of 87-4-415. A copy of the certificate of inspection
2 must be attached to the carcass or container. Upon the attaching of the certificate of inspection, the
3 carcass, parts, or byproducts of the game farm animal may be transported within the state to the transferee
4 named on the certificate of inspection.

5 (2) The licensee may sell dead game farm animals for meat upon compliance with all applicable
6 health laws."

7
8 **Section 10.** Section 87-4-417, MCA, is amended to read:

9 **"87-4-417. Records and reporting.** (1) Each game farm licensee shall keep and maintain for 3 years
10 accurate written records of all purchases, transfers, leases, and sales of game farm animals showing:

11 (a) the number of each species of game farm animal purchased by the game farm licensee and from
12 whom purchased;

13 (b) the number of each species of game farm animal transferred, leased, or sold, the date of
14 transfer, lease, or sale, and the name and address of the person to whom the transfer, lease or sale was
15 made; and

16 (c) individual identification of each game farm animal purchased, transferred, leased, or sold.

17 (2) ~~Within~~ Prior to January 1, 1997, within 2 weeks after January 1, April 1, and September 1 of
18 each year, the game farm licensee shall file a report with the director, showing the number and species of
19 game farm animals on hand as of January 1, April 1, and September 1 and the number and species of game
20 farm animals bought, sold, or propagated during the reporting period."

21
22 **Section 11.** Section 87-4-418, MCA, is amended to read:

23 **"87-4-418. Unlawful capture.** ~~No~~ A person may not capture, take, or otherwise acquire any game
24 animal in this state for use on a game farm ~~except as provided in 87-4-410.~~"

25
26 **Section 12.** Section 87-4-422, MCA, is amended to read:

27 **"87-4-422. Rulemaking.** (1) The department may adopt and enforce rules that are necessary to
28 implement the provisions of this part and to coordinate regulation of game farms with the department of
29 livestock.

30 (2) The rules may address but are not limited to the classifying of cloven-hoofed ungulates,

1 requirements for facilities, reporting and recordkeeping requirements, transportation and importation,
2 restrictions on importation, identification, sale of animal parts, and the care and maintenance of game farm
3 animals.

4 (3) The department shall adopt rules to effectuate the moratorium on the issuance of new game
5 farm licenses and the phaseout of commercial game farm activities required by 87-4-409, including rules
6 to establish an appropriate amount of compensation to be paid under the provisions of [section 18]."
7

8 **Section 13.** Section 87-4-423, MCA, is amended to read:

9 **"87-4-423. Revocation of license -- procedure -- disposition of animals.** (1) Proceedings for the
10 revocation of a license or the discipline of a licensee must be based on a determination by the department,
11 after an investigation, that there is good cause and a sufficient factual basis to believe that the licensee or
12 the principal manager is responsible for one or more of the acts or omissions set out in 87-4-427(1).

13 (2) The department may initiate revocation or disciplinary proceedings against a licensee by
14 specifying the grounds in writing to the licensee and providing an opportunity for a hearing as provided in
15 87-4-428.

16 ~~(3) Upon discovery of a violation of recordkeeping or reporting requirements that is not a material~~
17 ~~violation or an attempt to deceive, the department shall give notice of the violation to the licensee, with~~
18 ~~a statement that the violation must be corrected within 30 days of the notice, unless a longer period is~~
19 ~~approved by the department. Upon failure of the licensee to correct the violation, the department may~~
20 ~~institute revocation proceedings.~~

21 ~~(4)~~ (a) A licensee whose license is revoked shall lawfully dispose of any game farm animal held
22 pursuant to the license. Lawfully acquired and held game farm animals may be disposed of by the licensee
23 within 180 days of the license revocation or within a longer period if specified by the department in the
24 revocation order. After the expiration of this period, the department shall seize and dispose of any game
25 farm animals that have not been lawfully disposed of by the licensee. Any proceeds that remain after
26 deducting the department's expenses revert to the licensee. Any unrecovered costs may be charged to the
27 licensee.

28 (b) The department, when it is determined to be necessary by the state veterinarian appointed
29 pursuant to 81-1-301, ~~may~~ shall require that diseased or potentially diseased game farm animals be
30 quarantined or destroyed."

1 **Section 14.** Section 87-4-424, MCA, is amended to read:

2 "87-4-424. **Department restrictions on importation of certain species.** The department or the
3 department of livestock ~~may~~ shall restrict from importation for purposes of game farming any species or
4 subspecies and their hybrids with native species that are determined through scientific investigation to pose
5 a threat to native wildlife or livestock through nonspecific genetic dilution, habitat degradation or
6 competition caused by feral populations of escaped game farm animals, parasites, or disease."

7

8 **Section 15.** Section 87-4-426, MCA, is amended to read:

9 "87-4-426. **Criteria for ~~issuance~~ renewal of license -- fencing and enclosure requirements.** ~~(1) A~~
10 ~~game farm license may be issued by the department only to an applicant:~~

11 ~~(a) who owns or leases the premises on which the operations are to be conducted;~~

12 ~~(b) who has not been or whose principal manager has not been convicted of or who has not~~
13 ~~forfeited bond of \$100 or more for more than one violation of the fish and game laws or applicable~~
14 ~~regulations of any state or the United States within a 5-year period prior to application;~~

15 ~~(c) who has not or whose principal manager has not at any time pleaded guilty to or been convicted~~
16 ~~of a felony, unless civil rights have been restored pursuant to law. A person may not apply for licensure~~
17 ~~during any time in which a deferred or suspended felony sentence is in effect.~~

18 ~~(d) who is or whose principal manager is at least 18 years of age.~~

19 ~~(2) A game farm license must be ~~issued~~ renewed by the department, subject to the limitations of
20 87-4-409, if:~~

21 ~~(a)~~(1) the applicant has properly fenced the perimeter of the land upon which the game farm is to
22 be located with fencing designed and constructed to prevent the escape of the species of game farm animal
23 kept on the game farm and to prevent the entry of the same species of game animal or other native game
24 animal species capable of interbreeding with or contracting diseases or parasites from game farm animals;
25 To meet the requirements of this subsection, a game farm must be double-fenced to prevent nose-to-nose
26 contact between game farm animals and animals capable of contracting diseases or parasites from game
27 farm animals. A graveled buffer zone must exist between the fences.

28 ~~(b)~~(2) the application is for a single location;

29 ~~(c)~~(3) it is demonstrated that the applicant or the applicant's principal manager has the necessary
30 skills to properly care for game farm animals or intends to employ a person who has those necessary skills;

1 and

2 ~~(d) the application has not been denied under this section or issued with stipulations under~~
3 ~~subsection (3).~~

4 (4) the applicant has made provisions to ensure that no commingling or exposure occurs between
5 game farm animals and wildlife or domestic livestock. To meet the requirements of this subsection, the
6 applicant shall provide exclusive pasturage for the game farm animals and may not allow grazing on that
7 pasturage by any domestic livestock. The applicant shall also provide a buffer zone around all watercourses
8 capable of carrying fecal matter from a game farm animal to domestic livestock.

9 ~~(3) An application for a game farm license may be denied in its entirety or issued with stipulations~~
10 ~~if necessary to prevent public safety hazards or significant negative impacts to Montana's wildlife~~
11 ~~resources. Denial of an application or stipulations attached to a game farm license must be based on one~~
12 ~~or more of the following potential impacts ascribed to the physical location of the proposed game farm:~~

13 ~~(a) substantial loss or destruction of critical seasonal game animal habitat or habitat of federally~~
14 ~~designated threatened or endangered species under the Endangered Species Act of 1973, 16 U.S.C. 1531,~~
15 ~~et seq., including but not limited to traditional breeding, birthing, rearing, and wintering areas;~~

16 ~~(b) blockage or disruption of major traditional seasonal migration corridors or major travel routes;~~

17 ~~(c) unacceptable threat of introduction or transmission of serious diseases or parasites to native~~
18 ~~wildlife populations, as determined by the state veterinarian appointed pursuant to 81-1-301;~~

19 ~~(d) unacceptable threat of escape of captive game farm animals and establishment of feral~~
20 ~~populations that would result in habitat damage or competition with or genetic pollution of native wildlife~~
21 ~~populations;~~

22 ~~(e) the creation of a significant threat to the safety of the general public and surrounding~~
23 ~~landowners by the shooting of game farm animals.~~

24 ~~(4) If the department determines that it will propose, within the time allowed under 87-4-409(3),~~
25 ~~to deny a game farm license or issue a license with stipulations, the applicant must be given an opportunity~~
26 ~~to make changes to the application within 30 days of receipt of the department's written determination in~~
27 ~~order to mitigate or correct any problems or deficiencies. The department shall reconsider the application~~
28 ~~with the proposed changes within 30 days of receipt of changes to the application before granting,~~
29 ~~proposing to deny, or proposing to issue the license with stipulations.~~

30 ~~(5) An applicant may request that the commission review a department proposal to deny a game~~

1 ~~farm license or to issue a license with stipulations by petitioning the commission for review within 10 days~~
2 ~~of the department's proposed decision. The commission shall decide whether to grant the license, propose~~
3 ~~to deny the license, or issue the license with stipulations. The commission's decision then becomes the~~
4 ~~department's proposed decision, subject to an opportunity for hearing under 87-4-428."~~

5
6 **Section 16.** Section 87-4-427, MCA, is amended to read:

7 **"87-4-427. Revocation of license -- criteria -- penalties.** (1) The department may revoke any game
8 farm license or impose any of the penalties or conditions specified in subsection (3) if the licensee or the
9 principal manager has committed or is responsible for any of the following acts or omissions:

10 (a) failure to operate a game farm according to the provisions of this part, rules adopted under this
11 part, or stipulations of the game farm license;

12 (b) making a materially false statement in the license application;

13 (c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence
14 is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to
15 law;

16 (d) two convictions or bond forfeitures of \$100 or more for violations of the fish and game laws
17 or applicable regulations of any state or the United States within the preceding 5 years;

18 (e) negligent or willful misconduct of the game farm operation; including but not limited to the
19 unauthorized egress and ingress of game animal species or game farm animals, that:

20 (i) threatens public safety;

21 (ii) endangers native game animal populations or habitat through the establishment of feral
22 populations, genetic pollution, or competition for forage or habitat; or

23 (iii) increases the risk of transmission of disease to native wildlife and the game farm animals of
24 others;

25 (f) a material and willful falsification of any required game farm records or reports;

26 (g) the purposeful capture of wild animals within the perimeter fence of a game farm;

27 (h) repeated failure to maintain or repair required fences or facilities; or

28 (i) any other willful conduct or omission that creates a substantial threat to other game farm
29 animals and operators or to native wildlife or habitat.

30 (2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30

1 days to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be
 2 grounds for license revocation only if the misconduct is not corrected after the initial notice or if the
 3 misconduct is repeated.

4 (3) If the department finds, after opportunity for a hearing required under 87-4-428, that a game
 5 farm licensee or the principal manager is responsible for any act or omission set out in subsection (1), the
 6 department may in its discretion impose any one or more of the following penalties upon the licensee:

7 (a) revocation of the game farm license ~~for up to 5 years;~~

8 (b) imposition of a civil penalty not to exceed ~~\$5,000~~ \$50,000, restoration of any damage to native
 9 wildlife, or both;

10 (c) deferral of the revocation of a license subject to the completion of or adherence to specified
 11 conditions; or

12 (d) reprimand of a licensee.

13 (4) In addition to the revocation of a license or other penalties allowed by this section, a person
 14 who purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to criminal
 15 prosecution and a fine of not more than ~~\$1,000~~ \$10,000, imprisonment in the county jail for not more than
 16 1 year, or both. Any violation of 87-3-118 is subject to prosecution and penalties under that section."

17

18 **Section 17.** Section 87-4-428, MCA, is amended to read:

19 **"87-4-428. Right to administrative hearing.** (1) ~~An applicant must be given notice and an~~
 20 ~~opportunity for a hearing on a proposed denial or issuance with stipulations of a game farm license pursuant~~
 21 ~~to 87-4-426 before the department may deny a license or grant a license with stipulations.~~

22 ~~(2) A licensee must be given notice and an opportunity for a hearing before the department may~~
 23 ~~refuse to renew a license, withhold consent to the transfer of a license, revoke a license, or discipline a~~
 24 ~~licensee.~~

25 ~~(3)~~(2) The notice and an opportunity for a hearing and any judicial appeal must be conducted as
 26 provided in Title 2, chapter 4, parts 6 and 7."

27

28 **NEW SECTION. Section 18. Limited compensation of game farm licensees for certain property.**

29 (1) In response to the constitutional mandate that the legislature provide adequate remedies for the
 30 protection of the environmental life support system from degradation and provide adequate remedies to

1 prevent unreasonable depletion and degradation of natural resources, the elimination of commercial game
2 farm activities is a valid exercise of state regulatory power undertaken in the interests of the public health,
3 welfare, and safety and does not constitute a taking of private property for a public use. Nevertheless, the
4 legislature recognizes the monetary impact that may arise from the prohibition of this previously licensed
5 activity and authorizes compensation within the limited context of this section.

6 (2) A game farm licensee may, on or before January 1, 1997, provide the department with a report
7 of game farm animals that remain on the game farm premises, including the species, sex, and number of
8 animals remaining, and may request compensation for those animals. Upon verification of the report, the
9 department shall compensate the licensee for the animals, at current value on [the effective date of this
10 section], as determined by department rule. The department shall then take possession of the reported
11 animals and may sell and transport the animals out-of-state or otherwise dispose of the animals in a safe
12 and sanitary manner. Any proceeds of the sale must be placed in an appropriate account to offset the costs
13 of compensation.

14 (3) A game farm licensee who ceases operations must, upon request, be compensated by the
15 department for the verifiable cost of fencing that was required as part of the licensed operation, based on
16 the depreciated value of the fencing at the time compensation is requested.

17
18 **NEW SECTION. Section 19. State-tribal cooperation.** (1) The department shall contact a
19 representative of each of the seven Montana Indian reservations to discuss any state-tribal issues that may
20 arise in implementing the phaseout of game farms.

21 (2) The department is encouraged to enter into cooperative agreements, pursuant to Title 18,
22 chapter 11, part 1, with the reservation tribal governments to discuss the issue of game farms and to
23 develop a cooperative approach that will protect wild game populations located on state and reservation
24 lands.

25
26 **NEW SECTION. Section 20. State immunity from suit.** (1) The state of Montana is immune from
27 suit for damages arising from the spread of brucellosis, tuberculosis, or any other communicable disease
28 from a game farm animal to livestock.

29 (2) A cause of action exists for any person or class of persons who is damaged by the spread of
30 a communicable disease from a game farm animal to livestock to bring a suit against the game farm licensee

1 whose animal is found to have been the source of the disease.

2

3 **Section 21.** Section 81-3-102, MCA, is amended to read:

4 **"81-3-102. Recording of brands required -- game farm animals to be marked -- limit.** (1) It is
5 unlawful for a person to artificially brand, mark, or cause to be artificially branded or marked any domestic
6 animal or livestock running at large on the public domain or open range or that may run or stray at large
7 or on the public domain or open range, unless the artificial brand or mark has been recorded or rerecorded
8 with the department in the name of the person within the period of 10 years immediately preceding the
9 branding or marking.

10 ~~(2) Game farm animals, as defined in 87-4-406, exclusive of carnivores and omnivores, must be~~
11 ~~identified by use of a recorded whole herd mark or brand in compliance with the requirements of Title 87,~~
12 ~~chapter 4, and this chapter.~~

13 ~~(3) No more than five brands may be recorded or rerecorded by one person."~~

14

15 **Section 22.** Section 81-3-104, MCA, is amended to read:

16 **"81-3-104. Designation of years for rerecording brands.** (1) Until a system is developed under
17 subsection (2), each 10th year after 1921 is the year for rerecording artificial marks and brands used to
18 distinguish and identify the ownership of domestic animals and livestock. Subject to the provisions of
19 81-3-102~~(3)~~(2), the department shall, on the application of a person or the transferee of the person made
20 in a year that is a year for rerecording marks and brands, rerecord a mark or brand that at the time of the
21 application stands of record in the department in the name of the person. A mark or brand that was not
22 originally recorded or rerecorded in the name of the person during the rerecording year last preceding the
23 date when the application is filed or originally recorded in the name of the person or the person's
24 predecessor or predecessors in interest between the time of the application and the rerecording year last
25 preceding the application is not of record in the department.

26 (2) The department shall develop a system for the staggered recording and rerecording of marks
27 and brands."

28

29 **NEW SECTION. Section 23. Secretary of state to notify tribes.** The secretary of state shall send
30 a copy of Senate Bill No. ___ [LC 0012] to the tribal chairperson of each of the seven Montana reservations.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0173, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the law relating to game farms; placing a moratorium on the issuance of new game farm licenses; phasing out existing game farm operations by January 1, 1997; prohibiting further importation of game farm animals; providing that a game farm license is nontransferable; requiring present game farm license fees to be set commensurate with administrative costs; providing for limited compensation for certain game farm property; revising game farm licensing requirements and penalties; encouraging state-tribal negotiations with regard to game farms and the protection of wild game populations and providing state immunity from suit for damages arising from the spread of disease from a game farm animal to livestock.

ASSUMPTIONS:

1. Game farms will be prohibited after January 1, 1997.
2. The Department of Fish, Wildlife and Parks (FWP) will charge an annual renewal fee that is commensurate with the FWP's administrative costs, as determined by rule. Although \$5,000 in game farm licenses currently is being collected, license costs will increase in order to generate \$100,000 per year which is equal to FWP's projected regulatory costs. There is \$150,000 per year included in the Executive Budget recommendation, and with the prohibition on new game farms, MEPA inspections will be eliminated for a \$50,000 annual savings.
3. FWP will adopt rules to implement the moratorium on the issuance of new game farm licenses and the phaseout of commercial game farm activities, including rules to establish an appropriate amount to be paid for remaining game farm animals and the depreciated value of fencing the cost of which can be verified.
4. Game farms will dispose of 25% of existing animals (projected to be 25% x 3,140) prior to submitting a report to FWP that includes the species, sex, and number of remaining animals. Licensees will request compensation for the remaining animals, and will be compensated at a cost per animal ranging from \$5,000 for an elk to \$500 for a fallow deer or a mountain lion.
5. Costs of compensating game farm owners for verifiable fencing cannot be determined, but the costs could be substantial. Also, it is difficult to project costs for possible temporary holding areas for game farm animals prior to final disposition by FWP.
6. FWP will receive one third of the fair market value when disposing of the acquired game farm animals, because of the large number of being sold in a relatively short period of time. Revenues received will off-set the compensation paid to the game farm owners.
7. FWP will contact the seven Montana Indian reservations and, if appropriate, enter into cooperative agreements on the issue of game farm phaseout. Any costs associated with this state-tribal cooperative activity can be covered by the Executive Budget recommendation in the present law base.
8. The Secretary of State's office will send a copy of SB173 to the tribal chairperson of each of the seven Montana reservations. The costs associated with this mailing can be covered in the agency's present law base budget.
9. A two-thirds vote will be necessary for Section 20, state immunity from suit.

(continued on page 2)

Dave Lewis 1.26.95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

**NOT FOR
DISTRIBUTION**

TERRY KLAMPE, PRIMARY SPONSOR DATE

Fiscal Note for SB0173, as introduced

SB 173

FISCAL IMPACT:

Changes to Present Law Base

	FY96	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Regulatory Costs - decrease	(50,000)	(50,000)
Compensation - increase	<u>0</u>	<u>9,333,870</u>
Total	(50,000)	9,283,870
<u>Funding:</u>		
General License (02)	(50,000)	9,283,870
<u>Revenue:</u>		
Game Farm Licenses (02)	95,000	0
Sale of Game Farm Animals (02)	0	3,300,000

Net Impact:

Game farm regulatory costs funded with general license account dollars will decrease by \$50,000 in each year of the biennium.

In FY96, game farm license fees will increase to an amount that equals the administrative costs. The administrative costs will be \$100,000 in FY96 and \$5,000 currently is being received in fee revenue, so an additional \$95,000 of revenue will be received to cover the costs. This will be a funding switch, as the budget currently is funded with \$5,000 game farm licenses and \$95,000 general license account dollars.

In FY97, administrative costs associated with game farm activities still will be budgeted at the \$100,000 level, but funded with general license account dollars, because game license fees are due on January 1, 1997, the same effective date as this bill.

In FY97, \$9,333,870 of general license account funds will be used to compensate the game farms for the animals. This will be off-set by approximately \$3,300,000 of revenue when FWP sells the animals, for a net cost to the general license account of \$6,033,870.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

According to the Department of Revenue, game farm elk are assessed as purebred cattle at a value of \$1009 for a bull elk and \$504 for a cow elk. Deer are valued at \$444. Depending on the future property use, local government revenues could increase or decrease.