

HOUSE BILL REPORT

ESHB 1885

As Passed House:
January 29, 2010

Title: An act relating to feeding wildlife.

Brief Description: Regarding the feeding of wildlife.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Van De Wege, Blake, Warnick, Takko, Ormsby and Liias).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/10/09, 2/20/09 [DPS].

Floor Activity:

Passed House: 1/29/10, 55-41.

Brief Summary of Engrossed Substitute Bill

- Makes it unlawful for a person to place, deposit, distribute, or scatter grain, hay, or other food so as to intentionally lure, attract, or entice "potentially habituated wildlife," which includes bears, cougars, wolves, coyotes, deer, elk, and raccoons.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Blake, Chair; Ormsby, Vice Chair; Jacks, Liias, McCoy, Nelson and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Pearson and Warnick.

Staff: Jason Callahan (786-7117).

Background:

Enforcement Authority of Fish and Wildlife Officers.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Fish and wildlife officers (officers) and ex officio fish and wildlife officers (ex officio officers) enforce state laws related to fish and wildlife and the rules of the Washington Department of Fish and Wildlife (WDFW). An "ex officio fish and wildlife officer" is a commissioned officer of a municipal, county, state, or federal agency whose primary function is the enforcement of criminal laws while the officer is in the appropriate jurisdiction. Ex officio officers include special agents of the National Marine Fisheries Service, officers commissioned by the Washington State Parks and Recreation Commission, U.S. Fish and Wildlife special agents, Department of Natural Resources enforcement officers, and U.S. Forest Service officers, while the agents and officers are within their respective jurisdictions. Officers, but not ex officio officers, have the same general police powers throughout the state as sheriffs and peace officers and may serve and execute warrants issued by the courts.

Natural Resource Civil Infractions.

Certain prohibited actions contained in state laws concerning forests and forest products, fish and wildlife, public lands, and public recreational lands are punishable as civil infractions instead of criminal offenses. An infraction proceeding is initiated by the service and filing of a notice of infraction and is heard in the district court where the infraction occurred. The form for the notice of infraction is determined by Washington Supreme Court rules and must contain a number of statements, including: (1) that the notice represents a determination that an infraction was committed by the person named in the notice and shall be final unless contested; (2) the specific infraction for which the notice was issued; (3) the monetary penalty for the infraction; (4) options for responding to the determination; (5) hearing procedures; and (6) the consequences of failing to respond or appear at a hearing. Special provisions also apply regarding the nature and procedures of hearings about natural resource infractions and monetary penalties for them.

Summary of Engrossed Substitute Bill:

It is unlawful to place, deposit, distribute, or scatter grain, hay, or other food so as to intentionally lure, attract, or entice potentially habituated wildlife. "Potentially habituated wildlife" is defined as bears, cougars, wolves, coyotes, deer, elk, and raccoons.

Penalties.

If an officer or ex officio officer receives a complaint and has probable cause to believe that a person placed, deposited, distributed, or scattered grain, hay, or other food so as to intentionally lure, attract, or entice potentially habituated wildlife, the officer may issue a written warning. The warning will require the person to contain, move, or remove the grain, hay, or other food as directed by the officer. If the person fails to comply, the officer may issue a natural resources infraction.

Intentionally feeding potentially habituated wildlife in violation of a written warning or infraction is added to the list of actions constituting an infraction under the WDFW Enforcement Code.

Exemptions.

It is *not* unlawful for a person to feed potentially habituated wildlife, with the WDFW Director's authorization, in order to: (1) prevent damage to private property; (2) mitigate the

population loss anticipated by a predicted winter mortality; or (3) conduct a research or management program.

Exemptions are also provided for lawfully-operated waste disposal facilities, farmers and ranchers, zoos, and wildlife refuges, as well as for wildlife rehabilitators operating under RCW 77.12.467.

Finally, individuals feeding elk in the Mount St. Helens Elk Herd Management Area, as identified in the Washington State Elk Herd Plan, are exempt until July 31, 2019.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Humans feeding wildlife constitutes a serious public health and safety issue, both for humans and for the animals being fed. In terms of public safety, certain wildlife populations, like deer and raccoon, have started exhibiting abnormally aggressive behavior toward humans as a result of being regularly fed. In addition, feeding wildlife on a regular basis can lead to the artificial inflation of a species, which can attract more of the species' predators to urban areas and result in damage to public and private property.

In terms of public health, regularly feeding wildlife can lead to an increase in manure on surrounding property. The increased presence of a particular species, like raccoons, can lead to the increased chance of the spread of a particular disease, such as rabies.

Currently, the WDFW has limited tools available to address complaints related to humans feeding wildlife. The WDFW is often forced to resort to extreme solutions, such as euthanizing a bear that keeps returning to a particular house or area in search of more food. This bill would provide the WDFW with a tool to deal with situations like this in a fair and timely manner by requiring the issuance of a warning, followed by the issuance of a natural resources infraction if necessary. It is appropriate to give the authority to regulate the feeding of wildlife to the WDFW, because cities and counties do not have the authority to manage wildlife.

(With concerns) Deer and elk should not be included in the definition of "wildlife" contained in this bill, because these animals are usually shy and non-predatory and do not constitute a threat to human health and safety. It is appropriate, however, to include wildlife like bears, cougars, wolves, raccoons, and opossums in the definition. Deer and elk are often under severe stress during the winter due to human destruction of their natural environment, so feeding these species may be necessary to mitigate the effects of habitat loss. This issue would be better addressed at the local level, because different cities and counties have different experiences and issues with wildlife.

Certain programs authorized by the WDFW that relate to feeding wildlife for a specific purpose should be exempted from this bill, as should licensed wildlife rehabilitators.

(Opposed) The concept behind this bill is an important one, but in its present form, this bill is draconian and not narrowly tailored enough to adequately address the problem at hand. The unintended consequences that will stem from this bill are pervasive.

Persons Testifying: (In support) Representative Van De Wege, prime sponsor; Anne Stiles; Gerald Stiles; Ted Smith; William Shepherd; Mary Schilder, Progressive Animal Welfare Society; and Mike Cenci and Bruce Bjork, Washington Department of Fish and Wildlife.

(With concerns) Edward Barnes, Mount St. Helens Rescue; and Debora Munguia, Washington Forest Protection Association.

(Opposed) Kathryn Paulson; and Ed Owens, Hunters Heritage Council.

Persons Signed In To Testify But Not Testifying: None.