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SJVA

State Wildlife Council Model Legislation

COMPLIANCE WITH PITTMAN-ROBERTSON ACT IN STATE LEGISLATION CREATING WILDLIFE COUNCILS FOR EDUCATION OF THE NON-SPORTING PUBLIC

INTRODUCTION

Colorado and Michigan have enacted legislation creating wildlife councils. The mandate of each council is to educate the non-sporting public through comprehensive media based public information programs about the benefits to wildlife, wildlife management, and wildlife related recreational opportunities, from Sportsmen and Sportswomen activities. Funding for the media-based education programs is derived from hunting and fishing license surcharges in each state. While funding for wildlife council educational programs does not involve federal participation, any state legislation involving use of license fees must comply with the Pittman-Robertson Act to avoid a claimed diversion of license fees adversely affecting state eligibility for receipt of Pittman-Robertson funding. The purpose of this memorandum is to assist sportsman's organizations seeking to promote similar legislation in their states as well as state agencies and legislators drafting wildlife council legislation. Accompanying this memorandum is draft State Wildlife Council (SWC) model legislation designed to comply with Pittman-Robertson and allow states to tailor wildlife council legislation to each state's specific needs and requirements.

CURRENT AND PROPOSED WILDLIFE COUNCIL LEGISLATION

In 1998 Colorado became the first state to enact legislation creating the Public Education Advisory Council (C.R.S. 33-4-120). Utilizing Colorado as a model, in 2013 Michigan enacted wildlife council legislation creating the Michigan Wildlife Council (M.C.L. 324.43532b), effective April 2014. The duties and responsibilities of the Colorado and Michigan councils are similar:

Colorado:

> Oversee the design of a comprehensive media-based public information program to educate the general public about the benefits of wildlife, wildlife management, and wildlife-related recreational opportunities in Colorado, specifically hunting and fishing;

C.R.S. 33-4-120(e)(I).

Michigan:

(a) Develop and implement, in conjunction with a third-party marketing or advertising agency, a comprehensive media-based public information program to promote the essential role that sportsmen and sportswomen play in furthering wildlife conservation and to educate the general public about hunting, fishing and the taking of game. That education shall include, but is not limited to, teaching that hunting, fishing, and the taking of game are any of the following:

(i) Necessary for the conservation, preservation, and management of this state's natural resources
(ii) A valued and integral part of the cultural heritage of this state and should forever be preserved.
(iii) An important part of this state's economy.

M.C.L. 324.43532b(18)(a)(i)-(iii).

Funding for the Colorado and Michigan educational programs is derived from a hunting and fishing license fee surcharge.

As of the date of this memorandum, legislation is pending in Nevada (Senate Bill No. 163) and in Oregon (House Bill 3529). The proposed legislation in Nevada and Oregon are in various legislative stages.

PITTMAN-ROBERTSON/DINGELL-JOHNSON ACTS

On September 2, 1937, Franklin Roosevelt signed into law the Federal Aid in Wildlife Restoration Act commonly called the Pittman-Robertson Act (16 U.S.C. 669-669i; 50 Stat. 917). After many years of private, uncontrolled hunting and depletion of wildlife resources, it was decided that the Government would, in effect, hold those responsible for depletion of wildlife liable for wildlife replenishment. The tools of hunting were to be taxed so that the users of the resources would pay for species management and recovery.

The principle movers behind the Act were Senator Key Pittman of Nevada and Representative A. Willis Robertson of Virginia. The stated purpose of the Act was to provide a stable source of funding for wildlife conservation which was to be financed by a 10% excise tax on firearms and ammunition. The statute has been amended several times, principally to expand the collection of an excise tax on pistols and archery parts and accessories.

On August 9, 1950, Congress passed the Federal Aid in Sport Fish Restoration Act commonly known as the Dingell-Johnson Act (16 U.S.C. 777-777k; 64 Stat. 430). The legislation was sponsored by Senator Edwin Johnson of Colorado and Representative John Dingell, Sr. of Michigan. The Act was modeled after the Pittman-Robertson Act to expand funding for management and restoration programs for sport fishing. Revenues are derived from excised taxes on sport fishing equipment, pleasure craft, and a portion of the gasoline fuel tax attributed to small engines and motorboats. The Dingell-Johnson Act has been amended several

times, generally to change tax rates or add taxable items. Eligibility for funding under the Pittman-Robertson and Dingell-Johnson Acts are essentially the same. Both Acts will here collectively be referred to as "P-R."

The proposed use of the funds generated by P-R is to assist in the funding of state programs and activities which comport with programs and activities outlined in the Federal Code of Regulations. Funding is generally 75% federal and 25% state. Distribution amounts are generally based upon the number of hunting licenses sold and the population of the state. P-R funds are not only used for programs and activities, but a significant portion of the federal funds are utilized by the states to purchase, develop and maintain wildlife management areas. Recent estimates reflect that approximately 70% of the people using wildlife management areas are non-sportsmen. It is this segment of the population principally targeted by the educational programs of the state wildlife councils.

PITTMAN-ROBERTSON FUNDING ELIGIBILITY

The United States Department of Interior has promulgated administrative rules and regulations for the administration of P-R. These administrative rules are codified in the Code of Federal Regulations ("CFR") reported in the Federal Register. Title 50 of the CFR addresses all administrative rules and regulations dealing with Wildlife and Fisheries. Part 80 under Title 50 addresses "Administration Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts." 50 CFR 80.10 provides:

> **§ 80.10 Who is eligible to receive the benefits of the Acts?**
>
> States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation that:
>
> (a) Assents to the provisions of the Acts;
>
> (b) Ensures the conservation of fish and wildlife; and
>
> (c) Requires that revenue from hunting and fishing licenses be:
>
> (1) Controlled only by the State fish and wildlife agency; and
>
> (2) Used only for administration of the State fish and wildlife agency, which includes only the functions required to manage the agency and the fish - and wildlife-related resources for which the agency has authority under State law.

This Section is immediately followed by Section 80.11 which provides:

> **§ 80.11 How does a State become ineligible to receive the benefits of the Acts?**
>
> A State becomes ineligible to receive the benefits of the Acts if it:

(a) Fails materially to comply with any law, regulation, or term of a grant as it relates to acceptance and use of funds under the Acts;

(b) Does not have legislation required at § 80.10 or passes legislation contrary to the Acts; or

(c) Diverts hunting and fishing license revenue from:

(1) The control of the State fish and wildlife agency; or
(2) Purposes other than the agency's administration.

These Code provisions are essentially mirror-images of each other, setting forth eligibility and ineligibility to receive P-R funding.

State enabling legislation creating wildlife councils must create an administrative and control regulatory scheme which, on its face, supports eligibility for P-R revenue. If not, the Department of Interior may declare that a "diversion" has occurred in the use of state license fees. 50 CFR 80.21 provides:

§ 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?

The Director may declare a State to be in diversion if it violates the requirements of §80.10 by diverting license revenue from the control of its fish and wildlife agency to purposes other than the agency's administration. The State is then ineligible to receive benefits under the relevant Act from the date the Director signs the declaration until the State resolves the diversion. Only the Director may declare a State to be in diversion, and only the Director may rescind the declaration.

The Code requires three eligibility components of state legislation: 1) a purpose ensuring conservation of fish and wildlife; 2) enacted assent legislation to the provisions of P-R; and, 3) license revenue control by the state fish and wildlife agency.

A. Model Legislation.

The Nimrod Society's State Wildlife Council (SWC) model legislation addresses the key P-R eligibility requirements of purpose, assent, and financial control. Individual states are free to adopt or modify non-P-R eligibility components of the model to fit the needs of each state. The number and the appointment mechanism of council members (Governor or Wildlife Director) may vary from state to state. The same is true for variations in council operating procedures such as meeting frequency, bylaw adoption and reporting responsibilities.

The SWC model legislation addresses the eligibility requirements of P-R as follows:

1. Purpose: Use of license revenue for educational purposes related to fish, wildlife and its management has long been an approved use under P-R. Model paragraph (19)(a) prohibits the expenditure of any license surcharge revenue for any purpose other than the program designated in model paragraph (13).

2. Assent: While most, if not all states, already have legislation assenting to the provisions of P-R, the model specifically references and incorporates assent legislation in model paragraph (19)(c).

3. Revenue Control: The model ensures control of the license surcharge revenue by:

   (a) Creating a subaccount within an existing agency controlled fish and wildlife protection account (model paragraph (14));
   (b) Requiring that all surcharge license revenue be deposited solely into this agency-controlled subaccount (model paragraph (15));
   (c) Prohibiting a lapse or diversion of any license revenue in the subaccount to any other account or to a state's general fund (model paragraph (18)); and
   (d) Providing that the department/agency shall be the sole administrator of the subaccount for auditing purposes (model paragraph (20)).

The historical and current benefits to state fish and wildlife conservation derived from the landmark Pittman-Robertson and Dingell-Johnson Acts are significant and cannot be overstated. These Acts are not and should not be considered "obstacles" to state wildlife education legislation. Careful drafting of state legislation preserving eligibility for Pittman-Robertson and Dingell-Johnson funds and programs is essential to maintain the benefits from the Acts while expanding state education programs to the non-sporting public. One of the stated objectives of the United States Fish and Wildlife Service is "administering a national program to provide the public opportunity to understand, appreciate, and wisely use fish and wildlife resources" (www.fws.gov). The model wildlife council legislation promotes the same objective on the state level as demonstrated by the success of the Colorado and Michigan education programs.

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