

HOUSE BILL REPORT

HB 1135

As Reported By House Committee On:
Agriculture & Rural Development
Fisheries & Wildlife

Title: An act relating to alternative livestock.

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

Sponsors: 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).

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).

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 Substitute 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, most reindeer, Sika deer, Roosevelt and Rocky Mountain elk, and other animals listed by rules adopted jointly by the departments of Agriculture and Wildlife. The departments are prohibited from listing species as alternative livestock which pose certain threats of disease or which, if they escape, would likely: cause certain environmental damage or game code enforcement difficulties; or interbreed with wildlife, creating offspring which would cause such damage or difficulties. 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 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.

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.

Regulation by Department of Wildlife.

In general, the wildlife and game laws administered by the Department of Wildlife do not apply to alternative livestock or alternative livestock products. However, the Department of Agriculture and the Department of Wildlife may jointly adopt rules which permit the Department of Wildlife to

regulate the entry and in-state movement, sale, transfer, possession, exhibition, and release of alternative livestock. These joint rules may be adopted to: prevent the introduction or spread of disease, ensure the physical safety of humans, prevent the escape or release of an animal which is injurious to or competitive with other natural resources, ensure the humane treatment of alternative livestock, control the removal or use of the public's wildlife, or comply with federal law. The authority granted to the Department of Wildlife under such joint rules constitutes the only authority of the Department of Wildlife to regulate alternative livestock.

These jointly adopted rules and those designating animals as alternative livestock must specify the emergency enforcement action that may be taken by the Department of Wildlife without the department's first providing the affected party with an opportunity for a hearing. These constitute the only actions which may be taken by the Department of Wildlife against a person under the joint rules without first providing the person an opportunity for such a hearing. If the person requests a hearing, the enforcement action may not be taken until after the hearing.

Enclosures and Escapement.

The directors of the departments of Agriculture and Wildlife may 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.

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 the director of the Department of Wildlife and not more than seven members, appointed by the director of the Department of Agriculture, who are representatives of the alternative livestock industry. The council must advise the Department of Agriculture on all aspects of the industry.

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.

Substitute Bill Compared to Original Bill: The original bill defined alternative livestock as being nontraditional vertebrate livestock used in private sector farming and listed the conditions under which animals would not be considered to be alternative livestock. The substitute bill lists three types of deer and two types of elk as being alternative livestock and permits other animals to be listed as such livestock in rules adopted jointly by the departments of Agriculture and Wildlife. Added by the substitute bill are: the authority to set enclosure requirements for alternative livestock; express owner liability for damage caused by alternative livestock which are not enclosed as required and for impoundment costs; a civil penalty for not securing or confining the livestock; and inspection requirements for meat and meat byproducts from alternative livestock. The director of the Department of Wildlife is added to the alternative livestock council by the substitute bill.

Fiscal Note: Available.

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

Testimony For: (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.

Testimony Against: (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.

Witnesses: 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 Shreiner; Jeff Hatch; Burle Sargent; James Abbott; and Francis Ueltschi. Opposed to Original Bill: Curt Smitch, Dave Britell 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.

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).

Summary of Recommendation of Committee on Fisheries & Wildlife Compared to Recommendation of Committee on Agriculture & Rural Development: The amended bill removes Sika deer and Roosevelt and Rocky Mountain elk from the definition of alternative livestock, and confines rules adopted to add species to the alternative livestock list to those species that are nonresident vertebrates that are not wildlife existing in a wild state. However, 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 of Wildlife and Agriculture include methods that insure genetic integrity. Animals that have escaped confinement are also no longer considered alternative livestock.

A provision is added to the amended bill that makes it unlawful to hunt alternative livestock or Rocky Mountain elk reared on or derived from an alternative livestock farm.

The substitute bill disallows identification of species as alternative livestock if those species pose a threat to animals or humans. The amended bill requires consideration of these threats in identifying these species. The amended bill also requires consideration of the ability of scientists to identify and distinguish the species and products made from such species, in all forms, based on accepted biological testing.

The amended bill removes specific emergency enforcement procedures to be followed by the Department of Wildlife, and substitutes required compliance with the Administrative Procedures Act.

The amended bill adds a requirement that the director of the Department of Agriculture, in establishing identification requirements and disease inspection procedures for alternative livestock, consult with the director of the Department of Wildlife.

The amended bill adds a requirement that the director of the Department of Agriculture establish by rule annual registration fees to cover the costs of the alternative livestock program and requirements of the act. The fees are to be deposited into the alternative livestock farm account within the agricultural local fund.

The composition of the scientific review is changed in the amended bill to three members, one of whom is appointed by the director of the Department of Wildlife, one appointed by the director of the Department of Agriculture, and the third appointed by these two appointees.

The composition of the Alternative Livestock Council is changed from seven representatives of alternative livestock farming and marketing operations in the state and the director of the Department of Wildlife to four members appointed by the director of the Department of Agriculture and three members appointed by the director of the Department of Wildlife.

The exceptions for alternative livestock to Title 77 definitions of wild animals and deleterious exotic wildlife are deleted.

The amended bill adds to Title 16 a definition of exotic wildlife, meaning any wild animal whose members do not exist in Washington in a wild state as of the effective date of

this act, but not including alternative livestock. The amended bill authorizes the Department of Agriculture to conduct various disease control functions for alternative livestock and exotic wildlife, including requiring any importation into the state to be accompanied by a certificate of veterinary inspection or a health certificate. A provision is added that empowers the governor and director of the Department of Agriculture to cooperate with the federal government in preventing and eradicating diseases of exotic wildlife or alternative livestock.

The amended bill requires that the joint rules that pertain to the intrastate and interstate movement of alternative livestock must authorize the Department of Agriculture, rather than the Department of Wildlife, to regulate these activities.

Fiscal Note: Requested March 2, 1993.

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

Testimony For: 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: 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: 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).