

ESHB 1147 - S AMD 540

By Senator Jacobsen

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 77.36.005 and 1996 c 54 s 1 are each amended to read
4 as follows:

5 The legislature finds that:

6 (1) As the number of people in the state grows, wildlife management
7 techniques change, and wildlife habitat is altered, people will
8 encounter wildlife more frequently. As a result, conflicts between
9 humans and wildlife will also increase. Wildlife is a public resource
10 of significant value to the people of the state and the responsibility
11 to minimize and resolve these conflicts is shared by all citizens of
12 the state.

13 (2) In particular, the state recognizes the importance of
14 commercial agricultural and horticultural crop production, the state's
15 commercial livestock industry, and the value of healthy ((~~deer and~~
16 ~~elk~~)) wildlife populations, which can damage ((~~such~~)) crops and
17 commercial livestock. The legislature further finds that damage
18 prevention is key to maintaining healthy ((~~deer and elk~~)) wildlife
19 populations, wildlife-related recreational opportunities, ((~~and~~))
20 commercially productive agricultural and horticultural crops, and a
21 thriving commercial livestock industry, and that the state,
22 participants in wildlife recreation, and private landowners and tenants
23 share the responsibility for damage prevention. Toward this end, the
24 legislature encourages landowners and tenants to contribute through
25 their land management practices to healthy wildlife populations and to
26 provide access for related recreation. It is in the best interests of
27 the state for the department ((~~of fish and wildlife~~)) to respond
28 quickly to wildlife damage complaints and to work with these landowners
29 and tenants to minimize and/or prevent damages and conflicts while

1 maintaining (~~deer and elk~~) wildlife populations for enjoyment by all
2 citizens of the state.

3 (3) A timely and simplified process for resolving claims for
4 damages caused by (~~deer and elk~~) wildlife for commercial agricultural
5 (~~or~~), horticultural, or commercial livestock products is beneficial
6 to the claimant and the state.

7 **Sec. 2.** RCW 77.36.010 and 1996 c 54 s 2 are each amended to read
8 as follows:

9 (~~Unless otherwise specified,~~) The (~~following~~) definitions in
10 this section apply throughout this chapter(~~+~~) unless the context
11 clearly requires otherwise.

12 (1) "Commercial livestock" means cattle, sheep, and horses held or
13 raised by a person for sale, trade, or barter, and from which the
14 person derives an annual income from the sales of the animals in excess
15 of ten thousand dollars.

16 (2) "Crop" means a commercially raised horticultural and/or
17 agricultural product and includes growing or harvested product but does
18 not include livestock. For the purposes of this chapter all parts of
19 horticultural trees shall be considered a crop and shall be eligible
20 for claims.

21 (~~+~~) (3) "Emergency" means an unforeseen circumstance beyond the
22 control of the landowner or tenant that presents a real and immediate
23 threat to crops, domestic animals, or fowl.

24 (~~+~~) (4) "Immediate family member" means spouse, brother,
25 sister, grandparent, parent, child, or grandchild.

26 (5) "Predatory wildlife" means bears, wolves, and cougars.

27 **Sec. 3.** RCW 77.36.040 and 1996 c 54 s 5 are each amended to read
28 as follows:

29 (1)(a) Pursuant to this section, the director or the director's
30 designee may distribute money appropriated to pay claims for damages to
31 crops caused by wild deer or elk in an amount of up to ten thousand
32 dollars per claim. Damages payable under this section are limited to
33 the value of such commercially raised horticultural or agricultural
34 crops, whether growing or harvested, and shall be paid only to the
35 owner of the crop at the time of damage, without assignment. Damages
36 shall not include damage to other real or personal property including

1 other vegetation or animals, damages caused by animals other than wild
2 deer or elk, lost profits, consequential damages, or any other damages
3 whatsoever. (~~These damages~~)

4 (b) Pursuant to this section, the director or the director's
5 designee may distribute money appropriated to reimburse the owner of
6 commercial livestock that has been killed by predatory wildlife, or
7 injured by predatory wildlife to such a degree that the market value of
8 the commercial livestock has been diminished. Each individual animal
9 represents one claim, and each claim must be paid the fair market value
10 of the killed or injured animal.

11 (c) Damage claim payments under this section shall comprise the
12 exclusive remedy for claims against the state for damages caused by
13 wildlife.

14 (2) The director may, consistent with section 4 of this act, adopt
15 rules for the form of affidavits or proof to be provided in claims
16 under this section(~~(. The director may adopt rules)~~) and to specify
17 the time and method of assessing damage. The burden of proving damages
18 shall be on the claimant. Payment of claims shall remain subject to
19 the other conditions and limits of this chapter.

20 (3) If funds are limited, payments of claims shall be prioritized
21 in the order that the claims are received. No claim may be processed
22 if:

23 (a) The claimant did not notify the department within ten days of
24 discovery of (~~the~~) damage to crops or within seventy-two hours of the
25 discovery of a predatory wildlife attack on commercial livestock. If
26 the claimant intends to take steps that prevent determination of
27 damages, such as harvest of damaged crops, then the claimant shall
28 notify the department as soon as reasonably possible after discovery so
29 that the department has an opportunity to document the damage and take
30 steps to prevent additional damage; or

31 (b) The claimant did not present a complete, written claim within
32 sixty days after the damage, or the last day of damaging if the damage
33 was of a continuing nature.

34 (4)(a) The director or the director's designee may examine and
35 assess the damage upon notice, and may convene, upon the director's own
36 initiative or on the request of the claimant, the commercial livestock
37 valuation committee created in section 4 of this act to assist with the
38 assessment of the damage.

1 **(b)** The department and claimant may agree to an assessment of
2 damages by a neutral person or persons knowledgeable in horticultural
3 ~~((or))~~, agricultural, or commercial livestock practices. The
4 department and claimant shall share equally in the costs of such third
5 party examination and assessment of damage.

6 (5) There shall be no payment for damages if:

7 (a) The crops are on lands leased from any public agency;

8 (b) The landowner or claimant failed to use or maintain applicable
9 damage prevention materials or methods furnished by the department, or
10 failed to comply with a wildlife damage prevention agreement under RCW
11 77.12.260;

12 (c) The director has expended all funds appropriated for payment of
13 such claims for the current fiscal year; ~~((or))~~

14 (d) The damages are covered by insurance. The claimant shall
15 notify the department at the time of claim of insurance coverage in the
16 manner required by the director. Insurance coverage shall cover all
17 damages prior to any payment under this chapter; or

18 (e) The claimant has received compensation for the damages or is
19 eligible for compensation from a nongovernmental organization. The
20 department must provide the claimant with information about applicable
21 compensation programs offered by nongovernmental organizations.
22 However, the claimant is eligible for payment of damages pursuant to
23 this section if the claimant is denied compensation by all applicable
24 nongovernmental organizations.

25 (6) When there is a determination of claim by the director or the
26 director's designee pursuant to this section, the claimant has sixty
27 days to accept the claim or it is deemed rejected.

28 (7) The limitation on claim payments established in subsection
29 (5)(a) of this section is limited only to crop damage and does not
30 apply to commercial livestock damaged or killed on land leased by a
31 public agency.

32 NEW SECTION. Sec. 4. A new section is added to chapter 77.36 RCW
33 to read as follows:

34 (1)(a) The commercial livestock valuation committee is created to
35 assist the director with the determination of the market value of
36 killed or injured commercial livestock for the purposes of reimbursing
37 the owner under RCW 77.36.040.

1 (b) In assisting with the determination of the market value of
2 injured or killed commercial livestock, the members of the commercial
3 livestock valuation committee must have access to all documentation
4 regarding a particular claim, along with other information that is
5 deemed useful by the committee members.

6 (c) The recommendation of the commercial livestock valuation
7 committee is deemed final when four or more of the committee members
8 determine the fair market value, if any, for the claim in question.

9 (2) The commercial livestock valuation committee is composed of
10 seven members appointed by the commission. The membership of the
11 commercial livestock valuation committee must be composed as follows:

12 (a) Three members must be professionally involved in sheep
13 production;

14 (b) Three members must be professionally involved in cattle
15 production; and

16 (c) One member must be professionally involved in horse production.

17 (3) The members of the commercial livestock valuation committee are
18 appointed for a four-year term. If a vacancy occurs on the committee
19 prior to the expiration of a term, the commission must appoint a
20 replacement within sixty days to complete the term. After a term
21 expires, a committee member may be reappointed.

22 (4) The commercial livestock valuation committee must be convened
23 at time intervals necessary to provide timely recommendations for
24 claims filed under RCW 77.36.040. A majority of members currently
25 serving on the committee constitutes a quorum, and the chair of the
26 committee must be selected by the committee members. The department
27 must provide staff support for all official committee meetings.

28 (5) Each member of the commercial livestock valuation committee
29 shall serve without compensation but may be reimbursed for travel
30 expenses as authorized in RCW 43.03.050 and 43.03.060.

31 (6) The members of the commercial livestock valuation committee, or
32 individuals acting on their behalf, are immune from civil liability for
33 official acts performed in the course of their duties.

34 **Sec. 5.** RCW 77.36.050 and 1996 c 54 s 6 are each amended to read
35 as follows:

36 For crop claims only, if the claimant does not accept the
37 director's decision under RCW 77.36.040, or if the claim exceeds ten

1 thousand dollars, then the claim may be filed with the (~~office of~~)
2 risk management division of the office of financial management under
3 RCW 4.92.040(5). The (~~office of~~) risk management division shall
4 recommend to the legislature whether the claim should be paid. If the
5 legislature approves the claim, the director shall pay it from moneys
6 appropriated for that purpose. No funds shall be expended for damages
7 under this chapter except as appropriated by the legislature.

8 **Sec. 6.** RCW 77.36.060 and 1996 c 54 s 7 are each amended to read
9 as follows:

10 The director may refuse to consider and pay claims (~~of~~) for
11 damage to crops for persons who have posted the property against
12 hunting or who have not allowed public hunting during the season prior
13 to the occurrence of the damages.

14 **Sec. 7.** RCW 77.36.070 and 1996 c 54 s 8 are each amended to read
15 as follows:

16 (1) The department may pay no more than one hundred (~~twenty~~)
17 fifty thousand dollars per fiscal year from the state wildlife (~~fund~~)
18 account created in RCW 77.12.170 for claims under RCW 77.36.040 and for
19 assessment costs and compromise of claims. Such money shall be used to
20 pay animal damage claims only if the claim meets the conditions of RCW
21 77.36.040 and, for crop claims only, the damage occurred in a place
22 where the opportunity to hunt was not restricted or prohibited by a
23 county, municipality, or other public entity during the season prior to
24 the occurrence of the damage.

25 (2) Of the amount the department is authorized to pay for claims
26 under this section, no more than one-half of that amount may be used to
27 reimburse the owners of commercial livestock under this chapter for
28 losses due to predatory wildlife attacks.

29 **Sec. 8.** RCW 77.36.080 and 1996 c 54 s 9 are each amended to read
30 as follows:

31 (1) The department may pay no more than (~~thirty~~) one hundred
32 fifty thousand dollars per fiscal year from the general fund for claims
33 under RCW 77.36.040 and for assessment costs and compromise of claims
34 unless the legislature declares an emergency. Such money shall be used
35 to pay animal damage claims only if the claim meets the conditions of

1 RCW 77.36.040 (~~and the damage occurred in a place where the~~
2 ~~opportunity to hunt was restricted or prohibited by a county,~~
3 ~~municipality, or other public entity during the season prior to the~~
4 ~~occurrence of the damage~~)).

5 (2) The legislature may declare an emergency, defined for the
6 purposes of this section as any happening arising from weather, fire,
7 or other natural conditions(~~(, or fire)~~) that causes unusually great
8 damage to (~~commercially raised~~) commercial livestock by predatory
9 wildlife or to agricultural or horticultural crops by deer or elk. In
10 an emergency, the department may pay as much as may be subsequently
11 appropriated, in addition to the funds authorized under subsection (1)
12 of this section, for claims under RCW 77.36.040 and for assessment and
13 compromise of claims. Such money shall be used to pay animal damage
14 claims only if the claim meets the conditions of RCW 77.36.040 and the
15 department has expended all funds authorized under RCW 77.36.070 or
16 subsection (1) of this section.

17 (3) Of the amount the department is authorized to pay for claims
18 under this section, no more than one-half of that amount may be used to
19 reimburse the owners of commercial livestock under this chapter for
20 losses due to predatory wildlife attacks.

21 NEW SECTION. Sec. 9. If specific funding for the purposes of this
22 act, referencing this act by bill or chapter number, is not provided by
23 June 30, 2007, in the omnibus appropriations act, this act is null and
24 void."

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25 On page 1, line 1 of the title, after "wildlife;" strike the
26 remainder of the title and insert "amending RCW 77.36.005, 77.36.010,
27 77.36.040, 77.36.050, 77.36.060, 77.36.070, and 77.36.080; adding a new
28 section to chapter 77.36 RCW; and creating a new section."

EFFECT: Provides limitations for wildlife damage claims covered by a nongovernmental organization. Removes language allowing livestock damage claimants to file claims to the legislature, through OFM's risk management division, if the claimant rejects the department of fish and wildlife's claim determination or where the claim exceeds \$10,000. Authorizes the department of fish and wildlife to pay (1) \$150,000 annually, increased from \$120,000, from the wildlife account and (2) \$150,000 annually, increased from \$30,000, from the general fund for wildlife damage claims. Removes the restriction limiting the use of general fund moneys to crop damage on lands where hunting is restricted by local government.

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