

**SFA**

BILL ANALYSIS

MAR 05 1988

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Michigan State Law Library

**Senate Bill 374 (Substitute S-1 as passed)****Sponsor: Senator Harry Gast****Committee: Natural Resources and Environmental Affairs****Date Completed: 2-1-88****RATIONALE**

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. Some game species are established in statute, as are some season designations and bag limits, while others are set by the Commission. Some feel that it is both inefficient and confusing to have State game regulations set in some instances by laws passed by the Legislature and in other instances 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.

**CONTENT**

The bill would create the "Wildlife Conservation Act". Under the bill, all animals found in the State would be considered property of the people of the State, and the Natural Resources Commission would be required to manage the taking of animals of the State. The bill would do the following:

- Permit the Natural Resources Commission to issue orders to regulate the management, taking, and possession of game and protected animals in the State.
- Provide for the procedures under which orders by the Commission would be made.
- Require the Commission to issue orders sufficient to replace the Game Law of 1929, which would be repealed under the bill.
- Establish the category of game animals and the procedure for adding an animal to the category.
- Provide for hunting regulations concerning the transporting of game or weapons, use of artificial light, permits for disabled persons and others, and clothing requirements.
- Provide for violations and penalties.

**Orders Issued by the Commission**

In managing animals of 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 are 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 may 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 in his or her possession a valid license that would authorize the taking of that animal.
- 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.
- 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.

If an open season were to be established for game listed above for which no authority to permit taking existed on December 31, 1987, the open season for that animal would have to be established by the Legislature. After the Legislature established an open season, the Commission could issue orders pertaining to that animal.

**Procedures for Issuing An Order**

In issuing an order, the Commission would have to comply with the following procedure in a manner that would assure adequate public notice and opportunity for public comment:

- A draft order would have to be prepared by the Director after comments from DNR field personnel and interested persons had been solicited and considered.
- The draft order would have to 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 Tourism and Recreation Committee. The Committee members would have 30 days to review and submit comments to the Commission regarding a draft order. This part of the bill would not apply to a draft order that did not alter the substance of an existing statute, rule, regulation or order.

**OVER**

- The Commission would have to approve, reject, or modify the draft order.

The Commission could revise an order and would have to do so within the same procedure as in first forming a draft order.

The Director of the DNR could modify a Commission order by issuing an interim order consistent with Federal regulations or as necessary when he or she determined that animals were at risk of being depleted or extirpated, or the animal was threatening public safety or inflicting damage to horticulture, agriculture, or other property. The Director would have to publicize an interim order in a way that insured that interested persons were provided notice of the interim order, the reasons for the order, and the proposed effective date of the order. An interim order could not be in effect for longer than six months.

#### Replacement of the Game Law of 1929

Not later than January 1, 1990, the Commission would be required to issue orders that the Commission considered sufficient to replace the Game Law of 1929. The orders would have to be filed with the Secretary of State and indicate that the orders would be intended to result in the repeal of Public Act 286 of 1929 and was effective upon filing with the Secretary of State.

#### Game Animals

In managing the animals of the State, the Commission could make recommendations to the Legislature regarding animals that should be added or deleted from the category of game.

The category of game animals would consist of all of the following animals:

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

#### Transporting of Game or Weapons

If game were transported, the sex and species of the animal would have to be readily identifiable and be tagged as required by law, except for skins, pelts, or hides of animals that were lawfully taken or legally possessed.

Except as otherwise provided in the bill, a person could not take an animal from in or upon a vehicle or not transport or have in possession a firearm in or upon a vehicle, unless the firearm was unloaded in both barrels and magazine and enclosed in a case, carried in a trunk or unloaded in a motorized boat.

Except as otherwise provided in the bill, a person could not transport or have in possession a bow in or upon a vehicle, unless the bow was unstrung, or enclosed in a case.

In addition, a person would be prohibited from doing any of the following:

- Intentionally interfere in any manner with the lawful taking of game by another person.
- Hunt or discharge a firearm within 150 yards of an occupied building, dwelling, house, residence, or 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

Except as otherwise permitted authorized by the Commission, a person could not use an artificial light in taking game or in an area frequented by game or nongame animals, or in a field, woodland, or forest while having a bow or firearm or other weapon unless otherwise permitted by law. 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 hunting location.

Except as otherwise permitted by an order of the Commission, a person shall not use artificial light from January 1 to September 30 between the hours of 11:00 p.m. and 6:00 a.m. for the purpose of locating animals. From October 1 to December 31, a person could not use artificial light for the purpose of locating animals, except as otherwise permitted by an order of the Commission. This would not apply to any of 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 used to conduct a game census by the DNR.

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

#### Special Permit for Disabled Hunters

The Director or his or her authorized representative could issue a permit to a person who was unable to walk to authorize the person to take game during the open season for that game, including deer of either sex, from a standing vehicle if that person held a license to take that 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 to authorize the person to take game during the open season for that game with a bow that had been modified so that the bow may be held, aimed, and shot with one arm, if that person held a license to take that game and complied with all other laws and rules for the taking of game.

#### Other Permits

The Director or his or her authorized representative could issue permits authorizing all 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.

A permit issued under this part of the bill could be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended pursuant to the Administrative Procedures Act.

If the holder of a permit was convicted of violating this part of the bill, 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.

All fees received for permits and licenses issued under this part of the bill would have to 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 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% hunter orange. The garments made up of hunter orange would have to 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, unless the Commission determines there was a significant safety hazard. In such a case, the Commission could require a person engaged in these activities to wear hunter orange.

#### Game Animal Violations

In all prosecutions for violations of the bill, a Commission order, or an emergency order of the Director, the possession of the parts of any game or protected animal, except when the taking is permitted by the bill, would be prima facie evidence that the animal was taken in violation of the bill by the person possessing the animal.

A violator would be punished by imprisonment for not more than 90 days, or a fine of not less than \$50, nor more than \$250, or both, and the costs of prosecution. In addition, a permit issued by the Director would have to be revoked pursuant to the Administrative Procedures Act.

A person who was a violator in regard to the possession or taking of all game, except deer, bear, wild turkey, moose, or elk, would be guilty of a misdemeanor, and would have to be punished 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 was a violator in regard to the possession of deer, bear, or wild turkey would be guilty of a misdemeanor, and would have to be punished by imprisonment for not less than 5 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 was a violator in regard to the possession of or taking of elk would be guilty of a misdemeanor, and would have to be punished 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 was a violator in regard to the possession or taking of a moose would be guilty of a misdemeanor, and would have to be punished 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 was in violation by using artificial light from

a vehicle to locate animals would be guilty of a misdemeanor, and would have to be punished 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 was a violator in regard to using artificial light to locate animals from January 1 to September 1 between 11:00 p.m. and 6:00 a.m. or from October 1 to December 31, would be guilty of a misdemeanor and would have to be punished by imprisonment for not more than 90 days or a fine of not less than \$50, nor more than \$300, or both, and the costs of prosecution.

A person who failed to stop his or her vehicle, upon the request of a peace officer from which light had been cast to locate animals, would be guilty of a misdemeanor and would have to be punished 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.

A person who was a violator in regard to the taking or possession of a protected animal would be guilty of a misdemeanor, and would have to be punished by imprisonment for not more than one year or a fine of not more than \$2,000, 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, and would have to be punished 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.

#### 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, could not possess 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 from a vehicle to locate animals could not possess 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 and that person had been previously convicted two times within the preceding five years for a violation, the person would be guilty of a misdemeanor, and would have to be punished 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

A person who willfully and maliciously destroyed or injured the plant life, soil, structure, or fence of another person when committing a violation, would be guilty of a misdemeanor and would have to make restitution to a person for any damage resulting from the violation.

In addition to the penalties provided, 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:

- Elk, moose, and wolf, \$1,500 per animal.
- Deer, bear, wild turkey, hawk, owl, and eagle, \$1,000 per animal.
- Other game, \$75 per animal.
- Other protected animals, \$100 per animal.

If two or more defendants were convicted of the illegal killing, possessing, purchasing, or selling of game, the

forfeiture prescribed would be declared against them jointly. If a defendant failed to pay upon conviction the sum ordered by the court to be forfeited, the court would have to either impose a sentence and, as a condition of the sentence, require the defendant to pay the forfeiture 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 at those times and in those amounts that, in the opinion of the court, the defendant was able to pay.

If a defendant defaulted in payment of the sum forfeited 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 a 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 forfeiture or of each installment, or revoking the forfeiture or the unpaid portion of the forfeiture, in whole or in part.

A default in the payment of the forfeiture or an installment payment could be collected by any means authorized for the enforcement of a judgment under the Revised Judicature Act.

A court receiving forfeiture damages would remit the damages to the County Treasurer who would have to deposit the damages with the State Treasurer who would deposit the damages in the Game and Fish Protection Fund.

#### Other Provisions

A person could not take, release, transport, sell, buy, or have 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 specifies that this provision should not be construed to enhance the commission's powers to establish a season for an animal that was not a game animal or to give the commission the power to designate a species as game.

Public Act 286 of 1929 (MCL 311.1 to 315.5) would be repealed when the Commission orders required under the bill were filed with the Secretary of State and became effective.

The parts of the bill concerning definitions of terms, issuance of Commission orders, and the repeal of the Game Law of 1929 would take effect January 1, 1988. The remaining parts of the bill would take effect when the Commission orders, required under the bill, were filed with the Secretary of State and became effective.

### **FISCAL IMPACT**

This bill would not have any significant fiscal impact to the State. The cost of administration should be approximately the same as for implementation of the Game Law of 1929. There is a slight increase in penalties that would be revenue for libraries. There is a slight increase in restitution costs which should be offset by the deterrent effect of the increase in penalties and restitution. There would be an indeterminable effect (presumably increase) on revenues from permit fees which would be established by the Commission.

## **ARGUMENTS**

### ***Supporting Argument***

The bill would make more efficient the way in which game laws and regulations are administered in the State. Under the situation that we have now, part of the game laws and regulations is set by the Legislature and part by the Commission, resulting in a hodgepodge of shared responsibilities. For instance, a hunting season for pheasants in a particular area of the State, according to the Commission, might need to be closed in order to give a low pheasant count time to repopulate. But since the current Game Law gives the Legislature the authority to set the season on pheasants, it would take an act of the Legislature to change or close that season. There are other situations, however, under current law, in which the Commission can both identify a problem and have the authority to rectify it. The bill would perfect this system by giving the Commission the authority it deserves to set seasons, bag limits, and regulate game rules as it sees fit, through the recommendations of its biologists and conservation officers in the field.

### ***Opposing Argument***

Because 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 our wildlife on the desires of the majority of their constituents, rather than being duly influenced by the wishes of the hunting and trapping minority, as the Commission often is. Therefore, under the bill, the Legislature should retain the authority to set seasons, bag limits, and methods of taking animals. The bill would transfer this authority to the Commission which is comprised totally of appointed officials. The bill would deprive the citizens of the State to have their opinions regarding the State's wildlife given proper consideration by the Legislature.

**Response:** The Legislature would retain the authority to set the open season for an animal for which the Commission could not permit taking before 1988. Furthermore, 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 in tune with constituent needs and desires and would make recommendations back to the Commission on any changes that should be made. An important safeguard would be that, if in the opinion of the standing committees, the Commission failed in the administration of its responsibility under the bill, the Legislature could use the power to enact law to overrule any order that was set by the Commission. The bill would not give up this legislative authority which is guaranteed under the State Constitution.

### ***Opposing Argument***

The bill should give the Commission, not the Legislature, the authority to determine what species should be taken. Otherwise, there would be a situation in which the Commission supplied the methods by which game could be taken and the Legislature established what the game would be. This would 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.

***Opposing Argument***

The Game Law of 1929 should not be rewritten and repealed, but should be retained. It is a compilation of laws that have been passed by experience and time. If there is to be a new law, the bill should be drafted completely, not in such a way as to allow the Commission to formulate the rules after the bill's passage. A bill drafted with full details regarding the regulation of game could then be presented for discussion at public hearings, and after scrutiny by the Legislature, could be either passed or rejected.

***Opposing Argument***

The bill should not classify fur-bearing animals, such as skunk, opossum, and weasel, as game animals. Usually, giving an animal the status of game animal signifies that the animal is a great challenge to take and match wits with. Fur-bearers 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 with game animals, and neither should fur-bearers be. A separate classification of game animals and fur-bearers should be established by the bill.

Legislative Analyst: S. Margules

Fiscal Analyst: A. Rich

---

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.