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Senate Bill 354 (as enacted)
House Bills 4471 and 4614 (as enacted)
Sponsor: Senator Michelle A. McManus (S.B. 354)
Representative Darwin Booher (H.B. 4471)
Representative Joel Sheltrown (H.B. 4614)
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Tourism, Outdoor Recreation, and Natural Resources

PUBLIC ACT 47 of 2007
PUBLIC ACTS 48 & 49 of 2007

Date Completed: 8-13-07

RATIONALE

Over the last few years, environmental damage caused by the double-crested cormorant has become a concern in the Great Lakes region. Double-crested cormorants are large, greenish-black migratory birds that spend the winter months near the Gulf of Mexico and in the southeastern United States. Their nests are located in trees or on the ground, and they frequently nest on islands and near inland lakes.

Due largely to heavy water pollution, especially DDT contamination, in the Great Lakes, the regional cormorant population declined significantly during the 1960s. By the 1970s, the species was near extinction in the region. The double-crested cormorant was added to the list of species protected by the Federal Migratory Bird Treaty Act in 1972. Due to this statutory protection, pollution cleanup efforts, and a robust food supply resulting from the rise of aquaculture operations, the double-crested cormorant population has experienced a resurgence and today is at a historic high.

A large cormorant population can be problematic because the birds compete with other species for nesting sites. Crowding and cormorant waste can result in vegetation loss. Additionally, cormorants typically feed on small fish such as alewife, rainbow smelt, and yellow perch. Extensive feeding on these and other species can disrupt the Great Lakes food chain and have a negative impact on the fishing industry. In 2003, the U.S. Fish and Wildlife Service

(USFWS) issued a Public Resource Depredation Order (PRDO) to allow specified governmental agencies to take cormorants without a permit in 24 states, including Michigan. (The PRDO is described below, under **BACKGROUND.**)

In response to concerns about the environmental and economic impact of the cormorant population, it was suggested that the Department of Natural Resources (DNR) should be required to administer a cormorant control and management program, and work with other Great Lakes states to address problems caused by the birds on a regional basis.

CONTENT

The bills amended Part 401 (Wildlife Conservation) of the Natural Resources and Environmental Protection Act to require the DNR to do the following:

- **Administer a program to control and manage double-crested cormorants in order to reduce damage caused by the birds.**
- **Participate in a federally recognized organization of states to coordinate a regional effort to reduce cormorant damage.**
- **Create the "Cormorant Control Fund" within the State Treasury.**
- **Seek funding from the Great Lakes Protection Fund for deposit into the Cormorant Control Fund.**

-- Define the terms "cormorant damage" and "cormorant depredation order".

The bills were tie-barred to each other. They took effect on August 3, 2007. They are described below in further detail.

Senate Bill 354

To reduce cormorant damage, the bill requires the DNR to administer a program to control and manage double-crested cormorants. The DNR must administer the program in cooperation with Federal agencies and in a manner that complies with the cormorant depredation order.

Additionally, the bill requires the DNR, in consultation with the Department of Environmental Quality, to participate in a federally recognized organization of states, such as the Mississippi Flyway Council, to coordinate a regional effort to reduce cormorant damage that includes urging the Federal government to do both of the following:

- Expand state options for double-crested cormorant control by revising the depredation order.
- Seek to amend the Migratory Bird Convention with Mexico to designate the double-crested cormorant as a game species.

The bill also requires the DNR to seek funding from the Great Lakes Protection Fund for deposit in the Cormorant Control Fund. (Part 331 of the Act authorizes the Governor to enter into an agreement with other states for the formation and operation of a regional Great Lakes Protection Fund. Fund money is used to support activities related to Great Lakes research and protection, including the collection and analysis of data on the Great Lakes, the development of new or improved environmental cleanup technologies, research to assess the effectiveness of pollution control policies, and the assessment of the health of Great Lakes fish, waterfowl, and other organisms.)

House Bill 4471

The bill defines "cormorant damage" as adverse impacts of double-crested cormorants on fish, including fish hatchery

stock, wildlife, plants, and their habitats. "Cormorant depredation order" means the depredation order for double-crested cormorants to protect public resources, 50 CFR 21.48, issued by the U.S. Department of the Interior, Fish and Wildlife Service.

House Bill 4614

The bill created the Cormorant Control Fund within the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer must direct the investment of the Fund and credit to it any interest and earnings. Money in the Fund at the close of the fiscal year will remain in the Fund and will not lapse to the General Fund. The DNR is the Fund administrator for auditing purposes. The DNR may spend Fund money, upon appropriation, only to implement Section 40107c (which Senate Bill 354 added).

MCL 324.40107c (S.B. 354)
324.40102 (H.B. 4471)
324.40107d (H.B. 4614)

BACKGROUND

The Public Resource Depredation Order for double-crested cormorants is contained in 50 CFR 21.48. The purpose of the order is to reduce the occurrence and/or minimize the risk of adverse impacts on public resources (fish, wildlife, plants, and their habitats) caused by double-crested cormorants. The order applies to all land and freshwaters in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

The depredation order authorizes agencies (i.e., state fish and wildlife agencies, federally recognized tribes, and state directors of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service) to prevent depredations on the public resources of fish, wildlife, plants, and their habitats by taking without a permit double-crested cormorants found committing or about to commit such depredations.

The order specifies that a person operating under it should first use nonlethal control methods, such as harassment and exclusion devices, when they are considered effective and practicable and not harmful to other nesting birds. Double-crested cormorants may be taken only by egg oiling (with 100% corn oil), egg and nest destruction, cervical dislocation, firearms, and CO₂ asphyxiation. A person using a shotgun must use nontoxic shot. A person may use decoys, taped calls, or other devices to lure within gun range double-crested cormorants committing or about to commit depredation of public resources.

A person operating under the depredation order may not take double-crested cormorants contrary to the laws or regulations of the applicable state. None of the privileges granted under the order may be exercised unless the person possesses the appropriate state or other permits, if required.

A person must properly dispose of double-crested cormorants killed in control efforts. Individuals may donate the birds to museums or other scientific and educational institutions for exhibition, or bury or incinerate them. Individuals may not allow birds taken under the order, or their plumage, to be sold, offered for sale, bartered, or shipped for the purpose of sale or barter.

The order prescribes regulations pertaining to cormorant control activities conducted near nesting areas or critical habitat of specified endangered species. Additionally, if any agency plans a control action or succession of control actions that would kill more than 10% of the double-crested cormorants in a breeding colony, it must first provide written notification to the appropriate Service Regional Migratory Bird Permit Office.

Agencies must give a one-time written notice to the appropriate office before initiating any control activities in a given year. Agencies also must give the office an annual report detailing control activities. A person operating under the order must keep records of all activities carried out under it.

The order states that, in some situations, agencies may deem it necessary to reduce or eliminate local breeding populations of

double-crested cormorants to reduce the occurrence of resource impacts. For these actions, agencies must meet specified conditions.

The order will expire on April 30, 2009, unless revoked or extended before that date.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The resurgence of the double-crested cormorant in Michigan has had profound environmental and economic impacts on the State. Excessive cormorant excrement, which is highly acidic, can contaminate water, kill vegetation, and destroy wildlife habitat. Additionally, the waste can build up on manmade structures, resulting in corrosion over time and added cleanup costs. Cormorant feeding patterns can reduce the stock of fish in the State's lakes and harm commercial fisheries as well as recreational fishing. Because Michigan's economy is heavily reliant on outdoor recreation and tourism, the potential result of overpopulation could be significant.

Although various states, including Michigan, have implemented measures to control cormorant populations and the resulting damage, their actions are somewhat restricted by Federal regulations, and the process of documenting local control activities under the PRDO reportedly can be cumbersome. By requiring the DNR to work in collaboration with other states facing similar problems, the bills might encourage the Federal government to eliminate obstacles to cormorant control on a regional basis.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills will cost the State an indeterminate amount for the cormorant control program and the activities of a multistate collaboration. Senate Bill 354 directs the DNR to seek funding from the Great Lakes Protection Fund for deposit into the Cormorant Control Fund created by House Bill 4614, but a specific amount is not

identified. Michigan's Great Lakes Protection Fund receives revenue from the regional Great Lakes Protection Fund to support research and protection grants for projects related to the Great Lakes. This revenue is appropriated in the Department of Environmental Quality budget primarily to support the Office of the Great Lakes and for research grants. It is unclear whether the money to support cormorant control activities will come from the regional Great Lakes Protection Fund or if a portion of Michigan's annual distribution from the regional fund is being earmarked. In either case, a distribution from the Great Lakes Protection Fund to the Cormorant Control Fund will reduce the funds available for current uses of the Great Lakes Protection Fund.

The Cormorant Control Fund will support the Great Lakes cormorant control collaboration and expenses of the cormorant control program. Other than a potential transfer of money from the Great Lakes Protection Fund, no fund source is identified to support the collaboration or the control program.

In FY 2006-07, \$150,000 from the State's General Fund was appropriated for the DNR to conduct cormorant control activities. Expenditure of this money was contingent upon matching Federal funds. The Federal funds were received and the General Fund appropriation was spent.

Fiscal Analyst: Jessica Runnels

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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.