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BILL ANALYSIS

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House Bill 6245 (as passed by the House)  
Sponsor: Representative Tom Casperson  
House Committee: Conservation, Forestry, and Outdoor Recreation  
Senate Committee: Agriculture, Forestry and Tourism

Date Completed: 12-6-06

### **CONTENT**

**The bill would amend the Privately Owned Cervidae Marketing Producers Act to do the following:**

- **Transfer the administration of the Act from the Michigan Department of Agriculture (MDA) to the Department of Natural Resources (DNR) (as provided in Executive Order 2004-03).**
- **Require a cervidae livestock facility, by July 1, 2008, to comply with certain standards published by the DNR, rather than those published by the MDA, and incorporate the DNR's standards by reference.**
- **Require registration under the Act for possession of cervidae, as well as operation of a cervidae livestock facility.**
- **Increase application and inspection fees for cervidae livestock facilities.**
- **Establish a nonrefundable application fee of \$250 for an initial application, and an inspection fee of \$250 for a facility that was 40 acres or less and \$500 for a facility over 40 acres.**
- **Specify that the DNR could not issue a new registration for a Class I (hobby) cervidae livestock facility after the bill's effective date, but could renew a Class I registration that existed before that date.**
- **Revise the penalty for abandoning a facility without notifying the State, and prohibit the intentional release of cervidae species from a facility.**

promulgate rules to implement and enforce the Act.

The bill is described in detail below.

#### Operational Standards

Until July 1, 2008, a cervidae livestock facility registered before the bill's effective date would have to comply with the facility standards contained in "Operational Standards for Registered Privately Owned Cervid Facilities", published by the MDA in May 2000.

By July 1, 2008, a cervidae livestock facility that was in existence on or before the bill's effective date would have to be in compliance with the facility standards contained in "Operational Standards for Registered Privately Owned Cervidae Facilities", published by the DNR (revised December 2005), adopted by the Michigan Agriculture Commission on January 9, 2006, and adopted by the Natural Resources Commission on January 12, 2006. Those standards would be incorporated by reference in the Act.

The Act allows the MDA, after consultation with the DNR, and with concurrence of the Natural Resources Commission and the Agriculture Commission, to amend, update, or supplement the standards adopted under the Act, by amendment of the Act or promulgation of a rule.

Under the bill, the standards could be amended or updated only by amendment of the Act, and the DNR would have that

The bill also would repeal Section 15 of the Act, which permits the Director to

authority, after consultation with the MDA and with concurrence of the Natural Resources and Agriculture Commissions.

#### Transfer from MDA to DNR

Under the Act, the MDA is responsible for administering the Act, receiving and reviewing applications, granting registrations, and carrying out other responsibilities. The bill would transfer that responsibility and authority to the DNR. (Executive Order 2004-03 transferred the administration of the Act, and other specific powers, duties, functions, and responsibilities under the Act, from the MDA to the DNR.)

#### Registration Requirement; Application

The Act specifies that a person may not engage in cervidae livestock operation unless he or she obtains a cervidae livestock facility registration or unless otherwise exempt by rule or law. Under the bill, a person also could not possess cervidae without a cervidae livestock facility registration.

The Act requires a completed initial application for a registration to be submitted at least 60 days before the construction of the cervidae livestock facility. The Department must use the standards published by the MDA to evaluate the issuance, maintenance, and renewal of a registration issued under the Act. The bill would delete these requirements.

The bill would require the DNR to approve, deny, or propose a modification to a completed application within 60 days. It would have to use the standards published by the DNR (specified above) to evaluate the issuance, construction, maintenance, administration, and renewal of a registration issued under the Act.

Under the Act, as part of an application, the applicant for registration must submit a business plan complying with the standards established under the Act. Under the bill, that requirement would apply to an initial application and to an application to modify a cervidae livestock facility.

The business plan must contain certain information, including the number of cervidae species included in the proposed

facility. The bill would require the plan to include the number of each cervidae species included.

Under the Act, the business plan also must include the proposed record-keeping system. The bill would require the plan to include a record-keeping system that was in compliance with the Act and the operational standards incorporated by reference (as described above).

The bill also would require the business plan to include a disease herd plan in compliance with those operational standards, to be approved by the State Veterinarian under the Animal Industry Act.

#### Application Process

Beginning on the bill's effective date, the DNR would have to issue an initial registration or modification registration allowing an expansion of an existing facility within 120 days after the applicant filed a completed application. Renewal applications would have to be issued within 60 days after the applicant filed a completed application.

Receipt of an application would be considered the date the DNR received the application. If the Department considered the application incomplete, it would have to notify the applicant in writing or make the information electronically available within 30 days after receiving the incomplete application, describing the deficiency and requesting the additional information. The determination of the completeness of an application would not operate as an approval of the application for the registration and would not confer eligibility on an applicant who otherwise was determined to be ineligible for issuance of a registration.

The 120-day period would be tolled when the DNR sent notice of a deficiency, until the date the DNR received all of the requested information, or for the time period during which required actions were completed, including completion of construction or renovation of the facility; reinspections if mandated by the DNR; other inspections if required by any State, local, or Federal agency; approval by the legislative body of a local unit of government; or other actions mandated by the Act or otherwise mandated by law or local ordinance.

If the DNR failed to issue or deny a registration within the time required, the Department would have to return the registration fee and reduce the registration fee for the applicant's next renewal application, if any, by 15%. The failure to issue a registration within the time required would not allow the DNR otherwise to delay the processing of the application.

The application, upon completion, would have to be placed in sequence with other completed applications received at the same time. The DNR could not discriminate against an applicant in the processing based on the fact that the registration fee was refunded or discounted under these provisions.

"Completed application" under these provisions would mean an application complete on its face and submitted with any applicable registration fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a Federal agency, or a private entity but not from another department or agency of the State.

Under the Act, an application for renewal submitted more than 60 days before expiration of the current registration requires submission of an initial application. The Department must require a new registration for a transfer occurring within six months of the expiration of the current license. The bill would remove those provisions.

#### Facility Requirements; Animal Identification

The bill would require the DNR Director, before issuing any registration under the Act, to verify through written confirmation that the Department had approved the method used to flush any free-ranging cervidae species from the facility, if applicable, and that all free-ranging cervidae species actually had been flushed. The Director also would have to verify that the DNR had determined that the lot size and location of the facility would not place unreasonable stress on wildlife habitat or migration corridors. Currently, the MDA Director is required to make these verifications.

The Act requires that after flushing cervidae species in an approved manner, any cervidae species remaining in the facility be killed or tranquilized and removed by or under the authority of the applicant, pursuant to a permit issued by the DNR. Under the bill, the remaining species would have to be killed.

The Act prohibits the issuance of an initial cervidae livestock facility registration or modification unless the application demonstrates, among other things, that the facility has been inspected by the Director or his or her designee, and he or she has determined that the facility meets the standards and requirements under the Act, complies with the business plan, and has barriers in place to prevent the escape of cervidae species and prevent the entry of wild cervidae species.

In the case of elk, a perimeter fence must be constructed of woven wire and must be at least eight feet high. In the case of white tailed deer, a perimeter fence must be constructed of woven wire and must be at least 10 feet high. For other cervidae species, the perimeter fence height must be determined by standards and requirements prescribed by and adopted under the Act.

The bill would remove the specific requirements for a perimeter fence, instead requiring that a perimeter fence be in compliance with the operational standards incorporated under the Act.

The Act requires an applicant to notify the DNR in writing when the construction of the livestock facility is completed. Under the bill, that written notice would have to certify that, to the best of the applicant's knowledge, the facility had been constructed in compliance with the requirements of the Act and in compliance with the standards for cervidae livestock facilities.

The Act requires that, within 30 days after notification of completion of the facility, the Director inspect the facility. If the Director determines that it conforms to the standards under the Act, he or she must issue a registration within 30 days after completion of the inspection. Those time periods may be extended only if the Department is unable to verify the removal of wild cervidae species or for an act of God.

The bill also would permit an extension of those time periods under provisions described above allowing the time period to be tolled while additional information is being provided to the Department to complete an application, and while mandatory inspections or other required actions are being completed.

#### Issued Registration

Under the bill, a registration issued under the Act would be issued for three years.

Currently, the registration must contain certain information, including the registration number and expiration date. The bill would require the registration also to include the class and date of issuance. In addition, the bill would require the address provided on the registration to include the county, township, and section, as well as the size of the facility.

The bill also would require the registration to include any other information provided on the application.

#### Application & Inspection Fees

Under the bill, the DNR would have to charge a nonrefundable application fee of \$250 for an initial application and the following inspection fees:

For facilities containing 40 acres or less: \$250  
For facilities greater than 40 acres: \$500

The fee for a second inspection of a cervidae livestock facility under Section 7(3) (which provides for a second inspection after the correction of deficiencies identified in an initial inspection) would be \$100.

The Act provides for the following fees for initial and renewal applications for cervidae facilities:

-- Class I (Hobby)	\$45
-- Class II (exhibition)	\$75
-- Class II (ranch)	\$500
-- Full registration	\$150

The bill would increase those fees as follows:

-- Class I (hobby) renewal	\$450
-- Class II (exhibition)	\$450
-- Class II (ranch)	\$750
-- Full registration	\$750

Beginning on the bill's effective date, the DNR could not issue an initial registration for a class I (hobby) facility but the Department could renew a class I registration that was in existence on the bill's effective date.

#### Modification or Decommission

The Act requires a registered cervidae livestock facility to apply for a modification of the registration before any change in the registration class of activities for which the registration is issued. The bill instead would require the facility to apply for a modification of the registration if any changes to the information on the registration had occurred or would occur, although a completed modification application would have to be submitted and approved by the DNR before a change in registration class or a modification to the size of a cervidae livestock facility.

The bill provides that expiration dates would not change for approved modifications, except for a change in registration class.

Under the bill, a modification application submitted for a change in registration class would have to include the appropriate fee for the new class. If approved by the DNR, the registration would expire three years from the new date of issuance.

An application for a modification to the size of a facility would have to include a modification application fee of \$100.

A modification application fee would have to be submitted within 30 days after any of the following changes had occurred:

- A change to the complete name, business name, business address, or telephone number of the current registration holder.
- A change to the complete address of the cervidae livestock facility location.
- A sale or transfer of ownership if a cervidae livestock facility.
- The introduction of new species into a cervidae livestock facility.

In the case of a sale or transfer of ownership, the modification application would have to include a written statement signed by the new owner and the previous owner verifying the sale or transfer of ownership. (Currently, a sale or transfer of

ownership of a cervidae livestock facility requires the new owner or the transferee to notify the Department in writing.)

The bill would allow a registrant to request decommissioning of a cervidae livestock facility. The decommissioning would have to be in compliance with the operational standards incorporated by reference, unless there was a risk to the environment and to the health of other free-ranging animals in the area in the removal of fencing and other barriers.

Under the Act, the MDA may deny the issuance of a registration or may suspend or revoke a registration if the MDA, in consultation with the DNR or the DEQ, or both, determines that based upon substantial scientific evidence, the issuance of a registration will cause, or is likely to cause, an unreasonable or adverse effect upon the environment or wildlife that cannot be remedied by, or is not addressed by, the existing standards under the Act.

Under the bill, those provisions also would apply to a modification and an application for decommissioning, and the DNR would have that authority, in consultation with the MDA and the DEQ.

#### Penalties

Under the Act, an owner may not abandon a registered cervidae livestock facility without first notifying the MDA. A violation of this prohibition is a misdemeanor. Under the bill, an owner would have to notify both the MDA and the DNR, and a violation would be a felony.

The Act prohibits a person from intentionally or knowingly causing the ingress of free-ranging cervidae species into a registered cervidae livestock facility. A violation of this prohibition is a felony.

Under the bill, a person also would be prohibited from knowingly or intentionally releasing or allowing the release of any cervidae species from a cervidae livestock facility, and a violator would be guilty of a felony.

Currently, an initial application or an application for modification of a facility may not be approved unless individual animals are appropriately identified in compliance

with the standards established under the Act. The bill, instead, would require that the method for individual animal identification comply with the standards incorporated by reference.

#### Other Provisions

The Act requires the MDA Director and the DNR Director to enter into a memorandum of understanding for determining compliance by people engaged in cervidae livestock operations, applicants, and registered cervidae livestock facilities, as well as investigations of violations of the Act. The bill also would require the memorandum of understanding to include provisions for approving disease herd plans.

MCL 287.952 et al.

#### **FISCAL IMPACT**

The bill would increase revenue to the State. Revenue from application and inspection fees that the bill would establish or increase would be used to support program costs in the Departments of Natural Resources and Agriculture. The bill would create four new fees and increase the four existing registration fees. All new facilities would pay an initial application fee of \$250, and an initial inspection fee of \$250 if the facility were 40 acres or less or \$500 if larger than 40 acres. Modifications to applications would require a fee of \$100 and if the modification were to change a registration class, then the appropriate fee for the new class also would have to be submitted to the DNR. Revenue from these four new fees would depend on the number of new facilities and the number of modifications.

The bill would increase the existing four registration fees according to the schedule in Table 1. The fees are paid once every three years. The total annual revenue of \$165,100 from the proposed registration fees would be less than the current total amount appropriated for the captive cervidae program, which was \$381,400 in FY 2005-06. Of that amount, the Department of Natural Resources had a total of \$338,400 for the captive cervidae program; \$93,500 was from fee revenue and \$244,900 was from the General Fund. In FY 2005-06, the Department of Agriculture had appropriations of about \$43,000 General Fund for captive cervidae activities. The

increase in revenue from the proposed fees could be an enhancement to the captive cervidae program, although it is likely that a

portion of the General Fund dollars that currently support the program would be redirected to other needs.

Table 1

<b>Captive Cervidae Registration Fees</b>					
	<b># of Facilities *</b>	<b>Current Fee</b>	<b>Current Revenue</b>	<b>Proposed Fee</b>	<b>Proposed Revenue</b>
Class I (Hobby) Renewal only	166	\$45	\$7,470	450	\$74,700
Class II (Exhibition)	33	75	2,475	450	14,850
Class III (Ranch)	142	500	71,000	750	106,500
Class VI (Full)	399	150	59,850	750	299,250
<b>Total for 3 years</b>	<b>740</b>		<b>\$140,795</b>		<b>\$495,300</b>
<b>Total for 1 year</b>			<b>\$46,932</b>		<b>\$165,100</b>

\* Provided by the Department of Natural Resources in May 2005.

The bill also would expand activities that are felony violations of the Act. Offenders would be subject to a penalty of imprisonment for up to four years and/or a maximum fine of \$5,000 (the penalty under the Michigan Penal Code for a felony not subject to a specified punishment). Local units would incur the costs of incarceration in local

facilities, which vary by county. The State would incur the cost of incarceration in a State facility, at an average annual cost of \$31,000. Additional fine revenue would benefit public libraries.

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