

HOUSE BILL REPORT

SHB 1778

As Passed Legislature

Title: An act relating to modernizing certain provisions in Title 77 RCW regarding fish and wildlife.

Brief Description: Modifying various provisions of Title 77 RCW.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representative Blake; by request of Department of Fish and Wildlife).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/10/09, 2/17/09 [DPS];
General Government Appropriations: 2/25/09 [DPS(AGNR)].

Floor Activity:

Passed House: 3/11/09, 96-1.
Senate Amended.
Passed Senate: 4/14/09, 31-17.
House Concurred.
Passed House: 4/20/09, 63-35.
Passed Legislature.

Brief Summary of Substitute Bill

- Makes a number of housekeeping changes to Title 77.
- Adds additional prongs to the definition of "conviction" as used in Title 77.
- Includes all rules of the Fish and Wildlife Commission (Commission) in the list of civil infractions that can give rise to a license revocation.
- Changes the name, scope, and jurisdiction of salmon guide licenses.
- Clarifies that secondary buyers of fish are not required to obtain a game fish license as long as the person they bought the fish from did have a license.
- Clarifies that the Commission is authorized to establish the beginning date of the lowland lake fishing season.
- Increases from 15 to 30 the number of big game and turkey raffles the Washington Department of Fish and Wildlife (WDFW) may offer each year, and allows the revenue to be used for the management of all game species and not just for the improvement of the habitat, health, and welfare of the species subject to the raffle.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Authorizes the Commission to allow recreational anglers to purchase a stamp allowing them to use two fishing poles at one time.
- Updates statutory references to the State Wildlife Fund to the appropriate name, the State Wildlife Account.
- Adds a 10 percent surcharge onto the purchase of all recreational hunting and fishing licenses for the 2009-2011 biennium.
- Increases the fees for hunting for pheasants in western Washington.
- Removes a requirement that 80 percent of money in the eastern Washington Pheasant Enhancement Account be used to purchase or produce pheasants.
- Removes enforcement activities of the WDFW from the Uniform Unclaimed Property Act and creates provisions regarding unclaimed property specific to the Department of Fish and Wildlife, including the authority for the Department of Fish and Wildlife to sell, use, destroy, or donate unclaimed confiscated property after 60 days.
- Recodifies and alters provisions of law regarding crop damage by wildlife, including the provision of mandatory compensation for the owners of commercial crops and livestock that are damaged by certain wildlife species, discretionary authority to the Department of Fish and Wildlife to provide non-cash compensation to the owners of property that is not commercial crops or livestock that is damaged by wildlife, and the designation of prerequisites for wildlife damage compensation.
- Alters the existing law relating to aquatic invasive species, including a requirement that the WDFW provide training for local law enforcement, a requirement that any watercraft brought into Washington from a foreign country or a state identified as a source of aquatic invasive species to be pre-inspected and documented as free of aquatic invasive species, and requires the owner of watercraft not bearing the documentation to pay for an inspection, impoundment, confiscation, and decontamination.
- Creates a new misdemeanor for the unlawful use of a permit from the WDFW.
- Creates a new gross misdemeanor for the unlawful use of an experimental fishing permit or a tribal commercial fishery permit.
- Eliminates antiquated references to work groups that have terminated and codified provisions regarding reports and other work products that have been completed.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Jacks, Kretz, Lias, McCoy, Nelson, Ormsby, Pearson, Van De Wege and Warnick.

Staff: Jason Callahan (786-7117)

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Charlie Gavigan (786-7340)

Background:

Fish and Wildlife Enforcement.

The Fish and Wildlife enforcement statutes contain a number of unlawful acts that relate to hunting, fishing, and other wildlife-related activities. The penalties for violating these regulations range from civil natural resources infractions to misdemeanors and felonies.

In addition to the violations outlined in the statute, the Fish and Wildlife Commission (Commission) has the authority to adopt rules that regulate the harvest of wildlife and fish. Rules adopted by the Commission can be enforced with criminal sanctions, and serve as a basis for some of the crimes expressly outlined in the statute. If a rule is not an element of a statutory crime, the Commission has the authority to provide for civil enforcement of the rule.

The Washington Department of Fish and Wildlife (WDFW) may suspend a person's privilege to fish commercially if the person is convicted two or more times within three years of a commercial fishing violation. The suspension of privileges only applies to the fishery within which the violation occurred.

Commercial and Recreational Licenses.

The WDFW offers a taxidermy license and a fur buyer's license to individuals interested in pursuing the commercial aspects of these industries. License holders must abide by any rule of the Commission relating to the use, possession, display, or presentation of the license. Failure to do so may result in a criminal prosecution of the unlawful use of a commercial wildlife license.

The WDFW offers a number of short-term fishing licenses. These licenses allow for fishing between one and five days. However, only active duty military personnel may fish during the first eight days of the lowland lake fishing season with a short-term license.

Individuals must obtain a salmon guide license from the WDFW before they are allowed to operate a guide service in freshwater rivers and streams for anglers catching salmon for personal use. The salmon guide license is not necessary if the guide services take place between the mouth of the Columbia River and the Lewis and Clark Bridge in Longview. A charter license is needed to act as a guide in the river below the bridge.

The WDFW conducts raffles as a way to grant permission to hunt big game and turkeys during certain limited seasons. Licensed hunters may purchase a raffle ticket, but only raffle

winners are permitted to participate in the limited season. Raffle tickets may not exceed \$25. The Commission is allowed to offer hunting opportunities to up to 15 turkey or big game hunters each year through the raffle system.

Money from the Eastern Washington Pheasant Enhancement Account may be used to improve pheasant habitat or to purchase or produce pheasants, with no less than 80 percent of monies from the account used to purchase or produce pheasants.

Aquatic Invasive Species.

Signs warning vessels of the threat of aquatic invasive species, the penalties associated with introduction of an invasive species, and proper contact information for obtaining a free vessel inspection must be posted at all ports of entry and at all boat launches owned or leased by the WDFW. The WDFW is authorized to establish random check stations and require persons transporting recreational and commercial watercraft to stop at the check stations.

Wildlife Interactions.

The owners of a commercial agricultural or horticultural crop may apply to the WDFW for payment of damages caused by the browsing of wild deer or elk. Payments are limited to the value of the crop, but are generally capped at \$10,000 per claim. Claims valued over \$10,000 must be filed with the Office of Financial Management, which will forward a recommendation on the claim to the Legislature. Only a landowner that opens his or her land to public hunting is eligible for compensation caused by deer or elk damage.

Unless the Legislature declares an emergency, the WDFW may not pay more than \$150,000 total per year for crop damage claims. The \$150,000 is funded from both the General Fund and the State Wildlife Account. It is the responsibility of the WDFW to examine and assess the damage upon notification from the claimant, although the WDFW and the claimant can agree to have the damage assessed by a third party. The owner of the damaged crops must report the loss within 10 days of discovery. Any damage payments accepted by the owner represents the exclusive remedy against the state for wildlife-caused damages.

A landowner has the authority to kill any non-endangered wildlife causing damage on his or her property without first obtaining a license from the WDFW. However, unless an emergency exists, the landowner must obtain a permit from the WDFW. If there is an emergency, the landowner may kill deer or elk with verbal permission from the WDFW.

The WDFW is directed to work closely with landowners to prevent damage and increase harvest when non-lethal prevention does not work. Special hunts are required in instances of recurring complaints.

Summary of Substitute Bill:

Fish and Wildlife Enforcement.

Failure to pay a fine or appear at a hearing to contest an infraction or criminal citation is considered a conviction for purposes of the Fish and Wildlife enforcement statutes.

Additionally, forfeiture of bail is also considered a conviction for the purposes of the Fish and Wildlife enforcement statutes.

A person who holds a fur buyer's license or a taxidermy license is guilty of unlawful use of a commercial wildlife license for violating any rule of WDFW regarding reporting requirements.

Two new crimes are created. The Unlawful Use of a Department Permit is a misdemeanor applicable whenever a person violates a condition of a permit issued by the WDFW. The Unlawful Use of an Experimental Fishery Permit or a Trial Commercial Fishery Permit is a gross misdemeanor applicable upon a violation of a permit condition or rule applicable to experimental and trial commercial fisheries.

The WDFW may dispose of unclaimed property in the same manner as is currently done by the State Patrol, with the proceeds of sales deposited into the Fish and Wildlife Enforcement Reward Account. The WDFW may use monies in the Fish and Wildlife Enforcement Reward Account to offset costs approved by the WDFW that are incurred to administer the Hunter Education Deferral Program and the Master Hunter Program.

Commercial and Recreational Licenses.

The Commission is given the authority to allow anglers to purchase a stamp allowing them to use two fishing poles at one time. The cost of this addition to a fishing license is \$20 for most anglers, and \$5 for state residents over the age of 69. Additionally, the Commission must define the opening day of lowland lake fishing season by rule.

A master hunter program is created. Holders of a master hunter permit are entitled to participate in special hunts of problem causing animals. The fee for a master hunters permit is \$50, with a \$25 annual renewal charge. Fees from the master hunter permit must be deposited into the Fish and Wildlife Enforcement Reward Account.

A person must have a license or permit in order to act as a food fish guide, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in certain state waters. A person is guilty of acting unlawfully as a game fish guide or food fish guide if the person acts as a game fish guide or food fish guide and does not hold the proper license. Violation of this provision is a gross misdemeanor.

Retail sellers, such as grocery stores, are exempt from needing an anadromous game fish buyer's license if they purchased their steelhead trout or other anadromous game fish from a licensed wholesale fish dealer.

For the 2009-2011 biennium, the WDFW may charge an additional transaction fee of no greater than 10 percent for licenses, permits, tags, stamps, or raffles.

The Commission is given the authority to increase from 15 to 30 the number of big game and turkey raffles the WDFW may offer each year. The revenue from the raffles may be used for the management of all game species, and not just for the improvement of the habitat, health, and welfare of the species subject to the raffle.

Money from the Eastern Washington Pheasant Enhancement Account may be used to improve pheasant habitat or to purchase or produce pheasants. However, 80 percent of the funding is no longer required to be used for pheasant production. The WDFW must submit an annual report on the eastern Washington pheasant activities to the appropriate committees of the Legislature.

Aquatic Invasive Species.

The WDFW enforcement division may provide aquatic invasive species instruction training to other local law enforcement. A person entering Washington while transporting watercraft must have in their possession documentation that the watercraft has been inspected and found free of aquatic invasive species. The cost of impounding, transporting, cleaning, and decontaminating watercraft that is contaminated with aquatic invasive species will be paid by the person in possession of the watercraft when it is inspected.

Wildlife Interactions.

The provisions of state law dealing with reimbursement to landowners for damage caused by wildlife are recodified and reorganized. In addition, substantive changes are made to state policies regarding wildlife damage.

Besides owners of commercial crops damaged by deer or elk, the WDFW is required, subject to funding limits, to compensate owners of commercial livestock that are killed or significantly injured by bears, cougars, or wolves. Each individual claim by a crop or livestock owner is eligible to be paid the value of the lost crop less any payments received by a non-profit organization up to a maximum of \$10,000. For livestock, the compensation is \$200 for each lost sheep and \$1,500 for each lost head of cattle or horse.

Total compensation for the owners of commercial crops generally may not exceed \$150,000 per year, and total compensation for the owners of commercial livestock may not exceed the amounts specifically appropriated for the purpose. If the Legislature declares an emergency, then the WDFW may pay a cumulative amount in claims limited by specific appropriations.

The owners of property that does not qualify as commercial crops or livestock may still apply to the WDFW for compensation for damage caused by mammals or birds. However, unlike for crops and livestock, the WDFW is not required to provide compensation, and any compensation provided may not be in the form of monetary payments. Compensation for this class of damage must take the form of materials or services.

The Commission is directed to identify criteria that determine whether damage to property qualifies for compensation. Different criteria may apply to mandatory compensation claims and discretionary claims. For mandatory commercial crop and livestock claims, the criteria must provide for a minimum economic loss. The minimum loss must be set to at least \$500.

Property owners may not receive compensation from the WDFW if they have insurance that provides compensation for the crop loss. Also, they must first exhaust any available compensation offers from non-profit organizations and utilize all applicable legal and

practicable self-help preventative measures. Self-help measures include non-lethal methods of damage prevention and materials and services provided by the WDFW.

In addition, owners of commercial crops may only receive cash compensation if they have an annual gross sales or harvest value figure of at least \$10,000. Individuals suffering damage to crops that do not satisfy this threshold are still eligible for non-cash compensation.

The burden of proof in all claims belongs to the claimant.

The WDFW is directed to develop a process for a compensation applicant to follow. Elements of the process must include forms of proof, anticipated timelines for decisions from the WDFW, prioritization of claims, a process for determining damage assessments, and protocols for when an owner intends to salvage any still-harvestable crops.

The Commission must develop a procedure for appealing both the denial of claims and the amount offered for accepted claims. If an appeal of the compensation amount is successful, the WDFW is authorized to pay an amount greater than \$10,000.

Upon application by an individual, the WDFW may provide materials and services that help the applicant reduce negative wildlife interactions. The Commission must establish criteria for mitigating actions that are eligible for preventative materials and services.

In addition, the specific statutory provisions relating to when and how a landowner can kill damage-causing wildlife are removed. Landowners may still kill wildlife without licenses, but only under conditions set by the Commission. The conditions must include the protection of endangered species, the identification of instances when verbal permission is sufficient, and requirements for carcass disposal.

Specific details as to how the WDFW will address recurring damage complaints through special hunts is removed in favor of general authority for the WDFW to authorize the removal of damaging wildlife.

The Commission must formally review its ability to execute the wildlife interaction provisions and the authority delegated to it. Any recommendations for statutory changes must be forwarded to the 2014 Legislature.

Other Changes.

A number of references to other statutes throughout Title 77 are removed or corrected to reflect current codifications. Examples of these corrected antiquated references are located in sections of the code that deal with criminal convictions and fish passage requirements. In addition, a redundant section of the code relating to wildlife viewing is repealed.

The use of the term "State Wildlife Fund" is updated to "State Wildlife Account" to reflect the correct name of the account as it is used in Title 77. References to work groups that no longer exist are removed from Title 77, such as the Ballast Water Work Group. Also removed are references to studies, reports, and other one-time work products that have been completed by the WDFW.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 53-66, relating to compensation for damage caused by wildlife, which take effect July 1, 2010.

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) This bill was a year in the making and was designed to provide resources to the WDFW without damaging the resources managed by the WDFW.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

None.

Persons Testifying (Agriculture & Natural Resources): Representative Blake, prime sponsor; Ed Owens, Hunters Heritage Council; and Mike Cenci, Washington Department of Fish and Wildlife.

Persons Testifying (General Government Appropriations): None.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations): None.