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Initiated Legislation (as enacted)

PUBLIC ACT 281 of 2014

Date Completed: 9-9-14

CONTENT

The Scientific Fish and Wildlife Conservation Act, a law initiated by petition and enacted by the Legislature, reenacts any provisions of several Public Acts regarding hunting and fishing that are invalidated by referendum or any other reason. The initiated law also amends the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Require orders issued by the Natural Resources Commission (NRC) regarding the designation of game species and the establishment of an open season for a game species to be consistent with the Commission's duty to use principles of sound scientific wildlife management.**
- **Allow the NRC to decline to issue orders authorizing an open season for a game species if doing so would conflict with those principles.**
- **Authorize the NRC to take testimony from personnel of the Department of Natural Resources (DNR), independent experts, and others, and review scientific literature and data, in support of its duty to use sound scientific principles.**
- **For fiscal year 2014-15, appropriate to the DNR \$1.0 million to implement necessary management practices related to aquatic invasive species.**

The initiated law will take effect on the 91st day after the end of the 2013-2014 legislative session.

Designation of Game Species; NRC Regulation

Under NREPA, only the Legislature or the NRC may designate a wildlife species as game and establish the first open season for a designated game species. The Legislature has the sole authority to remove a wildlife species from the list of game species. The NRC must exercise its authority under these provisions by issuing orders. The initiated law specifies that the orders must be consistent with the Commission's duty to use principles of sound scientific wildlife management. The initiated law allows the NRC to decline to issue orders authorizing an open season for a game species if doing so would conflict with those principles.

The NRC has the exclusive authority to regulate the taking of game and fish, and, to the greatest extent possible, must use principles of sound scientific management in making its decisions. The initiated law authorizes the NRC to take testimony from DNR personnel, independent experts, and others, and review scientific literature and data, among other sources, in support of its duty to use those principles.

Aquatic Invasive Species: Appropriation

For fiscal year 2014-15, the initiated law appropriates to the DNR \$1.0 million to implement management practices necessary for rapid response, prevention, control, and/or elimination of aquatic invasive species, including Asian carp. Any portion that is not spent in that fiscal year will

not lapse to the State's General Fund but will be carried forward in a work project account that is in compliance with Section 451a of the Management and Budget Act.

(Under that section, a work project appropriation continues to be available until completion of the work or 48 months after the last day of the fiscal year in which the appropriation was originally made, whichever comes first; then, the remaining balance lapses to the State fund from which it was appropriated. To be designated a work project, a project must be for a specific purpose, contain a specific plan to accomplish its objective, and have an estimated completion cost and date.)

Legislative Findings

The following legislative findings are included in NREPA:

- "The wildlife populations of this state and their habitat are of paramount importance to the citizens of this state."
- "The sound scientific management of the wildlife populations of the state, including hunting of bear, is declared to be in the public interest."

The initiated law refers to the "fish and wildlife populations" in these findings. It also adds the following statement: "The conservation of fish and wildlife populations of the state depend upon the wise use and sound scientific management of the state's natural resources."

In addition, the initiated law states, "The legislature finds and declares that aquatic invasive species, including Asian carp, represent a significant threat to the state's fisheries, aquatic resources, outdoor recreation and tourism economies, and public safety."

Reenactment of Invalidated Acts; Severability

The initiated law provides that it reenacts all or portions of Public Act (PA) 520 of 2012 and PAs 21, 22, and 108 of 2013. If any portions of those acts not amended by the initiated law are invalidated pursuant to referendum or any other reason, the invalidated portions that are otherwise included in the initiated law "shall be deemed to be reenacted".

(Public Act 520 designated the gray wolf a game species. Public Act 21 extended to the NRC the authority to designate game species. Previously, this authority was granted solely to the Legislature. Public Act 22 included in NREPA a legislative declaration regarding hunting and fishing, as well as rights related to those activities. Public Act 108 revised the structure of hunting and fishing licenses, as well as associated fees. All of these PAs and the events leading to enactment of the initiated law are described below, under **BACKGROUND.**)

The initiated law also provides that if any part of it is found to be in conflict with the State Constitution, the U.S. Constitution, or Federal law, the initiated law must be implemented to the maximum extent permitted. Any provision held invalid or inoperative is severable from the remaining portions of the initiated law.

MCL 324.40103 et al.

BACKGROUND

Following many years of population decline due to extermination efforts, the gray wolf was listed as an endangered species under State law in 1965 and under Federal law in 1974. The U.S. Fish and Wildlife Service (USFWS) implemented a recovery plan for the gray wolf, and target population numbers in specific states, including Michigan, were achieved in the 1990s. Since then, the USFWS has attempted to remove the gray wolf from the endangered species list in the Great Lakes region several times, most recently by a final rule that took effect in January 2012. Each time, wildlife conservation organizations have sued the USFWS and the U.S. Department of the Interior, claiming that the rule violated the Endangered Species Act and the Department's own policy. Historically, U.S. District Courts have agreed with the plaintiffs, granting their motion

for judgment and vacating the rule. A decision regarding the 2012 rule is pending in the U.S. District Court for the District of Columbia.

Following the most recent Federal delisting, Public Act 520 of 2012 amended the Natural Resources and Environmental Protection Act to do the following:

- Include wolf in the definition of "game".
- Authorize the establishment of the first open season for wolf, and allow the Natural Resource Commission to establish annual wolf hunting seasons.
- Prohibit an individual from hunting wolf without a wolf hunting license, and establish a license fee of \$100 for a resident and \$500 for a nonresident.
- Make it a misdemeanor to illegally possess or take wolf.
- Create the Wolf Management Advisory Council, and require it to submit to the NRC and the Legislature an annual report containing wolf management recommendations.
- Specify legislative findings regarding wildlife management.

Wolf hunting opponents then launched a successful petition drive to compel a statewide referendum on PA 520, placing the question of approving the Act on the November 2014 general election ballot, where it will appear as Proposal 14-1. (The constitutional power of referendum enables the electors to approve or reject a law enacted by the Legislature. When sufficient petition signatures have been gathered, the law is suspended and ineffective unless approved by the majority of the electors voting on it.)

Subsequently, Public Acts 21 and 22 of 2013 were enacted. Public Act 21 amended NREPA to do the following:

- Authorize the NRC (in addition to the Legislature) to designate a species as game, and require the Commission to exercise this authority by issuing orders.
- Grant the NRC the exclusive authority to regulate the taking of fish in Michigan, and require it to issue related orders and notify the Legislature before doing so.
- Revise provisions pertaining to hunting and fishing licenses issued to members of the military.

Public Act 22 of 2013 amended Section 40113a of NREPA to add the following legislative declaration: "The legislature declares that hunting, fishing, and the taking of game are a valued part of the cultural heritage of this state and should be forever preserved. The legislature further declares that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural resources. Therefore, the legislature declares that the citizens of this state have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by subsection (2) and law."

(Subsection (2) of Section 40113a provides that the NRC has the exclusive authority to regulate the taking of game in Michigan, and requires the Commission to use principles of sound scientific management in making decisions regarding the taking of game. Orders of the NRC must be issued following a public meeting and an opportunity for public input.)

Unlike legislation, NRC orders are not subject to a referendum, and cannot be rejected by the voters. Wolf hunting opponents therefore collected signatures to place Public Act 21 before the voters at the November 2014 general election, where it will appear as Proposal 2014-2. Before the Act was suspended, however, the NRC issued orders declaring the gray wolf a game animal and prescribing an open season to take place in 2013. Due to the referendum on PA 21, a wolf hunt season was not scheduled for 2014.

Later in 2013, Public Act 108 amended NREPA to revise the fee structure for hunting and fishing licenses, and make a number of other changes concerning those licenses. Also, with regard to certain earmarked revenue, Public Act 108 limits the amount that may be spent on the purchase of land, unless all the money from the Michigan Natural Resources Trust Fund Eco-Region acquisition from previous years has been spent.

In response to the possibility that voters would prevent future wolf hunting seasons by rejecting Public Act 520 of 2012 and Public Act 21 of 2013 at the ballot box, wolf hunt supporters proposed an initiated law, the Scientific Fish and Wildlife Conservation Act (SFWCA), to reenact any invalidated provisions of the earlier legislation. (Under the State Constitution, invoking the initiative requires petitions signed by at least 8% of the total vote cast for all candidates for Governor at the previous gubernatorial election.) The Legislature must enact or reject a law proposed by initiative petition without change or amendment within 40 session days after receiving the petition. If the Legislature does not enact the proposed law within that time period, the law must be submitted to the people for approval or rejection at the next general election. An initiated law is not subject to the Governor's veto power.

On July 24, 2014, the Secretary of State certified that the Board of State Canvassers had determined that the initiative petition contained at least the minimum number of valid signatures required, and the Secretary of State submitted the legislative proposal to the Legislature. Both the Senate and the House of Representatives approved the SFWCA in August 2014, meaning that voter approval is not necessary for the initiated law to take effect. The State Constitution provides that an act takes effect upon the expiration of 90 days after the end of the session at which it was passed, unless two-thirds of each house of the Legislature votes for the act to take effect immediately. In this case, immediate effect was not granted. Assuming that the current legislative session ends at the end of December 2014, therefore, the SFWCA will take effect in late March 2015. Meanwhile, PA 520 of 2012 and PA 21 of 2013 remain suspended and will appear before the voters on the November general election ballot. If the Acts are rejected, the SFWCA will reenact their provisions (to the extent they are not otherwise amended by the initiated law) when it takes effect.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The initiated law will have a positive fiscal impact on the Department of Natural Resources and no fiscal impact on local units of government. The law appropriates \$1.0 million to the DNR in fiscal year 2014-15 to implement management practices for the response, prevention, control, and/or elimination of aquatic invasive species. If unspent, the funds will be carried forward for up to four years as a work project. While the law does not specify the source for these funds, it is assumed that General Fund/General Purpose revenue will be used for this purpose, as has been the case in other statutory appropriations where no fund source was specified.

The funds appropriated by the initiated law for aquatic invasive species control will be in addition to \$5.0 million for a new Invasive Species Prevention and Control program that was included in the FY 2014-15 DNR budget. The Governor's Recommendation for that budget had requested a total of \$6.0 million for this new program.

Other aspects of the initiated law will not have a substantial fiscal impact on the DNR.

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.