

Legislative Analysis



SWINE RUNNING AT LARGE

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House Bill 5822

Sponsor: Rep. Mike Huckleberry

House Bill 5823

Sponsor: Rep. Sharon Tyler

House Bill 5824

Sponsor: Rep. Barb Byrum

Committee: Agriculture

First Analysis (3-9-10)

BRIEF SUMMARY: The bills would amend existing acts relating to animals running at large to declare that swine running at large are a public nuisance and to allow them to be killed on public and private property. On public property, local animal control officers, law enforcement officers, and anyone with a valid hunting license for any type of game could kill swine running at large. On private property, the property owner or renter or anyone accompanied by or who had the permission of the owner or renter could kill swine running at large.

FISCAL IMPACT: House Bills 5822-5824 would have no significant fiscal impact on the Department of Natural Resources and the Environment or local units of government.

THE APPARENT PROBLEM:

Michigan, like many other states, has a rapidly growing population of wild or feral swine. Current estimates place the number of feral swine in Michigan at between 3,000 and 5,000. Swine are not native to Michigan — some people believe that Michigan's wild swine population has come mainly from swine that have escaped from private shooting ranches or breeding facilities. Others may have also escaped from farms or deliberately brought into Michigan and released into the wild illegally. Although Michigan's feral swine population is of growing concern, the problem here is not yet as bad as in states such as Texas and Florida, which have huge feral swine populations — Texas alone has more than three million feral swine that cause over \$60 million dollars worth of property damage annually. Because wild sows are capable of producing many offspring each year — from one to four litters of up to 12 piglets each — and because additional animals may be escaping into the wild each year from private shooting ranches or other locations, Michigan's feral swine population is expected to grow very rapidly if aggressive steps are not taken soon. Some say Michigan has a short window of opportunity to control this population before it is too late to keep it from being permanently entrenched.

Feral swine can spread many different types of diseases, including ones that threaten domestic livestock, pets, native wildlife. Some of these diseases can also be spread to humans. Agricultural experts and farmers are especially concerned that feral swine could spread diseases such as pseudorabies virus (PRV) or brucellosis to domestic livestock

animals. Michigan's commercial swine were declared free of PRV in 2000, after a 10-year eradication effort, a status that could be jeopardized if PRV is spread from feral swine to a commercial herd. Feral swine also displace native wildlife and prey on animals such as fawns, ground nesting birds, turkeys, and songbirds. They can cause many different kinds of property, crop, and environmental damage when they root to search for food. The Michigan United Conservation Clubs has described them as "mobile, nomadic 'rototillers.'" In states with large wild swine populations, they cause a lot of motor vehicle accidents. Feral swine can be dangerous or aggressive to humans if cornered.

The legality of killing feral swine is complicated by the existence of older laws that assume that swine running at large are agricultural animals owned by someone. These laws, which generally require that animals be seized, cared for, and then returned to their owners or sold at auction, are not appropriate for swine considered to be nuisance animals rather than private property. The Department of Natural Resources and Environment has reached agreements with many county prosecutors that they will not prosecute people who kill feral swine. According to the DNRE, it had this type of agreement with 66 counties as of November 6, 2009,¹ with agreements pending with six more.² The supporters of the bills discussed in this analysis say that these agreements, while helpful, are not sufficient and that a statewide law is needed.

In short, because Michigan's feral swine population is growing rapidly and because there are many different problems associated with a large feral swine population, the bills' supporters urge adoption of a statewide law as quickly as possible to give clear authority to kill feral swine to law enforcement officials, animal control officers, licensed hunters, and private property owners and renters, and to keep existing "animals running at large" statutes geared toward livestock from standing in the way of necessary efforts. Allowing individuals to kill swine on public and private property will help ensure these animals be eliminated wherever they appear before feral swine establish a permanent, destructive presence in Michigan.

THE CONTENT OF THE BILL:

House Bill 5822 (Substitute H-2)

The bill would amend Public Act 328 of 1976, which makes it unlawful for certain animals (cattle, horses, sheep, swine, mules, burros, and goats) to run at large in Michigan. It is a misdemeanor for an animal's owner to permit or enable it to run at large or for a person who is not the animal's owner to willfully and knowingly enable it to run

¹ The DNRE had agreements with county prosecutors in the following 66 counties as of 11/6/09: Allegan, Alcona, Alpena, Antrim, Arenac, Baraga, Bay, Branch, Berrien, Calhoun, Cass, Cheboygan, Clare, Clinton, Crawford, Delta, Dickinson, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Isabella, Ionia, Iosco, Houghton, Ingham, Jackson, Kalamazoo, Kent, Lake, Lapeer, Lenawee, Livingston, Marquette, Mason, Mecosta, Menominee, Midland, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, Sanilac, Shiawassee, St. Clair, St. Joseph, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford.

² The following six counties had pending agreements as of 11/6/09: Alger, Benzie, Charlevoix, Gogebic, Iron, Kalkaska, Leelanau, Macomb, Manistee, Missaukee, and Ontonagon.

at large. (An animal "running at large," as defined in the act, is one "not under the control of the owner and not on the owner's premises." "Owner" means "a person who has a right of property in an animal, a person who keeps or harbors an animal or has it in his care, or a person who permits an animal to remain on or about the premises occupied by him.")

In addition, a person who suffers property damage caused by an animal running at large is entitled to compensation from the animal's owner. Law enforcement officers who find animals running at large may seize them, and individuals who find them on their own property may seize them and contact a law enforcement agency to take custody of them. After seizing an animal, law enforcement officers must return it to its owner, if known (unless the owner refuses to pay compensation for damages caused by the animal). If the animal's owner is unknown, an advertisement must be placed in a newspaper notifying the general public that if the animal is not claimed within 15 days, it may be sold at a public auction. The act also prescribes the disposition of the proceeds from the auction sale, and grants the owner a right of redemption for three months after a sale.

House Bill 5822 would amend Public Act 328 of 1976 to do the following things:

- Declare swine running at large on public or private property to be a public nuisance.
- On public property, allow local animal control officers appointed under the Dog Law of 1919 (MCL 287.261 to 287.290), law enforcement officers, or anyone with a valid hunting license for any type of game issued under Part 435 of NREPA³ to kill swine running at large.
- On private property, allow anyone to kill swine running at large if the person is the owner or renter of the property, is accompanied by the owner or renter, or has the owner's or renter's permission.
- Specify that the bill does not authorize the discharge of a bow and arrow, crossbow, or firearm in an area where hunting with or discharging one of these weapons is prohibited by an ordinance adopted under Part 419 of the Natural Resources and Environmental Protection Act.⁴
- Repeals an obsolete provision.

[Note: House Bill 5822 and Senate Bill 1136 were identical as introduced.]

MCL 433.14a & 433.20

³ Part 435 of NREPA imports the definition of "game" from Part 401 of NREPA. Under Part 401, "game" means any of the following species (except for privately-owned cervidae on a registered cervidae livestock facility): badger, bear, beaver, bobcat, brant, coot, coyote, crow, deer, duck, elk, fisher, Florida gallinule, fox, geese, hare, Hungarian partridge, marten, mink, moose, muskrat, opossum, otter, pheasant, quail, rabbit, raccoon, ruffed grouse, sharptailed grouse, skunk, snipe, Sora rail, squirrel, weasel, wild turkey, woodchuck, woodcock, or Virginia rail.

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House Bill 5823

Public Act 66 of 1959 prohibits cattle, horses, sheep, or swine from being allowed to run at large or graze upon lands owned or controlled by the Department of Conservation without a written permit from the department. Under this act, the department must impound and care for seized animals until they can be returned to their owners or sold at auction.

The bill would amend this act to change all references to the Department of Conservation to the Department of Natural Resources and Environment and to specify that this act does not limit the authority to kill swine running at large under Public Act 328 of 1976 (as it would be amended by HB 5822). The bill would also make numerous grammatical or stylistic changes to the act.

MCL 322.581-322.592

House Bill 5824

The bill would amend Public Act 248 of 1879, a statute concerning animals running at large in cities and villages with a population of 7,000 or more (except for the city of Ludington, which is specifically excluded). Under this act, cattle, horses, mules, sheep, swine, and goats are not allowed to run at large in public in cities or villages with a population of at least 7,000, and these cities or villages must have at least one suitable and convenient pound. In addition, the act requires certain public officials to seize and keep animals found running at large until they can be disposed of lawfully. It also allows any inhabitant to seize and take an animal running at large to the pound, or to keep it if there is no pound within two miles of where the animal was found or if there is no poundmaster to accept the animal.

The bill would amend this act in the following ways:

- Make law enforcement officers and animal control officers (rather than commissioners of highways, poundmasters, marshals, deputy marshals, policemen, and constables) responsible for seizing and keeping animals running at large. (Inhabitants could also continue to seize animals running at large, including swine, and either take them to the pound or keep them in certain circumstances.)
- Specify that this act does not limit authority provided under Public Act 328 of 1976 (as it would be amended by HB 5822) to kill swine running at large.
- Remove the city of Ludington's exemption from the act.

MCL 433.51 & 533.513

BACKGROUND INFORMATION:

Feral swine sightings. For information about where feral swine have been spotted or killed in Michigan (70 of 83 counties as of November 6, 2009), see:

ARGUMENTS:

For:

Michigan needs to act quickly and aggressively to prevent feral swine from establishing a permanent presence here. Michigan needs state law to allow these animals to be killed wherever they appear to reduce or eliminate its growing feral swine population before it is out of control.

Aggressive control of feral swine will help protect Michigan's farmers. Pseudorabies and other diseases carried by feral swine are considered a serious threat to animal agriculture in Michigan, especially commercial pork production. Feral swine, described by the MUCC as "mobile, nomadic 'rototillers,'" can also cause major crop damage, so controlling their numbers or eliminating them will help protect Michigan's producers of commodity and specialty crops.

Aggressive control of feral swine will help protect natural resources. Feral swine can cause many different kinds of environmental damage including harming wetlands, eroding stream banks, and destroying native vegetation. They can also displace native wildlife and prey on small animals and ground nesting birds.

Response:

The bills do not go far enough. Some people believe that many of the animals in Michigan's current wild swine population have come from swine that have escaped from enclosed swine breeding or hunting operations and then multiplied in the wild. Unless swine breeding and shooting is prohibited at these locations, which reportedly do not have fences secure enough to prevent all swine and piglets from escaping, swine will continue to escape from these places and multiply in the wild. Among the recommendations contained in Joint Resolution No. 12 of the Natural Resources Commission and the Agricultural Commission, adopted April 12, 2007, is for Michigan to ban all recreational shooting of swine behind fences and to depopulate all swine from wild game breeding facilities and enclosed hunting ranches. The Michigan United Conservation Clubs has endorsed the joint resolution. Other states have reportedly taken this step.

Questions exist about how to interpret the bill. Although there was no opposition to the goals of the bill expressed at the committee level, questions were asked about how the bill would be interpreted. For example, would the provision allowing feral swine to be killed on public land authorize shooting feral swine in places where shooting an animal or where the possession or use of firearms is otherwise not allowed? Does the provision that allows anyone with a valid hunting license for any kind of game to kill swine on public property mean that the person can seek to take swine on public property any day of the year at any time of day using any kind of weapon? Or could the person just kill swine under the authority of that license during the days and hours open for hunting the game

covered by the license using the kind of weapon allowed under that license? Will persons hunting seeking to take swine on private land still need to abide by the law requiring them to have a hunting license when they are carrying a firearm in an area frequented by game?

POSITIONS:

Representatives of the following organizations testified in favor of or otherwise indicated support of the bill: The Department of Natural Resources and Environment, the Department of Agriculture, the Farm Bureau, the Michigan Animal Farmers, the Michigan United Conservation Clubs, and the Michigan Pork Producers Association.

The Sierra Club indicated a neutral position on the bills.

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■ 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.