

# HOUSE BILL REPORT

## HB 1609

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### As Reported By House Committee On:

Natural Resources

**Title:** An act relating to maintaining and rebuilding elk populations.

**Brief Description:** Attempting to rebuild the elk population in the state.

**Sponsors:** Representatives Alexander, Regala, Clements, DeBolt, Doumit, Pennington, Eickmeyer, Grant, Mielke, Boldt, Conway and Dickerson.

### Brief History:

#### Committee Activity:

Natural Resources: 2/4/99, 2/19/99 [DPS].

#### Brief Summary of Substitute Bill

- Requires the Department of Fish and Wildlife to take a number of actions to rebuild and restore elk herds in the state.
- Requires the Department of Fish and Wildlife to invite federally recognized Indian tribes to discuss elk populations and management.

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### HOUSE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Buck, Republican Co-Chair; Regala, Democratic Co-Chair; Anderson, Democratic Vice Chair; Sump, Republican Vice Chair; G. Chandler; Clements; Doumit; Eickmeyer; Ericksen; Pennington; Rockefeller and Stensen.

**Staff:** Josh Weiss (786-7129).

### Background:

Elk populations in Washington are impacted by a number of different factors, including habitat changes, weather conditions, hunting pressure, and poaching. Some elk herds are experiencing population declines. Hunting pressure on elk comes from both non-tribal

and tribal hunters. Non-tribal hunting is regulated by the Department of Fish and Wildlife. Individual tribes establish hunting regulations for members of their tribes. The degree to which a state agency, such as the department, may regulate tribal hunters has been debated in courtrooms for decades. A recent Washington Court of Appeals' decision addressed the subject of tribal hunting on "open and unclaimed lands," a term used in many of the treaties signed with tribes in Washington. The court found that, although fishing is reserved only on "usual and accustomed grounds and stations," tribal hunting rights extend anywhere in the territory that is open and unclaimed. This decision has been appealed to the Washington Supreme Court, where a decision is pending.

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### **Summary of Substitute Bill:**

Requires the Washington Department of Fish and Wildlife to take several actions relating to restoring elk herds. These actions include:

- Establishing accurate elk herd population estimates, especially those in areas in which conservation restrictions have been imposed in the past.
- Determining annual elk mortality rates, including those taken by all hunters and poachers.
- Delineating changes in historic elk ranges, anticipated habitat changes, and projected future impacts to herd health.
- Designing hunting rules and enforcement strategies that both honor tribal hunting privileges and recognize the benefit to tribal and non-tribal hunters in preserving and enhancing elk populations.
- Identifying avenues for interested volunteers to collect biological data, assist in preventing poaching and apprehending poachers.
- Identifying ways for those living near hunting areas to express their concerns and report the taking of elk.
- Identifying existing federal, state, local, tribal and private elk research and enhancement efforts.
- Identifying opportunities for possible cooperative efforts to maintain and rebuild elk populations.
- Initiating other efforts necessary to gain a better understanding of elk hunting and of state elk populations.

In all of these actions, the department is required to give emphasize to the Packwood, Olympic Peninsula, Nooksack, North Rainier, and Blue Mountain elk herds. However, the Colockum, Yakima, and Willapa Hills elk herds must also receive increased attention in order to prevent foreseeable declines.

The department is required to invite federally recognized Indian tribes to participate in discussions regarding elk populations and management. The department is further required to work with tribal representatives to identify strategies which honor tribal

hunting privileges while maintaining and rebuilding elk populations. The format of these discussions must provide opportunities for non-tribal hunters, residents living near hunting areas, and other interested parties to contribute.

The department is required to report to the Legislature on its progress in taking these actions by December 1, 2000.

The department is appropriated \$250,000 for the biennium from the general fund.

**Substitute Bill Compared to Original Bill:** The substitute bill provides an appropriation of \$250,000 for the biennium. This amount was left blank in the original bill.

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**Appropriation:** The sum of \$250,000 for the biennium from the state general fund.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

**Testimony For:** (Original bill) This bill sets the stage to rebuild one of the most important big game species in the state. Elk herds in the state are not behind the salmon by very much. The Packwood, Olympic Peninsula, North Rainier, and Blue Mountain herds are all in serious trouble. This is a result of habitat issues and over-harvesting. The state records over 400,000 hunting days, which are estimated to generate over \$40 millions in revenue. Courts are currently discussing the tribal right to hunt on open and unclaimed lands in the state. We need real population numbers in order to address this issue. This is an opportunity to be pro-active on an important issue.

The philosophy behind this bill is that better biological information will lead to better management. This is consistent with the Governor's intent. However, the bill would exceed the Governor's budget. The list of herds should be prioritized according to conservation closures. The herds are in trouble because of over-harvesting, predating, and changes in habitat. The strength of this bill is that it relies on partnerships with organizations like Eyes in the Woods. This requires the active participation and cooperation with Native American tribes. This is an important harvestable and watchable resource.

This is the top legislative priority for the Hunters Heritage Council this year. We need to encourage a network of people to help gather data. The council would prefer that the tribes cooperate on this issue, but if they don't want to, the council does not object. This is similar to legislation from last year that got stuck in Senate Ways and Means Committee. Over the last year we have worked to perfect the bill. Do not let another resource end up in the position that the salmon are in. Our natural resources need our

help. There are early signs of problems in the Yakima herd, relating to calf survival. We support recent conservation closures, but don't want them to spread. There are lots of volunteers out there who are waiting to be trained; however, we need a volunteer coordinator in the department. We also need additional field biologists' support.

The Point No Point tribes have focused on elk management and research for the last five years. The Olympic Peninsula herds have been declining and the tribes have reduced their hunting in response. The funding for the Point No Point program may not be extended, and there may be a funding shortfall. The state and tribes must work together on this issue. The Northwest Indian Fisheries Commission supports this bill but has some suggestions for language changes. These are: 1) Tribes should be recognized as co-managers and some funding should be provided for them; 2) Prioritized herds should be identified by biologists not by the Legislature; and 3) "privilege" should be exchanged with "right."

The Washington Association of Professional Biologists supports the good science in this bill. Some of the measures in this bill have been undertaken, but the most costly, such as population estimates, have not. The bill should focus on the most threatened herds. There have been two significant elk season closures since 1984 near the Skokomish Tribe. In both cases the tribe closed before the state did. We are serious about working with the state. There is no better time to put money into this issue and if we don't we will lose the herds in the state. Ensure that no habitat bought with the Pittman/Robertson Act funds are sold by the department. This bill ignores the role of the federal fish and wildlife officers. The tribes respect these federal agents. Increased hunting is hurting these herds. We have four months of hunting. We need to cut down on consumptive use. The regulations need to specify what the tribal seasons have been set at, so that people understand the pressure that these herds are under. Hunting seasons are too long, and the tribes are to blame for this too. We have an August through February season. The tribes allow up to five animals per person. The Yakama tribal leaders deserve respect and have 4,000 or 5,000 head of elk on the reservation. However, there are 29 other tribal groups involved. We need to influence the Fish and Wildlife Commission to cut back on seasons for everyone.

(With concerns) Anything that the Legislature can do to bring herds back is important. The Yakama Tribe would like to see changes in some of the language. The term "privilege" should be changed to "right"; tribes should be recognized as co-managers, and cooperation with tribes should be emphasized since the Yakama Nation has an extensive program. We need to talk about habitat in the future, which would benefit the animals. Hunting is a reserved Indian right, no different than fishing. The tribes are governing bodies that regulate their own members. Rebuilding elk herds is an admirable goal. The Quinault Indian Nation wants to help with the science, gathering the data, and habitat. This bill should focus on habitat and science rather than on harvesting issues.

**Testimony Against:** None.

**Testified:** (In support) Representative Alexander (prime sponsor); Dr. Jeffery Koenings, Director, Washington Department of Fish and Wildlife; Ed Owens, Hunters Heritage Council; Tony Wells, Citizens for Washington Wildlife, & Hunters Heritage Council; Dave Garrison, Washington State Archery Association; Kyle Winton, Eyes in the Woods; Sally Nickelson, Point No Point Treaty Tribes; Chris Madsen, Northwest Indian Fisheries Commission; Greg Schirato, Washington Association of Professional Biologists; Genny Rogers, Skokomish Tribe; Allan Woodbridge, Western Fish and Wildlife Federation, and Washington State Rifle and Pistol Association; Brian Blake, Citizens for Washington Wildlife, National Rifle Association, and Grays Harbor Democrats; Gerry Ring Erickson, Defenders of Wildlife; Tip Hudson, Washington Cattlemen's Association; Gerry Rowland, Modern Firearms Hunters of Washington; and Rob Kavanaugh, citizen.

(With concerns) Randy Settler, Yakama Nation; Dawn Vyvyan, Yakama Nation; and Randy Scott, Quinault Indian Nation.