



**House  
Legislative  
Analysis  
Section**

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Senate Bill 374 (Substitute H-2) **RECEIVED**  
First Analysis (6-22-88)

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Sponsor: Sen. Harry Gast  
Senate Committee: Natural Resources and  
Environmental Affairs Mich. State Law Library  
House Committee: Tourism & Recreation

### **THE APPARENT PROBLEM:**

The Game Law of 1929 serves as the foundation upon which the state provides for the management, taking, and possession of game and protected animals in the state. The Game Law has been amended on many occasions since its enactment, resulting in a current patchwork of laws and regulations. Under the Game Law, game are managed both by statutory provision and by Natural Resources Commission rules. It is felt that the current situation is both inefficient and confusing because some game regulations are set by laws passed by the legislature and others are set by rule of the commission. It has been proposed that the current game laws be recodified in a way that would provide a more consistent and efficient management of the state's wildlife resources.

### **THE CONTENT OF THE BILL:**

The bill would create the Wildlife Conservation Act and provide that all animals found in the state would be considered property of the people of the state. The bill would require the Natural Resources Commission to manage the taking of the animals of the state, provide for the commission to issue orders to replace the Game Law, which would be repealed under the bill, and provide penalties for violation of the bill's provisions.

Commission Orders. The bill would permit the Natural Resources Commission to issue orders to regulate the management, taking, and possession of game and protected animals in the state. The commission could issue draft orders or orders to do all of the following:

- make recommendations to the legislature regarding animals that should be added or deleted from the category of game;
- determine the kinds of animals that could be taken;
- determine what animals would be protected from being taken; establish open seasons for taking or possessing game, except as provided in the bill for game for which taking was not authorized before 1988;
- establish lawful methods of taking game;
- establish lawful methods of taking game for persons who had certain handicaps;
- establish bag limits;
- establish areas where certain regulations could apply to the taking of animals;
- determine conditions under which permits could be issued by the director of the Department of Natural Resources (DNR);
- establish fees for the issuing of permits by the director;
- regulate the hours during which animals could be taken;
- require that a person involved in a chase of an animal have a valid license that would authorize the taking of that animal in his or her possession;
- establish conditions under which animals taken or possessed outside of the state could be imported into the state;
- regulate the buying and selling of animals and parts of animals; and

- establish methods of taking animals that are primarily taken because of the value of their pelts, which would supplement the lawful methods of taking such animals that existed on the effective date of the bill.

Only the legislature could designate a species as game. If an animal was designated as game by the legislature, then only the legislature could authorize the establishment of the first open season for the animal. After the legislature authorized the establishment of the first open season for game, the commission could issue orders pertaining to the animal for purposes listed in the bill.

Procedures for Issuing an Order. When issuing an order, the commission would have to comply with the procedure set forth in the bill. The commission would also be required to issue orders in a manner that would assure adequate public notice and opportunity for public comment and due regard for traditional methods and practices that were lawful prior to the effective date of the bill.

Under the bill, a draft order would be prepared by the director after comments from DNR field personnel and interested persons had been solicited and considered. A draft order would be on the commission agenda for at least one month prior to its consideration by the commission. The commission would have to provide an opportunity for public comment. Except as otherwise provided in the bill, the commission would have to provide a copy of each draft order to each member of the Senate Natural Resources and Environmental Affairs Committee, the House Conservation and Environment Committee and the House Tourism and Recreation Committee. Committee members would have 30 days to review and submit comments to the commission regarding a draft order. This provision would not apply to an order that did not alter the substance of an existing statute, rule, regulation or order. The commission would have approve, reject, or modify the draft order. The director of the DNR could modify a commission order by issuing an interim order consistent with federal regulations when the director determined that animals were at risk of being depleted or extirpated, or an animal was threatening public safety or inflicting damage to horticulture, agriculture, or other property. The bill would require the director to publicize an interim order in a way to ensure that interested persons were provided notice of the interim order, the reasons for the order, and the proposed effective date of the order. In addition, the bill would require the director to provide a copy of an interim order to each member of the Senate Natural Resources and Environmental Affairs Committee, the House Conservation and Environment Committee and the House Tourism and Recreation Committee. An interim order could not be in effect for longer than six months.

Replacement of the Game Law. The bill would require the commission to issue orders it considered sufficient to replace the Game Law by January 1, 1990. The orders would have to be filed with the secretary of state's office

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and indicate that they were intended to result in the repeal of the Game Law and would become effective upon filing with the secretary of state's office.

Game Animals. The bill would allow the commission to make recommendations to the legislature regarding animals that would be added or deleted from the category of game. The category of game animals would include all of the following animals:

Badger	Moose
Bear	Muskrat
Beaver	Opossum
Bobcat	Otter
Brant	Pheasant
Coots	Quail
Coyote	Rabbit
Crow	Raccoon
Deer	Ruffed Grouse
Duck	Sharptail Grouse
Elk	Skunk
Fisher	Snipe
Florida Gallinule	Sora Rail
Fox	Squirrels
Geese	Weasel
Hare	Wild Turkey
Hungarian Partridge	Woodchuck
Marten	Woodcock
Mink	Virginia Rail

Transporting Game or Weapons. The bill would require the sex and species of an animal to be readily identifiable (unless the game had been cleaned at a hunting preserve) and tagged as required by law if game were transported. This provision would not apply to skins, pelts, or hides of game that were lawfully taken or legally possessed. A person would be prohibited from taking an animal from, in or upon a vehicle, except as provided in the bill or in commission order. A person could not transport or have in possession a firearm in or upon a vehicle, unless the firearm was unloaded in both barrel and magazine and enclosed in a case, carried in the trunk of a vehicle, or unloaded in a motorized boat. The bill would prohibit a person from transporting or possessing a bow in or upon a vehicle unless the bow was unstrung, enclosed in a case, or carried in the trunk of a vehicle. In addition, a person could not intentionally interfere in any manner with the lawful taking of game by another person, nor could a person hunt or discharge a firearm within 150 yards of an occupied building, dwelling, house, residence, cabin, or any barn or other building used in connection with a farm operation without obtaining the written permission of the owner, renter, or occupant of the property.

Use of Artificial Light. A person could not use an artificial light in taking game or in an area frequented by animals, or in a field, woodland, or forest while having a bow or firearm or other weapon unless otherwise permitted by law or the commission. A licensed hunter could use an artificial light one hour before and one hour after shooting hours while in possession of any unloaded firearm or bow and traveling afoot to and from his or her hunting location. A person could not use artificial light from December 1 to October 31 between the hours of 11:00 p.m. and 6:00 a.m. for the purpose of locating animals, except as allowed by commission order. From November 1 to November 30, a person could not use artificial light for the purpose of locating animals, except as permitted by commission order or by law. This provision would not apply to the following:

- a peace officer while in the performance of the officer's duties;

- a person operating an emergency vehicle in an emergency;
- an employee of a public or private utility while working in the scope of his or her employment;
- a person operating a vehicle with headlights in a lawful manner upon a street, highway, or roadway;
- a person using an artificial light to identify a house or mailbox number;
- the use of artificial lights to conduct a game census by the DNR; and
- a person using an artificial light from November 1 to November 30 on property owned by the person or by a member of the person's immediate family.

The operator of a vehicle from which artificial light had been cast in a clear attempt to locate game would have to immediately stop the vehicle upon the request or signal of a uniformed peace officer.

Special Permits for Disabled Hunters. The director of the DNR could issue a permit to a person who was unable to walk that would authorize the person to take game during the open season for the game from a standing vehicle if that person held a license to take the game, and complied with all other laws and rules for the taking of game. A permit could also be issued to a person who was permanently disabled and who had full use of only one arm and who upon investigation was unable to hold, aim, and shoot a bow. The permit would authorize the person to take game during the open season for that game with a bow that had been modified so that the bow could be held, aimed, and shot with one arm, as long as the person held a license to take the game and complied with all other laws and rules for the taking of game.

Other Permits. The director of the DNR could also issue several other permits authorizing one or more of the following:

- the taking or possession of animals for the purpose of rehabilitating animals;
- the taking of animals to prevent or control damage and nuisance caused by the animals;
- the collection, transportation, possession, or disposition of animals, and parts of animals, for scientific purposes;
- the public exhibition of animals;
- taxidermy; and
- the disposition of accidentally or unlawfully taken or injured animals, or animals that were unlawfully possessed.

A permit issued for the purposes listed above could be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended according to the Administrative Procedures Act. If the holder of a permit was convicted of violating this provision, his or her permit or license could be revoked and any animal and the parts of any animal in his or her possession would have to be disposed of in a manner approved by the director of the DNR. All fees received for permits and licenses issued under this provision would be forwarded by the DNR to the state treasurer to be credited to the Game and Fish Protection Fund.

Clothing Requirements. A person could not take any game during the established daylight shooting hours from August 15 through April 30 unless the person wore a hat, vest, jacket, or rain gear of the highly visible color commonly referred to as hunter orange. Hunter orange would include blaze orange, flame orange, or fluorescent blaze orange, and camouflage that was not less than 50 percent hunter orange. The garments made up of hunter orange would be the hunter's outermost garment and have to be visible from all sides of the hunter. This requirement would not apply to a person engaged in hunting with a bow during

archery deer season, the taking of waterfowl, crow, or turkey. The failure of a person to comply with this provision of the bill would not be treated as evidence of contributory negligence in a civil action for injury to the person or for the person's wrongful death.

**Violations and Fines.** The possession of the parts of any game or protected animal would be prima facie evidence that the animal was taken in violation of the bill in all prosecutions for violations of the bill, a commission order, or an interim order, except when the taking was permitted. A person who violated the bill would be punished by imprisonment for not more than 90 days, or a fine of not less than \$50, nor more than \$500, or both, and the costs of prosecution. In addition, a permit issued by the director would have to be revoked as provided under the Administrative Procedures Act. A person who violated the bill in regard to the possession or taking of all game, except deer, bear, wild turkey, moose, or elk, would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not less than \$100, nor more than \$1,000, or both, and the costs of prosecution. A person who violated the bill in regard to the possession or taking of deer, bear, or wild turkey would be guilty of a misdemeanor punishable by imprisonment for not less than five days, nor more than 90 days, and a fine of not less than \$200, nor more than \$1,000, and the costs of prosecution. A person who violated the bill in regard to the possession of or taking of elk would be guilty of a misdemeanor punishable by imprisonment for not less than 30 days, nor more than 180 days, or a fine of not less than \$500, nor more than \$2,000 or both, and the costs of prosecution. A person who violated the bill in regard to the possession or taking of a moose would be guilty of a misdemeanor punishable by imprisonment for not less than 90 days nor more than one year, and a fine of not less than \$1,000, nor more than \$5,000, and the costs of prosecution.

A person who violated the bill in regard to the taking or possession of a protected animal would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less \$100 nor more than \$1,000, or both, and the costs of prosecution. A person who bought or sold game or a protected animal in violation of the bill would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$1000, or both, for the first offense, and would be guilty of a felony for each subsequent offense.

A person who violated the bill by using artificial light to locate an animal while possessing a bow, firearm or other weapon capable of firing a projectile would be guilty of a misdemeanor punishable by imprisonment for not less than five days nor more than 90 days, or a fine of not less than \$100 nor more than \$500, or both, and the costs of prosecution. A person who violated the bill in regard to using artificial light to locate animals from December 1 to October 31 between 11:00 p.m. and 6:00 a.m. or from November 1 to November 30, would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$50 nor more than \$500, or both, and the costs of prosecution. A person who was in operation of a vehicle from which light had been cast to locate animals and who failed to stop his or her vehicle upon the request of a peace officer would be guilty of a misdemeanor punishable by imprisonment for not less than five days nor more than 90 days, and a fine of not less than \$100 nor more than \$500, and the cost of prosecution.

**License Suspensions.** A person who was sentenced for a violation of deer, bear, wild turkey, elk, moose or protected game provisions of the bill, or for the buying or selling of game, would be prohibited from securing or possessing a license to hunt during the remainder of the year of conviction, and the next three years. A person who was sentenced for using artificial light while possessing a bow, firearm or other weapon capable of shooting a projectile would be prohibited from possessing a license to hunt during the remainder of the year of conviction and the next year.

**Repeat Offenders.** When a person was convicted of a violation under the bill and the person had previously been convicted two times within the preceding five years for a violation, the person would be guilty of a misdemeanor punishable by imprisonment for not less than 10 days, nor more than 180 days, and a fine of not less than \$500 nor more than \$2,000, and the costs of prosecution.

**Restitution.** In addition to the penalties provided in the bill and the Endangered Species Act, a person convicted of the illegal killing, possessing, purchasing, or selling of game or protected animals would have to reimburse the state for the value of the game or protected animal as follows:

- \$1,500 per animal for bear, elk, hawk, moose, or any animal on the endangered species list;
- \$1,000 per animal for deer, owl, wild turkey;
- not less than \$100 nor more than \$500 per animal for all other game; and
- \$100 per animal for other protected animals.

If two or more defendants were convicted of the illegal killing, possessing, purchasing, or selling of game or protected animal, the reimbursement prescribed in the bill would be declared against them jointly. If a defendant failed to pay the sum ordered by the court to be reimbursed upon conviction, the court would either impose a sentence and, as a condition of the sentence, require the defendant to pay the reimbursement in the amount prescribed and fix the manner and time of payment, or make a written order permitting the defendant to pay the sum to be forfeited in installments. If a defendant defaulted in payment of the sum of the reimbursement or of an installment, the court on motion of the DNR or upon its own motion, could require the defendant to show cause why the default should not be treated as a civil contempt, and the court could issue a summons or warrant of arrest for his or her appearance. Unless the defendant showed that the default was not due to an intentional refusal to obey the order of the court, or a failure to make a good faith effort to obtain the funds required for the payment, the court would have to find that the default constituted civil contempt. If it appeared that the defendant's default in payment did not constitute civil contempt, the court could enter an order allowing the defendant additional time for payment, reducing the amount of the reimbursement or of each installment, or revoking the sum or the unpaid portion of the sum, in whole or in part. A court receiving reimbursement damages would remit the damages to the county treasurer who would deposit the damages with the state treasurer who would deposit the damages in the Game and Fish Protection Fund.

**Other Provisions.** The bill would prohibit a person from taking, releasing, transporting, selling, buying, or having in his or her possession game or any protected animal or parts of any game or protected animal from the state or outside the state, except as provided in the bill. The bill would specify that this provision should not be construed

to enhance the commission's powers to establish an open season for an animal that was not a game animal or to give the commission the power to designate a species as game.

The provisions of the bill detailing definitions of terms, issuance of commission orders, and designation of game by the legislature would take effect October 1, 1988. The repeal of the Game Law would take effect when the commission orders, required under the bill, were filed with the secretary of state and became effective as would the remaining provisions of the bill designed to replace the Game Law.

### **HOUSE COMMITTEE ACTION:**

The House Committee on Tourism & Recreation amended the Senate version of the bill to change the amounts of certain fines and the dates of provisions regarding clothing requirements and artificial light restrictions.

### **FISCAL IMPLICATIONS:**

According to the Department of Natural Resources, the bill would have no significant fiscal implications to the state. (6-16-88)

### **ARGUMENTS:**

#### **For:**

The bill would make the way in which game laws and regulations are administered in the state more efficient. Currently, some of the game laws and regulations are set by the legislature and some are set by the commission, resulting in a hodgepodge of shared responsibilities. For instance, if a hunting season for pheasants in a particular area of the state needed to be closed in order to give a low pheasant population time to repopulate, it would take an act of the legislature to change or close that season. However, there are other situations under current law in which the commission can identify a problem and would have the authority to rectify the problem. The bill would perfect this system by giving the commission the authority to set bag limits, and regulate game rules as it sees fit, through the recommendations of its biologists and conservation officers in the field.

#### **Against:**

Since a law enacted by the legislature takes precedence over an administrative rule under the State Constitution, the constitution guarantees that all policy regarding wildlife in the state will be determined by duly elected representatives of the citizens, not by appointed officials. Elected officials are more responsive to public sentiment and consequently base decisions pertaining to wildlife on the desires of the majority of their constituents. Under the bill, the legislature would retain the authority to set seasons and takeable game. However, the commission would set bag limits and regulate all other factors involving game. The commission is composed of appointed officials and can be swayed by vocal hunting or trapping groups. The bill would deprive the citizens of the state of their right to have their opinions concerning the regulation of the state's wildlife given proper consideration by the legislature.

**Response:** The bill represents an attempt to have the best informed people, those who are actually in the field, advise the commission on what rules should be established to manage game in the state. The commission, in issuing or modifying an order, would have to submit the order to the appropriate standing committees of the legislature whose members would be responsive to constituent needs and desires and would make recommendations back to the commission on any changes that should be made.

### **Against**

The bill should give the commission, not the legislature, the authority to determine what species should be taken. Under the bill, the legislature establishes game and the commission supplies the methods by which the game may be taken. The bill will continue the inconsistency of authority that has been a problem for years. It would be more efficient to give the entire responsibility of managing game to the commission.

**Response:** If the responsibility of managing game is turned over to the commission, the legislature and the citizens of the state will have no say over which game is taken.

### **Against:**

The bill should not classify fur-bearing animals, such as skunk, opossum, and weasel, as game animals. Usually, giving an animal game status signifies that the animal is a great challenge to match wits with and to take. Many fur-bearing animals do not fit this description. Animals that are often referred to as "nuisance animals," such as the starling, or the English Sparrow, are not listed as game animals, and neither should fur-bearers. A separate classification of nuisance animals and fur-bearers should be established by the bill.

### **POSITIONS:**

The Department of Natural Resources supports the bill. (6-16-88)