



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 27 (Substitute S-1 as reported)  
Sponsor: Senator Goeff Hansen  
Committee: Agriculture

Date Completed: 6-6-11

## **RATIONALE**

The Privately Owned Cervidae Producers Marketing Act was enacted in 2000 to provide for the regulation of cervidae livestock operations, where animals such as deer and elk are raised or held in captivity. At the same time, legislation removed privately owned cervidae from regulation as game by the Department of Natural Resources (DNR). Cervid livestock operations range from small farms where the animals are bred, to large ranches where they are hunted. Originally, the Michigan Department of Agriculture (MDA) was responsible for administering the Act. In an effort to prevent the spread of Chronic Wasting Disease, former Governor Granholm transferred regulatory functions to the DNR via Executive Order 2004-03, and statutory amendments enacted in 2006 reflect this change. While the DNR is responsible for such activities as registering facilities, inspecting enclosures, and enforcing standards, the MDA remains responsible for ensuring animal health, particularly through testing. Some people believe that returning regulatory authority to the MDA (now called the Michigan Department of Agriculture and Rural Development) would be consistent with the Department's agriculture-related mission.

- **Require the DNR to review the site plan contained in an application for registration of a proposed facility, and approve or deny the plan.**
- **Require an applicant to obtain a variance from a local unit of government if a proposed facility would violate an ordinance.**
- **Require MDARD to approve or deny a completed application for a proposed facility within 90 days after the application was filed, rather than the 120 days required of the DNR.**
- **Require an applicant for registration of a completed facility to be notified of the application's denial within 30 days after an inspection, rather than 60 days after the application was received.**
- **Require MDARD to make a decision within 30 days after receiving a request for an informal review of a denied application.**
- **Require a decision on registration renewal to be made within 30, rather than 60, days after the completed application was submitted.**

### Cervidae Livestock Facility

The Act defines "cervidae livestock facility" as a privately owned cervidae livestock operation on privately controlled land capable of holding cervidae species. The bill specifies that each separate enclosure on a separate parcel of land would be a separate cervidae livestock facility.

## **CONTENT**

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

- **Transfer administration of the Act from the Department of Natural Resources to the Michigan Department of Agriculture and Rural Development (MDARD).**

## Administration of the Act

Currently, the DNR is required to administer the Act, and MDARD and the Department of Environmental Quality (DEQ) are required to provide consultation. The bill would require MDARD to administer the Act in consultation with the DNR and the DEQ.

## Application for Conditional Registration

The Act sets forth an application process for the "initial" registration of a proposed facility. Under the bill, the process would apply to a "conditional" registration.

The Act requires an applicant for registration of a proposed facility to submit a business plan that complies with standards in the Act and contains specified information, including the size and location of the land on which the operation will be conducted, and the proposed method of flushing wild cervidae species from the enclosure, if applicable. Under the bill, this information would have to be included in a proposed site plan, which the business plan would have to contain.

A business plan also must include the current zoning of the property and whether the local unit or units of government in which the proposed facility will be located have an ordinance regarding fences. The bill would require the plan to indicate, as well, whether the proposed facility would be in violation of that ordinance. If a variation from an ordinance had been granted or were being considered, the applicant would have to include this information in the application.

The bill would delete a requirement that an application contain any other information considered necessary by the Department.

## Conditional Registration

Currently, the DNR is required to approve, deny, or propose modification of a completed initial application within 60 days. The Act also requires the Department to issue an initial registration or modification registration allowing an expansion to an existing facility within 120 days after a completed application is filed. The bill would delete these provisions.

The bill would require MDARD to issue or deny a conditional registration within 90 days after a completed application was filed. The bill specifies that an application would

be valid for three years from the date MDARD received it, after which another application would have to be completed and submitted to the Department.

The Act provides that renewal applications may not be issued later than 60 days after a completed application is filed. Under the bill, MDARD would have to make a decision on an application for renewal of a registration within 30 days after the applicant submitted a completed application.

The Act requires the DNR to use the standards contained in a DNR publication, "Operational Standards for Registered Privately Owned Cervidae Facilities", to evaluate the issuance, construction, maintenance, administration, and renewal of a registration. After consultation with MDARD and with concurrence of the Natural Resources Commission and the Agriculture Commission, the DNR may, by amendment of the Act, amend or update those standards. The bill would delete these provisions (although it would retain a requirement that a facility comply with the standards).

The Act requires the DNR Director, before issuing a registration, to verify that the Department has approved the method used to flush any free-ranging cervidae species from the facility, if applicable, and all such species have been flushed; and has determined that the size and location of the facility will not place unreasonable stress on wildlife habitat or migration corridors. The bill would delete this requirement.

Currently, upon receiving an application, the DNR must notify the local unit or units in which the proposed facility will be located, unless the Department determines, from information in the application, that the land is zoned agricultural. The local unit or units may respond within 30 days, indicating that the proposed facility would be in violation of an ordinance. Under the bill, if the facility would violate an ordinance, the applicant would have to obtain a variance from the local unit of government within 60 days after the application was submitted. Failure to obtain a variance would void the application.

The Act prohibits the DNR from issuing an initial registration or modification unless the applicant demonstrates that the facility has been inspected by the Director and he or she has determined that it meets the

standards and requirements of the Act and complies with the business plan, and determines that there are barriers in place to prevent the escape of cervidae species and the entry of wild species. Also, a renewal or initial applicant must provide a perimeter fence in compliance with operational standards under the Act, and a method for individual animal identification that complies with the standards. The bill would replace these provisions.

Under the bill, MDARD would have to approve a conditional registration for a facility if it met the standards and requirements of the Act and the business plan submitted in the application; the applicant agreed to maintain barriers in place to prevent the escape of cervidae species and the entry of wild species, including a perimeter fence in compliance with the operational standards; the applicant agreed to use a method for individual animal identification that complied with the standards; the applicant had all necessary permits required under the Natural Resources and Environmental Protection (as currently required); and the DNR had approved a site plan for the facility.

The Act allows an applicant to request an informal review of the application if it is denied. The review must include the applicant, MDARD, the DNR, and the DEQ, if applicable. After the informal review, the Director must issue a registration if he or she determines that the proposed facility complies with the requirements of the Act. If the Director determines that the facility does not comply with the Act, he or she must affirm the denial. The bill would require MDARD to make these determinations within 30 days after receiving the request for an informal review.

#### DNR Site Review

The bill would require the DNR, upon receiving an application for registration of a cervidae livestock facility, to review the proposed site plan contained in the application. Within 30 days after receiving the application, the Department would have to approve or deny the site plan.

The DNR would have to approve the site plan if the Department determined all of the following:

- The proposed size and location of the enclosures would not place unreasonable stress on wildlife habitat or migration corridors.
- The proposed method of flushing wild cervidae species from the enclosures would be appropriate under the circumstances.
- The proposed method of verification that all free-ranging cervidae species had been removed from the enclosures would be appropriate under the circumstances.

If it determined that the site plan did not meet those conditions, the DNR would have to disapprove the plan and specify the reasons for its determination.

The DNR would have to give written notice of its determination to MDARD.

#### Registration after Construction

Under the Act, when a cervidae livestock facility has been constructed, the applicant must notify the DNR. Within 30 days, the Director must inspect the facility and, if he or she determines that it complies with the Act, issue a registration within 30 days after completing the inspection.

If the Director determines that the facility does not comply with the Act, he or she must deny the application, and notify the applicant of the reasons for denial within 60 days after receiving the completed application. Under the bill, the MDARD Director would have to notify the applicant within 30 days after the inspection was completed.

The Act allows an applicant to request a second inspection after specified deficiencies have been corrected. An applicant who receives a second denial then may request an informal review of the application. The review must include the applicant, MDARD, the DNR, and the DEQ, if applicable.

Within 30 days after the informal review, the Director must issue a registration if he or she determines that the facility complies with the Act. If the Director determines that the facility does not comply with the Act, he or she must affirm the denial. The bill would require MDARD to make these determinations within 30 days after receiving the request for an informal review.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The Act states, "A cervidae livestock operation is an agricultural enterprise and is considered to be part of the farming and agricultural industry of the state." Regulation of captive cervidae operations would be consistent with MDARD's mission to protect, promote, and preserve the agricultural interests of the people of Michigan. The DNR, on the other hand, focuses on wildlife and fisheries management, conservation, and the management of State forests, parks, and recreational areas. When the captive cervidae statute was enacted, administrative responsibilities logically were given to the MDA. As noted above, due to concerns about Chronic Wasting Disease (CWD) and the need to protect Michigan's wild deer and elk population, administration of the Act was transferred to the DNR, which is charged with protecting the State's natural resources. After the 2004 Executive Order took effect, former Governor Granholm stated in a letter to the Speaker of the House, "[I]t is my intention to return regulatory functions to the Department of Agriculture", following an audit of Michigan's captive deer and elk industry and a review of its findings. That transfer never occurred, however.

Returning regulation to MDARD not only would be consistent with that Department's mission, it also would lead to a more efficiently run program. Although three-year registration fees were increased in 2006 from \$150 to \$750 for large facilities, the fee revenue covers only about one-third of the DNR's regulatory costs. According to United Deer Farmers of Michigan (UDFOM), both the MDA and the DNR overreacted and overspent in response to the discovery of CWD in one animal at a facility in 2008. In 2009, however, the MDA streamlined testing activities and cut overall costs in half, according to UDFOM, demonstrating that it is better suited to manage the industry. In addition, since the DNR has been in control, the number of cervid facilities declined from

approximately 750 in 2000 to about 450 today.

Transferring regulatory responsibilities to MDARD would enable the Department to foster the growth of cervid farming operations. These facilities represent a rapidly growing industry in rural Michigan and are an important component of the State's economy. At the same time, requiring the DNR to continue to approve site plans, including proposed enclosures, would ensure that captive cervidae did not pose a threat to wildlife in the event a captive animal became diseased.

**Response:** Regarding the reduced number of facilities, many operations evidently shut down after the 2008 CWD discovery because they could not afford the required testing, which suggests that they were not financially able to comply with necessary regulations.

### **Supporting Argument**

The bill would make various changes to the regulation of captive cervidae operations, in addition to transferring administrative functions. By indicating that each separate enclosure on a separate parcel of land is a separate facility, the bill would clarify that each such enclosure must be registered as a facility. By requiring an applicant to obtain a variance if a facility would violate an ordinance, the bill would ensure that the applicant involved the local unit of government. Shortening the time frames for approval and decision-making could encourage MDARD to speed up the registration process.

### **Opposing Argument**

Regulation of the captive cervidae industry should remain within the DNR, which has the necessary infrastructure and expertise in place. Unlike MDARD, the DNR has an entire division devoted to compliance and employs conservation officers, whose authority is equivalent to peace officers'. Despite the former Governor's stated intent to return regulatory functions to the MDA, the DNR has regulated the industry for the past seven years.

Although the DNR would continue to review plans for fences under this proposal, the bill would take away the Department's authority to investigate and demand compliance. While the regulatory program could be improved—for example, there could be better communication between the two

Departments, and the DNR could handle complaints better—the Department already is working on making improvements. The DNR and MDARD should continue to do what each does best.

Legislative Analyst: Suzanne Lowe

**FISCAL IMPACT**

The bill would transfer certain regulatory functions for privately owned cervidae livestock operations from the DNR to MDARD. Currently, both Departments have oversight responsibilities for this agricultural industry. The DNR regulates and enforces standards for cervid facilities, registers the 430-plus such operations, and administers a registration fee. The role of MDARD is to ensure animal health through testing functions and other oversight, including determining import and movement requirements and issuing quarantines to contain disease outbreaks. The State cost of cervid facility regulation for FY 2009-10 within the DNR program was \$144,600, of which \$69,600 was supported by cervid program fee revenue and the balance of \$75,000 was General Fund/General Purpose funding. The revenue obtained from regulatory fees, charged to operators on a three-year license basis, supported approximately one-third of the DNR's regulatory costs, according to a recent seven-year study of the program by the House Fiscal Agency. A history of cervid regulatory fee revenue collection is listed below:

Cervid Regulatory Fee Collections

Year	Fee Revenue
FY 2000-01	\$38,240
FY 2001-02	\$48,365
FY 2002-03	\$50,795
FY 2003-04	\$8,648
FY 2004-05	\$39,148
FY 2005-06	\$38,400
FY 2006-07	\$85,329
FY 2007-08	\$120,620
FY 2008-09	\$113,971
FY 2009-10	\$69,629

Under the Governor's FY 2011-12 budget recommendation for the Department of Natural Resources, it has been proposed that regulatory fees be increased in two cervid facility categories, ranch and full,

from the current \$750 to \$2,250 for a three-year license. The administration estimated that this would generate \$214,500 in additional revenue for FY 2011-12, bringing the fee revenue total for the year to \$334,600, the exact amount proposed for the DNR regulatory costs of the program, thus removing the need for General Fund/General Purpose funding and making the DNR-run regulatory program self-sufficient. Legislation would be needed to increase the fees.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.