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BILL ANALYSIS

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**Senate Bill 374 (as enrolled)**

Sponsor: Senator Harry Gast

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Tourism and Recreation

Date Completed: 7-12-88

***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- Require the Commission to issue orders sufficient to replace the Game Law of 1929, which would be repealed under the bill.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 authorize only the Legislature to designate an additional animal as game.
- 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.

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

**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 to 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 authorized by the Legislature for newly designated game.
- 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 in his or her possession a valid license that authorized 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 this provision.

Only the Legislature could designate a species as game. If an animal were designated game, the Legislature—and only the Legislature—could authorize the first open season for that animal. After the Legislature established an open season, the Commission could issue orders pertaining to that animal for the purposes listed above.

**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, opportunity for public comment, and due regard for traditional methods and practices that were legal before the bill took effect:

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- 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 before the Commission considered it.
- 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 and House standing committees that consider legislation pertaining to conservation, environment, recreation, tourism, and natural resources. 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.
- The Commission would have to approve, reject, or modify the draft order.

The Commission could revise an order and would have to follow the same procedure for issuing 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 that an 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 notified of the interim order, the reasons for it, and its proposed effective date. Interim orders also would have to be given to the legislative committees that received draft orders. 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 it considered sufficient to replace the Game Law of 1929. The orders would have to be filed with the Secretary of State and indicate that they were intended to result in the repeal of Public Act 286 of 1929 and would become 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 to or deleted from the category of game.

"Game" would mean any of the following animals:

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

#### Transporting Game or Weapons

If game were transported, the sex and species of the game would have to be readily identifiable unless the game had been cleaned at a hunting preserve and tagged as required by law. This provision would not apply to skins, pelts, or hides of game taken lawfully or legally possessed.

Except as otherwise provided in the bill, a person could not take an animal from in or upon a vehicle or transport or possess 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.

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, or carried in the trunk of a vehicle. In addition, a person would be prohibited from doing any of the following:

- Intentionally interfering in any manner with the lawful taking of game by another person.
- Hunting or discharging 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 authorized by the Commission, 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 possession or control of 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 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. From November 1 to November 30, a person could not use artificial light for the purpose of locating animals, except as otherwise permitted by law or Commission order. 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 light to conduct a census by the DNR.
- A person using artificial light in November on property owned by the person or 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 stop the vehicle immediately 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 or upon 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 also could 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 could 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 any of the following:

- Taking or possessing animals for the purpose of rehabilitating them.
- Taking animals to prevent or control damage and nuisance caused by them.
- Collecting, transporting, possessing, or disposing of animals, and parts of animals, for scientific purposes.
- The public exhibition of animals
- Taxidermy.
- Disposing of accidentally or unlawfully taken or injured animals, or illegally possessed animals.

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 were 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 from August 15 through April 30 unless the person wore a cap, 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 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. A person's failure to comply with these provisions could not be treated as evidence of contributory negligence in a civil action for the person's injury or wrongful death.

#### 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 was 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.

Except as described below, a violator would be subject to 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 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, 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 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 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 December 1 to October 31 between 11:00 p.m. and 6:00 a.m. or during November, 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 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 or an endangered species would be guilty of a misdemeanor, and would have to be punished by imprisonment for not more than 90 days, a fine of not less than \$100 and not 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, and would have to be punished by imprisonment for not more than 90 days, or a fine of not more than \$1,000, 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

In addition to the penalties described above and the penalties provided for in 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:

- Elk, bear, moose, hawk, and wolf, \$1,500 per animal.
- Deer, wild turkey, and owl, \$1,000 per animal.
- Other game, not less than \$100 or more than \$500 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 or protected animals, 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 either would have to 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 would have to 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 have to remit the damages to the county treasurer who would have to deposit them with the State Treasurer for deposit in the Game and Fish Protection Fund.

#### Repeal/Effective Dates

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, legislative designations of game, and effective dates would take effect October 1, 1988. The remainder 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 on 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 indeterminate effect (presumably increase) on revenues from permit fees which would be established by the Commission.

#### **ARGUMENTS**

##### ***Supporting Argument***

The bill would improve the efficiency with which game laws and regulations are administered in the State. Under the situation that we have now, some of the game laws and regulations are set by the Legislature and some 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 allow 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 under current law, however, 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 requires to set seasons and bag limits, and regulate game rules as it sees fit, through the recommendations of its biologists and conservation officers in the field. At the same time, only the Legislature could designate additional animals as game.

##### ***Opposing Argument***

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 our wildlife on the desires of the majority of their constituents. The Commission, on the other hand, often is influenced by the wishes of the hunting and trapping minority. Therefore, the Legislature should retain the authority to set seasons, bag limits, and methods of taking animals. The bill, however, would transfer this authority to the Commission, which is composed totally of appointed officials and may be swayed by vocal hunting and trapping groups. As a result, the bill would deprive the citizens of this State of their right 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 the Legislature designated as game. 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 who would make recommendations to the Commission on any changes that should be made. If, in the opinion of the standing committees, the Commission failed in the performance of its responsibilities, the Legislature could use its power to enact law to overrule any Commission order.

### ***Opposing Argument***

The bill should give the Commission, not the Legislature the authority to determine what species should be taken. Otherwise, there still 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 simply perpetuate 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 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 it 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.

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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.