

No. 1982-170

AN ACT

HB 163

Providing for a voluntary contribution system to aid in the conservation of certain wild flora and fauna, establishing a special fund and providing for its administration, establishing a procedure for the protection of wild flora, establishing a permit system, imposing powers and duties on the Department of Environmental Resources and imposing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Wild Resource Conservation Act."

Section 2. Legislative finding; declaration of policy.

It is hereby determined and declared as a matter of legislative finding that there are numerous flora and fauna, including those rare or endangered, which are not commonly pursued, killed or consumed either for sport or profit, that such species are in need of more active management and that it is in the public interest to preserve and enhance such species for the benefit of all. Therefore, it is the purpose of this act to:

- (1) Further provide for such species so as to enhance the constitutional rights guaranteed in section 27, Article 1 of the Constitution of the Commonwealth of Pennsylvania.
- (2) Provide a means for the citizens of the Commonwealth to support the management of our wild resource by establishing a voluntary contribution system on State income tax return forms.

(3) Promote the cooperation of the Department of Environmental Resources, Pennsylvania Fish Commission and Pennsylvania Game Commission in the management of our wild resource.

(4) Establish an interagency Wild Resource Conservation Board to channel that cooperation, promote the voluntary contribution system and administer the program.

(5) Establish and promote a cooperative Statewide system of private wild plant sanctuaries in order to maintain, protect and, to the extent possible, enhance wild plant numbers.

(6) Conserve and protect wild plant species recognized as endangered, threatened or vulnerable.

(7) Conduct an investigation to determine the status of wild plants, classify wild plants indigenous to or found in the Commonwealth and provide for their protection.

(8) Create a permit procedure for persons interested in wild plant management and a commercial license procedure for persons who purchase vulnerable plants with the intent to sell all or any part thereof.

Section 3. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Board.” The Wild Resource Conservation Board.

“Department.” The Department of Environmental Resources of the Commonwealth of Pennsylvania.

“Fund.” The Wild Resource Conservation Fund.

“Management.” The entire range of activities that constitute a modern scientific resource program including, but not limited to, the collection and application of biological data through research, census, habitat acquisition, habitat improvement and education.

“Wild plant.” Any and all naturally occurring native flora, except those commonly considered an agricultural commodity, including green and nongreen species or subspecies or any part, product, seed or offspring thereof.

“Wild resource.” All fauna not commonly pursued, killed or consumed either for sport or profit, but not including any domestic fauna or any domestic fauna that has reverted to a feral existence, and all flora not commonly considered an agricultural commodity.

Section 4. Voluntary contribution system.

(a) The Department of Revenue shall provide a space on the face of the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired, to the Wild Resource Conservation Fund established in section 5.

(b) The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which such individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The Department of Revenue shall determine annually the total amount designated pursuant to this section and shall report such amount to the State Treasurer, who shall transfer such amount from the General Fund to the Wild Resource Conservation Fund. The Department of Revenue shall be reimbursed from the fund for any administrative costs incurred above and beyond the cost savings it realizes as a result of individual total refund designations.

(d) The Department of Revenue shall provide adequate information concerning the Wild Resource Conservation Fund in its instructions which accompany State income tax return forms, which shall include the listing of an address, furnished to it by the board, to which contributions may be sent by those taxpayers wishing to contribute to said fund but who do not receive refunds.

(e) This section shall apply to taxable years beginning on or after January 1, 1982.

Section 5. Wild Resource Conservation Fund.

(a) In order to carry out the purposes of this act, there is hereby created a special fund, which shall be known as the "Wild Resource Conservation Fund," of the treasury of the Commonwealth.

(b) All moneys received from the voluntary contribution system established in section 4 and by the sale of any item authorized by section 6, by the issuance of permits authorized by section 8, by the issuance of licenses authorized by section 9 and from all penalties and fines imposed under section 11 shall be deposited in said fund.

(c) The Legislature may, from time to time, appropriate funds into the special fund for the purposes of this act.

(d) The moneys contained in said fund are continuously appropriated to the Wild Resource Conservation Board for the exclusive use of carrying out the purposes of this act.

Section 6. Wild Resource Conservation Board.

(a) There is hereby created a Wild Resource Conservation Board, the members of which shall consist of the Secretary of the Department of Environmental Resources, the Executive Director of the Pennsylvania Fish Commission, the Executive Director of the Pennsylvania Game Commission, the majority and minority chairmen of the House Conservation Committee and the majority and minority chairmen of the Senate Environmental Resources Committee. The chairmanship of said board shall rotate on an annual basis among the members thereof.

(b) The board shall have the power and its duty shall be to:

(1) Meet annually to determine and prioritize the management objectives deemed necessary to preserve and enhance the wild resource.

(2) Conduct a public hearing not less than 60 days prior to each annual meeting of the board, providing 30 days advance notice thereof by publication in the Pennsylvania Bulletin to which all interested persons shall be invited to make recommendations to the board.

(3) Establish, after reviewing the recommendations made at the public hearing and consulting with the professional staffs of those agencies represented on the board, management projects or programs deemed necessary to preserve and enhance the wild resource and to allocate moneys from the Wild Resource Conservation Fund to the agency or agencies selected by the board to implement said programs or projects. Prior to the issuance of an allocation for any project or program authorized herein, the board shall allocate moneys to the Department of Environmental Resources for its administrative responsibilities under sections 7, 8, 9, 10 and 11.

(4) Administer the Wild Resource Conservation Fund.

(5) Establish projects or programs to promote the voluntary contribution system and to allocate moneys from the fund to implement same.

(6) Issue an annual report, to be published in the Pennsylvania Bulletin concurrently with the notice required in paragraph (2), which shall include a financial analysis and synopsis of program activities.

(c) The board shall have the right to issue for sale to the public, stamps, decals or other items of personal property intended to signify the interest of the purchaser in contributing to programs established by the board, the net proceeds of which shall be deposited in the Wild Resource Conservation Fund.

(d) The authority granted pursuant to subsection (c) shall not effect or interfere with similar authority vested by law in any agency represented on the board to sell items of personal property which promote the independent programs of those respective agencies. Said agencies shall likewise have the right to issue for sale items of personal property intended to signify the interest of the purchaser in contributing to programs established by the board, the net proceeds of which shall be deposited in the Wild Resource Conservation Fund.

(e) The board may establish an advisory committee, the members of which shall be chosen from the public and shall serve at the pleasure of the board, which shall meet to advise the board and make recommendations regarding general management objectives or specific management projects.

(f) Within two years following the effective date of this act, the board shall develop a comprehensive management plan which shall establish the management objectives and policies of the board. The board shall review said plan periodically and make revisions thereto when necessary. The board shall make the plan and any revisions thereto available for public review and comment by publication in the Pennsylvania Bulletin.

(g) The powers and duties granted pursuant to this section shall be in addition to any powers and duties granted to the Department of Environmental Resources pursuant to the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," or to the Fish Commission pursuant to 30 Pa.C.S. § 101 et seq. (relating to fish), or to the

Game Commission pursuant to the act of June 3, 1937 (P.L.1225, No.316), known as "The Game Law."

Section 7. Wild plant management.

(a) In addition to the powers and duties granted to it by the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," the Department of Environmental Resources shall, with cooperation from taxonomists, biologists, botanists and other interested persons conduct investigations on wild plants in order to ascertain information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to classify plants and to determine management measures necessary for their continued ability to sustain themselves successfully.

(b) The department shall establish a classification procedure that should include but may not be limited to the following categories:

(1) Extirpated. Species which once occurred in Pennsylvania, but no longer are known to exist.

(2) Endangered. Species in danger of extinction throughout all or most of its range if critical habitat is not maintained, or it is greatly exploited by man.

(3) Threatened. Species likely to become endangered throughout all or most of its range if critical habitat is not maintained or it is greatly exploited by man.

(4) Disjunct. Species which are significantly separated from the main area of distribution.

(5) Endemic. Species confined to a specialized habitat and with limited ranges.

(6) Restricted. Species with epidemic distribution but found in specialized habitats or habitats infrequent in Pennsylvania.

(7) Limit of range. Species which are uncommon or rare in Pennsylvania because they are at or near the peripheral of their distribution. Within the main body of their distribution, these species may or may not be common.

(8) Vulnerable. Species which are in danger of loss because of their beauty, economic value, use as cultivar or other factors which make them prime targets for being removed from native habitats.

(9) Undetermined. Species suggested as needing protection because of their infrequent occurrence, but their status in Pennsylvania is unclear.

(c) On the basis of such determinations, the Environmental Quality Board shall issue regulations not later than two years from the effective date of this act, after public notice, after receiving data from interested persons and after holding public hearings. Such regulations so established shall set limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage wild plants. The Environmental Quality Board may add or delete species as conditions change and may modify regulations to reflect the changing environment.

(d) The department shall establish criteria for and promote a cooperative Statewide system of private wild plant sanctuaries.

(e) Each landowner desiring "private wild plant sanctuary" designation under this act shall make application to the department on a form prepared and provided by the department.

(f) No portion of this section shall be construed to restrict withdrawal of said designation at the request of the landowner.

(g) The department may suspend or revoke any designation for violation of this act, the regulations thereunder or for other good cause.

(h) No portion of this section shall be construed to restrict entry into such sanctuaries for the purpose of hiking, hunting, fishing or any other beneficial nonmotorized outdoor activity.

(i) Except as provided in this section, it shall be unlawful for any person exclusive of the owner of the land or any person having a bona fide property interest therein, to willfully adversely alter or destroy the local ecosystem of such private wild plant sanctuary.

Section 8. Wild plant management permits.

(a) In carrying out the purposes of this act, the department shall upon application issue permits authorizing the removal, collection or transplanting of endangered or threatened plant species pursuant to regulations established by the Environmental Quality Board.

(b) Any person desiring a wild plant management permit as herein provided, shall make application to the department on a form provided by the department.

(c) It shall be lawful for a person holding a valid wild plant management permit, with the expressed permission of landowners, to transplant wild plants into private and public plant sanctuaries for the purpose of insuring their perpetuation as members of ecosystems, to enhance their numbers or to restore their natural range. All such transplants shall be in accordance with the provisions of this act.

(d) Persons holding valid wild plant management permits should make every effort possible to transplant valuable species from land areas threatened by future land development, surface mining or agricultural encroachment to public or private plant sanctuaries.

(e) The department may also grant certain permittees, for taxonomical and botanical purposes, the right to collect threatened or endangered plants defined herein subject to the rules and regulations pursuant to this act, with the expressed permission of the landowner, as long as such collections would be deemed by the department to be consistent with the intent of this act.

(f) The department may suspend or revoke any plant management permit for violation of this act or regulations thereunder, the terms or conditions of the permit or for other good cause.

(g) Any person aggrieved by a decision of the department may appeal such decisions to the Environmental Hearing Board pursuant to Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 9. Vulnerable species.

(a) Species classified as vulnerable shall be subject to the following restrictions:

(1) The Environmental Quality Board upon designation of vulnerable species shall establish regulations over the digging, harvesting, sale and exploitation of said species.

(2) The regulations shall:

(i) consider the distribution, abundance, economic value, growing and reproduction cycle;

(ii) establish seasons for the digging and harvesting of plants or plant parts; and

(iii) provide for the commercial licensing of persons who buy with the intent to sell vulnerable plants within the Commonwealth or export said plants therefrom and to require the licensees to maintain records of their transactions.

(3) The Environmental Quality Board shall establish the license fee.

Section 10. Public wild plant sanctuaries.

(a) The department may, when deemed necessary to protect wild plant species afforded consideration under this act, acquire natural areas of land or aquatic habitat, or designate such areas on land previously acquired for the establishment of public wild plant sanctuaries.

(b) The department may, when deemed necessary to protect a species afforded protection under this act, acquire natural areas of land or aquatic habitat.

(c) The secretary shall utilize all existing authority vested in the department to carry out the purposes of this section.

(d) The department may allow, under such terms and conditions as may be prescribed by regulation, individuals or groups to assist in the management of designated areas for the purpose of promoting wild plants.

(e) Such areas established under this section shall be utilized whenever feasible, for scientific or educational purposes.

Section 11. Enforcement.

(a) Except as otherwise provided it shall be unlawful for any person, exclusive of the owner of the land or any person having a bona fide property interest therein to disturb, pick, take or possess vulnerable, threatened or endangered wild plants. It shall be unlawful for any person to transport with the intent to sell, sell or export threatened or endangered wild plants. It shall be unlawful for any person to disturb, pick or take wild plants from State parks and forest lands except as provided by rules and regulations.

(b) In order to aid the department in the enforcement of this act, the following penalties shall apply:

(1) Any person who violates the provisions of this act relating to commercial licensing or regulations issued thereunder shall be sentenced to pay a fine of not more than \$200 or have the license revoked or both.

(2) Any person found to be illegally in possession of any wild plant species or part thereof protected hereunder, or any person who willfully destroys or mutilates an endangered plant species protected hereunder shall be sentenced to pay a fine of up to \$100 for each plant taken or destroyed.

(3) Any person who violates any other provision of this act or regulation issued hereunder shall, for violation, be sentenced to pay a fine of not more than \$100.

(c) Any enforcement officer employed or designated by the department or any police officer of the Commonwealth or any municipality within the Commonwealth shall have authority to enforce the provisions of this section.

(d) Any person aggrieved by any order or other action of the department shall have the right of appeal to the Environmental Hearing Board, in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure) and such further right of appeal as is provided by law in such cases.

Section 12. Limitation; termination.

The check-off system created by section 4 of this act shall be the only such check-off allowed on Pennsylvania State income tax return forms seeking voluntary contributions from tax refunds. In the event the Wild Resource Conservation Fund shows a net loss, after the deduction of administrative costs by the Department of Revenue, for two consecutive years, and the Secretary of the Budget and the State Treasurer certify to the General Assembly that such loss has in fact occurred then the board and all of its powers and duties shall terminate and go out of existence within 60 days of the certification.

Section 13. Limitation on General Fund money.

Except to complete any transfer required by section 4, no moneys from the General Fund shall be used for the purposes of this act.

Section 14. Repeal.

All acts or parts of acts inconsistent with the provisions of this act are hereby repealed to the extent of such inconsistency.

Section 15. Effective date.

This act shall take effect January 1, 1983.

APPROVED—The 23rd day of June, A. D. 1982.

DICK THORNBURGH