

# HOUSE BILL REPORT

## ESHB 1135

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As Amended by the Senate

**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.

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### 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).

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### 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.

The following animals are considered to be alternative livestock if they are confined by humans, raised or used in farm or ranch operations in the private sector, and produced on the farm or ranch or legally acquired for it: Fallow deer and most reindeer. Alternative livestock may also be species that are non-resident vertebrates and that are not wildlife existing in a wild state. Additional alternative livestock species must be adopted by joint rule of the departments of Agriculture and Wildlife. Rocky Mountain elk may be farmed in the same status as alternative livestock if rules adopted jointly by the directors of the departments include methods that ensure genetic integrity of the species. The departments must consider, in identifying alternative livestock species, the following: risk to public health and safety, the environment, resident wildlife to traditional and alternative livestock and the ability of scientists to identify such species. Hybrids of animals are alternative livestock only if they are listed as such in joint rules.

If the director of either department proposes to list an animal as alternative livestock and the other fails to propose the listing jointly, a board is formed to review the proposal and make recommendations. If the board recommends listing the animal as alternative livestock and either of the directors of the departments declines to adopt joint rules doing so, that director must specify, in writing, his or her reasons.

The following are, by definition, expressly not considered to be alternative livestock: 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, an animal that has escaped confinement, an animal which must be identified as alternative livestock but is not so identified, or an animal associated with a farm or ranch which is not registered as an alternative livestock farm or ranch.

Alternative livestock or Rocky Mountain elk 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 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.

Regulation by Department of Wildlife.

The Department of Agriculture and the Department of Wildlife may jointly adopt rules which permit the Department of Agriculture to regulate the entry and in-state movement, sale, transfer, possession, exhibition, and release of alternative livestock. These jointly adopted rules and those designating animals as alternative livestock must be in compliance with the Administrative Procedures Act.

Enclosures and Escapement.

The directors of the departments of Agriculture and Wildlife shall study enclosure needs and shall 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. The owner is liable for any damages caused by the animal and for any costs of impounding the animal. The director of the Department of Agriculture may fine an owner of alternative livestock up to \$10,000 per violation for not confining or securing the livestock.

Fees.

The director of the Department of Agriculture must 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.

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.

#### Other.

The owner of a farm or ranch for alternative livestock must register annually with the Department of Agriculture. The department must maintain a registry of such farms and ranches. The Department of Agriculture must adopt rules for administering the alternative livestock laws. The Department of Wildlife's authority to regulate alternative livestock is confined to the joint rulemaking with the Department of Agriculture for species identification and enclosure standards.

#### **EFFECT OF SENATE AMENDMENT(S):**

##### **Regulatory Fairness Act**

The amendment adds a requirement that a Small Business Economic Impact Statement be prepared if rulemaking under the bill restricts the economic utilization of a species being raised for commercial purposes in the state. The amendment expands the definition of "industry" in the

Regulatory Fairness Act to include species being raised for commercial purposes and all industries specifically declared to be industries by a provision of state law.

### **Alternative Livestock Definition**

The amendment removes species specific designations of alternative livestock. The amendment exempts species raised in fur farming and game farming from alternative livestock designation. The amendment removes the exemption for animals that are required to be identified or registered, but that are not, from alternative livestock designation. A definition for traditional livestock is added to include horses, mules, cattle, sheep, swine, goats, poultry, and rabbits, as well as other species jointly designated by the directors of the departments of Agriculture and Wildlife.

### **Designation Process**

The bill as passed the House outlines a process for designating alternative livestock, which includes joint rulemaking by the directors of Agriculture and Wildlife. The amendment removes this process and outlines a process for identifying vertebrate animals. The process is to be used for designating species as traditional livestock and alternative livestock. Specific authority is given to the Department of Agriculture to regulate traditional livestock. Specific authority is given to the Department of Wildlife to regulate resident wildlife. The amendment allows anyone registering a nontraditional animal and the directors of either agency to petition in writing that a species be jointly regulated, and authorizes the directors to determine whether and how a species is to be regulated through jointly adopted rules. A species not currently in the state "may be petitioned by any person for possible regulation and such petition acted upon under this section prior to entry for allowance or prohibition as alternative livestock." If agreement is not reached, a scientific review board is convened to make a written recommendation to the directors as to the status of the species. If the directors do not agree within 30 days of receipt of the recommendation, the determination is to be made by the Governor.

The directors are required to adopt rules to identify the requirements for a written petition, and are to develop criteria on which to make evaluations as to whether and how petitioned species will be regulated.

### **Hunting Alternative Livestock**

The amendment removes Rocky Mountain elk from the provision that prevents hunting of alternative livestock, but does not

change language that allows Rocky Mountain elk to be farmed "under the same regulatory provisions as alternative livestock."

### **Indemnification Policy**

The amendment adds a requirement that the departments of Agriculture and Wildlife in consultation with the attorney general 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 of Nontraditional Animals**

The amendment adds a new requirement that nontraditional animal growers register with the Department of Agriculture within 180 days of the effective date of the act. Nontraditional animals are not defined. The registration does not change the legal status of the species.

### **Enclosures**

The bill as passed the House requires that alternative livestock that escape a required enclosure be recaptured and impounded. The amendment authorizes such impoundment if the animals are recaptured, but does not require either recapture or impoundment. The amendment removes the civil penalty for not securing alternative livestock.

### **Registration Fees for Alternative Livestock**

The amendment replaces the rule-making by the Department of Agriculture for fee-setting with joint rule-making by the departments of Agriculture and Wildlife. The amendment adds authorization to set different fees for different species. The amendment adds a requirement that part of the fees be deposited into the Wildlife Fund.

### **Authority of the Department of Wildlife**

The amendment removes language that explicitly limits the authority of the Department of Wildlife.

### **Rocky Mountain Elk**

The amendment adds a requirement that the directors of the Departments of Agriculture and wildlife jointly prepare a report 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.

### **Other Reporting**

The amendment removes the requirement that the directors of the Departments of Agriculture and Wildlife prepare a comprehensive report to the Legislature on the alternative livestock industry.

### **Other**

The bill as passed the House declares it a state policy to encourage the development of appropriate alternative livestock farming. The amendment deletes the term "appropriate." The amendment: adds to the findings section an intent to establish a process to identify vertebrate animal species that may be commercially raised in the state of Washington, and adds protection of traditional livestock industries to the policy goals of the state relative to regulation of alternative livestock farming; removes the exemption for animals that are required to be identified or registered, but are not, from alternative livestock regulation; adds a definition for alternative livestock farm or ranch; excludes traditional livestock from the definition of "deleterious exotic wildlife" in the Department of Wildlife statutes; adds a definition of domestic animal, to include alternative livestock, to chapter 16.52 which requires humane treatment of such animals; identifies possible "methods of identification requirements" such as tatoos, branding, or eartags, for alternative livestock; adds "other interests" to those that the Department of Agriculture must consult when developing its disease control program for alternative livestock; expands the duties of the Alternative Livestock Council from advising the departments on marketing to advising on both marketing and regulation of alternative livestock and alternative livestock products; fixes the number of individuals on the council at seven; removes the consultation requirement for the Department of Agriculture in adopting rules to implement the provisions of the act; adds a requirement that all rules of the departments of Agriculture and Wildlife that are inconsistent with the provisions of the act be amended or repealed to comply with the act; adds qualifications for the scientific review board including qualifications appropriate to responsibilities under the act, and residency in Washington; authorizes the board to take testimony and seek expert advice; requires the board to hold meetings that are open to the public, publish its recommendations in the Washington State Register, and review and provide recommendations on agency rules pertaining to alternative livestock.



**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).

**VOTE ON FINAL PASSAGE:**

Yeas 93; Nays 5

Nays: Representatives Cole G, Fisher R, Locke, Ludwig, Myers H