

HOUSE BILL REPORT

E2SSB 6146

As Passed House:

February 29, 1996

Title: An act relating to property damage by wildlife.

Brief Description: Revising procedures for minimizing property damage by wildlife.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Loveland, Swecker, Drew and Oke; by request of Department of Fish and Wildlife).

Brief History:

Committee Activity:

Natural Resources: 2/20/96, 2/21/96 [DP];

Appropriations: 2/22/96, 2/26/96 [DP].

Floor Activity:

Passed House: 2/29/96, 96-0.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: Do pass. Signed by 14 members: Representatives Fuhrman, Chairman; Buck, Vice Chairman; Pennington, Vice Chairman; Basich, Ranking Minority Member; Regala, Assistant Ranking Minority Member; Beeksma; Elliot; Hatfield; Jacobsen; Keiser; Sheldon; B. Thomas; L. Thomas and Thompson.

Staff: Linda Byers (786-7129).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 29 members: Representatives Huff, Chairman; Clements, Vice Chairman; H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Basich; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dellwo; Dyer; Foreman; Grant; Hickel; Jacobsen; Kessler; Lambert; Linville; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Silver; Smith; Talcott and Wolfe.

Staff: Nancy Stevenson (786-7137).

Background: Current law allows a property owner or a property owner's family, employee, or tenant to trap or kill wild animals or wild birds on that property that are damaging crops, domestic animals, fowl, or other property.

Current law also provides a process whereby a property owner may file a claim with the Department of Fish and Wildlife for damages caused by deer and elk. Claims for damages must be filed in writing within 90 days of discovery of the damage. Payments are not made if the damages occur on lands leased from a public agency, and the department director may refuse to pay claims if the claimant posted the property against hunting.

The department may pay deer and elk damage claims up to \$2,000. Claims that are not settled and paid within one year and claims exceeding \$2,000 may be filed as sundry claims with the state Office of Risk Management. These claims are then submitted to the Legislature for approval. Payments for deer and elk damage claims come out of the Wildlife Fund.

In November 1994, the Attorney General issued an opinion that payment for deer and elk damage claims could not exceed \$2,000. In 1995, the Legislature expressly allowed for payments exceeding \$2,000 until January 1, 1996. That legislation also directed the Department of Fish and Wildlife to study the issue of damages caused by wildlife and to develop long-term policy proposals regarding state compensation for wildlife damages.

Summary of Bill: A new chapter is created in the Wildlife Code dealing with property damage by wildlife, particularly damage to crops by deer and elk.

Killing or Trapping of Animals Causing Property Damage

Reiterating current law, the new chapter provides that the Department of Fish and Wildlife is to work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, and to kill the animals when no other practical means of damage control is feasible. If the department receives recurring complaints from an owner or tenant of real property or from several owners or tenants in one locale, the Fish and Wildlife Commission must consider conducting a special hunt to reduce the potential for damage.

The existing statute allowing the trapping or killing of wild animals or wild birds doing property damage is repealed and replaced with a similar section in the new chapter. The new section provides that a property owner, a family member of the property owner, or a property owner's employee or tenant may trap or kill wild animals or wild birds on the property that are damaging crops, domestic animals, or fowl. A hunting license is still not required in this situation. Except for coyotes and

Columbian ground squirrels, wildlife trapped or killed for causing damage remain the property of the state. The person trapping or killing the wildlife must notify the department immediately, and the department must dispose of the wildlife within three days of being notified.

The general authorization to trap or kill wild animals or wild birds that are damaging crops, domestic animals, or fowl is subject to three limitations. First, threatened or endangered species may not be hunted, trapped, or killed. Second, except in emergency situations, deer, elk, or protected wildlife may not be killed without a permit from the director or the director's designee. In an emergency, the department may give verbal permission to trap or kill deer, elk, or protected wildlife causing damage. Third, on privately-owned cattle ranching lands, the land owner or lessee may declare an emergency only when the department has not responded within 48 hours after having been contacted about damage. In such an emergency, the owner or lessee may trap or kill the deer, elk, or other protected wildlife causing the damage only if the lands were open to public hunting during the previous hunting season or closure to public hunting was coordinated with the department to protect property and livestock.

Claims for Deer and Elk Damage

The existing statutes governing payment of deer and elk damage claims are repealed and replaced with new sections in the new chapter. The amount the department may pay for claims for deer and elk damage to crops is increased from \$2,000 to \$10,000 per claim. Damages are limited to the value of the commercially-raised horticultural or agricultural crops.

A claim for damages may not be processed if the claimant does not notify the department within 10 days of discovery of the damage or if the claimant does not complete a written claim form within 60 days, rather than 90 days, after the damage. The burden of proving damages is on the claimant. The director may adopt rules for the form of affidavits or proof to be provided for claims and to specify the time and method of assessing damage. The director or the director's designee may examine and assess the damage, or the department and the claimant may agree to assessment of damages by a third party.

There is no payment for damages if (1) the crops are on lands leased from a public agency; (2) the landowner or claimant failed to use damage prevention materials or methods furnished by the department or failed to comply with a damage prevention agreement; (3) the director has expended all funds appropriated for damage claims; or (4) the damages are covered by insurance. The director may also refuse to pay claims to persons who posted the property against hunting or who did not allow public hunting during the season prior to the occurrence of the damages.

When the director has determined a claim, the claimant has 60 days to accept it, or the claim is deemed rejected. If the claimant does not accept the director's decision or the claim is greater than \$10,000, the claim may be filed with the state Office of Risk Management and brought before the Legislature for approval.

Fund Sources for Deer and Elk Damage Claims

Two specific fund sources are identified for payment of claims for deer and elk damage to crops. A cap of \$120,000 is set on payments from the Wildlife Fund. This fund may be used only if the damages occur in a place where a local government has not restricted or prohibited hunting. In areas where the opportunity to hunt has been restricted or prohibited by a local government, up to \$30,000 in damage claims may be paid from the state general fund.

In special circumstances, such as an exceptionally harsh winter or major fire, that lead to unusually large amounts of deer and elk damage to crops, the Legislature may declare an emergency. In such an emergency, the department may pay animal damage claims above the limits described above based on whatever funds the Legislature appropriates for that purpose. The Legislature would choose the fund source for any additional appropriations.

Other Provisions

The provisions in the new chapter apply prospectively only, addressing claims that arise on or after July 1, 1996. Until July 1, 1996, the department may pay damage claims that have been approved by the Legislature, using funds appropriated by the Legislature for that purpose.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 1996, except Section 14 which takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Natural Resources) There is a growing problem with human and wildlife interaction. This proposal has been developed with the input of many interest groups. This will give the department more flexibility to pay claims and to protect wildlife. The bill is part of a larger package to deal with problem wildlife. The stakeholder groups valued the concept of shared responsibility, which is behind the use of the general fund for the first time. This will streamline the claims process and allow the department to handle claims faster.

(Appropriations) An attorney general's opinion in 1994 stated that the historical practice of paying claims is incorrect. The 1995 Legislature directed the Department of Fish and Wildlife to design a new process. This bill revises the process allowing the department to process claims up to \$10,000. Dollars will be saved as claims are settled more quickly.

Testimony Against: (Natural Resources) None.

(Appropriations) None.

Testified: (Natural Resources) Senator Valoria Loveland, prime sponsor; Larry Popejoy, Department of Fish and Wildlife; Ken Koski, Washington State Trappers Association; and Jim Halstrom, Washington State Horticultural Association (all in favor).

(Appropriations) Ed Manary, Department of Fish and Wildlife.