



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5380 (Substitute H-3 as reported without amendment)

Sponsor: Representative Michael Lahti

First House Committee: Appropriations

Second House Committee: Tourism, Outdoor Recreation and Natural Resources

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 12-16-09

RATIONALE

Bovine tuberculosis (TB) is a contagious disease capable of infecting most warm-blooded animals, but commonly affects cattle, bison, deer, and elk. It is primarily spread by close contact and is intensified by confined or crowded conditions. At one time, northeastern Michigan was thought to be the only place on the continent where the disease had become established in the wild deer population. Some believe that the presence of the disease is due, in part, to individuals' supplying supplemental food to the deer for hunting or viewing purposes. This practice usually involves scattering food on the ground to lure deer or elk into closer proximity to humans. Because supplemental feeding may draw herds of animals into nose-to-nose contact, it can contribute to the spread of bovine TB and other contagious diseases.

Another contagious disease that can affect deer and elk has made its way into Michigan. Chronic Wasting Disease, or CWD, is a fatal neurological disease closely related to Bovine Spongiform Encephalopathy (BSE, or "mad cow" in cattle) and Creutzfeldt-Jakob Disease in humans. While the route of infection for CWD is unknown, there is strong evidence that it is transmitted via saliva, urine, and feces, either from animal to animal or from soil or surface to animal. It is believed that supplemental feeding provides conditions favorable to the spread of CWD. In 2008, Michigan's first (and thus far, only) case of CWD was confirmed in a white-tailed deer from a captive cervid facility. The incident prompted implementation of a response plan

the State had formulated in 2002, which included an immediate statewide quarantine and the extension of a feeding ban from several counties to the entire Lower Peninsula.

Public Act 66 of 1999 added Section 40111a to the Natural Resources and Environmental Protection Act to require the Natural Resources Commission (NRC) to issue an order regulating deer and elk feeding. The section was scheduled to sunset on December 31, 2004, but because of the continuing threat of bovine TB and the new threat of CWD, the expiration date was postponed until January 1, 2010. It has been suggested that the sunset be delayed once again to ensure that the NRC retains the authority to regulate feeding practices that could facilitate the spread of these diseases.

CONTENT

The bill would amend Part 401 (Wildlife Conservation) of the Natural Resources and Environmental Protection Act to do the following:

- **Delay until January 1, 2016, the sunset on a requirement that the Natural Resources Commission issue an order concerning deer and elk feeding.**
- **Delete provisions specifying the content of the order.**
- **Define "deer and elk feeding".**

Section 40111a of the Act required the NRC, after consultation with the Agriculture Commission, to issue an order concerning deer and elk feeding to take effect on October 1, 1999. (The order is described below, under **BACKGROUND**.)

The order is required to do all of the following in the Lower Peninsula:

- Prohibit a person from engaging in deer or elk feeding unless it is for recreational viewing purposes.
- Require that the feed be deposited or distributed within 100 yards of the residence of the person engaging in the feeding for recreational viewing purposes on land he or she possesses.
- Establish any other reasonable conditions for deer and elk feeding for recreational viewing purposes that are consistent with the requirements of Section 40111a.

The order also must establish criteria for deer feeding in the Upper Peninsula.

Notwithstanding those requirements, the NRC, after consultation with the Agriculture Commission, may issue an order that prohibits all deer and elk feeding in all or part of the State if the NRC considers it necessary to manage wildlife populations properly or to control or eradicate disease.

An order under Section 40111a concerning baiting to take deer and elk or concerning feeding may not make a distinction between depositing or distributing feed by hand and depositing or distributing feed by a mechanical device, whether operated by human power or otherwise.

The bill would delete these provisions. The bill instead would require the NRC, after consultation with the Agriculture Commission, to issue an order concerning deer and elk feeding in Michigan. "Deer and elk feeding" would mean the depositing, distributing, or tending of feed in an area frequented by wild, free-ranging white-tailed deer and elk to prevent them from starving or for recreational viewing. The term would not include any of the following:

- Baiting to take game as provided by an NRC order under Section 40113a (which gives the NRC the exclusive authority to

regulate the taking of game in Michigan).

- The scattering of feed solely as the result of normal logging practices or normal agricultural practices.
- Feeding wild birds or other wildlife if done in such a manner as to exclude wild, free-ranging white-tailed deer and elk from gaining access to the feed.

In addition, the term would exclude the storage or use of feed for agricultural purposes if at least one of the following applied:

- The area was occupied by livestock actively consuming the feed on a daily basis.
- The feed was covered to deter wild, free-ranging white-tailed deer and elk from gaining access to the feed or was being used on a daily basis.
- The feed was in a storage facility or was stored in a manner that was consistent with normal agricultural practices.

Section 40111a is to be repealed on January 1, 2010. The bill would delay the date to January 1, 2016.

MCL 324.40111a

BACKGROUND

The initial order required under Section 40111a took effect on October 1, 1999, and has been amended several times since then. The current language took effect on October 1, 2008. It prohibits a person from engaging in deer and elk feeding in the Lower Peninsula.

The order prohibits a person from engaging in deer and elk feeding in the Upper Peninsula except for recreational viewing and authorized supplemental feeding. In the event that chronic wasting disease is documented in the Upper Peninsula or within 50 miles of its border with another state or Canadian province, the Director of the Department of Natural Resources (DNR) must issue an interim order banning the use of bait and the feeding of deer and elk within the Upper Peninsula.

In the Upper Peninsula, a person may engage in deer and elk feeding for recreational viewing only if certain conditions are met. A person may engage in

supplemental feeding of deer in Ontonagon, Houghton, Keweenaw, Baraga, Alger, and Luce Counties, and portions of Marquette and Chippewa Counties if he or she first acquires permission of the respective public land administrator and private property owner and a supplemental deer feeding permit issued by a DNR wildlife biologist. The feeding must be conducted in compliance with certain requirements, unless otherwise specified in the permit.

A person issued a supplemental deer feeding permit must agree to assist the DNR in the collection of deer tissue samples for disease surveillance, and must report the quantity and type of feed used, dates and duration of feeding, and other information as specified in the permit. The DNR must report to the NRC the number of permits issued, quantity of feed used, and other relevant supplemental deer feeding information.

(The full regulations are found in Section 3.100a of the DNR's Wildlife Conservation Order. Both the deer and elk feeding regulations and the baiting regulations, in Section 3.100, may be viewed at http://www.michigan.gov/documents/Chapt erIII_128581_7.pdf.)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

When Section 40111a was enacted, the State recognized that bovine TB presents a risk to humans, livestock, deer, and other wildlife. In March 1999, the Natural Resources Commission and the Agriculture Commission had adopted resolutions calling for a statewide ban on supplemental feeding of wild free-ranging deer and elk. The resolutions provided that supplemental feeding is not a scientifically or biologically supported resource management practice and that it had inflated the deer and elk population, resulting in the segregation of habitat; negatively affected the environment and ecosystem; and increased opportunities for the spread of bovine TB.

The presence of CWD could pose similar problems, although to date the State has verified only one case in the captive deer population. In February 2003, Governor

Granholtz commissioned a task force to study the threat of CWD to Michigan cervids (e.g., deer and elk) and to make recommendations to address it. According to the Chronic Wasting Disease Task Force's Final Report, issued in October 2003, "The potential for the spread of disease increases when animals congregate around unnatural (i.e., baiting/feeding) sources of feed." The Task Force Report concluded that CWD's spread to Michigan would be a "major disaster" for the State's wild cervid populations and agricultural enterprises. Widespread CWD could significantly reduce the deer and elk population, which would reduce hunting and adversely affect Michigan's economy. Also, monitoring and controlling CWD would be extremely costly and divert funding from the DNR, the Michigan Department of Agriculture, and the farm community.

In light of the hazards these two contagious diseases present, it is important that the State continue to regulate how, when, and whether supplemental feeding is permitted based on scientific management principals.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.