House
Legislative
Analysis
Section

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PUT ALL PRIVATELY OWNED DEER SPECIES SOLELY UNDER THE MDA

House Bill 4427 as enrolled
Public Act 190 of 2000

House Bill 4428 as enrolled
Public Act 191 of 2000

Second Analysis (8-1-00)

Sponsor: Rep. Michael Green
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness, and Food Systems

THE APPARENT PROBLEM:

There are a number of activities involving white tailed deer and elk, whether "free ranging" or "captive," and the naming and regulation of these various activities sometimes can seem rather bewildering. However, *all* activities involving "cervids," such as white tailed deer and elk, currently are regulated by the Department of Natural Resources (DNR) under the authority of the Natural Resources and Environmental Protection Act (NREPA). Probably everyone is familiar with the activity of hunting of wild deer or elk, under hunting licenses issued by the DNR, on public or private land. But there is another kind of DNR license or permit: the "breeder's license" or "permit to hold wildlife in captivity" (or "captive wildlife permit") that applies to activities involving wildlife held privately on enclosed, private land. With respect specifically to white tailed deer or elk, a DNR captive wildlife permit can be used for any of a number of activities: hobbyists, who wish to have a few animals for non-commercial, non-hunting purposes; commercial exhibits, where paying customers can view captive deer or elk for a fee; "ranches," where the animals are hunted by fee-paying customers for trophy antler racks; and "farms," where the animals are raised for commercial purposes such as for sale as breeding stock, for sale to "ranches," and for the sale of their body parts, especially the males' antlers.

Although the DNR regulates the possession of wildlife by private individuals, the Department of Agriculture (MDA) also became involved with the testing of captive white tailed deer and elk as a result of the current bovine tuberculosis epidemic that originated (apparently among free-ranging white tailed deer) in the northeastern Lower Peninsula. In addition, although the MDA does not currently regulate cervids, Public Act 41 of 1994 amended the Animal Industry Act, which is administered by the Department of Agriculture (MDA), to add to the act definitions involving "captive cervidae" (see BACKGROUND INFORMATION) as well as adding "captive cervidae" to the list of animals under the act's definition of "livestock." The 1994 Animal Industry Act amendments also defined -- and distinguished between -- "captive white tailed deer or elk ranches" (where the deer or elk are killed "by the hunting method") from "captive white tailed deer or elk farms" (where the deer or elk are *not* killed "by the hunting method"). Then in 1995, the Agricultural Commission, under the Right to Farm Act, adopted "generally accepted agricultural and management practices" (GAAMPS) for the care of farm animals that includes a section on captive cervidae.

The past decade has seen a rapid growth in the "captive cervidae" industry, where deer species are raised commercially for sale as breeding stock, for sale to hunting "ranches," and for the sale of their body products (particularly trophy antlers and "velvet antler product," which is highly valued in Asian markets as a natural aphrodisiac). According to testimony before the House Committee on Agriculture and Resource Management, owners of captive cervid farms feel that regulation by the DNR is inappropriate, and that regulation of all captive cervids should be under the sole jurisdiction of the Department of Agriculture. They particularly would like to take advantage of the

agricultural marketing programs that would be available to them were they to be regulated by the Department of Agriculture.

At the request of the industry, legislation, modeled on the Michigan Aquaculture Development Act (Public Act 199 of 1996), has been introduced to place all operations involving captive cervids under the Department of Agriculture.

THE CONTENT OF THE BILLS:

House Bill 4427 would create a new act to remove regulation of privately owned white tailed deer, elk, moose, and caribou from oversight by the Department of Natural Resources and instead place them entirely under regulation by the Department of Agriculture. Instead of obtaining a DNR captive wildlife permit ("breeder's license" or "permit to hold wildlife in captivity"), someone wishing to begin a new "cervid livestock operation" would apply to the MDA for a "cervidae livestock facility registration." Existing DNR captive wildlife permits would be presumed to meet the requirements for registration under the bill, and holders of these permits would have to obtain a registration from the MDA when their DNR permit expired or by January 1, 2003, whichever were earlier. House Bill 4428 (MCL 324.40103 et al.) would exempt privately owned cervids from regulation as game animals by the Department of Natural Resources under the Natural Resources and Environmental Protection Act (NREPA). Neither bill could take effect unless both were enacted, and, if enacted, both bills would take effect on June 1, 2001.

House Bill 4427. Currently, although a 1995 amendment to the Animal Industry Act added "captive cervidae" to the list of animals included under the act's definition of "livestock," cervids are regulated by the Department of Natural Resources under Part 427 of the Natural Resources and Environmental Protection Act (NREPA). Part 247 is the "(game) breeder's and dealer's" part of the NREPA, and regulates the private possession of all game animals (as listed in the act), including white tailed deer, elk, moose, and caribou under "game breeder's" licenses (which also are called "permits to hold wildlife in captivity" or "captive wildlife permits"). These license or permits are issued for three-year periods and cost from $45 to $150. (See BACKGROUND INFORMATION.)

The bill would transfer regulation of all cervids to the Department of Agriculture (MDA), which would regulate "cervidae livestock operations" as "agricultural enterprises" under a registration system. The bill would prohibit a person from engaging in a "cervidae livestock operation" (see "Definitions" below) unless he or she had obtained a "cervidae livestock facility registration" from the MDA, and would require the MDA to issue a registration to operate a cervidae livestock facility to a person who met the bill's requirements. The bill also would refer to "privately owned cervidae species," rather than (as in the Animal Industry Act) to "captive cervidae."

Cervidae operations as agriculture. The bill would create a new law, the "privately owned cervidae marketing act" to be administered solely by the Department of Agriculture. The bill would declare "cervidae livestock operation[s]" to be "agricultural enterprises," "a form of agriculture," and "considered to be part of the farming and agricultural industry of this state." Instead of, as currently, obtaining a captive wildlife permit (or "breeder's license") from the Department of Natural Resources, someone who wanted to own cervids (such as white tailed deer, elk, moose, or caribou) for any reason -- whether as a hobby, for hunting or exhibition, or as livestock -- would apply for a registration from the MDA. Among other things, the bill would require director of the MDA to assure that cervidae livestock operations were afforded "all rights, privileges, opportunities, and responsibilities of other agricultural enterprises," which means, among other things, that such operations would enjoy the protections of the Right to Farm Act and the favorable tax treatment received by agricultural enterprises. (The bill would define "director" to mean the director of the MDA or his or her designee, and "farm" or "farm operation" by reference to the definition in the Right to Farm Act. See BACKGROUND INFORMATION.)

Definitions. The bill would define, among other things, "cervidae species," "cervidae livestock operation," and "cervidae livestock facility."

• "Cervidae species" would mean "members of the cervidae family including, but not limited to, deer, elk, moose, reindeer, and caribou." (See "Biological classification" in BACKGROUND INFORMATION.)

• A "cervidae livestock operation" would mean "an operation that contain[ed] 1 or more privately owned cervidae species involving the producing, growing, propagating, using, harvesting, transporting, exporting, importing, or marketing of cervidae species or cervidae products under an appropriate registration." (The bill does not define "livestock," although the term is defined in the Animal Industry Act. See BACKGROUND INFORMATION.)

• A "cervidae livestock facility" would mean "a privately owned cervidae livestock operation on privately controlled lands capable of holding cervidae species."

Role of the DNR and DEQ. The Departments of Natural Resources (DNR) and Environmental Quality (DEQ) would provide consultation to the Department of Agriculture (MDA) in its administration of the bill's provisions, and, if applicable, participate in informal MDA reviews of registration applications for new cervidae livestock facilities. (When the MDA received an application for registration of a proposed new cervidae livestock facility, the MDA would have to forward a copy of the application to the Departments of Natural Resources and Environmental Quality.)

The MDA also would be required to enter into a "memorandum of understanding" (see below) with the DNR to determine compliance by registrants (and applicants for registrations) and to investigate violations of the bill's provisions.

The DNR also would be required to do the following:

• provide consultation to the MDA on proposed changes to the operational standards adopted by reference in the bill (see below and BACKGROUND INFORMATION);

• provide the MDA with written confirmation that (1) the DNR had approved the method used by an applicant for a proposed new cervidae livestock facility registration to flush any "free-ranging cervidae species" from the proposed facility ("if applicable"), (2) all "free-ranging cervidae species" actually had been flushed from the property; and (3) the DNR had determined that the size and location of the proposed facility would not place "unreasonable stress" on wildlife habitat or migration corridors.

• permit the killing or tranquilizing and removal of any wild cervids left in a proposed new cervidae livestock facility after the required flushing of wild cervids;

• consult ("if possible") with the MDA on "recovery plans" when privately owned cervids escaped from registered facilities (see "Operational Standards" in BACKGROUND INFORMATION);

• in cases where privately owned cervids were unable to be visibly identified as privately owned, work with the MDA to develop a plan to adequately address biosecurity issues (that is, disease transmission issues) that might affect keeping such cervids confined (see "Operational Standards" in BACKGROUND INFORMATION).

Memorandum of understanding. The director of the MDA would be required to enter into a "memorandum of understanding" ("MOU") with the DNR both to determine compliance with the bill and to investigate violations of its provisions. (See BACKGROUND INFORMATION.)

This section of the bill also would add a second set of requirements, in addition to those listed in the sections dealing with the registration application process, that the director of the MDA would have to verify before being allowed to issue any registration under the bill. More specifically, before issuing any cervidae livestock facility registrations under the bill, the director of the MDA, subject to the memorandum of understanding, would first have to verify, through written confirmation from the DNR, (1) that the DNR had approved the method used to flush any free-ranging cervids from the (proposed) cervidae livestock facility, if applicable; (2) that all free-ranging cervids had actually been flushed from the property; and (3) that the DNR had determined that the size and location of the (proposed) facility would not place unreasonable stress on wildlife habitat or migration corridors.

Types of registrations. There would be four types of cervidae livestock facility registrations under the bill: three "classes" ("hobby," "exhibition," and "ranch") and a "full" registration. The bill also would allow the MDA to issue "limited" classes of registrations. The "Operational Standards for Registered Privately Owned Cervidae Facilities" adopted in May 2000 by the Agriculture Commission (see BACKGROUND INFORMATION), and referenced in the bill, clarify that the three registration classes are limited registrations, and further specify that limited registrations "may provide for modified record-keeping or individual animal identification requirements, fee requirements, and limitations on movements of animals or animal products."

Under the proposed operational standards, the first two classes of registration ("hobby" and "exhibition") wold have to meet all of the bill's requirements for record-keeping and individual animal identification; Class III registrations ("ranch") would not have to meet these record-keeping or individual animal identification requirements for animals added through natural reproduction, though these requirements would apply to animals added in any other way (such as through purchase). In addition, the operational standards would

specify the following about each of the three classes of limited registrations:

• "Class I (Hobby)" registrations would be required to have prior approval from the MDA to add animals to a registered facility's herd (other than through natural reproduction). Under a Class I registration, no live privately owned cervids could be removed from the herd.

• "Class II (Exhibition)" registrations would be required to have prior MDA approval to add or move animals to or from a facility's herd (other than through natural reproduction), except for animals moved from the herd for up to 60 consecutive days. Under a Class II registration, animals could be moved from the herd for up to 60 days without MDA approval, but those animals could have no direct physical contact with any other livestock during that time.

• "Class II (Ranch)" registrations would be exempt from the bill's record-keeping and individual animal identification requirements for animals added to the herd through natural reproduction, though these requirements would apply to any animals added to the herd by any method other than natural reproduction. The identification exemption would be reviewed in 2005 as outlined in the section in the operational standards on individual animal identification.(See BACKGROUND INFORMATION.) Under Class III registrations, records would have to be kept of any animal products removed from the herd (including the name and address of the destination).

Neither the bill nor the proposed operational standards defines "hobby," "exhibition," or "ranch" (though the Animal Industry Act defines "captive deer or elk ranch." See BACKGROUND INFORMATION.)

Registration fees. Like the current captive wildlife permit, a cervidae livestock facility registration would be for three years. The fees for each of the three classes of limited registration and for a full registration, for both an initial registration and renewals, would be as follows:

• Class I (Hobby): $45

• Class II (Exhibition): $75

• Class III (Ranch): $500

• Full registration: $150

If a registration (application) were denied, the MDA would not return any of the registration fee.

Current DNR captive wildlife permit holders, "grandfather" clauses. In order to keep deer or elk in captivity, someone already holding a DNR "breeder's license" (captive wildlife permit) would be required to obtain a registration from the MDA either when the DNR license expired or by January 1, 2003, whichever were earlier. Subject to this requirement, a cervidae livestock facility in existence before the bill took effect would be required to obtain a registration from the MDA by January 1, 2003 in order to continue engaging in a cervid livestock operation after the bill's proposed June 1, 2001 effective date. Any facility that had a valid DNR captive wildlife permit (see BACKGROUND INFORMATION) would be considered to have met the requirements for registration under the bill.

The bill also would specify that any facility that had a valid "permit to maintain wildlife in captivity" issued by the Department of Natural Resources (that is a DNR "breeder's license" or a "captive wildlife permit") would be considered to have met the requirements of the section of the bill regarding the memorandum of understanding. That is, current holders of captive wildlife permits would be considered to have had their method of flushing any "free-ranging cervidae species" from their facility and to have actually flushed such "free-ranging cervidae species," and it would be presumed that the size and location of their facility did not place unreasonable stress on wildlife habitat or migration corridors.

Registration process for new facilities. Generally, the bill would set up a registration process for applicants proposing new cervidae livestock facilities that would give the applicant an opportunity to obtain up to two pre-registration inspections by the MDA and up to two informal application reviews by the MDA without the applicant having to submit a second registration application. The application process also would incorporate 60- and 30-day deadlines tied to the construction of a new proposed cervidae livestock facility and to the informal MDA reviews, if any were conducted.

Registration application for new facilities. A completed initial application for a cervid livestock facility registration would have to be submitted to the Department of Agriculture at least 60 days before construction of the (proposed) facility were begun. A registration application would have to (a) include a business plan and (b) demonstrate that:

• the (proposed) cervidae livestock facility had been inspected by the director of the MDA and that the director had made certain determinations;

• that individual animals were identified as required by the operational standards adopted by reference in the bill (see below and BACKGROUND INFORMATION); and

• that the applicant had all of the required permits.

Business plan. As part of the application to register a new facility, an applicant would have to submit a business plan that complied with the operational standards established under the bill. (See below and BACKGROUND INFORMATION.) The bill would define "business plan" to mean a written document of intent that a person submitted to the MDA that defined the methods, protocols, or procedures that the person intended to implement to comply with the proposed act.

A business plan would have to include all of the following:

• The complete address, and a description of the size and location, of the proposed cervidae livestock facility and a legal description of the lands on which the cervidae livestock operation would be conducted;

• The number of "cervidae species" (to be) included in the proposed facility;

• Biosecurity measures to be used, including, but not limited to, methods of fencing and appropriate animal identification (the bill would define "biosecurity measures" to mean "measures, actions, or precautions taken to prevent the transmission of disease in, among, or between free-ranging and privately owned cervidae species"; the operational standards specify fencing requirements and allowable methods of animal identification);

• The proposed method of flushing "wild cervidae species" from the (proposed) enclosure, if applicable;

• The proposed record keeping system;

• The method of verification that all "free-ranging cervidae species" had been removed;

• The current zoning of the property proposed as a cervidae livestock facility and whether the local unit or units of government within which the (proposed) facility would be located had an ordinance regarding fences; and

• Any other information considered necessary by the MDA.

MDA notification of DNR, DEQ, local units of government. When the MDA received an application for registration of a proposed new cervidae livestock facility, it would have to forward a copy of the application to the Departments of Natural Resources and Environmental Quality. The MDA also would have to send a written notice to the local unit or units of government in which the proposed facility was located if the MDA determined, from information provided in the application, that the land were not zoned "agricultural." The local unit or units of government would be allowed to "respond" (to the written notification from the MDA), within 30 days of receiving the MDA notice, indicating whether the applicant's (proposed) cervidae livestock facility would be in violation of any ordinance.

Other application requirements. The bill would prohibit the MDA from issuing an initial cervidae livestock facility registration for a new facility, or from modifying a registration (whether for a new or existing facility), unless the registration application demonstrated all of the following:

(1) The facility had been inspected by the director and the director had determined that:

(a) the facility met the operational standards and requirements prescribed by and adopted under the proposed act and complied with the business plan submitted to the department, and

(b) there were barriers in place to prevent the escape of (privately owned) "cervidae species" and the entry of "wild cervidae species." (At this point, the bill also specifies that fencing for elk and white tailed deer would have to be constructed of woven wire and be at least 8 feet high for elk and at least 10 feet high for white tailed deer, and that the perimeter fence height would be determined by "the standards and requirements prescribed by and adopted under" the bill.)

(2) Individual animals were appropriately identified in compliance with the operational standards established under the bill; and

(3) The applicant had all necessary permits required under the sections of NREPA regarding water resources protection (Part 31), inland lakes and streams (Part 301), and wetland protection (Part 303), as well as any other permits or authorizations required by law.

As mentioned above (in the section on "memorandum of understanding"), the bill also would require the director of the MDA, before issuing any registration under the bill, to verify, through written confirmation from the DNR:

(1) that the DNR had approved the method used to flush any free-ranging cervids from the (proposed) cervidae livestock facility, if applicable;

(2) that all free-ranging cervids had actually been flushed from the property; and

(3) that the DNR had determined that the size and location of the (proposed) facility would not place unreasonable stress on wildlife habitat or migration corridors.

Application denials and informal MDA reviews. The bill would appear to provide for two possible application denials, two optional informal MDA application denial reviews, and two MDA pre-registration inspections for a single application to register a proposed new cervidae livestock facility with the MDA. In both cases, the bill would specify explicitly that an applicant could waive the informal review of the application. One denial and optional informal review are detailed in section 6 of the bill; the two pre-registration inspections, a "second denial," a second optional informal MDA review of the application, and hearings under the Administrative Procedures Act are described in section 7.

Although section 6 of the bill does not explicitly say that the Department of Agriculture would be required to issue a denial of a registration application at any specific point in the new facility registration application process, presumably the director of the MDA would deny a registration application if any of the above listed requirements were not met. That is, presumably the director would deny an application to register a new facility if the application were not submitted at least 60 days before construction of the new facility [had begun], were not accompanied by a business plan that complied with the operational standards adopted by reference under the bill or did not include all of the information required by the bill, had not demonstrated the required conditions (including an inspection of the proposed new facility, and a determination by the director of the MDA that the facility met the operational standards and requirements prescribed by and adopted under the bill and that appropriate fencing were in place; appropriate identification of individual animals; and all of the necessary required permits), or the director had not verified, through written confirmation from the DNR, that the DNR had approved the method used to flush any "free-ranging cervidae species" and that they actually had been flushed, and that the DNR had determined that the size and location of the proposed new facility would not place an unreasonable stress on wildlife habitat or migration corridors.

In any case, the bill does say that "upon receipt of a denial under this section" (that is, under section 6), an applicant could, without submitting a second application, make a written request to the MDA for the first of two possible "informal department review[s] of the application." If an applicant requested an informal review, the MDA would be required to provide the informal review of the application.

The informal departmental review of the application would have to include the applicant, the MDA, and the DNR and DEQ, "if applicable." After the informal review, if the director of the MDA determined that the proposed cervidae livestock facility or cervidae livestock operation did comply with the bill's requirements, he or she would be required to issue a registration within 30 days after the applicant notified the department of the completion of the facility. If the director determined that the proposed facility or operation did not comply with the bill's requirements, he or she would affirm the denial of the application in writing and specify the deficiencies that needed to be addressed or corrected in order for a registration to be issued. The bill would specify that an applicant could waive an informal departmental review of the application.

MDA pre-registration facility inspections. When construction of a (proposed) new cervidae livestock facility were completed, the applicant would have to notify the Department of Agriculture in writing, and within 30 after this notification, the director would have to inspect the facility. If the director determined that the proposed facility met the operational standards prescribed by and adopted under the bill, he or she would have to issue a registration within 30 days of the inspection. The 30-day time periods could be extended by the MDA only if it were unable to verify the removal of "wild cervidae species" or for an act of God. The MDA would be required to make as many as

two "pre-registration" inspections of a facility, if necessary, under a single application.

(Note: Although the provisions regarding pre-registration inspections are included in the bill after the provisions regarding a registration application denial and a possible informal MDA review of the application, presumably a pre-registration MDA inspection of a proposed new cervidae livestock facility would be needed in order for an application for a registration of the facility to demonstrate what the bill would require it to demonstrate before the director could decide to issue or deny the registration.)

Second registration application denial and second informal MDA review. If, after a pre-registration inspection, the director of the MDA determined that a proposed new cervidae livestock facility did not comply with the bill's requirements, he or she would be required to deny the application for registration and notify the applicant in writing of the reasons for the registration denial within 60 days after receiving a completed application. The notice would have to specify in writing the deficiencies to be corrected in order for a registration to be issued. An applicant could request a second inspection, without filing a second application, after the deficiencies had been corrected, though the department would not be required to make more than two preregistration inspections of the same proposed facility per application.

Upon receiving a registration application denial after a pre-registration inspection, and without filing a second application, an applicant could request, in writing, a informal departmental review of the application. This informal review also would include the applicant, the MDA, and, if applicable, the Departments of Natural Resources and Environmental Quality.

After the informal MDA review of a second application denial, if the director of the MDA determined that the proposed cervidae livestock facility complied with the bill's requirements, he or she would be required to issue a registration within 30 days after the informal review (rather than, in the case of a first application denial, within 30 days of completion of the facility. If the director of the MDA determined that the proposed facility did not comply with the bill's requirements, he or she would be required to affirm the (second) denial of the application in writing and, as in the case of a first denial, specify the deficiencies needed to be addressed or corrected in order for a registration to be issued.

APA hearings. The bill says that an applicant could request a hearing under the Administrative Procedures Act on a denial of a registration or upon any limitations placed on the issuance of a registration.

Operational standards for new facility registrations. In evaluating the issuance, maintenance, and renewal of registrations under the bill, the Department of Agriculture would be required to use the standards contained in "Operational Standards for Registered Privately Owned Cervid Facilities," adopted in May 2000 by the Agriculture Commission. (See BACKGROUND INFORMATION.) The standards include sections on "facility standards"(which specifies fencing requirements for white tailed deer, sika deer, fallow deer, and mule deer species, elk and red deer, reindeer and caribou), "records," "individual animal identification," "recovery protocol for any animals which become released" (i.e. escape for more than 12 hours), "oversight responsibilities and reporting," and "limited registration guidelines." The bill would allow the standards to be amended, updated, or supplemented by the MDA – either by amending the bill or by rule promulgation – after consultation with the Department of Natural Resources and with the concurrence of the Agriculture Commission. (Note: Despite this language, only the legislature, not an executive department, can amend legislation, so the standards could not by amended by the MDA amending the bill.)

Registration contents. A cervidae livestock facility registration issued by the Department of Agriculture would have to contain the following information:

(1) The registration number and expiration date;

(2) The cervidae species involved in the facility;

(3) The complete name, business name and address, and telephone number of the registration holder;

(4) The complete address of the facility location; and

(5) The complete name, address, and telephone number of the MDA contact person for captive cervidae livestock operations.

Flushing (wild) cervids. Currently, under Department of Natural Resources captive wildlife permits, wildlife must either be flushed from the land to be enclosed or bought from the state. The bill would require registrants to either remove wild cervids from the registered facility before beginning operation of the facility or to kill them. More specifically, the bill would require that *after* flushing (wild) cervidae species in an

approved manner, any (wild) cervidae species remaining in a (proposed) cervidae livestock facility would have to be killed or tranquilized and removed by or under the authority of the registrant under an appropriate DNR permit.

Registration denials, suspensions, revocations, limitations. After an opportunity for an administrative review, the MDA could deny, suspend, revoke, or limit a registration if an applicant or registrant failed to comply with the bill's provisions, standards adopted or established under the bill, orders issued by the director as the result of an administrative action of informal departmental review conducted under the act, or rules promulgated under the act.

In addition, the MDA could deny issuance of a registration or suspend or revoke a registration if, in consultation with the DNR or DEQ, or both, the MDA determined that "based upon substantial scientific evidence, the issuance of a registration [would] cause, or [was] likely to cause, an unreasonable or adverse effect upon the environment or upon wildlife which [could] not be remedied by, or [was] not addressed by, the existing standards under [the bill]."

If the MDA denied a registration application, it would not return any of the registration fee.

APA hearings of registration application denials. Except in the case of an informal departmental review, the MDA would be required to conduct an administrative proceeding [upon denying a registration application] under the Administrative Procedures Act (when taking registration actions).

Renewals. Each registration would be for three years from the date it was issued. Applications for renewals of registration would have to be submitted at least 60 days before the current registration expired; otherwise a new application for registration would have to be submitted. However, failure of the department to process a renewal application that was submitted "in a timely and complete manner" would operate to extend the current registration until the department completed its processing. Unless the department indicated otherwise in writing when it sent a registered facility its renewal application, there would be a presumption that the department would renew the registration upon timely submission of the completed renewal application and registration fee.

Registration modifications. A registered cervidae livestock facility would have to apply for a modification of its registration before any change in the registration class of activities for which the registration were issued.

Transfer or sale of registered facilities. If a (registered) cervidae livestock facility were sold or ownership were transferred, the new owner or transferee would have to notify the MDA in writing (of the sale or transfer), and the department would have to require a new registration for a transfer that occurred within six months of the expiration of a current registration.

Inspections of registered facilities. The operational standards that would be adopted by reference by the bill would require the MDA to inspect registered facilities at least once every three years, although inspection intervals could be changed based on a facility's risk factors or on whether or not the industry had private inspection or education programs. (See BACKGROUND INFORMATION.)

Other MDA powers. The Department of Agriculture, or its duly authorized agents, would have access at all reasonable hours to any cervidae livestock facility to inspect and to determine if the bill's provisions were being violated and to secure samples or specimens of any cervidae species. Inspections would have to be designed not to jeopardize the health of the cervidae species.

The director of the MDA could periodically inspect a facility for confirmation (a) that there were procedures or barriers in place designed to prevent the escape of (the privately owned cervids), (b) that all specimens were accounted for, and (c) of compliance with other of the bill's requirements or other laws.

The director of the MDA also would be authorized to promulgate rules he or she considered necessary to implement and enforce the bill; issue warnings or impose administrative fines for violations, or issue appearance tickets; and obtain injunctions or declaratory judgements. (See "Prohibitions and penalties" below.)

Owners' rights. The Natural Resources and Environmental Protection Act (NREPA) lists the rights of licensed game breeders (holders of captive wildlife permits) in section 42705 as follows: "A person who has secured a license may possess, propagate, use, buy, sell, trap, kill, consume, ship, or transport any or all of the stock designated in that license, and offspring, products, carcasses, pelts, or other parts of the stock as provided in this part," and section 42708 says, in part, that "[g]ame covered by a license may be taken or killed in any manner and at any time."

The bill would explicitly state that cervidae products and "cervidae species" that were "lawfully produced, purchased, possessed, or acquired from within this state or imported into this state" would be "the exclusive and private property of the owner." (Under the bill, an "owner" would mean "the person who owns or is responsible for a cervidae livestock operation" and the definition of "cervidae livestock operation" requires that "the producing, growing, propagating, using, harvesting, transporting, exporting, importing, or marketing of cervidae species or cervidae products" be done under "an appropriate registration.")

The bill specifically would not give a (registered) cervidae livestock operation the authority to take "free-ranging animals" (a term not defined in the bill) in violation of the NREPA except under a permit issued by the Department of Natural Resources. However, as currently is the case under permits to maintain wildlife in captivity, the bill would continue exempt from the NREPA's possession limits and closed seasons involving cervidae (under Parts 401, 411, and 427) an owner "harvesting" (a term not defined in the bill or other laws, but see the Animal Industry Act's definition of "slaughter facility premises" and NREPA's definition of "taking") "privately owned cervidae species" from a registered cervidae livestock facility.

Application of other laws. If an existing cervidae livestock facility were engaged in an activity that was required to be regulated under any other law, registration with the Department of Agriculture under the bill's provisions would not exempt the person or cervidae livestock facility from requirements imposed under any local, state, or federal regulation.

Zoo exemption. As currently is the case with DNR permits to maintain wildlife in captivity, the bill would exempt from its provision zoos that were accredited under the American Zoological Association (or other accreditations or standards that the Department of Agriculture considered appropriate and acceptable).

Transportation of cervids. Any movement, importing, or exporting of cervids would have to comply with the current Animal Industry Act requirements for the intrastate movement of captive cervidae (specified in MCL 287.730b). A person transporting cervids would have to provide, when asked by a law enforcement officer or the director of the Department of Agriculture, documentation that contained the origin of shipment, registration or permit documentation, documentation demonstrating shipping destination, and any other documentation that might be required under the Animal Industry Act.

Records. A person registered under the bill would have to keep ("and maintain") records of production, purchases, or imports in order to establish proof of ownership. The operational standards that would be adopted by reference under the bill also would require certain records on individual animals and on perimeter fencing inspections (see "Operational Standards" in BACKGROUND INFORMATION). The operational standards also would require certain annual reports to the MDA by owners of registered facilities.

Prohibitions and penalties. In addition to prohibiting persons from engaging in cervidae livestock operations without a Department of Agriculture permit, the bill would prohibit a person from "knowingly provid[ing] false information in a manner pertaining to" the proposed act and from resisting, impeding, or hindering the director of the MDA in discharging his or her duties under the bill.

The bill also would prohibit the release (or allowing the release) of any "cervidae species" from a cervidae livestock facility (though the bill would explicitly state that this provision would not prohibit the legal sale, breeding, marketing, exhibition, or other approved uses of cervidae species). The bill also would prohibit intentionally causing "the ingress of free-ranging cervidae species" into a registered facility. Owners would be prohibited from abandoning a registered livestock facility without first notifying the MDA in compliance with the standards established under the bill.

Releasing cervids from a cervidae livestock facility or abandoning a registered facility would be a misdemeanor punishable by a fine of up to $300 or imprisonment for up to 90 days, or both, for a first offense. For a second or subsequent violation, the misdemeanor would be punishable by a fine of up to $1,000 or imprisonment for up to a year, or both. A person who intentionally or knowingly released a cervid from a facility, intentionally or knowingly abandoned a registered facility, or intentionally or knowingly caused free-ranging cervids to enter a facility would be guilty of a felony.

A person who violated the bill's other provisions or a rule promulgated under the bill would be guilty of a misdemeanor punishable by a fine of at least $300 but not more than $1,000 or imprisonment for at least 30 days but not more than 90 days, or both.

In addition to the fines allowed by the bill, the court also could allow the MDA to recover reasonable costs

and attorney fees incurred in a prosecution resulting in a conviction for a violation.

Upon finding that a person had violated any provision of the bill, a rule promulgated under the bill, or an order issued by the director of the MDA as the result of an informal or administrative hearing, the director of the MDA could issue a warning, impose an administrative fine of up to $1,000 (plus the costs of investigation) for each violation (after notice and an opportunity for a hearing), or issue an appearance ticket in accordance with the minor offenses provisions of the Code of Criminal Procedure.

If any person failed to pay an administrative fine issued under the bill, the director of the Department of Agriculture would be required to notify the attorney general, who then would be required to bring a civil action in a court of competent jurisdiction to recover the fine. Civil penalties collected would be paid to the general fund.

Finally, the director of the MDA could bring an action to do either or both of the following:

(1) Obtain a declaratory judgment that a method, activity, or practice was a violation of the bill's provisions; and

(2) Obtain an injunction against a person who was engaged in such a method, activity, or practice.

The bill would specify that remedies under its provisions were cumulative and that use of one remedy would not bar the use of another unless otherwise prohibited by law.

House Bill 4428 would amend the Natural Resources and Environmental Protection Act (NREPA) to exempt "privately owned cervidae species located on a registered privately owned cervidae facility," as defined in House Bill 4427, from the NREPA's definition of "game" and the act's tagging requirements for moving game animals. The bill also would exempt "privately owned cervidae species located on a registered cervidae livestock facility or involved in a registered cervidae livestock operation" under House Bill 4427 from the Department of Natural Resources' authority to manage and regulate the taking or killing of fish, game and fur-bearing animals, and game birds.

The NREPA currently also requires the DNR to "issue licenses to authorize the possession for propagation, and for dealing in and selling game." (Under the Captive Wildlife Animal Commission Order of 1990, breeders' licenses also are known as "permits to hold wildlife in captivity.") Part 247 of the NREPA also prohibits the DNR from (1) granting a breeder's license to applicants who do not own or lease the premises to be used for the purposes designated by the license and (2) issuing a license to persons – or approving an enclosure or pen capable of enclosing deer – unless (a) the township or city in which the enclosure or pen is to be located has granted authorization for the enclosure or pen to be located in that township or city, and (b) the applicant flushes any deer from the area to be enclosed. The bill would amend this provision to *allow*, rather than require, the department to issue such licenses and would exempt persons registered under the provisions of House Bill 4427 from the licensing provisions of Part 427 of the NREPA.

Finally, the bill would repeal, and reinstate, the December 31, 2004, repealer of the enacting section of Public Act 66 of 1999. In response to the bovine tuberculosis outbreak that was discovered among wild, free-ranging white tail deer in the northeastern Lower Peninsula in 1994, Public Act 66 of 1999 requires the Natural Resources Commission to issue certain orders (1) banning deer and elk feeding in the Lower Peninsula except for "recreational viewing purposes" and (2) establishing criteria for deer feeding in the Upper Peninsula.

BACKGROUND INFORMATION:

State stewardship of wildlife. The state "owns" all wildlife on behalf of the people of the state. Article IV, Section 52 of the state constitution says, "*The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.*" Wild birds and mammals are considered to be among the renewable natural resources of the state, and the legislature statutorily addresses the constitutional mandate to protect this natural resource in the Natural Resources and Environmental Protection Act (NREPA), a 1995 codification of many laws enacted over the years addressing the protection of natural resources and the environment.

Under the NREPA, the Department of Natural Resources (DNR) is the state agency designated to regulate the "taking" of wild birds and wild mammals and, under a 1995 amendment to the act, to "manage" wild birds and wild mammals. (The act refers to

"animals," which it defines to mean "wild birds and wild mammals." The act also defines "taking," but does not define "manage," except through a list of actions that the DNR can take under its order-issuing powers. "Taking" means "to hunt with any weapon, dog, raptor, or other wild or domestic animal trained for that purpose; kill; chase; follow; harass; harm; pursue; shoot; rob; trap; capture; or collect animals, or to attempt to engage in such an activity.") Wild birds or wild mammals may be designated by the legislature (and only by the legislature) as "game" animals with an "open season" during which the animal may be legally taken. The DNR has the authority to designate wild birds or wild mammals as "protected," which means that they cannot be legally taken.

The NREPA says that "All animals [that is, wild birds or wild mammals] found in this state, whether resident or migratory and whether native or introduced, are the property of the people of the state, and the *taking* of all [wild birds and wild mammals] shall be regulated by the department as provided by law." (MCL 324.40105, emphasis added.) Neither game animals nor protected animals can be "taken," released, transported, sold, bought, or in a private person's possession except as specifically provided by law or by an order of the DNR. (MCL 324.40106)

In addition, in 1995, in response to an initiated referendum that would have prohibited the use of electronically equipped dogs in bear hunting, Public Act 57 (a legislative referendum) required the DNR to *manage* animals in the state – not just regulate their "taking" – and authorized the department to do so through issuing orders. Through this process of issuing orders, the DNR can make recommendations to the legislature regarding animals that should be added to or deleted from the list of game animals in the NREPA (though only the legislature, through statute, can add animals to, or delete animals from, this statutory list); determine the kinds of animals that can be taken (the act defines "kind" to mean "an animal's sex, age, or physical characteristics") and the animals or kinds of animals that are "protected" (that is, that cannot be "taken"); establish open seasons for taking or possessing game, lawful methods of taking game, bag limits, geographic areas within the state where certain regulations may apply to the taking of animals, fees for departmental permits, and conditions under which animals taken or possessed outside the state may be imported into the state; determine conditions under which it can issue permits; regulate the hours during which animals may be "taken," and the buying and selling of animals or parts of animals; require that someone chasing an animal have a valid license authorizing the taking of the animal being chased; and establish methods of trapping animals for their pelts.

DNR captive wildlife permits involving deer and elk. The game breeder's and dealer's part (Part 427) of the Natural Resources and Environmental Protection Act (NREPA) authorizes the Department of Natural Resources to issue a "game breeder's license" or, in the language of the Natural Resources Commission's 1990 Captive Wild Animal Commission Order (CWAO), a "permit to hold wildlife in captivity" (captive wildlife permit). This license or permit, is for three years and costs between $45 and $150 for the three-year period (depending generally on the size of the area to be enclosed and the number of animals). The license requires that the wildlife in question generally be confined to the licensed premises at all times (except for transport for such things as veterinary care, sale, or exhibition) in enclosures that must meet certain specifications. When the land covered by a captive wildlife permit is being enclosed, any wild animals on the land must either first be driven off or bought from the state at prices specified in the NREPA ($250 a head for white tailed deer) or in the CWAO (in the case of other wild cervids, $1,000 for each elk, and $1,500 for each moose). Enclosures for white tailed deer must have at least 1,000 square feet for each deer and an exterior fence at least 10 feet high. Enclosures for elk must have at least 1,500 square feet for the first elk and at least 1,000 square feet for each additional elk, and have exterior fencing at least 8 feet high.

A person holding a captive wildlife permit from the DNR under this part of the NREPA "may possess, propagate, use, buy, sell, trap, kill, consume, ship, or transport" any or all of the game animals designated in that license, "including offspring, products, carcasses, pelts, or other parts of the stock" (that is, game animals) as provided in the act. Captive game animals covered by a captive wildlife permit may be taken or killed in any manner and at any time (except for game birds, which cannot be shot except by the permit holder under certain circumstances).

Though this part of the NREPA refers to "game breeders, shooting preserve operators, or persons holding permits authorizing the possession of the game," there is only one kind of captive wildlife permit that, unlike the provisions of the Animal Industry Act (which distinguishes between captive deer and elk "ranches" and "farms" by whether or not the individual animals are killed by "the hunting method") does not distinguish among permit holders by how deer or elk in captivity are killed. A "permit to hold wildlife in

captivity" is not required for a person to possess game birds authorized by a shooting preserve license (see below).

Interestingly, the 1990 commission order rescinded and replaced two sets of administrative rules that had been promulgated under two different 1929 public acts (and Public Act 380 of 1965). One set of rules applied to public exhibitions of wild animals and birds, the other to game breeders.

Number of captive cervid permits. According to the Department of Natural Resources, as of February 21, 2000, there were 544 captive wildlife permits for the possession of white tailed deer (currently totaling 21,154) and 197 permits for elk (currently totaling 2,995), with a total of 625 enclosures (since 116 of the total of 741 permits are for the possession of both deer and elk).

Also as of February 21, 2000, there were 40 pre-applicants in the process of building enclosures for deer or elk, and 34 current permit holders who are in the process of expanding their enclosures. More than half of the permit holders (344, or 55 percent) have fewer than six acres enclosed. A quarter (160, or 25 percent) of the permit holders have 6 to 39 acres enclosed, 63 (or 10 percent) have between 40 and 199 acres enclosed, and 29 (or 5 percent) have between 200 and 499 acres enclosed. Of the remaining permit holders, 17 have between 500 and 999 acres enclosed, 9 have between 1,000 and 1,552 acres enclosed, and 3 have between 3,800 and 5,500 acres enclosed.

The number of permits issued has risen steadily through the years. According to departmental figures, captive white tailed deer permits have increased from 363 in 1992 to 544 in 1999, while elk permits have increased from 42 in 1992 to 197 in 1999.

Biological classification. In biology, animals sharing similar characteristics are classified in a variety of ways, but one common way is to start with the broadest classification, the phylum, and then distinguish among groupings by "sub-phylum," "class," "order," "family," "sub-family," "genus," and "species." The cervidae (or deer) family, for example, belongs to the phylum "chordata," the sub-phylum "vertebrata," the class "mammalia," and the order "artiodactyla." Animals in the same species not only share common attributes, but can interbreed and produce fertile offspring, However, though the term "species" usually refers to classes of individuals that share a common gene pool, the term also can be used to refer to individual animals or kinds belonging to that species. (See, for example, *Webster's New Collegiate Dictionary*.)

The species name of an animal is designated by a two-part Latin name, with the first name indicating the genus to which the species belongs, and the second name indicating the species. Thus, for example, the cervidae (or deer) family often is further divided into four "subfamilies" with about 16 genera and 30 species. The European (or "Old World") elk's scientific name is *Alces alces*, but another common name for it in North America is "moose" (which comes from the Native American Algonquin language). The North American elk, *Cervus elaphus*, also is called "wapiti" (from the Native American Shawnee language), but in Europe is usually called the "red deer." *Rangifer tarandus* usually is called "caribou" (from the Native American language Micmac) in North America and "reindeer" (from Old Norse) in Europe. The common American ("white tailed") deer is *Cervus Virginianus*, the Western North American black tailed deer, *Cervus Columbianus*, and the mule deer, *Cervus macrotis*.

The deer family consists of ruminant (or true cud chewing) mammals with no upper front teeth that have two large and two small hooves on each foot and that have solid antlers that are shed annually (rather than permanent hollow horns, as members of the cattle family, for example, have) in the males of most species and in the females of only some species (such as the reindeer or caribou). In fact, the feature most commonly associated with deer is the presence of antlers.

Definitions. Three state laws contain statutory definitions dealing with animals, hunting, and farming.

• Part 401 of the Natural Resources and Environmental Act defines "animals" to mean "wild birds and wild mammals," and defines "game" to mean any of the animals on a list adopted by the legislature by statute. The list of 38 animals under the definition of "game" in the NREPA includes both deer and elk. "Protected" or "protected animal" means an animal or kind of animal ("kind" means "an animal's sex, age, or physical characteristics") that is designated by the department as an animal that shall not be "taken" (that is, hunted, killed, chased, followed, harassed, harmed, pursued, shot, robbed, trapped, captured, or collected).

• The Animal Industry Act, which was amended by Public Act 41 of 1994, has its own definition of "animal," along with definitions of "domestic animal," "wild animal," "livestock," "captive cervidae,"

"captive cervidae ranch," "captive elk farm," and "captive white tailed deer farm." (See MCL 287.703 et al.)

Under the 1994 amendment, the Animal Industry Act defines "animal" to mean "mollusks, crustaceans, and vertebrates other than human beings." "Domestic animal" means "those species of animals indigenous to North America which have lived under the husbandry of humans" (which would seem to exclude domestic animals originating outside of North America). "Wild animal" means "any nondomesticated animal or any cross of a nondomesticated animal," while "livestock" means "those species of animals used for human food and fiber or those species used for service to humans." The definition of "livestock" is a list of animals that includes, but is not limited to, cattle, sheep, new world camelids, goats, bison, captive cervidae, ratites (flightless birds, such as ostriches, emus, rheas, cassowaries, and kiwis), swine, equine, poultry (which includes game birds "under the husbandry of humans"), aquaculture, and rabbits. "Livestock" does not include dogs and cats.

The 1994 amendment to the Animal Industry Act also added the definition of "captive cervidae" ("members of the cervidae family including but not limited to, deer, elk, moose, and caribou living under the husbandry of humans"), and added definitions that differentiate captive cervidae "ranches" from captive cervidae "farms" based on whether or not the captive cervids are "removed by the hunting method."

• Under the Right To Farm Act (MCL 286.471 to 286.474), "farm" means "the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products." The act does not define "animal," unlike the NREPA and the Animal Husbandry Act, nor reference either of these other definitions. "Farm product" means "those plants and animals useful to human beings produced by agriculture." "Farm product" includes, but is not limited to "forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, *cervidae* (emphasis added), livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and plant products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan Commission of Agriculture." The act does not define "cervidae," "captive cervidae," or "livestock," though the latter two terms are defined in the Animal Industry Act. "Farm operation" means "the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products." The act lists ten items included under the definition of "farm operation":

(a) Marketing produce at roadside stands or farm markets;

(b) "The generation of noise, odors, dust, fumes, and other associated conditions";

(c) The operation of machinery and equipment necessary for a farm, including irrigation and drainage systems and pumps and on-farm grain dryers, and the movement on roadways of vehicles, machinery, equipment, and farm products and "associated inputs" necessary for farm operations;

(d) Field preparation and ground and aerial seeding and spraying;

(e) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides;

(f) Use of alternative pest management techniques;

(g) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals;

(h) The management, storage, transport, utilization, and application of farm by-products, including manure and agricultural wastes;

(i) The conversion from a farm operation activity to other farm operation activities; and

(j) The employment and use of labor.

"Generally accepted agricultural and management practices" (GAAMPS) means those practices as defined by the Michigan Commission of Agriculture, after giving "due consideration" to "available Michigan Department of Agriculture information" and to written recommendations from all of the following sources:

** the Michigan State University College of Agriculture and Natural Resources Extension and the Agricultural Experiment Station in cooperation with the United States Department of Agriculture Natural

Resources Conservation Service and the Consolidated Farm Service Agency,

** the Michigan Department of Natural Resources, and

** "other professional and industry organizations."

The act also requires the commission to review GAAMPS annually and revise them "as considered necessary." Currently, the commission has defined six GAAMPS:

(1) "Manure Management/ Utilization";

(2) "Pesticide Utilization/Pest Control";

(3) "Nutrient (i.e. fertilizer) Utilization";

(4) "Care of Farm Animals";

(5) "Cranberry Production"; and

(6) "Site Selection and Odor Control at New and Expanding Livestock Facilities" (which were required by Public Act 261 of 1999 to be written and adopted by June 1, 2000).

The introduction to the "GAAMPS for the Care of Farm Animals" says, in part, that the practices are "voluntary," "are intended to be used by the livestock industry and other groups concerned with animal welfare as an educational tool in the promotion of animal husbandry and care practices," and "include care for the major farm animals raised in Michigan." The "Care of Farm Animals" practices is divided into 12 sections covering different kinds of livestock:

* Beef cattle, bison and llama;

* Swine;

* Dairy;

* Equine;

* Captive cervidae;

* Veal;

* Sheep and goats;

* Laying chickens;

* Domestic rabbits;

* Farm-raised mink and fox;

* Fish;

* Broilers, turkey, and gamebirds.

Right to Farm protections. Under the Right to Farm Act, a farm or farm operation cannot be found to be a public or private nuisance if either (1) it conforms to GAAMPS as formulated by the Agriculture Commission, or (2) it existed before a change in the use of occupancy of land within one mile of the farm or farm operation's boundaries and would not have been a nuisance before the change. Moreover, if a farm or a farm operation conforms to GAAMPS, it cannot be found to be a public or private nuisance as the result of any of the following:

(1) A change in ownership or size;

(2) Temporary cessation or interruption of farming.

(3) Enrollment in government programs.

(4) Adoption of new technology.

(5) A change in the type of farm product being produced.

Local control, GAAMPS, and Public Act 261 of 1999. The Right to Farm Act states that it does not affect the application of state and federal statutes, and specifically mentions the county, township, and city and village zoning acts as being among the state statutes not affected. Nevertheless, Public Act 261 of 1999 (enrolled Senate Bill 205) amended the Right to Farm Act, among other things, to prohibit local units of government from enacting ordinances -- including zoning ordinances -- that conflict either with the act or with "the generally accepted agricultural management and practices" (GAAMPS) established by the Michigan Commission of Agriculture.

Public Act 261 of 1999 also requires the Agriculture Commission to adopt, in addition to the current five sets of GAAMPS (see Right to Farm Act, above), GAAMPS for site selection and odor controls at new and expanding animal livestock facilities.

"Operational Standards for Registered Privately Owned Cervidae Facilities." House Bill 4427 adopts by reference "Operational Standards for Registered Privately Owned Cervidae Facilities" that were adopted by the Agriculture Commission in May 2000. The five-page standards include six sections.

1. "Facility standards" specify fencing requirements for three different sets of cervids and allow the Commission of Agriculture to approve fence heights for any other cervid species approved under a limited registration. Fencing for white tailed deer, sika deer, fallow deer, and mule deer would have to have a minimum vertical height of 10 feet from the ground level; fencing for elk and red deer would have to have to be at least 8 feet high; and fencing for reindeer and caribou would have to be at least four and a half feet high. However, any facilities with a current Department of Natural Resources permit to maintain wildlife in captivity that met the permit's fencing requirements (namely, 8-foot high continuous woven wire fencing with single stranded high tensile wire for the top two feet of fencing) could be registered under House Bill 4427, though any additions to the facility (including any fence replacements 40 feet long or more) would have to use the fencing requirements specified in the operational standards.

The integrity of the fencing perimeter would have to be monitored by the facility owner (or authorized representative) "on not less than a monthly basis" or following any possible physical damage, and the data and the name of the person conducting the inspection would have to be contained in the facility's records.

2. "Records" would have to be kept on site for all livestock included in the herd, regardless of the species of the livestock. (Any livestock – a term which is not defined in House Bill 4427 or in the operational standards, but which is defined in the Animal Industry Act – contained within the perimeter fence would be considered to be "within the herd.") The following information would have to be kept for each livestock animal within the herd:

• Official identification number;

• Species and gender;

• Age upon entry into the herd;

• Date and method of entry into the herd, including purchase or natural reproduction;

• For any purchased animals, the complete name, address, and phone number of the person from whom the animal was acquired; and for any animals sold or transferred live, the complete name, address, and phone number of the person who received the animal at the destination;

• Copies of any test certificates, herd status letters, or official interstate or international health certificates required to show compliance with any state or federal law, for animals entering or removed from a registered facility's herd; and

• The date and method of "disposition" of any animals removed from a registered facility's herd, including sale, transfer, and "mortality." For all deaths, the records would have to indicate whether the animal's death was intentional or not, and the method and site of disposal (presumably of either the carcass or parts).

Copies of these records would have to be kept and available for inspection for three years following the removal of each individual animal from the herd.

3. "Individual Animal Identification." The operational standards explicitly state that "It is the expressed intent [of the Agriculture Commission] that privately owned cervids should be visibly identified as privately owned. In those cases where owners are unable to visibly identify animals, the owner must work with the Michigan Department of Agriculture (MDA), in conjunction with MDNR [the Michigan Department of Natural Resources], to develop a plan to adequately address biosecurity issues that may affect prevention of animals being released [i.e. escaping] from the facility. In 2005, this standard will be reviewed by MDA and MDNR to determine if technological advances in animal handling and identification have made this standard null."

All livestock species in the enclosure occupied by privately owned cervids would have to be officially identified by one of three methods (or by "any other official identification approved by the director" of the MDA): (1) An official alpha-numeric ear tag; (2) a registration tattoo (only for animals registered with an official breed registry); or (3) electronic identification placed at the base of the left ear (though, presumably, this type of identification wouldn't necessarily be "visible" except through the appropriate electronic technology). Electronic identification could only be used if the facility had an electronic identification reader capable of being used to identify the animal, and it would be the facility owner's responsibility to ensure that the appropriate electronic reader were present at the facility.

All animals entering a registered facility's herd, except through natural reproduction, would have to have an official identification, while each animal added through natural reproduction (except for those in Class III

limited registration facilities) would have to be officially identified before it reached its first birthday.

4. "Recovery protocol" for escaped animals. If a livestock animal from a registered cervidae livestock facility escaped ("became located outside the perimeter fence" and was "not under the direct control of the owner") for more than 12 hours, the animal would be considered to be "released." Escaped animals would be considered to be privately owned as long as they kept their official identification and the owner followed MDA-specified procedures for recapturing them. However, escaped animals without "visible identification" would be subject to "legal taking" under a permit issued by the DNR (i.e. a hunting license, a deer damage permit, or a disease control permit).

The owner of the registered facility would be required to contact the MDA within 24 hours of the discovery of the "release" (though if an animal escaped a facility outside of normal MDA business hours, the owner would be required to contact the MDA during the next business day). Any animal that escaped and was recovered would have to immediately be placed in an isolation facility that kept the animal at least 30 feet from all other livestock at all times.

If an escaped animal weren't recovered within 48 hours after its escape were discovered, the MDA would be required to develop a recovery plan for recapturing ("reacquisition of") the animal. If possible, the MDA would develop the recovery plan in consultation with the DNR, and, if appropriate, with the privately owned cervid industry. The recovery plan could include methods used to recover the animal, a maximum allowable timeframe for recovery, an isolation period and methods to conduct any required isolation before reintroducing the animal back into the herd, and any necessary tests or examinations – to be performed at owner expense – prior to reintroduction. The MDA would be required to evaluate the cause of the escape, and could require modifications of fencing or management practices to prevent a reoccurrence of the escape.

5. "Oversight Responsibilities and Reporting." Once a facility were registered, the MDA would "have primary inspection and oversight responsibilities for compliance" with the bill's provisions. The department would be required to inspect each registered facility at least once every three years, though inspection intervals for individual registered facilities could be made on a "risk" basis, using criteria that could include the type of registration, the difficulty of complying with the registration requirements, the risk of the animals escaping ("becoming released"), the size of the facility, the number of "animal movements" reported, the risk of a reportable disease occurring, and the facility's history of complaints, inspections, or (non)compliance with requirements. MDA inspection intervals also could be modified if there were any industry-sponsored private inspections or education programs.

In addition to the records on individual animals that would be required under the "Records" section of the operational standards, each owner of a registered facility would have to submit an annual report to the MDA of inventory and of fencing inspection. The report would have to indicate "completed inspection" of perimeter fencing for integrity and maintenance, including the date and time of inspection, the name of the person completing the inspection, any noted deficiencies, and the method of repair. The annual report of inventory would have to be sent to the MDA by January 15 of each calendar year, and would have to specify the total number of each (livestock) species within the facility and the number of each species added or removed from the herd during the previous 12-month (January-December) period.

Records would have to be provided to MDA representatives upon request at any reasonable hour, and would have to be kept for at least three years after an animal were removed from the facility. (See "Records" section, above.)

6. "Limited Registration Guidelines." (See "Content of the Bills," above.)

Memorandum of understanding. Although the term "memorandum of understanding" is not defined in Michigan statute, it is used seven times in the Michigan Compiled Laws to refer to agreements (sometimes specifically "written agreements") between government officials, agencies, or other parties. Five of the seven uses of the term in Michigan law involve agricultural issues, the Department of Agriculture, or the Departments of Natural Resources Environmental Quality, or some combination of these issues or state agencies. (The remaining two uses of the term in statute occur in the Downtown Development Authority Act and in the Minimum Wage Law of 1964. In the Downtown Development Authority Act (MCL 125.1651) the memorandum of understanding is between a municipality and a public utility. In the Minimum Wage Law, a memorandum of understanding is a type of written agreement [in addition to collective bargaining agreements] between an employer and a representative of employees.)

According to *Black's Law Dictionary*, a "memorandum" is "An informal note or instrument embodying something that the parties desire to fix in memory by the aid of written evidence, or that is to serve as the basis of a future formal contract or deed. A brief written statement outlining the terms of an agreement or transaction. A memorandum in writing may sometimes be sufficient in law if it contains all of the essential terms of an agreement. Informal interoffice communication." *Black's* further references the use of the word "memorandum" in "the statute of frauds as the designation of the written agreement, or note or evidence thereof, which must exist in order to bind the parties in the cases provided. The memorandum must be such as to disclose the parties, the nature, and substance of the contract, the consideration and promise, and be signed by the party to be bound or his authorized agent. See U.C.C. [para] 2-201. See also Contracts."

1. MDA and DNR. In the Michigan Right to Farm Act (MCL 286.473a), the Michigan Commission of Agriculture and the director of the Michigan Department of Agriculture are required to enter into a memorandum of understanding with the Michigan Natural Resources Commission and the director of the Michigan Department of Natural Resources. Investigation and resolution of "environmental complaints" brought under the act are required to be conducted in accordance with the memorandum of understanding.

2. MDA and DEQ. In the Michigan Agricultural Processing Act (MCL 289.824), the Michigan Commission of Agriculture and the director of the Michigan Department of Agriculture are allowed to enter into a memorandum of understanding with the Michigan Department of Environmental Quality, and the investigation and resolution of "nuisance complaints" under the act involving processing operations are required to be conducted "pursuant to the memorandum of understanding."

3. MDA and CIS. In a 1997 Executive Reorganization Order (E.R.O. 1997-12) that, among other things, transfers the powers and duties of the state fair ("the state exposition and fairgrounds office") from the director of the Department of Consumer and Industry Services to the director of the Department of Agriculture, the two departments are required to "jointly develop a memorandum of understanding pertaining to the allocation of resources between the two agencies." (MCL 445.2002)

4. DNR and Department of Commerce. In a 1995 Executive Reorganization Order (E.R.O. 1995-6) reference is made to a memorandum of understanding between the Department of Natural Resources and the Department of Commerce (under which three programs functioned as part of a joint program under the direction of the DNR's Environmental Assistance Division), and the directors of the Departments of Natural Resources and Commerce are required to initiate coordination to facilitate the transfers and develop a "memorandum of *record* identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved" by the three programs in question.

5. In Public Act 187 of 1965, the pest control compact act, the insurance fund is allowed "to negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states and any other entities concerned." (MCL 2867.501)

Terminology. Although the Natural Resources and Environmental Protection Act (NREPA) currently is the controlling statute for private possession of wildlife, popular terminology used to describe activities regarding the use or possession of white tailed deer, elk, and other cervids often is rather confusing. For example, the NREPA contains provisions for obtaining a "game breeder's *license*" from the Department of Natural Resources. A 1990 "Captive Wild Animal [Natural Resources] Commission Order" further specifies, however, that when used in the 1990 "CWAO," "*permit* to hold wildlife in captivity" (or "permit") means "a game breeders license." Often this permit also is referred to as a "captive wildlife permit," and House Bill 4427 refers to this as a "permit to maintain wildlife in captivity." All captive wildlife held under a game breeder's license must be held in regulated enclosures.

Though the Animal Industry Act does not regulate wildlife, the Animal Industry Act (through 1994 amendments) defines "captive cervidae," and distinguishes between captive white tailed deer or elk *farms* and *ranches*. On "ranches" captive cervids are "removed by the hunting method"; on "farms" they are not. That is, the Animal Industry Act, but not the NREPA, distinguishes between "farmed" captive cervids, and captive cervids that are held privately for hunting purposes. Both captive cervid farms and captive cervid ranches are held under game breeder's licenses (or wildlife captivity permits) and must be

enclosed. Sometimes, moreover, captive white tailed deer or elk "ranches" also are popularly called "private hunting preserves." The hunting of animals held under a DNR captive wildlife permit is not limited by state hunting seasons or bag limits. Moreover, these so-called "private hunting preserves" are *not* the same as the statutorily-regulated "private shooting preserves," which under the NREPA refer to privately-owned land which is posted (but not enclosed) and used for hunting only gamebirds under a DNR "private shooting preserve" license.

Finally, there also are so-called "hunting clubs," where club members own tracts of private, unenclosed land (though the state is in litigation with one such large club in the northeastern Lower Peninsula over the issue of enclosure) upon which the members hunt state-owned, free-ranging wildlife under individual DNR hunting licenses. These private "hunt clubs" do not need to have a captive wildlife permit from the state, since the clubs' individual members obtain individual hunting licenses from the state and hunt game animals on the private land owned by the club during state-specified hunting seasons, observing state-specified "bag limits" (that is, limits on the number of wild game animals that can be killed under the individual license).

FISCAL IMPLICATIONS:

According to the Department of Agriculture, the bill would result in the need for the department to add 2 to 4 employees at an annual cost of up to $265,000, as well as an additional one-time equipment cost of $11,000. Registration fees are expected to generate $165,000 per three-year registration cycle. (8-1-00)

ARGUMENTS:

For:

As the proposed name of the new act indicates, the "privately owned cervidae producers marketing act" would provide a tremendous boost to the rapidly-growing industry of farmed deer and elk. Right now, privately owned herds of white tailed deer and elk reportedly number around 25,000 animals and are worth an estimated $30 million. Currently, profits from "captive" white tailed deer or elk "farms" come from three main sources: from breeding stock sold to other "captive" cervid farms, from male animals sold to private hunting "ranches" (where they are hunted for their prized, large racks of "trophy" antlers), and from elk antler "felt," which is used in traditional Asian medicines as an aphrodisiac. Reportedly, sport hunters are willing to pay up to $15,000 to hunt trophy bucks on private captive cervid "ranches," where the specially bred, privately owned bucks have large antler racks that seldom are seen any more in wild populations. While elk also are sold to private hunting "ranches," much of the revenue in elk farming reportedly comes from "antler velvet," which is sold primarily to Asian markets for its supposed aphrodisiac properties. Reportedly, a mature elk can produce more than 20 pounds of antler velvet a year, and the product has sold for as high as $50 per pound. Antler velvet also reportedly has been found to have a high percentage of an anti-inflammatory substance that can be used as a nutritional supplement for people suffering from inflammatory disorders such as arthritis. Perhaps somewhat surprisingly to the average person, farm-raised venison apparently is not a major product from farmed cervids, though one of the goals of moving regulation of private cervid farms from the Department of Natural Resources to the Department of Agriculture is to increase the market for farm-raised venison.

In 1996, the legislature enacted the Michigan Aquaculture Development Act "to define, develop, and regulate aquaculture as an agricultural enterprise" in the state. The act defined "aquaculture" to mean "the commercial husbandry of aquaculture species on [an] approved list of aquaculture species, including, but not limited to, the culturing, producing, growing, using, propagating, harvesting, transporting, importing, exporting, or marketing of aquacultural products under an appropriate permit or registration," and established an aquaculture facility registration program under the Department of Agriculture (MDA). The bills would provide a similar structure for the farm-raised cervid industry, establishing it as a legally protected and regulated agricultural industry in the state, with all of the rights and privileges to which other agricultural enterprises are entitled. Under the bills, the young and growing cervid livestock industry would be strengthened and encouraged to continue to expand and contribute both to local economies and to the state's economy as a whole. Cervid livestock operations currently are not legally recognized as valid agricultural enterprises, nor do they receive the tax benefits or Right to Farm protections that agricultural enterprises do. Instead, current law treats captive cervids such as white tailed deer and elk the same as it does their wild cousins, which means that captive cervids are regulated under Natural Resources and Environmental Protection Act (NREPA) and that captive cervid farms must obtain permits to operate from the Department of Natural Resources (DNR). Many in the cervid livestock industry believe that regulation by the DNR no longer is appropriate, and want to enjoy the benefits provided by the Department of Agriculture through its

agricultural marketing programs, which the bills would do.

Even though the majority of existing cervid farms are in suburban areas (for example, Genesee County, with 40 such facilities, has the highest number in the state), cervids thrive in such a wide variety of settings that it is possible that this industry could be established in areas of the state that would not be suitable for other, more traditional kinds of production agriculture. Moreover, cervid farms likely would not have the same potential environmental impacts as the more controversial intensive livestock operations have had, and the expansion of cervid farming could contribute to the preservation of farmland and open spaces that has become of such concern in recent years.

Finally, the bills would continue the process begun with the 1994 Animal Industry Act amendments (Public Act 41 of 1994) that added captive cervids and aquaculture to the list of animals included under the act's definition of "livestock," and the Agriculture Commission's adoption in 1995 of the "Care of Farm Animal GAAMPS" ("generally accepted agricultural and management practices," see BACKGROUND INFORMATION), which includes a section on captive cervidae. (The 1994 amendments to the Animal Industry Act also established brucellosis and tuberculosis requirements for captive cervids, and prohibited their importation into the state without a prior entry permit from the MDA.) The bills also would enable cervid farmers to avail themselves of the Right to Farm Act's protections by voluntarily adopting the captive cervidae GAAMPS, and would ensure that so long as they voluntarily followed these practices they could not be subjected to nuisance lawsuits.

For:

Currently, the DNR must approve the pens or enclosures used for propagation purposes by holders of captive wildlife permits unless the enclosures are not approved by the local unit of government in whose jurisdiction the enclosure is located. Under the "memorandum of understanding" that House Bill 4427 would require between the Department of Agriculture and the DNR, the DNR would have to determine that the size and location of a proposed cervid livestock facility would not place "unreasonable stress" on wildlife habitat or migration corridors before the MDA could issue a registration under the bill. This provision would increase the DNR's ability to protect wildlife habitat and migration corridors.

Response:

While the MDA reportedly often uses memoranda of understanding (see also BACKGROUND INFORMATION), such memoranda are not defined in the bill and according to the attorney general's office, the legal implications of this provision – including what would happen should the MDA fail to enter into, or to subsequently not honor, the memorandum of understanding – are unclear. Reportedly, the provision regarding the memorandum of understanding was added to the bill in response to concerns raised by the conservation community that the DNR be involved in the new regulatory scheme for cervid livestock operations. But without statutory (or other) clarification of the legal status and import of memoranda of understanding, and with no sanctions for failure to implement or follow the proposed memorandum of understanding, the requirements of this section of the bill regarding the issuance of registrations – and the guarantee of an effective role for the DNR in this process – remains legally unclear.

Against:

The regulation of captive deer and elk should remain a shared responsibility between the Departments of Natural Resources and Agriculture. Captive deer and elk facilities can have serious adverse impacts both on the state's wildlife populations and on the agricultural industry. When non-native domestic livestock species – such as cattle, sheep, or swine – escape from farms, it is obvious that they are not supposed to be on the loose. However, when white tailed deer or elk escape from captive cervid farms or ranches, they are indistinguishable from free-ranging native wild white tailed deer or elk, and become the responsibility of the state. Once a captive cervid has escaped, there is a potential risk to native wild cervids (and possibly other wildlife) of the possible transmission of parasites, diseases, and interbreeding. The current bovine tuberculosis epidemic, which has resulted in Michigan losing its federal "bovine tuberculosis free" status, illustrates how damaging it is to both agriculture and wildlife when disease is transmitted between wild and domestic animals. As a result of the bovine TB outbreak, that originated in the northeastern Lower Peninsula and first appeared among wild white tailed deer, Michigan has lost its federal bovine TB-free status, which is costly to all livestock farmers, and the management of the disease among wild white tailed deer also has been costly to the taxpayers of the state as a whole. Additionally, because deer are migratory animals, moving substantial distances seasonally, the placement of high fences, such as are needed to keep captive cervids from escaping, can have substantial adverse impacts on Michigan's wildlife populations. For example, the fencing of critical habitat, such as deer "yards" or migration corridors, can have a serious

detrimental effect on deer populations over an area much greater than that which is fenced in.

Response:

House Bill 4427 would, in effect, keep the regulation of captive white tailed deer and elk a shared responsibility between the Departments of Agriculture and Natural Resources, though placing responsibility for implementing the bill's provisions upon the MDA. The bill would do this through a "memorandum of understanding" (MOU) that the bill would require the Department of Agriculture to enter into with the Department of Natural Resources. This "MOU" would be "for determining compliance by persons engaged in cervidae livestock operations, applicants, and registered cervidae livestock facilities with [the bill] and investigation of violations of [the bill]." In addition, the bill would require the director of the MDA, under the memorandum of understanding, to verify, through written confirmation from the DNR, that certain conditions were in place before the director issued any registration under the bill's provisions. These conditions would include confirmation that (a) the DNR had approved the method used to flush any free-ranging cervidae species from the facility, (b) that all free-ranging cervidae species had actually been flushed, (c) that the DNR had determined that the size and location of the facility would not place "unreasonable" stress on wildlife habitat or migration corridors.

Reply:

Putting the "shared responsibility" between the MDA and the DNR under a "memorandum of understanding" and not into statute is, at best, to make this "shared responsibility" legally unclear because the legal status of memoranda of understanding is unclear. The term is not defined in the bill, and appears only seven times in state statute. (See BACKGROUND INFORMATION.) Compliance with the bill's provisions and investigations of violations should be in statute, not in an instrument of questionable legality, and one whose terms would have to be determined through case law by the courts should conflicts arise or should one or the other of the parties fail to honor the memorandum of understanding. The crucial issues of critical wildlife habitat and migration corridors also should be placed in statute and not left to a legally unclear device such as a memorandum of understanding.

Against:

House Bill 4427 proposes to regulate an industry, the cervid livestock industry, but leaves much of the proposed regulation outside of the proposed statute. Instead, the bill would propose an awkward scheme under which the cervid livestock industry would be regulated under the bill's provisions, "operational standards," a memorandum of understanding, and generally accepted agricultural and management practices (GAAMPS) under the Right to Farm Act. In addition to the 1995 "GAAMPS for the Care of Farm Animals," which includes a section on captive cervids, the bill would propose regulation of crucial aspects of the industry under "operational standards" which were adopted by the Agricultural Commission as the bill was going through the legislature, and under a legally undefined (and so far uncompleted) "memorandum of understanding" between the Department of Agriculture and the Department of Natural Resources. The "operational standards" (see BACKGROUND INFORMATION) specify such things as fencing requirements, record-keeping requirements, identification of individual animals, reference to unspecified "recovery protocols" for escaped animals, "oversight responsibilities and reporting," and "limited registration guidelines" (which include fee schedules already included in the bill itself). Why aren't these requirements in statute, or at least implemented under administrative rules, as normally is the case? Reportedly, the bill is modeled on the Michigan Aquaculture Development Act, which does refer to administrative rules. Why not use administrative rules?

Response:

Reportedly, the use of "operational standards" and the memorandum of understanding are intended to provide the Department of Agriculture with the flexibility to make needed changes as required by a still-growing industry. Putting the requirements found in these two documents into statute would mean that any future changes would have to be done through the legislative process rather than through the department and the Agricultural Commission.

Reply:

Given the seriousness of the current bovine tuberculosis epidemic, it would seem wise to keep regulation of cervids under legislative oversight. Moreover, the use of administrative rules offers an alternative to statutory amendments, but the process must conform to the Administrative Procedures Act.

Against:

Among other things, by designating privately-owned captive cervid operations as "agricultural enterprises," these operations would reap the benefits of current agricultural tax breaks, but the effect of the possible tax breaks that would accrue to existing captive cervid enterprises on local units of government is not clear. Would local units of government lose some of their tax bases if the bills are enacted?

Against:

The bill would appear to further erode local control over land use decisions. Currently, the Natural Resources and Environmental Protection Act (MCL 324.42706) requires that local units of government approve captive cervid facilities before the Department of Natural Resources can issue a captive wildlife permit. House Bill 4427 would remove this authority from local units of government and replace it with "notification" by the Department of Agriculture when someone applied for a new facility registration under the bill. Local units would have up to 30 days from receiving such notification to "respond," but it appears that the only "response" that the bill would allow would be for the local units to inform the MDA whether the applicant's proposed facility would be in violation of any ordinance. Thus, the bill appears to remove any local control over registration or siting of such facilities.

Moreover, by statutorily placing all cervid livestock facilities under the Michigan Right to Farm Act, the bill would remove these facilities from local control so long as they conformed to the generally accepted agricultural and management practices ("GAAMPS") for "captive cervidae" adopted by the Michigan Agricultural Commission as part of the 1995 GAAMPS for the "Care of Farm Animals". In light of the recent exemption of farming operations from local control as implemented by Public Act 261 of 1999, this would mean that apart from the notification requirements in the bill, local units of government would appear to lose their current say in the siting of such enclosures.

In addition, some people have raised concerns over the impact that high fencing of large tracts of land would have on adjacent properties. Reportedly, some small landowners who bought land for hunting have effectively lost that use of their land when the fencing of neighboring property stopped the movement of deer across or into the smaller tracts of land. What would be the impact of the bills on this issue? Would more people wind up losing the use of their land for hunting because of large, fenced cervid livestock facilities?

Response:

Other agricultural operations are not required to notify local units of government when they decide to begin or expand operations. The bill would designate cervid livestock facilities as "agricultural enterprises," and so even the notification provisions of the bill would go beyond what currently is required of other agricultural enterprises.

Reply:

Given the consolidation occurring in the agriculture industry, in which small family farms are increasingly replaced by ever larger farming operations, some people argue that in fact large agricultural operations *should* be subject to more, not less, local control, given the impact that these large operations can have on their smaller neighbors.

Against:

Some of the bill's language is confusing and imprecise. For example, the bill defines "cervidae species" to mean "members of the cervidae family including, but not limited to, deer, elk, moose, reindeer, and caribou." Not only does this definition differ from the definition of "captive cervidae" in the Animal Industry Act ("members of the cervidae family including but not limited to, deer, elk, moose, and caribou living under the husbandry of humans"), the phrase "cervidae species" is used throughout the bill to refer both to deer species (that is, classes of animals) and to individual cervids within these species. It would be clearer to refer to the individual animals as cervids. In addition, like the definition in the Animal Industry Act, the bill lists "deer" as being members of the "cervidae family," though "cervidae" is the Latin word for "deer." So "cervidae family" or "cervidae species," except as defined by the bill, is the same thing as "deer family" or "deer species." Thus elk are a species of deer, as are moose, caribou, and white tailed deer. In addition, unlike the Michigan Aquaculture Development Act, upon which the bill reportedly is modeled, the bill does not give the scientific names of the animals regulated under the act. This can lead to confusion, since there can be more than one common name for a deer species, often because one name is derived from European language roots and another from North American Native American language roots. Thus, for example, the deer species *Rangifer tarandus* is known in Europe as "reindeer" (from Old Norse origins) and in North America as "caribou" (from Micmac origins). Similarly, the deer species *Alces alces* can refer to what are called "elk" in Europe and "moose" in North America, while North American "elk" (*Cervus elaphus*) also can be called "wapiti" (from Algonquin origins), but in Europe are called "red deer." For clarity, the bill should use the scientific names of the deer species that the bill proposes to regulate.

There are other terminological problems. In addition to defining "captive cervidae," the Animal Industry Act also defines "captive cervidae ranch," "captive elk farm," and "captive white tailed deer farm" (see "Definitions" in BACKGROUND INFORMATION). The bill instead would define "cervidae species," and distinguish between "free ranging" (or "wild") "cervidae species" and "privately owned cervidae species." Reportedly the cervid livestock industry

wishes to move away from using the term "captive cervidae" in order to emphasize that most if not all of its cervid livestock never has been wild or free ranging, but instead is bought from other cervid livestock operations where deer and elk are under the husbandry of humans (and some of which have documented pedigrees that sometimes can be traced back for generations). Should the Animal Industry Act then be amended to refer to "privately owned cervidae" instead of "captive cervidae"? Or should the desired distinction be drawn between "privately owned" and "state owned" cervids? Or between "free ranging" and "confined" cervids? Or between "wild" and "farmed" cervids? For, unlike domestic cattle, who have no wild or free ranging counterparts in the state, it generally is impossible to distinguish, on sight, a wild deer or elk from a "privately owned" deer or elk (which the bill recognizes, for example, by requiring certain heights and kinds of fencing to make sure that "privately owned" cervids remain "captive," and that wild cervids don't get trapped on private ground behind fences.) Which language would control? That of the proposed act or that of the Animal Industry Act?

On a related point, the Animal Industry Act is clear that "captive cervidae *ranches*" differ from "captive elk *farms*" and "captive white tailed deer *farms*." On a "ranch" the captive cervids are killed "by the hunting method," while on "farms" they are not. This seems like a useful distinction to maintain, since the Department of Natural Resources would seem to be the proper regulatory agency for animals taken by hunting. However, the bill would eliminate this distinction, and instead put all captive or privately owned cervids under the Department of Agriculture, which traditionally has regulated domestic livestock that are killed by slaughtering. Moreover, the bill's definition of "cervidae livestock operation" refers to an (agricultural) operation that contained privately owned cervids and involved "the producing, growing, propagating, using, *harvesting* (emphasis added), transporting, exporting, importing, or marketing of cervids or cervid products under an appropriate registration." Presumably, the bill would allow privately-owned (or "captive" or "confined" or "farmed") cervids to be hunted without regulation by the DNR, even though sport hunting presumably is not an agricultural but an outdoor recreational activity.

Finally, the bill defines "release" as meaning "to cause an animal to become located outside the perimeter fence of a cervidae livestock facility not under the direct control of the owner," when presumably an animal located outside the perimeter fence of a cervidae livestock facility generally, if not always, will not be under the direct control of the owner. The operational standards referenced in the bill suggest that "release" actually refers to the accidental or nonintentional *escape* of confined cervids, but the current definition of "release" in the bill appears to suggest that it is the facility and not the escaped animal that is not under the owner's "direct control."

Against:

The general procedures for the registration application process for proposed cervid livestock facilities are outlined in sections 6 and 7 of the bill. However, while the main elements of the process – including the opportunity for up to two "free" pre-registration inspections by the MDA, the opportunity for up to two "free" informal department reviews, and the option of a contested case hearing under the Administrative Procedures Act – appear clear, the details of the process, as outlined in the bill, are not. The bill includes a number of deadlines, which appear to provide a time line for the registration application process, but the actual application of these deadlines is unclear.

For example, it would appear to be the case that a "completed" application (a term not defined in the bill) for a proposed new cervid livestock facility would have to be submitted before construction of the proposed facility were begun. At the same time, the bill also appears to require that a completed application demonstrate certain conditions that could be met only after construction of the facility had been completed. The bill would be strengthened by more clearly setting forth the details of the proposed registration process.

Against:

The bill would appear to have extraordinarily low registration fees, given the amount of time and effort that would be required of the Department of Agriculture -- and possibly of the Departments of Natural Resources and Environmental Quality as well -- to administer the bill's provisions (which would include duties specified in the operational standards referenced in the bill). For example, the bill would allow applicants to request up to two informal department reviews of an application for a proposed new cervid livestock facility (which reviews could also involve the DNR and DEQ), two "pre-registration" facility inspections by the MDA, and the development of a "recovery plan" by the MDA (and, possibly, the DNR) for recapturing privately owned cervids that escaped from their owners' facilities. While it is true that the MDA considers itself to be "user friendly," nevertheless the amount of work that the three departments could be called upon to perform for an application fee that could be as low as $45 for three

years seems extraordinary. Given the enormous potential financial benefits to the cervid livestock industry, shouldn't the bills at least ensure that the state does not incur costs above what would be paid for by "user fees"?

Against:

Though not all of the potential effects of the bills are clear, hunting and conservation interests have expressed concern with the potentially adverse impact of conflating farming and hunting operations. The bills would do this by moving authority for all cervid operations – not just cervid farms, but so-called "ranches" (where cervids are hunted), "exhibitions," and "hobbyists" as well – under the Department of Agriculture. Given hunters' concerns over what sometimes seems to be an increasingly hostile public attitude towards hunting, blurring the distinction between domestic livestock and game animals could further public confusion over the distinctive value of hunting as a separate tradition and industry. The bills could have potential repercussions on the public's perception of hunting in the state, in addition to furthering public confusion between "publicly owned" wildlife, which is a public natural resource, and "privately owned" wildlife, which is becoming a booming private industry.

The bill might work well for what the Animal Industry Act calls "captive deer or elk farms." However, it would apply not just to cervid "farms" but to what the Animal Industry Act also calls "captive deer or elk ranches," and all other operations involving privately owned cervids, including hobbyists and exhibitors. At the very least, captive cervid operations involving hunting ought to be left under regulation of the Department of Natural Resources, which regulates sport hunting of game animals generally. Rather than include *all* "operations" involving privately owned cervids under "farming," the bill should restrict itself to bona fide cervid farming and farms, and leave hunting involving cervids under their current regulation by the Department of Natural Resources.

Moreover, designating cervid "ranches," where the animals are hunted, as "agricultural enterprises" to be regulated by the Department of Agriculture, instead of viewing them as hunting facilities properly regulated by the Department of Natural Resources, would appear to begin to blur the distinction between hunting and farming, at least as traditionally known. Many hunters already feel that anti-hunting sentiment among certain sectors of the public potentially threatens this ancient sport. What, if any, will be the effect on hunting of the bill's conflation of captive wild animals hunted for sport and those same animals slaughtered like domestic livestock for their meat and other body products? Will the general public understand the difference between "privately-owned" and "publicly-owned" cervids? Will this lead to a situation such as exists, for example, in some European countries, where reportedly all wildlife is privately owned, and therefore accessible only to those who can afford to pay to have access to it?

Response:

With regard to whether or not people will further confuse the difference between privately owned livestock and wildlife held in the public trust, two analogous situations with regard to fish may be somewhat reassuring. First is the publicly well-understood difference between commercial and sports fishing. Even though sometimes the very same species are harvested, in the one case for commercial profit and in the other for sport, people don't seem to have any trouble distinguishing between the two activities, nor with accepting sport fishing as a legitimate interest separate from commercial fishing. Nor does the use of the term "harvesting" in both of these contexts seem confusing. Secondly is the well-understood difference between sports fishing and aquaculture. Under aquaculture, fish are raised and harvested specifically as a commercial food source. (And in fact, a law was enacted, the Michigan Aquaculture Development Act, in 1966 "to define, develop, and regulate aquaculture as an agricultural enterprise in this state.") Again, the development of the aquaculture industry as an agricultural enterprise does not seem to have confused people about the difference between sports fishing and the (agricultural) aquaculture industry. The bills would simply extend these concepts to the realm of "farm-raised cervids," much in the same way as commercial aquaculture engages in the business of "farm-raised fish."

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.