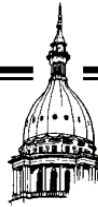




Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 288 (Substitute S-1 as reported)
Senate Bill 289 (as reported without amendment)
Sponsor: Senator Tom Casperson
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 4-18-13

RATIONALE

In 1996, Michigan voters approved Proposal G, a referendum on Public Act 377 of 1996, which amended the Natural Resources and Environmental Protection Act (NREPA) to grant the Natural Resources Commission (NRC) exclusive authority to regulate the taking of game in the State, and require the NRC to use principles of sound scientific management in making decisions regarding the taking of game. (Previously, the authority to regulate the taking of game was assigned to the Director of the Department of Natural Resources.) The NRC is a seven-person body consisting of members appointed by the Governor with the advice and consent of the Senate. Some people believe that language similar to that approved in Proposal G should be enacted with regard to the NRC's authority to regulate the taking of fish in Michigan.

In a related matter, under NREPA, only the Legislature may designate animals as game species. Legislation was enacted in 2012 to declare wolf a game species, allow the Legislature to authorize the establishment of the first open season for the animal, and permit the NRC to issue orders establishing annual wolf hunting seasons throughout the State. Wolf hunting opponents then launched a petition drive to compel a statewide referendum on the legislation. (In order for a law enacted by the Legislature to be submitted to voters for approval or rejection, the State Constitution requires the collection of a number of signatures equal to at least 5% of the total vote cast for all gubernatorial candidates at the last general election at which a governor was elected.) Petition circulators evidently have collected

enough signatures to surpass the constitutional threshold, meaning that the question likely will appear on the ballot at the 2014 general election.

For some people, this situation has raised concerns about the extent to which electors should be directly involved in natural resource decisions; the appropriate use of the referendum; and the potential influence of money and out-of-State interests in Michigan's affairs. In response, it has been suggested that the authority to designate game species should be extended to the NRC, whose orders are not subject to the Constitution's referendum provisions.

In a separate matter, the State offers Michigan residents who serve in the military, and who are stationed or called to active duty elsewhere, the opportunity to obtain a temporary Michigan hunting or fishing license for the reduced fee of \$1. A service member may designate a period of up to two weeks during which he or she may use the license to hunt or fish in Michigan. It has been suggested that this opportunity should be extended to all military members, not just those serving out-of-State; that the fee should be eliminated; and that the license should be valid for the entire season rather than a short period of time.

Also, in recognition of the impact of hunting and fishing on wildlife management and Michigan's economy and culture, some people believe that hunting and fishing rights should be expressed in State law.

CONTENT

Senate Bill 288 (S-1) would amend Parts 401 (Wildlife Conservation) and 487 (Sport Fishing) of NREPA to do the following:

- Authorize the Natural Resources Commission (in addition to the Legislature) to designate a species as game.**
- Appropriate \$1.0 million to the Department of Natural Resources for fiscal year 2012-13 to implement management practices for fish and game animals and perform research, education, and outreach.**
- Grant the NRC the exclusive authority to regulate the taking of fish in Michigan, and require it to issue related orders and notify the Legislature before doing so.**

The bill also would amend Part 435 (Hunting and Fishing Licensing) to revise provisions pertaining to hunting and fishing licenses issued to members of the military, by eliminating the fee, a requirement that a member be stationed outside the State, and the two-week duration of a license.

Senate Bill 289 would amend Part 401 (Wildlife Conservation) of NREPA to add a legislative declaration regarding hunting and fishing in Michigan, as well as rights related to those activities.

The bills are described in further detail below.

Senate Bill 288 (S-1)

Designation of Game Species

Under Section 40110, only the Legislature may designate a species as game and authorize the establishment for the first open season for an animal designated as game. After the Legislature authorizes the establishment of the first open season for game, the Department of Natural Resources may issue orders pertaining to that animal for specific purposes (e.g., lawful methods of taking game, bag limits, and hunting hours). The bill would refer to the Legislature or the NRC in these provisions. The Commission would have to exercise its authority under these provisions by issuing

orders, and could not designate a domestic animal or livestock as game.

("Domestic animal" would mean those species of animals that live under the husbandry of humans. "Livestock" would include cattle, sheep, new world camelids, goats, bison, privately owned cervids, ratites, swine, equine, poultry, aquaculture, and rabbits. Livestock would not include dogs and cats.)

The bill specifies that only the Legislature could remove a species from the list of game.

The definition of "game" includes a number of specific animal species. Under the bill, the term also would include any animal designated as game under Section 40110.

Appropriation

For fiscal year 2012-13, the bill would appropriate for the Department of Natural Resources \$1.0 million to implement management practices for fish and game animals, and perform research, education, and outreach related to hunting, fishing, game animals, predators, and prey.

Rather than lapsing to the General Fund, any portion of the money that was not spent in that fiscal year would be carried forward in a work project account that complied with Section 451a of the Management and Budget Act.

(Under that section, a designated work project must be for a specific purpose, contain a specific plan to accomplish its objective, and have an estimated completion cost and date. A work project appropriation is available until completion of the work or 48 months after the last day of the fiscal year in which the appropriation was made originally, whichever comes first. After that, the remaining balance lapses to the State fund from which it was appropriated.)

Taking of Fish

The bill would grant the Natural Resources Commission the exclusive authority to regulate the taking of fish in Michigan under Part 487. To the greatest extent possible, the NRC would have to use principles of sound scientific management in making decisions regarding the taking of fish.

The Commission would have to issue orders regarding the taking of fish following a public meeting and an opportunity for public input. At least 30 days before issuing an order, the Commission would have to give a copy of it to each of the following:

- Each member of each standing committee of the Senate or House of Representatives that considers legislation pertaining to conservation, the environment, natural resources, recreation, tourism, or agriculture.
- The chairperson of the Senate and House Appropriations Committees.
- The members of the subcommittees of the Senate and House Appropriations Committees that consider the DNR budget.

(Part 401 contains similar language applicable to the NRC and the taking of game.)

Military License

Currently, a member of the military may obtain any license under Part 435 for which a lottery is not required, for \$1, upon presenting leave papers, duty papers, military orders, or other evidence verifying that he or she is stationed outside of Michigan. The license is valid for up to a two-week period designated by the individual during the season in which the license would otherwise be valid.

Under the bill, instead, a member of the military could obtain any license under Part 435 free of charge, subject to any lottery and other eligibility requirements. The bill would require the person to present evidence that he or she was a member of the military, rather than stationed outside of the State. The bill would delete the provision limiting the validity of the license to two weeks.

"Member of the military" means a person regularly enlisted or commissioned as an officer in the U.S. Armed Forces who, at the time of enlistment, was a Michigan resident and has maintained his or her residence in Michigan for the purposes of obtaining a driver license and/or voter registration, and who is stationed outside the State.

Additionally, "member of the military" includes a person who meets all of the

following requirements:

- The person is a reserve component soldier, sailor, airman, or marine or member of the Michigan National Guard and is called to Federal active duty.
- The person was a Michigan resident at the time he or she was called to Federal active duty.
- The person is stationed outside the State.

The bill would eliminate the references to being stationed outside the State.

Senate Bill 289

The bill would include the following statement in Section 40113a, which contains legislative findings and declarations: "The legislature declares that hunting, fishing, and the taking of game are a valued part of the cultural heritage of this state and should be forever preserved. The legislature further declares that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural resources. Therefore, the legislature declares that the citizens of this state have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by subsection (2) and law."

(Subsection (2) of Section 40113a provides that the Natural Resources Commission has the exclusive authority to regulate the taking of game in Michigan, and requires the Commission to use principles of sound scientific management in making decisions regarding the taking of game. Issuance of NRC orders must be made following a public meeting and an opportunity for public input. At least 30 days before issuing an order, the Commission must give a copy of it to specified members of the Legislature.)

MCL 324.40103 et al. (S.B. 288)
324.40113a (S.B. 289)

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

Natural resources are a matter of public trust, and rigorous science is critical to the fulfillment of the State's stewardship

responsibilities. With their strong support of Proposal G, Michiganders acknowledged the recreational, social, and economic value of the State's natural resources; expressed their desire for natural resource management decisions to be based on sound science; and demonstrated a belief that the Natural Resources Commission is the appropriate body to make such decisions. By granting the NRC similar authority to regulate the taking of fish as it was granted for the taking of game, and authorizing the Commission to designate game species, Senate Bill 288 (S-1) would be in keeping with the spirit of Proposal G and the will of the people.

Furthermore, the NRC has the expertise to consider complex wildlife management questions properly. The bill would recognize that, in some cases, the Commission might be in a better position than the Legislature to make decisions regarding the designation of game species.

The proposed referendum on the wolf hunting legislation highlights several problems associated with ballot questions generally. While the referendum is an important tool through which the people may weigh in on significant policy issues, the prudence of allowing electors, most of whom are not subject matter experts, to vote directly on specific wildlife management decisions is questionable. Also, there is concern that some stakeholder groups take advantage of voters' lack of knowledge and present misleading or inaccurate information in their efforts to sway public opinion regarding ballot proposals. Often, ballot question campaigns are financed by parties from outside the State. Sometimes, petition circulators are paid for each signature they obtain, which might encourage them to use tactics that cast doubt on the legitimacy of the political process. Under these circumstances, allowing the NRC, whose orders cannot be challenged through a referendum, to designate game species would ensure that the State's wildlife management decisions were based on scientific evidence.

Supporting Argument

The appropriation to the DNR for game and fish management programs and education, outreach, and research could be used to provide a required match for Federal conservation and management funds. This

additional money could support wildlife population surveys and other measures to improve the hunting and fishing experience, and aid the State's efforts in hunter and angler recruitment and retention.

Supporting Argument

By expanding the availability of the reduced-cost hunting and fishing licenses to all members of the military, eliminating the fee entirely, and making the licenses valid for the entire applicable season, Senate Bill 288 (S-1) would show a measure of gratitude to the men and women who serve to protect the nation's freedom and preserve its future.

Supporting Argument

Because of Michigan's abundant natural resources, hunting and fishing have a significant presence in the State's heritage. Hunters and anglers play a critical role in wildlife conservation and management through the license fees they pay and by helping to control animal populations. In addition, people engaged in these sports constitute a considerable part of Michigan's tourism industry, contributing billions of dollars to the State and local economies every year. Senate Bill 289 would emphasize the value of hunting and fishing by declaring in statute the people's right to engage in these activities, subject to applicable laws and regulations.

Opposing Argument

Authorizing the NRC to designate game animals would impede citizen participation in the democratic process and place responsibility for important wildlife management decisions in the hands of an appointed body that is not accountable to the public. Through Proposal G, voters granted the NRC the authority only to regulate the taking of game, not to determine which species should be classified as game. Elected officials are directly accountable to their constituents; thus, it is appropriate that the Legislature has the authority to designate game species. Furthermore, the manner in which Proposal G has been implemented may be contrary to what voters were anticipating when they approved it. Even though the statute approved by the ballot question directs the NRC to use "principles of sound scientific management" in making its game-related decisions, that term is not defined in law, and Commission members do not necessarily have a background in science.

For these reasons, expanding the NRC's authority could expose the decision-making process to manipulation.

Because natural resources, including wildlife, are held in the public trust, it is fitting that individual residents have the opportunity to vote directly on these matters. Instead of fulfilling the wishes of voters embodied by Proposal G, however, Senate Bill 288 (S-1) would stifle the public's voice with regard to the designation of any game species. Not only could the bill prevent future referenda on wolf hunting or other game designations, it also could enable the NRC to override the public's wishes in previous votes, such as the 2006 referendum through which Michiganders overwhelmingly rejected mourning dove hunting.

Also, the State Constitution provides that the referendum power does not extend to appropriation acts. This means that the bill's appropriation of funds to the DNR would make the bill itself immune to a referendum. Altogether, the bill would obstruct access to the ballot box, erode voter rights, and undermine the democratic process.

Response: Although there is no requirement that NRC members have a scientific background, they receive information and advice to guide their decisions from some of the field's top biologists and other experts. This is not necessarily the case with regard to the general public in a referendum situation. Additionally, the bill would not eliminate any authority of elected officials; the Legislature would retain its role in the process to designate game species, and could remove a species from the list in the event of a disagreement with the Commission.

Opposing Argument

While Senate Bill 288 (S-1) would extend the authority to designate game to the NRC, the authority to remove an animal from the game list would remain with the Legislature exclusively. If the NRC can be trusted to make sensible, science-based decisions regarding the designation of game species, it also should be trusted to decide when such a designation should be revoked. These provisions lack the checks and balances that are critical to democratic governance.

Opposing Argument

While there is great value to the State associated with hunting and fishing, Senate Bill 289 inappropriately would single out the right to engage in these activities for heightened statutory recognition. This right is not more in need or deserving of affirmation than the right to participate in other outdoor recreational pursuits, such as hiking, bicycling, or canoeing. Additionally, specifying hunting and fishing rights in the law could have undesirable consequences similar to those that have occurred under the State's Right to Farm Act, which has protected the rights of small, family-owned farming businesses but also has enabled concentrated animal feeding operations to engage in industrial-scale pollution. Giving an elevated status to these particular rights would be ill-advised and unnecessary.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 288 (S-1)

The bill would appropriate \$1.0 million to the Department of Natural Resources, and also have a significant negative fiscal impact on the DNR.

Under the bill, the DNR would receive a \$1.0 million fiscal year (FY) 2012-13 GF/GP appropriation to implement management practices for fish and game, and to perform research, education and outreach. The bill does not specify a fund source, but many past statutory appropriations have been assumed to be from the General Fund. This appropriation would be carried forward into subsequent fiscal years if it were not spent during FY 2012-13.

The bill also would allow members of the military to obtain hunting and fishing licenses for free. Currently, there are fee exemptions in Part 435 of the Act for disabled veterans and members of the military who are stationed out-of-State. These exemptions allow for free or reduced-price licenses for veterans who meet certain criteria. The bill would allow any member of the military who was a Michigan resident at the time he or she enlisted to obtain a hunting or fishing license free of charge. This would result in the loss of an unknown amount of revenue that would normally be credited to the Game and Fish Protection

Fund. It also would reduce Federal apportionment of Pittman-Robertson and Dingell-Johnson funds that are distributed based on the number of paid hunting and fishing license holders. By making members of the military nonpaying license holders, the bill would prevent these hunting and fishing licenses from counting toward Michigan's Federal apportionment and would result in the loss of an unknown amount of Federal revenue.

Senate Bill 289

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

Fiscal Analyst: Josh Sefton

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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.