



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 609: Chronic Wasting Disease Management Issues and Indemnification

Assembly Bill 609 would allow the Department of Natural Resources (DNR) to promulgate rules regarding the transportation and disposal of deer carcasses in order to control the spread of Chronic Wasting Disease (CWD). The bill would also allow DNR and the Department of Agriculture, Trade, and Consumer Protection (DATCP) to enter into agreements with landfills, meat processing facilities, or wastewater treatment facilities to indemnify them for damages resulting from the processing or disposal of cervids carrying CWD. Further, the bill would require individuals to provide DNR with a tissue sample of an animal if that sample is needed to determine the extent of a disease in wild animals. Finally, the bill would authorize DNR to exempt deer hunters in CWD control zones from the requirement to have a valid deer hunting license. The bill was introduced on August 16, 2005, and referred to the Assembly Committee on Natural Resources. On November 16, 2005, the bill was recommended for passage by the Committee on a vote of Ayes, 12; Noes, 0. On November 29, 2005, the bill was referred to the Joint Committee on Finance.

CURRENT LAW

Between 1999 and 2001, DNR tested over 1,000 deer throughout the state for CWD. However, no positive samples were identified prior to the 2001 gun deer season. In that year, three bucks harvested from deer management unit 70A (which includes portions of Dane and Iowa Counties) tested positive for the disease. As of January 19, 2006, a total of 92,861 samples taken from deer statewide have been analyzed for CWD, yielding 552 positive test results.

The Department has spent a over \$25 million since February, 2002, on efforts to control or eradicate CWD from the state's deer herd. Funds have been provided for herd monitoring and sampling, carcass disposal costs, law enforcement and wildlife management staff costs, equipment,

supplies, travel, outreach and education efforts, limited-term employees and overtime costs as well as for a veterinarian, public information officer, and a data manager position. Further, DNR was directed to provide funds to the Wisconsin Veterinary Diagnostic lab (WVDL) for CWD testing, and entered into a memorandum of understanding with DATCP to provide one-time funding to buy out captive deer herds for CWD testing, to support DATCP CWD-related staff and to publicize CWD control efforts to deer farmers and processors.

The Department has concentrated its control efforts on areas of the state where deer infected with CWD have been found (designated as Disease Eradication Zones, or DEZ), as well as the larger areas encompassing each DEZ and expanding outward (designated as Herd Reduction Zones, or HRZ). Originally, the DEZ extended approximately 4.5 miles out from where each CWD positive deer was found, with the HRZ extending out up to 40 miles from the center of the DEZ. These boundaries have since been modified to reflect the detection and estimated dispersal of additional CWD infected deer within those boundaries.

Hunters who harvest a deer in either a herd reduction zone or a disease eradication zone may have the deer tested by DNR for CWD, and may choose to turn the carcass over to Department staff if the hunter does not wish to keep the animal. Carcasses left at DNR stations are sampled for CWD and then kept in refrigerated storage until the test results are returned. Carcasses testing negative for CWD may be disposed of in landfills. Those testing positive are either incinerated or processed in a chemical digester by the WVDL. Further, car-killed deer in CWD control areas are also typically disposed of through incineration or chemical digestion (as decomposition can interfere with the ability to detect CWD in tissue samples). Disposal costs, including staff time, refrigerated storage, transportation, incineration or chemical digestion costs, and the disposal of uninfected carcasses in landfills totaled \$576,700 in 2003-04 and \$498,900 in 2004-05.

SUMMARY OF BILL

Assembly Bill 609 addresses several issues related to the Department's management of CWD in the state's deer herd. The bill allows DNR to promulgate administrative rules regulating the transportation, possession, control, storage, and disposal of the carcass of a cervid in order to control the spread of CWD. These rules could also prohibit the transportation of the carcass of a cervid from another state or country in which CWD has been confirmed. However, the bill specifies that these rules may not apply to deboned meat, quarters or other portions of meat to which no part of the spinal column or head is attached, cut and wrapped meat (either commercial or private), hides with no head attached, antlers and skulls with no meat or tissue attached, upper canine teeth, or finished taxidermy heads. Under the bill, these rules would apply to everyone who may be involved with a cervid carcass, including hunters, taxidermists, transporters, and individuals claiming car-killed deer. The bill would define "cervid" to mean any species of deer or elk that is present in the wild and that is not a farm-raised deer.

Currently, DNR may conduct testing for CWD, but does not have the authority to require it of deer hunters. The bill would require any person to provide DNR with sample tissue or data

derived from a wild animal (not limited to cervids) if that sample is needed to determine the extent of a disease in wild animals. For the purpose of the bill, "wild animal" is defined as any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion.

The bill would also remove the sunset date of June 30, 2004, from provisions allowing DNR staff, federal employees, and landowners to shoot deer from certain vehicles (such as cars and tractors) in areas designated as CWD control zones, allowing individuals to continue these herd control practices. Provisions previously allowing DNR and federal agents to shoot deer in CWD zones from aircraft would be repealed.

Further, the bill would allow DNR to exempt deer hunters hunting in areas that have been designated in administrative rule as CWD control zones from the requirement that they must have a valid deer hunting license. Hunters must still be at least 12 years of age and would still be subject to current law requirements regarding hunter safety course requirements and any required accompaniment by a legal guardian. The bill would require DNR to promulgate a rule that establishes eligibility criteria and application procedures for the receipt of an exemption from licensing requirements, including a method for obtaining a permit to hunt deer without a license.

Finally, the bill allows DNR and DATCP to enter into agreements with persons who own or operate landfills, meat processing facilities, or wastewater treatment facilities under which the state would agree to indemnify them for damages to individuals, property, or to the environment resulting from processing or disposing of cervids that have CWD. The bill would create a sum-sufficient appropriation from the general fund to pay claims. Under the bill, any indemnity agreement must specify a method for determining whether the facility is liable for the damages, and requires the facility to notify the Department that entered into the agreement and the Attorney General when a claim or lawsuit to which the agreement may apply is filed. The agreement must authorize the Attorney General to intervene on behalf of the facility, and the agreement must require the owner or the operator of the facility to minimize risks related to processing or disposal of carcasses of cervids and farm raised deer that have CWD. Further, the agreement authorizes the Department that entered into the agreement to require the owner or operator of the facility to operate in a manner specified in writing by that Department to minimize risks related to processing or disposal of CWD infected carcasses.

Indemnity agreements would be subject to the approval of the Governor under the bill, and the agreements may not be construed as consent to sue the state. If a claim is filed under an indemnity agreement, the Department that entered into the agreement would review the claim to determine whether or not it was valid. Valid claims would be paid from the sum-sufficient GPR appropriation created under the bill.

ANALYSIS

The bill is anticipated to have two separate quantifiable fiscal effects, both impacting the fish

and wildlife account of the conservation fund. First, the ability to enter into an indemnity agreement would allow DNR to revise its current procedure for disposing of deer carcasses from within CWD control zones. Rather than storing carcasses in refrigerated units until CWD tests are completed and then either incinerating or chemically digesting infected deer, DNR would be able to send all carcasses (including those retrieved as road kill) directly to landfills. The ability to do so would decrease anticipated disposal costs to approximately \$50,000 annually (compared to \$576,700 in 2003-04 and \$498,900 in 2004-05 for disposal costs). To the extent that expenditures related to CWD consist largely of funding reallocated from other existing wildlife projects, the savings generated by this initiative could restore funds available for other projects typically supported by the account. Alternatively, the amount of the appropriation could be reduced by the amount of the anticipated savings (approximately \$450,000 annually) in order to increase the available balance of the fish and wildlife account.

Under the bill, DNR would have the ability to waive the requirement to purchase a deer hunting license in order to hunt in CWD control areas (including both HRZ and DEZ land). The Department would have the authority to specify which areas, if any, within the CWD control zones would be subject to this exemption. While it is difficult to estimate the revenue loss to the fish and wildlife account of this change (as it may be used broadly or narrowly, at the Department's discretion), some assumptions could be made based on the Department's past practice of allowing landowners within the DEZ to request free deer gun licenses during the 2004 fall season.

In 2004, DNR gave approximately 3,800 private landowners free deer gun licenses as an incentive to remove additional deer from the DEZ. Landowners were also given the option of allowing others to hunt on their land using the free shooting permits (approximately 3,200 additional hunters received free deer gun hunting licenses this way). However, of the almost 7,000 individuals who received the free approvals, approximately 2,300 (34%) purchased an additional approval that authorized gun deer hunting, either as part of a conservation patron license or because they chose to hunt in other additional locations where the free approvals did not apply. The remaining 66% (or 4,700) did not purchase additional deer gun approvals.

Assuming that the 66% reduction in individuals purchasing separate deer gun approvals when free licenses were available instead remained constant across the DEZ, some estimates may be made as to the possible loss of revenue as a result of this change under the bill. There are approximately 8,000 landowners in the current DEZ, an estimated 70% of which allow hunters on their property. The mean number of hunters per property reported in the area by survey is 3. If 70% of the landowners (5,600) each allowed three hunters on their property, it could be estimated that as many as 16,800 hunters may be expected to purchase deer gun licenses to hunt in the DEZ. If 66% of them do not purchase a license because of the availability of free deer gun approvals, a decrease of almost 11,100 in the number of deer gun licenses sold may be anticipated. However, it is reasonable to assume that almost 4,700 have already stopped purchasing deer gun licenses because of the Department's current policy to distribute free approvals to landowners and their designees, leaving a total estimated decrease of approximately 6,400 from the number of approvals currently sold. At a loss of \$24 per resident deer license, the anticipated loss of revenue could exceed \$150,000 annually.

This estimate assumes that DNR would limit free permits to hunters in the DEZ, although the language in the bill would allow DNR to include much larger areas (including any land designated as a CWD control zone). Department staff indicated that their initial plan was to restrict the free approvals to limited areas within some of the DEZ areas in order to better target high deer population areas. If this were the case, revenue losses could be substantially smaller than estimated.

The estimate also does not take into account the number of individuals who may be drawn to public hunting land within the DEZ in order to take advantage of free deer gun approvals. Should DNR include large areas of public hunting land in its areas of license fee exemption, it could significantly increase anticipated revenue losses to the fish and wildlife account. The bill would allow the Department a great deal of flexibility in determining the number of free permits allowed by controlling the size and location of areas that the policy is applied to. Consequently, an accurate estimate of the fiscal impact of this change is unavailable. Further, as CWD zones expand the potential revenue loss under this provision would also increase. For example, the original DEZ in the fall of 2002 was 411 square miles, but had increased to 1,743 square miles by the fall of 2005. Further, CWD related zones currently cover 8,849 square miles, or approximately 16% of the state's land area.

The bill creates a sum-sufficient GPR appropriation to fund any payments required for valid claims under the indemnity agreements. The Department has argued that scientific research supports their position that the disposal of CWD infected carcasses poses little danger to people, property, or the environment. However, the potential general fund liability of this bill cannot be determined at this time. Previously, other funds have been used to fund claims under indemnity agreements. Under 1999 Act 9 (the 1999-01 biennial budget), DNR was authorized to enter into indemnity agreements with municipalities against liability damages attributable to polychlorinated biphenyls (PCBs) resulting from the municipality's acceptance and disposal of sediments contaminated with PCBs from remediation projects in streambeds or lakebeds in the Great Lakes basin. Act 9 created a sum sufficient appropriation from the environmental management account of the environmental fund to pay any indemnification awards under the agreement. An alternative could be considered to convert the source of funding for the sum sufficient appropriation to a non-GPR source (such as the segregated conservation fund).

The indemnification provisions in 2005 AB 609 are generally patterned after the provision in 1999 Act 9. As passed by the Legislature, the 1999-01 biennial budget bill would have specified that any indemnity agreements (a) be approved by the agency secretary and the Attorney General (in addition to the Governor) and (b) allowed the agency to place a limit on the amount the state will pay to a municipality under an agreement. The Governor item-vetoed these provisions in 1999 Act 9. Further, the current bill could provide indemnity to private owners of landfills, waste water treatment facilities and meat processors while Act 9 is limited to municipally owned facilities.