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Senate Bills 1077 and 1084 (as enacted)

House Bill 5696 (as enacted)

Sponsor: Senator Mike Prusi (S.B. 1077)

Senator Ron Jelinek (S.B. 1084)

Representative Michael Lahti (H.B. 5686)

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Tourism, Outdoor Recreation and Natural Resources (S.B. 1077 & 1084)

Agriculture (H.B. 5686)

PUBLIC ACTS 317 & 318 of 2008

PUBLIC ACT 290 of 2008

Date Completed: 2-9-09

RATIONALE

As the population of gray wolves has recovered from near-elimination in Michigan, attacks by gray wolves on livestock, hunting dogs, and pets have become a concern. The gray wolf has been protected under Michigan and Federal law since 1965 and 1973, respectively. In 2007, the U.S. Fish and Wildlife Service (FWS) promulgated a rule that removed the gray wolf from the Federal list of endangered and threatened species in a portion of the country, including this State. That rule was vacated by a U.S. District Court decision in September 2008, but the FWS again proposed to delist the gray wolf. Under the Michigan Administrative Code, the gray wolf remains on the State's list of threatened species. This means that gray wolves may be taken, or killed, only in an emergency situation involving an immediate threat to human life, or as authorized by a Federal permit (which Michigan does not have) in order to protect property, such as livestock. Although a proposed rule change would remove the gray wolf from the State's list of threatened species, it was suggested that the statute should specifically permit livestock or dog owners to kill, capture, or remove a gray wolf that is pursuing or attacking their animal, if the Federal court decision is overturned or the FWS rule takes effect.

CONTENT

House Bill 5686 and Senate Bill 1084
created new acts to do the following:

- **Authorize a livestock owner or dog owner to remove, capture, or kill a gray wolf that is preying upon the livestock or dog.**
- **After a gray wolf is legally taken, require the livestock or dog owner to report to the Department of Natural Resources (DNR), and retain the wolf until a DNR official can take possession of it.**
- **If a wolf is killed for preying on livestock, prohibit a person from disturbing the wolf until he or she photographs the wolf and the area where it was killed.**
- **If a wolf is killed for preying on a dog, prohibit a person from disturbing the area until an official DNR inspection is complete.**
- **If a dog has been injured or killed, require the person killing the wolf to produce the dog for inspection.**
- **Prescribe a misdemeanor penalty for a violation of these requirements.**
- **Require a DNR official to respond within 12 hours after being notified that a wolf was killed.**

Senate Bill 1077 amended the act created by House Bill 5686 to provide that the sections authorizing a livestock owner to remove, capture, or kill a gray wolf, and requiring the owner to retain the wolf until a DNR official can take it, are not operational and enforceable until a final appellate court overturns a

decision of the U.S. District Court in *The Humane Society of the United States v Kempthorne* or the U.S. Fish and Wildlife Service promulgates a final rule removing gray wolves in Michigan from the endangered wildlife list and the rule takes effect.

Senate Bill 1084 contains the same language in regard to the sections enacted by that bill.

House Bill 5686 pertains to livestock and defines "livestock" as those species of animals used for human food or fiber or used for service to humans. Livestock include cattle, sheep, goats, bison, swine, equine, poultry, aquaculture, and rabbits. Livestock also include new world camelids (e.g., alpacas and llamas), privately owned cervids (e.g., deer and elk), and ratites (e.g., ostriches). Senate Bill 1084 pertains to dogs, and states that "dog" includes a domesticated dog and a dog used for hunting.

House Bill 5686 took effect on October 6, 2008. Senate Bills 1077 and 1084 took effect on December 18, 2008. All of the bills are described in detail below.

Taking a Gray Wolf

Under House Bill 5686 and Senate Bill 1084, the owner of livestock or a dog, or his or her designated agent, may remove, capture, or, if deemed necessary, use lethal means to destroy a gray wolf that is in the act of preying upon the owner's livestock or dog.

The owner or designated agent must report the taking of a gray wolf to a Department of Natural Resources official as soon as practicable, but not later than 12 hours after the taking. The owner or designated agent must retain the wolf until a DNR official is available to take possession of it and transfer the wolf to the appropriate DNR personnel for examination. A person who violates either of these provisions is guilty of a misdemeanor punishable by imprisonment for up to 90 days, a fine of at least \$100 but not more than \$1,000, or both, and the costs of prosecution.

The owner or designated agent may report the taking of a gray wolf by using the DNR's Report All Poaching hotline at 1-800-292-7800.

Under House Bill 5686, if lethal means are used to destroy a gray wolf, a person may not move or disturb it until he or she takes photographs of the deceased wolf and of the area where lethal means were used. A violation of this provision is a misdemeanor punishable by imprisonment for up to 90 days, a fine of at least \$100 but not more than \$1,000, or both, and the costs of prosecution. The DNR may request copies of the photos for examination.

Under Senate Bill 1084, if lethal means are used to destroy a gray wolf, a person may not move or disturb it until a DNR official is available to take possession of and transfer the wolf to the appropriate Department personnel for examination or until as otherwise directed by a DNR official. A person may not disturb the area where the lethal means were used until after an official investigation by the DNR is complete. If a dog is physically attacked or killed, a person who uses lethal means to destroy a gray wolf must produce the dog for inspection by DNR officials. A violation of these provisions is a misdemeanor punishable by imprisonment for up to 90 days, a fine of at least \$100 but not more than \$1,000, or both, and the costs of prosecution.

Under both bills, a DNR official must respond to the scene where lethal means were used to destroy a gray wolf within 12 hours after being notified by the owner of the livestock or dog, or his or her agent.

The DNR may promulgate rules to implement each act.

If any Federal or State litigation overturns the decision to remove gray wolves from the list of endangered species, the DNR must report the impact of that litigation on the acts to the standing committees of the Legislature with jurisdiction over issues primarily dealing with natural resources and the environment.

Enforceability

Under Senate Bill 1077, the sections of House Bill 5686 authorizing a livestock owner to remove, capture, or kill a gray wolf, and requiring the owner to retain the wolf until a DNR official can take it, are not operational and enforceable until one of the following occurs:

- A final appellate court issues a decision overruling the decision of the U.S. District Court in *The Humane Society of the United States v Dirk Kempthorne* (Civil Action No. 07-0677, 9-29-08), and permits the final rule of the U.S. Fish and Wildlife Service in 72 FR P 6052 (2-8-07), removing gray wolves located in Michigan from the list of endangered and threatened wildlife, to take effect.
- The U.S. Fish and Wildlife Service promulgates a final rule dated after March 12, 2007, that removes gray wolves located in Michigan from the list of endangered and threatened wildlife and that final rule takes effect.

Under Senate Bill 1084, the sections enacted by that bill are not operational and enforceable until one of those actions occurs.

Under both bills, when the applicable sections become operational and enforceable, the DNR must post on its website a notice that includes a summary of the sections and the date they are operational and enforceable.

MCL 324.95155 (S.B. 1077)
 324.95161-324.95167 (S.B. 1084)
 324.95151 & 324.95153 (H.B. 5686)

BACKGROUND

Federal Endangered Species List

The Federal Endangered Species Act authorizes the U.S. Fish and Wildlife Service to list and delist species, subspecies, and distinct population segments of animals. A distinct population segment (DPS) is a discrete and separate population that occurs in a portion of a species' or subspecies' range. The Western Great Lakes DPS includes the wolf populations in Michigan, Minnesota, and Wisconsin, portions of Illinois, Iowa, North Dakota, and South Dakota, and fractions of Indiana and Ohio. This DPS encompasses a "core area" where wolf recovery has occurred. The core area includes the Upper Peninsula of Michigan as well as northern and central forested areas of Minnesota and Wisconsin.

In January 2007, the U.S. Fish and Wildlife Service promulgated a rule that removed the Western Great Lakes Distinct Population Segment of gray wolves from the Federal list

of threatened and endangered species, and removed Federal protection for critical habitat for the species in Michigan and Minnesota. According to the FWS, the affected states have management plans in place and will manage wolf populations in accordance with population objectives. At the time of the delisting, the wolf populations were estimated to be 434 in Michigan, 3,020 in Minnesota, and 465 in Wisconsin.

That rule was challenged in the U.S. District Court for the District of Columbia. The plaintiffs claimed that the FWS violated the Endangered Species Act and acted arbitrarily by simultaneously designating and delisting the western Great Lakes DPS. The Court found that the Act was ambiguous with respect to the issue before it, and vacated the rule (*The Humane Society of the United States, et al. v Dirk Kempthorne, et al.*, Civil Action No. 07-0677, 9-29-08). As a result, the status of the gray wolf in the Western Great Lakes DPS returned to threatened in Minnesota and endangered elsewhere in the DPS (the status before the 2007 rule was published). The Court's decision was not appealed.

On January 14, 2009, the Fish and Wildlife Service announced its intention to reissue a Final Rule to delist the gray wolf in the Western Great Lakes DPS. On January 20, 2009, however, the White House Chief of Staff directed all Federal agencies to withdraw new or pending regulations. As a result, the FWS Final Rule was withdrawn.

Wolf Management in Michigan

According to the Department of Natural Resources, it is believed that gray wolves were once present in all of Michigan's 83 counties. A combination of factors, including active predator control programs, virtually eliminated gray wolves from Michigan. They had completely disappeared from the Lower Peninsula by around 1910, and had nearly vanished from the Upper Peninsula by 1960, when the State-paid bounty on wolves was repealed. The species was given legal protection in Michigan in 1965, and placed on the Federal list of endangered species in 1973. Michigan's gray wolf population began to recover in the 1990s, and grew from an estimated 20 wolves in 1992 to 361 in 2004.

In 1992, the DNR Director appointed a Michigan Gray Wolf Recovery Team and charged it with developing a wolf recovery plan for the State. The Department finalized the *Michigan Gray Wolf Recovery and Management Plan* in 1997. Subsequently, the context of wolf management in Michigan changed due to several developments, including the expansion of the wolf population size and distribution; active involvement of the U.S. Department of Agriculture (USDA) Animal and Plant Inspection Service Wildlife Services; the development and implementation of *Michigan's Wildlife Action Plan* in 2005; and the (temporary) delisting of wolves from the Federal endangered species list in the Western Great Lakes DPS.

These events contributed to the development of the *Michigan Wolf Management Plan*, which was finalized in May 2008. This plan resulted from discussions the DNR began with other State and Federal agencies in August 2004; public meetings the DNR held in May 2005; focus group meetings coordinated by the Michigan State University Department of Fisheries and Wildlife during the summer of 2005; and the work of an advisory committee convened by the DNR, the Michigan Wolf Management Roundtable. The Roundtable met between June and September 2006 and submitted its report the following November.

According to the *Michigan Wolf Management Plan*, the plan provides strategic guidance for the management of wolves in this State but does not outline operational details. The plan was developed to help do the following: 1) maintain a viable Michigan wolf population above a level that would warrant its classification as threatened or endangered; 2) facilitate wolf-related benefits; 3) minimize wolf-related conflicts; and 4) conduct science-based wolf management with socially acceptable methods.

Wolf-Related Conflicts

The *Michigan Wolf Management Plan* addresses the management of wolf depredation of domestic animals. The plan states that a depredation event occurs when a predator kills or injures one or more animals at a given time. Although wolves normally kill or injure wild prey and

competitors, they sometimes attack domestic animals.

According to the plan, from 1998 through 2007, the Michigan DNR and the USDA Wildlife Services verified 70 wolf-livestock depredation events on 45, or 5%, of the 900-plus livestock farms in the Upper Peninsula. No wolf-livestock depredation events were verified in the Lower Peninsula. Between 1996 and 2007, the DNR and the USDA Wildlife Services verified 40 wolf attacks on domestic dogs in Michigan. Of those, 43% involved bear-hunting hounds in the field.

Language in the enacted budgets for the DNR and Michigan Department of Agriculture (MDA) provides for indemnification to owners of livestock killed by wolves. Specifically, Section 212 of Public Act 253 of 2008, which makes fiscal year (FY) 2008-09 appropriations for the MDA, requires that Department to make an indemnification payment for the fair market value of livestock killed by a wolf, coyote, or cougar, if the kill is verified by the DNR. Section 501 of Public Act 252 of 2008, the DNR's FY 2008-09 appropriations act, specifies legislative intent that the DNR reimburse the MDA for costs incurred for indemnification for livestock losses caused by wolves, coyotes, or cougars under the Animal Industry Act.

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

Michigan residents should have the right to protect their livestock and dogs from attacks by wolves, even when lethal means are necessary. Livestock are a commodity to farmers, and can represent a significant financial investment. A hunting dog also can be an investment as well as a pet, and other domestic dogs often are considered members of the family. Although there is not a high number of documented incidents in which wolves have injured or killed livestock or dogs, these attacks are likely to increase as the wolf population continues to grow in Michigan. It also is likely that the number of verified incidents understates the actual number of attacks.

If the newly enacted statutes become operational, allowing livestock producers and dog owners to remove or kill wolves that prey on their animals will have little impact on the population of wolves. On the other hand, allowing farmers to protect their livestock from wolf attacks might deter them from adopting indiscriminate antiwolf behavior would have a greater adverse impact on the wolf population. In addition, as wolves become more populous and more common in developed areas, allowing residents to take steps to protect their animals might prevent a resurgence of the antiwolf sentiments and superstitions were largely responsible for the near-extinction of the species.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5686 & Senate Bill 1084

The bills will have no fiscal impact on the State. The additional responsibilities of Department officials to retrieve a gray wolf from the owner of the livestock or dog will be paid for from existing resources.

The bills will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be convicted of the misdemeanor offenses. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

Senate Bill 1077

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Lindsay Hollander
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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.