

HOUSE BILL REPORT

ESHB 1135

As Passed Legislature

Title: An act relating to alternative livestock.

Brief Description: Modifying the regulation of "alternative livestock."

Sponsors: By House Committee on Agriculture & Rural Development (originally sponsored by Representatives Kremen, Ballard, Linville, Foreman, Rayburn, Padden, R. Johnson, Grant, Schoesler, Lisk, Fuhrman, Morris, Morton, Brough, Sheahan, Finkbeiner, Quall, Miller and Anderson.)

Brief History:

Reported by House Committee on:
Agriculture & Rural Development, February 17, 1993, DPS;
Fisheries & Wildlife, March 2, 1993, DPS(AG-A FW);
Passed House, March 17, 1993, 93-5;
Amended by Senate;
Passed Legislature, April 22, 1993, 81-12.

HOUSE COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Rayburn, Chair; Kremen, Vice Chair; Chandler, Ranking Minority Member; Schoesler, Assistant Ranking Minority Member; Chappell; Foreman; Grant; Karahalios; Lisk; and Roland.

Staff: Kenneth Hirst (786-7105).

HOUSE COMMITTEE ON FISHERIES & WILDLIFE

Majority Report: The substitute bill by Committee on Agriculture & Rural Development be substituted therefor and the substitute bill as amended by Committee on Fisheries & Wildlife do pass. Signed by 8 members: Representatives King, Chair; Orr, Vice Chair; Fuhrman, Ranking Minority Member; Sehlin, Assistant Ranking Minority Member; Basich; Foreman; Lemmon; and Scott.

Staff: Keitlyn Watson (786-7310).

Background:

Department of Agriculture.

State law grants the director of the Department of Agriculture authorities to suppress and control the spread of diseases affecting animals within, in transit through, and imported into the state. Among the authorities of the director are those to impose quarantines, regulate veterinary biologics, and to adopt and enforce rules to prevent the introduction or spread of diseases in domestic animals. The disease control authorities of the director are exercised through the state veterinarian who is appointed by the director.

In 1985, the Department of Agriculture was given certain regulatory authorities over aquatic farming conducted in the private sector. The director of the Department of Agriculture and the director of the Department of Fisheries were required to develop jointly a program of disease inspection and control for such aquatic farming. The program is administered by the Department of Fisheries under rules adopted with the prior approval of the director of the Department of Agriculture. The director of the Department of Agriculture was given the responsibility of establishing identification requirements for the products of private sector aquaculture to the extent necessary to permit the departments of Fisheries and Wildlife to administer and enforce the fisheries, game, and wildlife codes. The Department of Agriculture was also designated by that legislation as the principal state agency for providing state marketing support services for private sector aquaculture.

Department of Wildlife.

Many of the state's wildlife laws are administered by the Department of Wildlife. These laws define wildlife, in general, as being those species of the animal kingdom whose members exist in Washington in a wild state. The department may issue game farm licenses which permit private entities to hold or raise such wildlife for commercial purposes, trade, or gift.

The laws administered by the department define deleterious exotic wildlife as being species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state. State law directs the Wildlife Commission to regulate the taking, sale, possession, and distribution of such exotic wildlife. The commission has recently adopted rules establishing more detailed policies under this authority. The rules add animals to the list of animals classified as being deleterious exotic wildlife, including Sika deer; expand the

commission's importation restrictions on such wildlife; establish breeding restrictions; establish special rules for wildlife lawfully held in captivity before the adoption of the rules; require the deleterious wildlife to be confined in a secure facility and specify fencing and quarantine requirements; establish marking and genetic testing requirements; and impose certain reporting requirements.

Summary of Bill: It is now state policy to encourage the development and expansion of alternative livestock farming.

Alternative Livestock Definition and Designation Process

Alternative livestock are species designated by a joint rule-making process of the directors of the departments of Agriculture and Wildlife. The process, which is used to identify vertebrate animals, can be initiated by either director or by any person registering with the Department of Agriculture as a grower of nontraditional animals. Species designated as alternative livestock must be confined by humans, raised or used in farm or ranch operations in the private sector, and produced on the farm or ranch. Alternative livestock does not include: a domestic dog or cat, a private sector aquatic product, an animal raised for release into the wild, an animal raised for hunting that takes place in Washington, resident wildlife and animals raised for fur-farming or game-farming. Traditional livestock species may also be designated by the directors and regulated only by the Department of Agriculture.

If agreement on species designation and regulation is not reached by the directors, a scientific review board is convened to make a written recommendation to the directors as to the status of the species. The board is to be composed of three members. One is to be appointed by the director of the Department of Wildlife, one by the director of the Department of Agriculture, and one appointed jointly by these two members. The board may hold hearings and take testimony prior to making a written recommendation to the directors. If the directors do not agree within 30 days of receipt of the recommendation, the governor must make the final decision.

Rocky Mountain Elk

Rocky Mountain elk may be farmed in the same status and under the same regulatory provisions as alternative livestock if rules adopted jointly by the directors of the departments include methods that ensure genetic integrity of the species.

If and when such a rule is adopted, the directors of the departments of Agriculture and Wildlife must jointly prepare a report within 90 days on the methods used to determine genetic integrity of farmed Rocky Mountain elk. Within two years of rule adoption, the directors are to jointly prepare a report on the status of farmed Rocky Mountain elk operations. The reports are to be submitted to the Legislature.

Hunting of Alternative Livestock

Alternative livestock that are reared on or derived from an alternative livestock farm may not be hunted.

Disease Control; Animal or Product Identification

The director of the Department of Agriculture must establish and administer a program of disease inspection and control for alternative livestock. The purpose of the program is to protect the alternative livestock industry from the loss of animals or productivity and to protect wildlife. The director must also establish methods of identification requirements for alternative livestock and the products of such livestock to the extent that identifying them is necessary to permit the Department of Wildlife to administer and enforce effectively the wildlife and game laws of this state. Both disease control and identification programs are to be developed in consultation with the Department of Wildlife.

Enclosures and Escape

The directors of the departments of Agriculture and Wildlife are directed to study enclosure needs and to jointly adopt rules establishing enclosure standards for alternative livestock. An animal found to be outside of a required enclosure is declared to be a public nuisance and may be captured and impounded. The owner is liable for any damages caused by the animal and for any costs of impounding the animal.

Regulatory Fairness Act

A Small Business Economic Impact Statement must be prepared if rule-making under the bill restricts the economic utilization of a species being raised for commercial purposes in the state. The definition of "industry" in the Regulatory Fairness Act is expanded to include species being raised for commercial purposes and all industries specifically declared to be industries by a provision of state law.

Indemnification Policy

The departments of Agriculture and Wildlife in consultation with the attorney general are directed to develop recommendations and a report to the secretary of the Senate and the speaker of the House of Representatives on the establishment of an indemnification policy.

Registration and Fees.

Owners of alternative livestock farms must register annually with the Department of Agriculture, and provide production data to the department. The directors of the departments of Agriculture and Wildlife must, in consultation with the Alternative Livestock Council, establish annual registration fees to fund the Alternative Livestock Program. The fees are to be deposited into the alternative livestock farm account within the agricultural local fund.

Growers of nontraditional animals must register with the Department of Agriculture within 180 days of the effective date of the bill.

Meat Inspection

Meat and meat by-products of alternative livestock may not be sold or distributed for consumption without being inspected by the Department of Agriculture, the United States Department of Agriculture, or another agency recognized by the Department of Agriculture for the task. The Department of Agriculture may establish such an inspection program on a fee-for-service basis.

Marketing; Brands; Council

The Department of Agriculture is the principal state agency for providing state marketing support services for the alternative livestock industry. The department must develop a program for assisting the industry in marketing and promoting the use of its products. State laws providing brand registration services and brand protection expressly apply to alternative livestock. An Alternative Livestock Council is created. It is composed of seven members, four appointed by the director of the Department of Agriculture, and three appointed by the director of the Department of Wildlife. The council must advise the Department of Agriculture on all aspects of the industry.

Exotic Wildlife

A definition of exotic wildlife is added to Title 16 RCW, to mean any wild animal whose members do not exist in Washington in a wild state, but not including alternative livestock. The Department of Agriculture is authorized to conduct disease control activities for exotic wildlife.

Fiscal Note: Requested March 2, 1993.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Agriculture & Rural Development) (1) Alternative livestock, such as deer, give farmers and consumers choices; venison offers consumers an alternative to meats that are high in fat and oils; deer offer farmers higher value products and the environmental benefits of integrated pasture use and no need for feed lots. (2) The actions taken recently by the Department of Wildlife to ban even the breeding of alternative livestock demonstrates the use of the overwhelming weight of the state against individuals; a federal judge has agreed that the state's action regarding the breeding is probably a "taking" without compensation. (3) The United States is a net importer of venison. The restaurant market for the product could more than double in this state alone. (4) The Department of Wildlife has used its current authority to regulate the industry to death; the disease control issues are overblown. (5) The actions taken by the Department of Wildlife reflect the objectives of animal activists to restrict husbandry practices of various industries on a piecemeal basis. (6) Rocky Mountain elk are too expensive to be allowed to escape; if they do escape, they are herding animals and would return for food. Many of the species the Department of Wildlife is concerned about are so poorly adapted to the wild they would simply die if they escaped. (7) The Department of Agriculture's disease control abilities are very credible; those of the Department of Wildlife are not. (8) The Department of Wildlife is interpreting its authority under the deleterious wildlife law so broadly it could control any animal. (9) Multi-species grazing systems are more productive than single species systems.

(Fisheries & Wildlife) Much work has been done on the substitute bill to address fears that harm to wildlife could result from farming of alternative livestock. The bill has been unfairly characterized as a pro-deer farmer bill. The substitute bill received the approval of the full House Agriculture & Rural Development Committee. Alternative livestock farming is the kind of clean, green industry Washington needs more of. The bill fills a void in existing regulations by addressing the potential commercial cultivation of species that are not currently so regulated.

Deer farming in particular has been practiced in Washington for at least 40 years, and no harm to wild cervids has resulted yet. Fears of diseases and hybridization with wild animals are overblown. Sika deer and elk don't interbreed in Asia, where they are indigenous. Alternative livestock farming is analogous to fish farming, which is safely practiced in Washington.

Testimony Against: (Agriculture & Rural Development) (1) In reviewing the recent actions taken by the Department of Wildlife regarding these animals, a federal judge has noted that the state has an interest in preventing a problem before an irreversible incident occurs. Once a major problem is introduced into the wild, it cannot be controlled. (2) The Department of Wildlife's recent actions were prompted by border closings by other states and provinces. Washington could have been a dumping ground for problem animals. (3) The bill requires the Department of Agriculture to agree to regulations to protect wildlife, but wildlife protection is not its mission. (4) The definition of alternative livestock is far too broad. (5) This state's \$2.7 billion/year industry in wildlife related activities should not be jeopardized for the benefit of a few. The state's native elk population could be permanently changed by hybrids. Tuberculosis and the meningeal (brain) worm are very real threats. The risks posed by each type of alternative livestock should be carefully analyzed. (5) Eight of the 11 western states prohibit the farming of Sika deer. (6) New York and Pennsylvania have lost their status as being tuberculosis free because the disease was introduced by captive cervids. (7) Alternative livestock do escape; in Clark County, a farmed deer was shot in the wild by a hunter; Atlantic salmon have been caught in the open sea and in streams in northern Washington. Cross-breeding is going on; most of the animals in a tuberculosis infected elk herd that was recently destroyed in a sister state were Sika/elk hybrids. Because of their bigger size, the market favors selling Sika crossed with elk. (8) If the state permits native wildlife to be farmed, it will be interfering with tribal treaty rights. (9) The bill should contain a requirement that the meat from alternative livestock be inspected. (10) If there is disagreement over whether a particular species should be farmed, the issue should be examined by a panel of scientists and then decided by the Department of Wildlife.

(Fisheries & Wildlife) The definition of "alternative livestock" is too broad, since it could potentially include all vertebrates. Sections 2 and 4 are contradictory, since some of the species approved for commercial cultivation in section 2 fail to pass the criteria in section 4. The review board in the bill is stacked against wildlife

interests. Potential problems include the spread of diseases such as tuberculosis and brucellosis in the wild; hybridization with native species; competition with wild native animals; and a rise in black market antler sales and poaching of wild animals. Any of these problems would be costly to the state and therefore to the public, whereas the benefit from the bill would be to a private industry. Passage of the bill will add considerably to the workload of wildlife enforcement personnel. Rocky Mountain elk and Roosevelt elk both are native species, and therefore unsuitable for farming. If there is doubt as to the risk involved, the state should err on the side of protecting its wildlife heritage. There needs to be more study and discussion prior to passing the bill.

Witnesses: (Agriculture & Rural Development) In Favor of Original Bill: Jim Rich, Susan Judy and Bruce Morgan, Alternative Livestock Association; Gary Bumgarner, Private Land Wildlife Association; Don Wages; Jeff and Kathy Helsdon; John and Joe Schreiner; Jeff Hatch; Burle Sargent; James Abbott; and Francis Ueltschi. Opposed to Original Bill: Curt Smitch, Dave Brittell and Briggs Hall, Department of Wildlife; Dean Lydig, Wildlife Commission; Jeff Parsons, Audubon Society; Joe LaTourrette, Washington Wildlife Federation; Richard Finkbonner; Jeanne Wasserman, Owl Wildlife Rehabilitation Program; J.K. Johnson, Tacoma Sportsman's Club; John Kelly, King County Outdoor Sports Council; and Curt Clumpner, Progressive Animal Welfare Society (PAWS). Other: LeRoy Millard, King County Outdoor Sports Council; Jack Nelson; and Dick Hemstad, Llamas Owners of Washington.

(Fisheries & Wildlife) Representative Kremen, prime sponsor (pro); Dave Brittell, Department of Wildlife (con as written, working with Department of Agriculture on changes); Mike Schwisow, Department of Agriculture (working with Department of Wildlife on changes); James Abbott, Abbott Farm (pro); Joe Schreiner, Schreiner Farms (pro); Marianne LeSage, LeSage Deer Farm (pro); Viola Sargent, Washington Alternative Livestock Association (pro); Jim Rich, Washington Alternative Livestock Association (pro); Bruce Morgan, Washington Alternative Livestock Association (pro); Sylvia Thorpe, citizen (con); Bob Panther, Inland Northwest Wildlife Council (con); J.K. Johnson, Washington State Muzzle-Loaders and Tacoma Rifle and Revolver Association (con); Chuck Lennox, Seattle Audubon Society and Audubon Conservation Committee (con); and Gary Geddes, Northwest Trek Wildlife Park (con).