

ALLOW NRC TO DESIGNATE GAME

House Bill 5478 (Substitute H-3) First Analysis (12-6-01)

Sponsor: Rep. Cameron Brown
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Under the Natural Resources and Environmental Protection Act (NREPA), the Natural Resources Commission (NRC) regulates the “taking” of game. However, the NREPA says, *“Only the legislature may designate a species as game. If an animal is designated under this section by the legislature as game, then only the legislature may authorize the establishment of the first open season for that animal. After the legislature authorizes the establishment of the first open season for game pursuant to this section, the department [of natural resources] may issue orders pertaining to that animal for each of the purposes listed in section 40107.”* (MCL 324.40110). In addition, Section 40113a of the NREPA, which implements Ballot Proposal G of 1996, specifically states that the Natural Resources Commission (NRC) “shall have the exclusive authority to regulate the taking of game as defined in section 40103 in this state.” That is, the language says nothing about giving the NRC the authority to designate game but instead gives the commission the exclusive authority to regulate the *taking* of game as statutorily defined. Some believe that the Proposal G should also have given the NRC authority to designate game, and that the act is ambiguous in its division of powers. Accordingly, legislation has been introduced to transfer the authority to designate game from the legislature to the NRC.

THE CONTENT OF THE BILL:

House Bill 5478 would amend Part 401 of the Natural Resources and Environmental Protection Act (NREPA), concerning wildlife conservation, to allow the Natural Resources Commission (NRC) to designate a species as game (currently, the act specifies only that the NRC has authority to regulate the taking of game).

NRC Authority. Currently, Part 401 of the NREPA specifies that only the legislature may designate a species as game (MCL.324.40110). House Bill 5478 would repeal this provision, and would specify,

instead, that the Natural Resources Commission (NRC) could designate game.

NRC Orders. The bill would specify that the NRC could issue orders designating an animal as game, reversing such a designation, or deleting an animal from the list of game animals. However, the commission would have to hold at least two public meetings before issuing such an order. Under the bill, each such meeting would have to be held after six p.m. on a weekday, or between ten a.m. and four p.m. on a Saturday or Sunday, and also would have to be held more than 50 miles from the City of Lansing.

Exceptions. Despite the provision to allow the NRC to designate game species, the bill would specify that the legislature reserved the authority to amend the act to designate by statute whether or not certain animals were game.

Definitions. House Bill 5478 would extend the current definition of “game” to exclude any animal deleted from the current list of game animals by the NRC or by the legislature.

Other provisions. House Bill 5478 would also include a “registered Cervidae livestock facility” under the act. [“*Cervidae species*” is defined under the Privately Owned Cervidae Producers Marketing Act (MCL 287.952) to include deer, elk, moose, reindeer, and caribou; and “cervidae livestock facility” is defined under that act to mean a privately owned cervidae livestock operation on privately controlled lands capable of holding cervidae species.]

MCL 324.40103 and 40113b

BACKGROUND INFORMATION:

Michigan Humane Society v Natural Resources Commission. In 1985, the Natural Resources Commission (NRC) voted to establish a mourning dove hunting season, and the Department of Natural

Resources followed that action by issuing hunting regulations for a 22-day open hunting season for mourning doves in the fall of 1985. The Michigan Humane Society filed suit against the commission and the DNR challenging their authority to establish a mourning dove season, and the Michigan Court of Appeals (*158 Mich App 393, 1987*) found that, while the commission had the power to establish the time, manner, and bag limits of a hunt, the power to declare an open season rested with the legislature as provided under the then-Game Law of 1929. The court said, in part, that “this matter is too important to rest on the assumption that the NRC has implied authority to establish a mourning dove season simply because no laws expressly forbid such a season.” One year later, the Wildlife Conservation Act repealed the Game Law of 1929, and replaced and modified several of its provisions, including a provision that only the legislature could designate a species as game and authorize the establishment of the first open season for a newly designated game animal. Mourning doves were not included on the list of species considered game under the Wildlife Conservation Act (which since has been repealed and incorporated into the Natural Resources and Environmental Protection Act of 1994).

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Experienced and knowledgeable professional wildlife managers, rather than the legislature, should make wildlife management decisions, including the designation of game. Ballot Proposal G of 1996 approved an amendment to the Natural Resources and Environmental Protection Act (NREPA), giving the Natural Resources Commission (NRC) exclusive authority to regulate the taking of game in the state, using principles of sound scientific management. By deleting language that gives the legislature the exclusive authority to designate game, the bill would be consistent with Proposal G. In addition, the legislature still would have the authority to change the list of animals designated as game at any time. Moreover, according to the act, the commission must issue orders regarding the taking of game after a public meeting and an opportunity for public input. The bill would extend this provision to require that two meetings be held.

Against:

As the branch of government most closely representative of and accountable to citizens, the legislature should be the only agency entrusted with making decisions on which native wildlife is to be designated as game. Both the state constitution and the NREPA make it clear that the legislature is to hold wildlife in trust for the people of the state. Article IV, Section 52 of the state constitution says,

“The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.” Similarly, Section 40110 of the NREPA, which the bill would repeal, reads as following: *Only the legislature may designate a species as game. If an animal is designated under this section by the legislature as game, then only the legislature may authorize the establishment of the first open season for that animal. After the legislature authorizes the establishment of the first open season for game pursuant to this section, the department [of natural resources] may issue orders pertaining to that animal for each of the purposes listed in section 40107.*

Game is considered to be among the renewable natural resources of the state, and the legislature statutorily addresses the constitutional mandate to protect this natural resource under the NREPA. Moreover, by transferring the legislature’s authority to designate game, the bill would make it difficult for ordinary citizens to voice opinions on sensitive issues. For example, if the NRC were to add mourning doves to the list of game, which some people believe may be one intent of the bill, voters would have an opportunity to attend two public hearings on the issue, but those unable to attend the hearings wouldn’t have the option of notifying their state legislators to make their opinions heard. In testimony before the House committee, the Michigan Humane Society reminded legislators of the events of 1985, when the NRC voted to establish a mourning dove hunting season, and the humane society brought suit against the commission to have its decision overturned see (Background Information).

POSITIONS:

The Department of Natural Resources (DNR) supports the bill. (12-5-01)

The Michigan United Conservation Clubs (MUCC) supports the bill. (12-5-01)

The Michigan Coalition for Responsible Gun Owners (MCRGO) supports the bill. (12-5-01)

The Michigan Audubon Society opposes the bill. (12-5-01)

The Animal Law Section of the State Bar of Michigan opposes the bill, to the extent that it authorizes the NRC to designate game. (12-5-01)

The Michigan Humane Society opposes the bill. (12-5-01)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.