

# HOUSE BILL REPORT

## HB 1752

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### As Reported by House Committee On:

Agriculture & Ecology  
Appropriations

**Title:** An act relating to wildlife damage claims on rangeland suitable for grazing or browsing of domestic livestock.

**Brief Description:** Allowing for claims for wildlife damage on rangeland suitable for grazing or browsing of domestic livestock.

**Sponsors:** Representatives Clements, Grant, G. Chandler, B. Chandler, Linville, Lisk, McMorris, Armstrong, Schoesler and Mulliken.

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 2/20/01, 2/23/01 [DPS];  
Appropriations: 2/28/01, 3/7/01 [DP2S(w/o sub AGECE)].

#### Brief Summary of Second Substitute Bill

- Adds rangeland forage to the definition of crop as it is used to describe damage caused by wildlife.
- Allows the Department of Fish and Wildlife to pay claims for deer and elk damage to the owner or tenant of rangeland livestock forage.
- Removes the restriction against paying claims for wildlife damage that occurred on lands leased from a public agency.
- Limits the payment of damage claims on leased lands to the annual amount paid to lease the land.

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Mielke, Republican Vice Chair; B. Chandler, Delvin, Grant, Hunt, Kirby, Quall, Roach, Schoesler and

Sump.

**Minority Report:** Do not pass. Signed by 1 member: Representative Dunshee.

**Staff:** Jason Callahan (786-7117).

**Background:**

The Legislature has stated in statute that wildlife is a public resource of significant value, and that the minimization of conflicts between humans and wildlife is a responsibility shared by all citizens of the state. The Legislature has also found that commercial crop production and healthy deer and elk populations are both important. However, healthy wildlife populations can cause damage to crops. Provisions in current law address this conflict between agriculture and wildlife.

The Department of Fish and Wildlife is instructed to work closely with landowners to find non-lethal solutions to problem wildlife. However, if such efforts are not practical, the department is authorized to increase the harvest of damage-causing animals during the hunting season. The department is also authorized to conduct special hunts in problem areas as a result of recurring complaints regarding property being damaged by wildlife.

The owner or tenant of real property being damaged by wildlife is authorized to trap or kill the problem wildlife damaging crops. Crops is defined as commercially raised horticultural or agricultural products, but does not include livestock. The owner or tenant may not kill or trap the problem wildlife if the animal is an endangered or threatened species, or the animal is a deer or an elk. Problem deer and elk may only be killed with a take permit issued by the department, unless the situation is an emergency. On cattle ranching land, the owner may only declare an emergency if the department does not respond within 48 hours of notification. Even if an emergency situation exists, the owners of cattle ranching land may not kill the problem wildlife if they did not make the land available for public hunting during the previous hunting season.

The director of the department may pay up to \$10,000 per claim for damages caused to crops by wild deer or elk. The damages are limited to the value of the commercially raised agriculture or horticultural crops and comprise the sole remedy available to the crop owner from the department. The burden of proving damages belongs to the claimant.

If the department rejects a claim, or a claim is for over \$10,000, the claimant may file a request with the Office of Risk Management (ORM). The ORM recommends to the Legislature whether the claim should be paid, and if the Legislature agrees, the director of the department may pay the claim. The department may refuse to pay a claim for land that was not open to public hunting during the prior hunting season.

The department may not pay more than \$120,000 in wildlife damage claims in any fiscal year. If claims exceed this amount, the claims are prioritized according to legislative direction. The Legislature may expand the damage cap by declaring an emergency.

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**Summary of Substitute Bill:**

The definition of crop, as it is used to calculate damages to agriculture due to wildlife, is expanded to include rangeland livestock forage suitable for grazing or browsing livestock for a portion of the year. The rangeland forage can be located on privately owned land or on lands leased from a public agency.

The department may pay claims up to \$10,000 per claim for damage to rangeland livestock forage caused by wild deer or elk. Claims are payable to the owner of the crop, or the lessee of the rangeland. Claims are limited to fenced ranchland, hay meadows, pasture meadows, artificially seeded ranchland, and grazing land that is deferred to seasonal use.

The burden of proving losses to rangeland does not belong to the claimant. Instead, the claim is submitted to arbitration within 10 days if the department does not agree with the rangeland owner's claim or any other element of a damage settlement. The arbitration is conducted before a three-member panel, comprised of one member chosen by the department, one by the land owner, and one by the other two members. If a third arbitrator can not be agreed upon, the Superior Court for the county of the land in question is asked to appoint a third impartial arbitrator. The department and the landowner share the expense of the third arbitrator. The findings of the arbitration panel are non-binding and appealable in a judicial proceeding.

**Substitute Bill Compared to Original Bill:**

The original bill only allowed rangeland owners to recover damages caused by deer and elk if those damages exceeded 10 percent of historic levels over a 10-year period.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (Original bill) Grass is the cattle rancher's crop and should be protected. It is raised like a crop and used as the primary feed for cattle. The elk herds of such size and/or mismanagement make some leased land unusable for growing the

grass necessary to feed the cattle. Grasses common in eastern Washington include the crested wheat grass, which only has a growing cycle of 80 days. If it is eaten by elk, the grass will not have time to regrow into a useable crop. Washington grasses are also extremely vulnerable to damage early in its growth cycle because if an elk gets to the grass early, a seed head will never form and the field will die. This has happened on numerous ranches as a direct result of elk, and the ranchers should receive compensation like other agriculturists.

(With concerns) Rangeland crops should not be treated differently from other agricultural or horticultural crops. Non-rangeland crops would not be afforded the advantage of going to arbitration, while rangeland crops would. The department's budget for paying wildlife damage claims is limited, and rangeland claims would mean no claims for other property owners. Damage prevention could be pursued to eliminate the need to provide damage mitigation.

**Testimony Against:** None.

**Testified:** Jim Zimmerman, Washington Cattlemen's Association; John Ashbaugh, Yakima County Cattleman; and W. Frank Hendrix, Washington State University.

(With concerns) Steve Pozzanghera, Bruce Bjork, and John Broome, Washington Department of Fish and Wildlife.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 29 members: Representatives Sehlin, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; Lisk, Republican Vice Chair; Alexander, Boldt, Buck, Clements, Cody, Cox, Fromhold, Gombosky, Grant, Kagi, Keiser, Kenney, Kessler, Lambert, Linville, Mastin, Mulliken, Pearson, Pflug, Ruderman, D. Schmidt, Schual-Berke, Talcott and Tokuda.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Dunshee and McIntire.

**Staff:** Jeff Olsen (786-7157).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Ecology:**

The second substitute removes the provision under which the burden of proof for damages would not be on the claimant. In addition, the arbitration process between the

department and the claimant is deleted. The second substitute bill removes the restriction that states claims for damages to rangeland livestock may not be appealed to the ORM. The second substitute bill also limits the payment of damage claims to lessees to no more than the annual amount of the lease payment paid for leased lands.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect July 1, 2001.

**Testimony For:** Elk herds have been depleting grass, which is a cattle rancher's crop. The department has not done enough to manage the wildlife damage to rangelands. Ranchers should be compensated for damage to rangelands similar to other crops.

(With concerns) Costs for the department would be minimal if rangeland damage claims were managed just like other crops.

**Testimony Against:** None.

**Testified:** Representative Clements, prime sponsor; and Jim Zimmerman, Washington Cattlemen's Association and the Washington State Grange.

(With concerns) Bruce Bjork, the Department of Fish and Wildlife.