

ORIGINAL

In the
Supreme Court of Ohio

ARLIE RISNER,	:	Case No. 2014-0242
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Huron County
v.	:	Court of Appeals,
	:	Sixth Appellate District
OHIO DEPARTMENT OF NATURAL	:	
RESOURCES, DIVISION OF WILDLIFE,	:	Court of Appeals
	:	Case No. H-13-009
Defendant-Appellee.	:	

MERIT BRIEF OF APPELLEE
OHIO DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WILDLIFE

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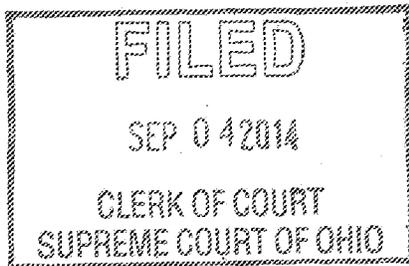


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INTRODUCTION

A hunter finds and stalks a trophy-size white-tailed deer. He kills the deer with an arrow, but does so while trespassing on someone else's property. He is prosecuted because hunting on land without the property owner's permission is illegal. Evidence from that case includes the meat and antlers of the deer. At the end of the case, the prosecutor has no further need for the evidence and the Ohio Department of Natural Resources (ODNR) takes possession of that evidence. Ohio law mandates that a poacher like this pay the State (which holds wild animals in trust for the people) for illegally killing the deer. The question is whether the State's possession of the evidence somehow prevents it from collecting from the poacher the statutory restitution owed to the people for the loss of the deer. The answer—as the text, context, and purpose of the relevant statute show—is no.

First, the restitution is mandatory. It is not affected by other consequences of the poacher's illegal acts. *Second*, the statute's text is best read as permitting the State to recover the restitution even if it has also recovered parts of the deer. *Third*, the context of the statute's restitution clause shows that the law permits the State to recover both illegally poached animals and the corresponding statutory restitution. *Finally*, legislative purpose shows that the statute is meant to be expansive and that the General Assembly intended that restitution amounts be large enough to deter poaching. Those aims go unfulfilled if restitution is unavailable whenever the State ends up with physical possession of some parts of the deer.

The poacher offers little in response. He insists that the word “or” in the statute bars the State from recovering restitution if it also recovers parts of the animal. But that reads too much into those two letters. He also says that a fee he paid in his criminal case blocks the statutory restitution. But that argument clashes with established law defining restitution and *res judicata*. This Court should affirm the Sixth District's decision.

STATEMENT OF THE CASE AND FACTS

This is the first appeal to reach the Court that involves changes to Ohio law penalizing illegal hunting. The law changed in 2008 after the General Assembly heard testimony from the Ohio Department of Natural Resources and honest hunters that prior law did not deter poaching because the penalties did not match potential gains. The 2008 law upped the price for those who poach animals held “in trust for the benefit of all the people.” R.C. 1531.02.

A. The General Assembly amends the law to increase the penalty for poaching animals, especially trophy-size deer.

The General Assembly significantly increased the cost of poaching in 2008, but only after hearing testimony from several stakeholders.

Some testimony focused on the economic and other losses that poaching visits on Ohio and its law-abiding sportsmen and women. The sponsors of the 2008 law explained the aim of “maintain[ing] the quality and quantity of wildlife for the hunters . . . who contribute billions of dollars to the state’s economy each year.” Statement of Reps. Latta and Stewart before the House Agriculture and Natural Resources Committee and Senate Environment and Natural Resources Committee (June 13, 200[7]; Oct. 3, 2007) (Appx. 2, 22). The Chief of the Division of Wildlife told members of the General Assembly that poaching “robs the state’s economy of valuable resources” and “robs the state’s law abiding sportsmen and women of [the] opportunity” to score a trophy animal. Statement of Dave Graham before the House Agriculture and Natural Resources Committee and the Senate Environment and Natural Resources Committee (June 13, 2007; Oct. 10, 2007) (Appx. 8, 24). Other testimony specifically decried the loss of “genetic material” of trophy-quality animals that cannot “pass along” to future generations when poachers illegally kill those animals. Statement of the President of the League

of Ohio Sportsmen before the House Agriculture and Natural Resources Committee (June 20, 2007) (Appx. 36).

Still more testimony focused on fixing the problem of under deterrence in then-existing law. The sponsors invoked the goal of increasing “the penalty for poaching.” Statement of Reps. Latta and Stewart (Appx. 2, 22). According to the sponsors, previous law did “not deter criminals from breaking the law.” *Id.* The Division of Wildlife Chief also presented the results of his own research showing that hunters would pay as much as \$15,000 for scoring a trophy deer in a hunting preserve and that trophy-size antlers could “easily net” \$20,000 on the black market. Statement of Dave Graham (Appx. 8, 24). He, too, explained that prior law was “not a deterrent to poaching.” *Id.* That weak deterrence, the Chief reported, suffered further because pinched judicial discretion “in some jurisdictions” in Ohio produced fines under \$100 and “negligible” restitution. *Id.* Other stakeholders echoed the need to make “poachers think twice” so that the punishment “fits the crime.” Statement of Regional Director of the National Wild Turkey Federation before the House Agriculture and Natural Resources Committee (June 20, 2007) (Appx. 33). Or, as the President of the League of Ohio Sportsmen explained, under the old law, poachers often treated the low fines and restitution amounts as simply the “cost of doing business.” Statement before the House Agriculture and Natural Resources Committee (June 20, 2007) (Appx. 36).

B. Arlie Risner illegally kills a trophy-size deer and is convicted in a criminal action.

In Huron County, locals knew that a hunting-lore sized deer lived primarily on private commercial property that had “zero tolerance” for trespassers. ODNR SJ Mot., Ex. C (Supp. 23). That, of course, was part of the reason it had grown to mythic size. Most deer in Ohio are taken by age two; this deer was five or six. *Id.* Ex. A ¶ 14 (Supp. 19). When measured for

scoring (there are competitive records for these kinds of things) the deer will likely rank as one of the biggest deer harvested in Ohio that year.

Arlie Risner killed the famed deer and took it to a hunting shop in a neighboring county that sponsored a contest for the biggest deer taken each year. *Id.*, Ex. B ¶ 13 (Supp. 21). Normally, the kill would have elevated Risner to legendary status like the deer, as its antlers were a size that hunters covet. *Id.*, Ex. A ¶ 15 (Supp. 19). But the story has a hitch: Arlie Risner killed the deer illegally by trespassing on private property without permission to kill the record-book deer. *See* R.C. 1533.17 (hunters must have written permission from landowner to hunt on landowner's property).

Local suspicion quickly caught up with Risner (an anonymous tip claimed Risner had taken the trophy deer on private property where the owner never permitted hunting), and ODNR officers started investigating. ODNR Mot. SJ., Ex. B ¶ 8 (Supp. 21). As a first step, investigators tracked the meat and antlers that Risner had sent for processing to two local businesses and seized each. *Id.*, Ex. A ¶¶ 9-10 (Supp. 18). As to the meat, the investigators paid the balance of the processing fee of \$90. *Id.* Ex. A ¶10 (Supp. 18). Investigation near the scene of the hunt uncovered a tree with evidence that a tree stand (a place hunters perch to wait for deer to come in range) had recently been attached on private property whose owner did not give permission for Risner to hunt. *Id.*, Ex. A ¶ 8 (Supp. 18). Near the tree stand, the officers found piles of corn (which some hunters use to bait deer to come near their tree stands). *Id.* Also near the tree stand, the officers found a trail of blood that led to a pile of deer organs. *Id.*

From the organs and the previously seized meat, a wildlife investigator sent tissue samples to a specialty lab for DNA analysis. *Id.*, Ex. A ¶ 11 (Supp. 18). The lab results matched both the DNA in the meat that Risner had taken to a butcher for processing and the DNA in

tissue samples from the remains the investigators had found on the private property. *Id.*, Ex. A ¶ 12 & Ex. D (Supp. 18, 24-26).

As for the antlers, an investigator took them to a certified scorer because State law imposes increased monetary liability on hunters who illegally take trophy-quality white-tailed deer. *See* R.C. 1531.201. The scorer tabulated the antlers as among the biggest taken in Ohio that year. *See* ODNR Mot. SJ, Ex. B ¶ 11 (Supp. 21).

The investigators then referred the matter to the Norwalk municipal prosecutor because State law designates local prosecutors as the enforcers of most hunting laws. *See* R.C. 1531.16. Risner initially pleaded not guilty. But after prosecutors confronted him with their wealth of evidence, including the DNA match, Risner changed his plea to no contest, and the municipal court found him in violation of R.C. 1531.17, which bars hunting on another's property without written permission. *See* ODNR Mot. SJ, Ex. G (Supp. 31). The court fined Risner \$200.00 for the violation, assessed \$55 in court costs, and ordered him to pay \$90.00 to cover the cost of the unpaid bill for the deer-meat processing that the State paid when it seized the meat. The meat was forfeited to the State (which donated it to a local food pantry). *Id.* The antlers were also forfeited to the State. *Id.* Ex. H (Supp. 32); *see* R.C. 1531.20; 2981.12(A); 2981.11(A)(2)(d). One last consequence of Risner's conviction—his hunting license was suspended for one year. *Id.*, Ex. G (Supp. 31).

C. The Ohio Department of Natural Resources informs Risner that his illegal kill means that he owes restitution to the State. Risner sues to block the restitution payment.

Following the criminal proceedings, ODNR sent Risner a letter about his hunting license. As mandated by statute, the letter told Risner that his license was suspended indefinitely and would be restored only after he paid the State the restitution value for the deer he took illegally.

Compl., Ex. A (Supp. 5). Because the deer was record-book-quality, the restitution amount was correspondingly noteworthy—\$27,851.33 to be exact. *See* R.C. 1531.201.

In response, Risner sued ODNR alleging that any “restitution” beyond that paid in the criminal case (\$90) was “illegal” and “unconstitutional.” Compl. ¶3(A), (B) & Ex. B (Supp. 2, 6). ODNR counterclaimed for the restitution value set by statute. After cross-motions for summary judgment, the common pleas court denied ODNR’s request for the statutory restitution. The court reasoned that ODNR’s possession of the meat and antlers “prevent[ed] any further attempts to seek restitution.” App’t Appx. 31 (hereafter “Trial Op.”). The trial court therefore “decreed” that R.C. 1531.201 had been “complied with” and any action to recover restitution was “improper.” *Id.* As further relief, the trial court dismissed with prejudice “[a]ny action” to recover restitution and ordered ODNR to “vacate” any license suspension and “remove” from ODNR records “any reference” to the license suspension. *Id.* 31-32. The common pleas court did not address Risner’s claims that the statutory restitution was unconstitutional. *Id.* 31.

ODNR appealed to the Sixth District, which reversed and remanded. *Risner v. ODNR*, No. H-13-009, 2013-Ohio-5902 (6th Dist.) (hereafter “App. Op.”). After setting out the statutory context, the appeals court concluded that “a plain reading” of R.C. 1531.201 gives ODNR the “option” of recovering the restitution value of an illegally hunted deer even if officers have “already seized” parts of the deer. App. Op. ¶ 21. The court reached that conclusion because it would be “illogical” to put ODNR to the choice between recovering possession of the deer and restitution as Risner had “no title or ownership interest” in the deer. *Id.* ¶ 22. The appeals court also explained that the trial court’s reading of the statute would render “meaningless” the mandatory commands about liability for restitution. *Id.* ¶ 23. Finally, the appeals court directed the trial court to address any constitutional claims in the first instance and to determine the value

to the State of the deer meat and antlers for the purpose of crediting those values against the statutory restitution. *Id.* ¶¶ 25-26.

ARGUMENT

Appellee Ohio Department of Natural Resources' Proposition of Law:

R.C. 1531.201 imposes mandatory restitution for certain hunting violations and that restitution is not contingent. The Department of Natural Resources may seize any illegally taken wild animal and may also obtain restitution in an amount authorized by statute.

The relevant statute mandates that Risner pay restitution for illegally killing a white-tailed deer. Every indication of legislative meaning—text, context, and purpose—supports that result and the Sixth District's ruling. Risner's brief does not account for any of this. And by his admission, the constitutional arguments he raised in the trial court are not presented in this appeal. Regardless, those arguments hold no water.

I. Ohio law imposes mandatory restitution against those who illegally kill wildlife. If that money is not paid, the Department of Natural Resources may recover that money in a civil action.

Risner's conviction for violating the wildlife laws requires that he pay the restitution values set in statute. That conclusion follows naturally from the text, context, and purpose of R.C. 1531.201, including the authority of the Chief of the Division of Wildlife to seek restitution in a civil action.

A. The statutory restitution values imposed for illegal hunting are mandatory.

The core statutory language here is mandatory. The money a person owes the State for illegally taking a trophy-quality deer is set by statute, not by administrative rule. *See* R.C. 1531.201. The command in the statute is not conditional. A person convicted of this crime "shall pay" the money tied to the quality of the deer. R.C. 1531.201(C). The more impressive the deer, the more impressive the money owed. And if the person had an Ohio hunting license at

the time of the crime, ODNR “shall revoke” the license until the money is paid. R.C. 1531.201(D). The money Risner owes the State is the result of policy choices of the General Assembly, not wildlife officers, bureaucrats, or courts. Risner owes restitution as a matter of law. This money compensates the people of Ohio for the loss of the deer; it does not flow to general state coffers. The money must be paid to the State’s wildlife fund. *See* R.C. 1531.17 (establishing fund); 1531.99 (directing restitution to fund); 1531.201 (authorizing ODNR Chief to recover restitution).

The “shall” language in R.C. 1531.201(C) and (D) conveys the General Assembly’s command that those who violate the hunting laws pay restitution. As this Court has held time and again, “shall” is the language of command not the language of discretion. *See, e.g., State ex rel. Cincinnati Enquirer v. Lyons*, ___ Ohio St. 3d ___, 2014-Ohio-2354 ¶ 28 (“We have repeatedly recognized that use of the term ‘shall’ in a statute or rule connotes a mandatory obligation unless other language evidences a clear and unequivocal intent to the contrary.”). “Ordinarily, the word ‘shall’ is a mandatory one, whereas ‘may’ denotes the granting of discretion.” *Miller v. Miller*, 132 Ohio St. 3d 424, 2012-Ohio-2928 ¶ 28 (citation and internal quotation marks omitted); *see State v. Smith*, 131 Ohio St. 3d 297, 2012-Ohio-781 ¶ 9 (“ordinary usage” of shall is mandatory) (internal quotation marks omitted). Shall reveals “an intent by the legislature” to make an action “mandatory.” *Miller*, 2012-Ohio-2928 ¶ 28.

Throughout the Revised Code, “shall” imposes mandatory duties on the State and citizens alike. The restitution statute here is no exception. For example, certain convictions require that the court suspend the offender’s driver’s license. *See, e.g.,* R.C. 2925.03(D)(2) (court “shall suspend” the license). Because this command is not optional, when a court omits the suspension,

it “renders the sentence void in part.” *State v. Harris*, 132 Ohio St. 3d 318, 2012-Ohio-1908 ¶ 15.

Even in the absence of explicit “shall” commands, many parts of the Revised Code impose mandatory payments for violating the law. For example, a violation of the prevailing-wage law triggers an automatic obligation to pay a 25% penalty to the underpaid employee. R.C. 4115.02(A). If an aggrieved payee “proves the case” that a payor broke the law, the fine “follows as a matter of course” and is “mandatory.” *Bergman v. Monarch Construction Co.*, 124 Ohio St. 3d 534, 2010-Ohio-622 ¶ 14.

These mandatory duties sometimes fall to administrative agencies to execute after a court conviction. One example was the former license suspension that flowed from a hit-and-run conviction. As this Court held, when those statutes were in effect, they imposed “mandatory” duties on the registrar of the Bureau of Motor Vehicles to suspend a driver’s license after conviction. *See Williams v. Dollison*, 62 Ohio St. 2d 297, 300 (1980). As this Court explained, those sanctions gave the registrar no “latitude” or power of “independent determination.” *Id.* Instead, they were “legislative mandates” that gave the executive “no alternative” but to obey the General Assembly’s command. *Id.*; see also R.C. 119.06 (“The following adjudication orders shall be effective without a hearing: “(A) Orders revoking a license in cases where an agency is required by statute to revoke a license pursuant to the judgment of a court.”)

In the same way, the obligations in the wildlife-restitution statute express legislative judgment that a person convicted of illegal hunting “shall pay” the statutory value of the ill-gotten animal. R.C. 1531.201(C). The legislative command is enforced in a second way if the convicted person has an Ohio hunting license, as the General Assembly directs that ODNR “shall revoke” the license until the money is paid. R.C. 1531.201(D). Like other mandatory

commands in the Revised Code, these commands leave the courts and the executive “no alternative” but to impose the restitution. *Dollison*, 62 Ohio St. 2d 297, 299.

B. To combat illegal hunting, the statute authorizes recovery of an animal, restitution, or both.

The restitution that poachers must pay the State is mandatory, and the State has multiple tools to collect the money. The State may demand the money from the poacher after a conviction by sending a demand letter. Or, as specified in the statute, the State might rely on the license suspension as an incentive for the poacher to pay. R.C. 1531.201(D). One other option is that the State may file a civil suit to recover the restitution. R.C. 1531.201(B).

The authority for the State to recover statutory wildlife restitution empowers the Chief of the Division of Wildlife (“Chief”) to bring a civil action to “recover possession of or the restitution value of” an animal “held, taken, bought, sold, or possessed” in violation of wildlife laws. R.C. 1531.201(B). The statute empowers the Chief to recover the animal, the restitution value, or both. That conclusion flows from the statute’s plain text, context, and purpose.

1. The plain meaning of “or” is inclusive. The statute authorizes recovery, restitution, or both.

The starting point for statutory analysis aims to “give effect to the plain meaning of the words used in a statute.” *State v. Steele*, 138 Ohio St. 3d 1, 2013-Ohio-2470 ¶ 17. The plain meaning of “or” shows that the statute permits the Chief to file a civil action to recover a deer, recover the restitution value of a deer, or both.

The word “or” usually takes a disjunctive meaning, but that does not mean that it only connects two mutually exclusive concepts. The word “or” often indicates “a deliberate [legislative] exercise in expansion.” *Kish v. Akron*, 109 Ohio St. 3d 162, 2006-Ohio-1244 ¶ 34. That insight accords with a well-known work on legislative drafting. “Observation of legal usage suggests that in most cases ‘or’ is used” to mean A, or B, or both. F. Reed Dickerson, *The*

Fundamentals of Legal Drafting, 106 (2nd Ed. 1986). The consequence for legislative drafting is that, in the absence of special circumstances, drafters can rely on a simple “or” to convey inclusive meaning and avoid the “undesirable expression ‘and/or.’” *Id.* at 106. That is, the General Assembly chose the more concise way to express the same point as the Colorado legislature when it wrote a similar statute that gives ODNR’s analogue there the power to “bring and maintain a civil action against any person, in the name of the people of the state, to recover possession or value or both possession and value of any wildlife taken in violation.” Co. Rev. Stat. § 33-6-110(1). And as this Court recently recognized, the General Assembly may use words in statute to “avoid repetition.” *State v. Straley*, 139 Ohio St. 3d 339, 2014-Ohio-2139 ¶ 16. The wording of the wildlife-restitution statute expands rather than contracts the State’s power to recover restitution.

Other statutes teach the same lesson. Consider the phrase in the public-records statute that authorizes suits against a “public office or the person responsible” for the records. R.C. 149.43(C)(1). That statute does not restrict a suit to one or the other. *See State ex rel. Kinsley v. Berea Bd. of Ed.*, 64 Ohio App. 3d 659, 665 (8th Dist. 1990). Or consider a hypothetical statute that permits a creditor to sue the “debtor or the guarantor.” No one would contend that a suit must be against either the debtor or the guarantor, but *not both*.

Not only does “or” usually signal “either or both,” when “or” follows language of permission rather than command, the inclusive sense is the most natural. A leading article considering the meaning of “or” explains that when an “or” construction is part of a phrase with permissive language, the “or” most naturally means either or both. Maurice B. Kirk, *Legal Drafting: The Ambiguity of ‘and’ and ‘or,’* 2 Texas Tech. L. R. 235, 243 (1971). For example, the construction “he may contribute to a charitable or educational institution” is unlikely to mean

“but not both” because of the permissive “may.” *Id.* And when the hot-dog vendor asks “would you like ketchup or mustard” he is not putting you to an exclusive choice of condiments. For those so inclined, ketchup *and* mustard can grace the hot dog. That is, if “but not both” were intended, a drafter, or vendor, would have used “different language.” *Id.* So the language in R.C. 1531.201 that the Chief “may” seek seizure or restitution—a grant of permission—means that the Chief may use a civil action to recover possession, restitution, or both.

2. The surrounding context of the “or” clause further shows that it authorizes recovery, restitution, or both.

The search for legislative intent also includes considering “all words and phrases in context.” *Ohio Neighborhood Fin., Inc. v. Scott*, ___ Ohio St. 3d ___, 2014-Ohio-2440 ¶ 22; R.C. 1.42. That includes teasing out the meaning of “or.” *See, e.g., O’Toole v. Denihan*, 118 Ohio St. 3d 374, 382, 2008-Ohio-2574 ¶ 51(considering context surrounding “or”); *Ramage v. Central Ohio Emergency Serv., Inc.*, 64 Ohio St. 3d 97, 105 (1992) (context meant reading an “or” as an “and”). Other courts and commentators agree that context matters even for short conjunctions. A federal appeals court explains that, “[a]lthough connecting words such as ‘and,’ ‘or,’ or ‘also’ are often helpful keys to unlocking” legislative intent, “we must still look at all parts of the statute.” *Kelly v. Wauconda Park Dist.*, 801 F.2d 269, 270 n.1 (7th Cir. 1986). And the leading treatise on statutory construction tells us that courts “do not rely too heavily upon characterizations such as ‘disjunctive’ or ‘conjunctive’ forms to resolve difficult issues, but look to all parts of a statute.” 2A Norman Singer, *Sutherland Statutes and Statutory Construction* § 46:5 (7th Ed. 2013).

Here, the context supports the appellate court’s reading of the statute. If the State takes possession of a deer, or some of its parts, that is no obstacle to recovering the restitution value

designed to compensate the people of the State for the crime and deter illegal poaching. Context shows this in five ways.

First, the mandatory nature of the restitution belies any notion that the seizure and restitution provisions are exclusive. As explained above, the restitution obligation on those who violate the State's wildlife laws is mandatory. It would be a strange reading of the statute if this mandatory duty blocked the State from seizing wild animals, as the State has no choice about whether the violator owes the restitution. The result is stranger still because seizing a still-live wild animal may be the most important goal of wildlife officials in certain situations. If someone illegally traps a diseased animal, or illegally transports or sells a live animal native to the State, recovering possession is the priority, not restitution. Restitution is mandatory, and that shows it is an additional, not an exclusive, option for enforcing the wildlife laws.

Second, the authorization to recover possession or restitution exists in a broader section of the Revised Code that explicitly authorizes criminal courts to impose restitution "in addition to" any seizure or forfeiture. R.C. 1531.99(E). That puts to rest any notion that the "or" clause authorizes one or the other of possession or restitution. *See, e.g., Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86 ¶ 13 (rejecting interpretation that viewed statutory phrase in isolation). The authorization to recover possession or restitution, like all other remedies in Section 1531 of the Code, are cumulative, not exclusive, options.

Third, language surrounding the "or" clause indicates inclusion, not exclusion. *See, e.g., TLC Home Healthcare, LLC v. Iowa Dept. of Human Servs.*, 638 N.W.2d 708, 713 (Iowa 2002) ("[g]iven the words and phrases preceding 'or' . . . we 'conclude 'or' means both and is used as a word of inclusion, rather than exclusion"). The immediate context of the "recover" language reveals that the statute gives the State options to address poaching and other wildlife crimes. The

options of seizure and restitution are paired with a long list of wildlife crimes that the State may need to remedy. *See* R.C. 1531.201(B) (remedies available to enforce any violation of Chapters 1531 and 1533). These include recovering still-living wild animals that could be returned to the wild, recovering living wild animals that may need to be destroyed, and seeking restitution against those who trapped, possessed, or killed a wild animal illegally. *See* R.C. 1531.201. With this breadth of goals comes a breadth of remedies.

Fourth, the statute disclaims any intent to limit the options for enforcing the wildlife laws. The last subsection explains that nothing in R.C. 1531.201 “affects the right of seizure under any other section of the Revised Code.” R.C. 1531.201(E); *see also* R.C. 1531.13 (“A wildlife officer . . . may search any place which the officer has good reason to believe contains a wild animal or any part of a wild animal taken or had in possession contrary to law or division rule . . . and *seize* any the officer finds so taken or possessed.”) (emphasis added). This expansive phrasing means expansive remedies because statutes “phrased in broad, sweeping language” have “sweeping application.” *State ex rel. Mager v. State Teachers Retirement Sys. of Oh.*, 123 Ohio St. 3d 195, 2009-Ohio-4908 ¶ 16; *see also Smith v. Landfair*, 135 Ohio St. 3d 89, 2012-Ohio-5692 ¶ 29 (noting broad language of statute when liberally construing specific term); *Volkswagenwerk Aktiengesellschaft v. Fed. Maritime Comm’n*, 390 U.S. 261, 273 (1968) (rejecting “narrow view” of statute written in “expansive language”), superseded by statute on other grounds by 46 U.S.C. 814. To read the seizure and restitution mechanisms narrowly as exclusive options would “affect” the State’s “right of seizure” if the restitution were viewed as precluding the seizure remedy. R.C. 1531.201(E).

Finally, the prohibition against possessing wildlife illegally shows that the “or” cannot connect mutually exclusive options. No person may possess wild animals “except wild animals

that the Revised Code or division rules permit to be taken.” R.C. 1531.02; *see also* R.C. 1531.11 (no person may possess a wild animal as prohibited by statute or rule). Reading the “or” as limiting the State to recovering an illegally possessed animal or the restitution value of that wild animal would mean that the State would condone illegal possession whenever it sought restitution and the poacher retained the wild animal or its parts. A reading of the statute where every action for restitution condones illegal action cannot be the right reading. Context again reveals that the “or” in R.C. 1531.201 is expansive, not limiting.

3. The General Assembly’s purpose in amending the statute also shows that it authorizes recovery, restitution, or both.

The legislative purpose to attack poaching supports reading the restitution clause to authorize both seizure and restitution. *See, e.g., Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St. 3d 549, 552 (2000) (examining, among other indicia, “purpose” to interpret statute); R.C. 1.49(A), (C) (legislative “object” and “history” bear on statutory meaning). The restitution clause is part of an amended statute that greatly increased restitution values for trophy-sized white-tailed deer. *See, e.g., Legislative Servs. Comm’n, Fiscal Note & Local Impact Statement* (Nov. 14, 2007) (listing sample restitution values from \$1,031 to \$25,781 for various antler scores) (Appx. 42). Reading the possession and restitution clauses as exclusive would thwart the legislative goal of “deter[ring]” deer poachers. Statement of Reps. Latta and Stewart (Appx. 2, 22); *see Hauser v. Dayton Police Dept.*, ___ Ohio St. 3d ___, 2014-Ohio-3636 ¶ 14 (in cases of doubt courts “should favor the meaning that furthers the legislative purpose over the meaning that obstructs or hinders that purpose”) (internal quotation marks omitted) (plurality op.).

If the State may recover the restitution, but not the deer, the poacher may still profit. The poacher might sell the deer meat, its hide, and its antlers for more than the restitution amount. Conversely, if the State recovers the deer, but not the restitution, the poacher may profit in other

ways. He may recoup more than the restitution value by, for example, selling photographs of the kill (hunters often sell pictures of them posing with name-brand hunting attire or weapons to the companies that make these products). Or a hunter may make and sell a reproduction of the antlers (if the seizure takes some time). Although the restitution formula in the statute is designed to up the price for poaching, it will not be a perfect match. Reading the seizure and restitution remedies as exclusive undercuts the articulated legislative goal of eliminating the chance of profiting from poaching.

Reading the restitution clauses as embracing mutually exclusive alternatives would undercut the purpose of the increased restitution amounts. *See, e.g., Griffith v. City of Cleveland*, 128 Ohio St. 3d 35, 2010-Ohio-4905 ¶¶ 25-27 (considering consequences of construction to interpret statute); R.C. 1.49(E) (“consequences” of a construction bear on meaning). The basic mechanics of deterrence show the problem. As the General Assembly heard, the restitution values of prior law simply did not deter poaching because those values were a fraction of the potential gain from poaching. Statement of Dave Graham before the House Agriculture and Natural Resources Committee and the Senate Environment and Natural Resources Committee (June 13, 2007; Oct. 10, 2007) (Appx. 8, 24). The new law, through a mathematical formula, sets restitution values that correspond with the possible profits from poaching. Because restitution values track potential profits from poaching, R.C. 1531.201 only achieves real deterrence if it includes both restitution and forfeiture remedies. The restitution value alone will not fully deter poachers because true deterrence must not simply leave a potential violator “indifferent” between crime and compliance. Richard Posner, *An Economic Theory of the Criminal Law*, 85 *Columbia L. R.* 1193, 1202 (1985). And punishment costs must also account for probability of apprehension to achieve real deterrence. *Id.* at 1206. Because the restitution

values only *match* rather than *exceed* potential profits from poaching, reading R.C. 1531.201 to offer only options between restitution and forfeiture strips the law of the real deterrent force that the General Assembly intended.

A final point about purpose. The goal of deterrence and the mechanism of paired seizure (forfeiture) and restitution square with general forfeiture and restitution principles. That is, the law of forfeiture and restitution endorses a statute that empowers the State to seek both forfeiture and restitution for the same crime. “Case law and commentary establish that the forfeiture and restitution statutes serve different purposes.” *United States v. Torres*, 703 F.3d 194, 203 (2d Cir. 2012). “Restitution is loss based, while forfeiture is gain based. . . . The measures are different, and the purposes distinct.” *Id.* (internal quotation marks omitted). “Restitution operates to make the victim of the crime whole, not to confer legal ownership on the offender of the stolen property.” *United States v. Emerson*, 128 F.3d 557, 567 (7th Cir. 1997) (internal quotation marks omitted). Therefore, “paying restitution plus forfeiture at worst forces the offender to disgorge a total amount equal to twice the value of the proceeds of the crime.” *Id.* (internal quotation marks omitted). “Given the many tangible and intangible costs of criminal activity, this is in no way disproportionate to the harm inflicted upon government and society.” *Id.* (internal quotation marks omitted). The General Assembly did nothing out of the ordinary when it decided to deter poaching by pairing higher restitution awards with the existing forfeiture penalty in the law.

Text, context, and purpose all lead to the same conclusion—the restitution clause in R.C. 1531.201 empowers the Chief to seek possession, restitution, or both from those who poach Ohio’s white-tailed deer.

II. Risner’s argument to the contrary relies solely on the disfavored meaning of “or” and he admits that his constitutional arguments are not properly before this Court.

Risner offers nothing in rebuttal beyond the bare assertion that the “or” in R.C. 1531.201 prevents the State from collecting restitution. As for the constitutional arguments he raised in the trial court, Risner agrees that they are not preserved for this Court’s review; they are meritless in any event.

A. Risner’s insistence that his criminal penalties block restitution contradicts the text, context, and purpose of the statute.

To all of the arguments about text, context, and purpose, Risner responds with a two-step argument. First, that “or” must connect mutually exclusive options. Risner Br. at 8. Second, that he has already satisfied either the “possession” option because the State possessed the meat and antlers of the poached deer or the “restitution” option because he reimbursed \$90 to the State for the unpaid tab at the meat-processing facility. *Id.* Both steps crumble on closer inspection.

To the first step, Risner offers nothing but the intuition that “or” must connect mutually exclusive options. But courts have often cautioned that interpretation should not stop with the “intuition that ‘and’ means ‘and,’ ‘or’ means ‘or,’ and never the twain shall meet.” *Essex Ins. Co. v. Fidelity & Guar. Ins. Underwriters, Inc.*, 282 F. App’x 406, 410 (6th Cir. 2008) (Sutton, J.) (internal quotation marks omitted). As we explain above, the most natural reading of the “or” conjunction, and the statute’s context and purpose, gut Risner’s argument.

To the second step, Risner is wrong about both “possession” and “restitution.”

Possession. The State never recovered “possession” of the deer Risner killed because it received only the meat and antlers. The statute authorizes the Chief to recover “possession of . . . any wild animal.” R.C. 1531.201(B). All the State recovered here from the criminal case was discarded evidence—some deer meat (which it donated to a local food pantry) and the antlers (which it uses for education). The State (and the law-abiding people of the State) did not recover

the “wild animal.” The State therefore did not recover what was taken from the people of Ohio when it received some of the deer’s meat and its antlers. Living things are more than the sum of their parts. As the General Assembly learned, that is especially true of trophy-quality deer because their genetic material can pass on similar traits to future generations that benefit Ohio wildlife and sportsmen alike. Statement of the President of the League of Ohio Sportsmen (Appx. 36).

In response, Risner points only to R.C. 1531.01(L), which defines “whole to include part” as meaning that statutes protecting a whole animal also protect each part of that animal. The definition does not aid Risner for two reasons. First, it is never actually used in any part of the Revised Code. It is a definition without a home. Second, if the definition were ever used, it would be aimed at expanding protection, not contracting it. No one would argue with straight face that a poacher could satisfy a civil judgment for possession of a poached trophy deer by turning over a hoof while retaining the meat and antlers.

Restitution. The State has yet to receive a penny in restitution from Risner because he sued to block payment. Risner implies that the State cannot recover the full restitution value because he believes it would duplicate money he already paid when he reimbursed the State \$90 for paying his tab at the meat-processing facility as ordered in the criminal case. Risner Br. at 8. Risner mischaracterizes the \$90 payment. That money reimbursed the State for its costs of recovering the meat for use as evidence; it was not restitution in any normal sense of the term. The criminal statute that authorizes restitution “limits the amount” to “the economic detriment suffered by the victim,” but “does not provide restitution for the costs” of figuring out that detriment. *State v. Lalain*, 136 Ohio St. 3d 248, 2013-Ohio-3093 ¶ 22; *State v. Christian*, No. 25256, 2014-Ohio-2672 ¶ 127 (2d Dist.) (money “expended in pursuit of solving crimes” not

recoverable as restitution) (internal quotation marks omitted); *see id.* at ¶¶ 126-27 (collecting Ohio and non-Ohio authority). Because the \$90 was not restitution, it cannot be—as Risner says—the first of two “double” (or more) recoveries for the same crime. Risner Br. at 8.

Risner is equally off base to press this restitution double-recovery argument with an offhand reference to “res judicata” as blocking full restitution to the State. Risner Br. at 8. Res judicata is no barrier to criminal and civil proceedings for the same offense because a “civil action and a criminal prosecution are separate and independent processes, each of which is available to the State.” *State ex rel. DeWine v. Ashworth*, No. 11CA16, 2012-Ohio-5632 ¶ 53 (4th Dist.); *cf. Helvering v. Mitchell*, 303 U.S. 391, 397 (1938) (“That acquittal on a criminal charge is not a bar to a civil action by the Government, remedial in its nature, arising out of the same facts on which the criminal proceeding was based has long been settled.”). Indeed, the statute actually contemplates separate actions because R.C. 1531.99 gives the judge hearing the criminal case the *discretion* to impose restitution, while R.C. 1531.201 is a mandatory legislative command to impose restitution. If the trial judge does not impose restitution in the criminal case, the State must impose it civilly. And if it is imposed civilly, the restitution is open to settlement like any civil judgment. Plus, under-enforcement in local courts was one of the motivating forces behind the increased restitution in the amended law. *See* Statement of Chief of the Division of Wildlife (Appx. 8, 24). Nothing in the cases or the statute supports Risner’s “res judicata” argument.

One last point. Risner cannot win even on his own terms. Even contorting the statute as he advocates is not a path to having the Sixth District reversed. The State did not bring a “civil action” to both recover the deer and the restitution. It already had parts of the deer. The civil action—filed as a counterclaim to Risner’s declaratory judgment—sought only restitution. So

even if the statute bars a civil action to recover possession *and* restitution, that is not what the State did here.

B. Risner’s constitutional arguments are not preserved in this Court, and they are meritless nonetheless.

Risner offers nothing beyond insisting that the word “or” blocks mandatory restitution. But in the trial court, he advanced constitutional arguments against restitution. He does not advance those arguments in this Court and gave them no more than a two-word mention in his Sixth District brief. Risner Br. at 5 n.1; Risner’s Notice of Appeal in 2014-0242 (Feb. 13, 2014) (asserting only that the case raises issues of “public or great general interest”). Those arguments are therefore not appropriately before this Court. *See, e.g., E. Liverpool v. Columbiana Cnty. Budget Comm’n*, 116 Ohio St. 3d 1201, 2007-Ohio-5505 ¶ 3 (arguments “abandoned” in Supreme Court where litigant “never pressed [them] . . . in its briefs to the Court); *State ex rel. Kolcinko v. Ohio Police & Fire Pension Fund*, 131 Ohio St. 3d 111, 2012-Ohio-46 ¶ 10 (argument presented only in reply in lower court not considered by this Court).

Regardless, the constitutional arguments Risner made to the trial court are easily set aside. He makes three: that restitution deprives him of the right to a jury, that it violates substantive due process, and that it trespasses equal-protection guarantees. Risner SJ Mot. at 5-8 (Supp. 44-47).

Risner suffered no deprivation of his right to a jury. In the criminal case he pleaded no contest, which waived any right to a jury. *See* Ohio R. Crim. P. 11(C)(2)(c). And in the civil case he initiated against ODNR, Risner had no constitutional or statutory right to a jury because he brought a declaratory-judgment action seeking relief other than money. He has no constitutional right to a jury because actions for “declaratory judgment . . . did not exist prior to the adoption of the Ohio Constitution, and consequently . . . [a]ny right to trial by jury in such

actions is, therefore, not vouchsafed by the Constitution but must be found in the statutes.” *Renee v. Sanders*, 160 Ohio St. 279, 282 (1953). And the statutory right to jury in declaratory-judgment actions is confined to suits seeking “the recovery of money only.” *Erie Ins. Group v. Fisher*, 15 Ohio St. 3d 380, 382 (1984) (internal quotation marks omitted). Risner’s suit sought (and obtained in the trial court) injunctive and declaratory relief. Nothing about the result in the Sixth District trampled Risner’s constitutional or statutory rights.

To boot, Risner *prevailed* on summary judgment. That certainly did not violate his jury-trial rights. *See Houk v. Ross*, 34 Ohio St. 2d 77, 85 (1973) (summary judgment mechanism consistent with right to a jury); *State ex rel. Cuyahoga Cnty Hosp. v. Ohio Bureau of Workers’ Compensation*, 27 Ohio St. 3d 25, 28 (1986) (same); *see State Farm Mut. Auto. Ins. Co. v. Advanced Impounding Recovery Servs.*, 165 Ohio App. 3d 718, 2006-Ohio-760 ¶ 19 (Klatt, J.) (same).

Risner’s arguments about due process are equally unsound. Risner was afforded due process before imposition of the mandatory restitution through proceedings in the underlying criminal case. This Court has held that the “legislature can impose mandatory penalties” that flow from “prior judicial determination.” *Williams*, 62 Ohio St. 2d 297, 300; *see also, e.g., Torres*, 703 F.3d 194, 204 (“Eight other Circuits to have considered orders of forfeiture and restitution in the face of ‘double recovery,’ due process-type challenges have affirmed their concurrent imposition.”) (collecting cases).

Finally, the statutory restitution is consistent with equal-protection guarantees. Risner has not alleged that the statute classifies at all, let alone that it classifies irrationally. That ends his argument before it begins because courts “may conduct an equal protection inquiry only if the challenged government action classifies.” *E.g., Woodard v. Andrus*, 419 F.3d 348, 354 (5th

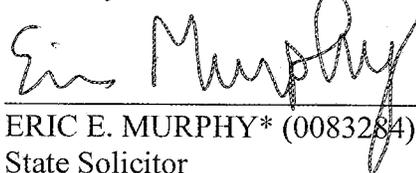
Cir. 2005) (internal quotation marks omitted). If Risner meant to challenge the increased restitution for the increased value of the poached deer, the argument is also a nonstarter. “[I]t is hardly necessary to say that the comparative gravity of criminal offenses, and whether their consequences are more or less injurious, are matters for the state itself to determine.” *Collins v. Johnston*, 237 U.S. 502, 510 (1915) (rejecting equal-protection claim).

CONCLUSION

The Court should affirm the judgment of the Sixth District.

Respectfully submitted,

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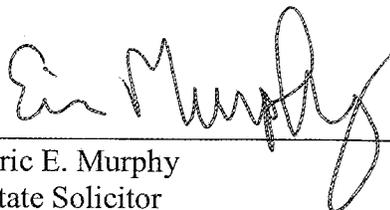
Division of Wildlife

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Appellee Ohio Department of Natural Resources, Division of Wildlife, was served by regular U.S. mail this 4th day of September, 2014 upon the following:

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APPENDIX



Ohio Senate
14th District

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Committees:

Natural Resources and Environment, Chair
Finance and Financial Institutions
Energy and Public Utilities
State and Local Government and Veterans Affairs
Ways and Means and Economic Development

COMMITTEE NOTICE

To: Members of Senate Environment and Natural Resources Committee
From: Senator Tom Niehaus, Chair
Date: September 27, 2007

The Senate Environment and Natural Resources Committee will meet in the South Hearing Room

Wednesday, October 3, 2007 at 11:00 a.m.

AGENDA

SCR 11 Grendell	Congress: enact Water Resources Development	1 st hearing Sponsor
SCR 12 Grendell	Congress: Great Lakes-protect from invasive species-ballast water discharges	1 st hearing Sponsor
HB 169 Wagner	Used lead-acid batteries-collection/disposal requirements	1 st hearing Sponsor
HB 238 Latta	Wild animals-made property unlawfully-restitution value	1 st hearing** Sponsor

** pending referral

If you plan to testify, please provide 20 copies of written testimony to the Committee Secretary before testifying.

All amendments to be submitted 24 hours in advance of the scheduled meeting.

cc: Senate Clerk, Sgt. at Arms, LSC, ENR Distribution Lists

Serving: Clermont, Brown, Adams, Scioto and Lawrence (part) Counties



Robert E. Latta

State Representative, 6th House District

**Senate Environment and Natural Resources Committee
Representatives Bob Latta and Jimmy Stewart
Sponsor Testimony
House Bill 238
October 3, 2007**

Chairman Niehaus and members of the Environment and Natural Resources Committee, I come before you today and bring House Bill 238, legislation that will increase the penalties for poaching white-tailed deer and other wildlife in Ohio.

House Bill 238 will increase the restitution value of wildlife that is poached in Ohio and specifically increase the penalty for poaching antlered white-tailed deer through the use of a gross scoring system based on the national Boone and Crockett antler measurement. In addition, any person convicted of taking, buying, selling or possessing any wild animal unlawfully will also be subject to the restitution as well as having their Ohio hunting license revoked until the restitution is paid.

Under current law, individuals who are caught poaching face misdemeanor criminal charges and also may be ordered to pay a restitution based on the type of animal killed. They can range from \$25 to \$1,000. By enacting this law, both Representative Stewart and I hope to maintain the quality and quantity of wildlife for the hunters, trappers, fishermen and wildlife watchers who contribute billions of dollars to the state's economy each year.

This legislation is in response to poaching rings in Franklin, Hamilton, Marion and Meigs Counties. These cases have resulted in the suspects being charged with more than 200 wildlife violations. Considering what the trophy-sized bucks sell for on the black market, it's appropriate that the restitution be commensurate with their market value. Current statute does not deter criminals from breaking the law, and this bill provides the necessary tools we need to stop this criminal activity.

I want to thank the Ohio Division of Wildlife for all of their input on this legislation.

This bill was voted out of the House Agriculture and Natural Resources Committee unanimously as well as unanimously from the House floor.

I ask for your support of House Bill 238 and will answer any questions you may have at this time. Thank You.

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Appx. 2



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Finance and Financial Institutions
Energy and Public Utilities
State and Local Government and Veterans Affairs
Ways and Means and Economic Development

COMMITTEE NOTICE

To: Members of Senate Environment and Natural Resources Committee
From: Senator Tom Niehaus, Chair
Date: October 4, 2007

The Senate Environment and Natural Resources Committee will meet in the South Hearing Room

Wednesday, October 10, 2007 at **11:00 a.m.**

AGENDA

Governor's Appointments

Frances S. Buchholzer, as a Member of the Recreation and Resources Commission for a term beginning April 4, 2007, and ending at the close of business February 1, 2012.

William Brantingham, as a Member of the State Emergency Response Commission for a new term beginning April 4, 2007, and ending at the close of business January 13, 2009.

Hans Landefeld, as a Member of the Ohio Parks and Recreation Council for a term beginning June 6, 2007, and ending at the close of business January 31, 2009, replacing Owen V. Hall, whose term expired.

Tina G. Niven, as a Member of the Ohio Geology Advisory Council for a term beginning June 28, 2007, and ending at the close of business May 3, 2010, replacing Lynn M. Kantner, whose term expired.

Janine H. Rybka, as a Member of the Parks and Recreation Council for a term beginning June 12, 2007, and ending at the close of business January 31, 2009, replacing Caroleta Colborn, whose term expired.

John P. Vimmerstedt, as a Member of the Forestry Advisory Council for a new term beginning June 28, 2007, and ending at the close of business February 28, 2011.

SB 214 Niehaus	Dishwater detergents-limit percentage of phosphorus	1 st hearing Sponsor
HB 169 Wagner	Used lead-acid batteries-collection/disposal requirements	2 nd hearing prop./opp./ip Testimony
HB 238 Latta	Wild animals-made property unlawfully-restitution value	2 nd hearing prop./opp./ip Testimony

If you plan to testify, please provide 20 copies of written testimony to the Committee Secretary before testifying.

All amendments to be submitted 24 hours in advance of the scheduled meeting.

cc: Senate Clerk, Sgt. at Arms, LSC, ENR Distribution Lists

Ohio Senate
Committee on Environment and Natural Resource
Minutes
October 10, 2007 Committee
127th General Assembly

The Senate Committee on Environment and Natural Resources was called to order pursuant to the meeting notice at approximately 11:00 a.m. in the South Hearing Room of the Statehouse.

Attendance was taken with a quorum present.

Minutes of October 10, 2007 were approved without objections

Chair called for Governors' Appointments to be considered:

Frances S. Buchholzer, Republican, from Akron, Summit County, Ohio, as a Member of the Recreation and Resources Commission for a term beginning April 4, 2007, and ending at the close of business February 1, 2012.

William Brantingham, Winona, Columbiana County, Ohio, as a Member of the State Emergency Response Commission for a new term beginning April 4, 2007, and ending at the close of business January 13, 2009.

Hans Landefeld, from Springboro, Warren County, Ohio, as a Member of the Ohio Parks and Recreation Council for a term beginning June 6, 2007, and ending at the close of business January 31, 2009, replacing Owen V. Hall, whose term expired.

Tina G. Niven, Democrat, from Worthington, Franklin County, Ohio, as a Member of the Ohio Geology Advisory Council for a term beginning June 28, 2007, and ending at the close of business May 3, 2010, replacing Lynn M. Kantner, whose term expired.

Janine H. Rybka, from Cleveland, Cuyahoga County, Ohio, as a Member of the Parks and Recreation Council for a term beginning June 12, 2007, and ending at the close of business January 31, 2009, replacing Caroleta Colborn, whose term expired.

John P. Vimmerstedt, Democrat, from Wooster, Wayne County, Ohio, as a Member of the Forestry Advisory Council for a new term beginning June 28, 2007, and ending at the close of business February 28, 2011.

Senator Dale Miller moved to accept and second by Senator Schaffer. Chair called for roll call vote - 7 yays - no nays.

Chair called for proponent, opponent, interested testimony on the following bills:

Amended House Bill 169 – Wagner

Used lead –acid batteries-collection/disposal requirement

- 1) Timothy J. LaFond – Johnson Controls Inc. proponent (written testimony)

Amended House bill 238 – Latta

Wild animals-made property unlawfully-restitution value

- 1) Dave Graham – ODNR, Chief of Division of Wildlife, proponent (written testimony)
- 2) Larry Mitchell – League of Ohio Sportsmen, proponent (written testimony)
- 3) Mike Miller – ODNR, Knox County Wildlife Officer, President of Wildlife Officers Lodge 149 of the Fraternal Order of Police (written testimony)

Senate Bill 214 – Niehaus

Dishwater detergents-limit percentage of phosphorus 1st hearing, sponsor testimony (written testimony)

With no further business before committee, Chair adjourned committee at approximately 11:30 a.m.


Tom Niehaus, Chairman



ENVIRONMENT AND NATURAL
RESOURCES COMMITTEE

Witness Form

Today's Date 10-10-07

Name: David Graham

Address: 2045 Morse Rd

Columbus Ohio 43229

Telephone: 614-265-6304

Organization Representing: ODNR

Testifying on Bill Number: HB 238

Testifying AS (Mark One):

Proponent

Opponent

Interested Party

Are you a Registered Lobbyist?

YES

NO

Are you Submitting Written Testimony?

YES

NO

Comments

OHIO DEPARTMENT OF NATURAL RESOURCES
HOUSE BILL 238 TESTIMONY
SENATE ENVIRONMENT & NATURAL RESOURCES COMMITTEE
DAVE GRAHAM, CHIEF, DIVISION OF WILDLIFE
OCTOBER 10, 2007

Good morning Mr. Chairman, Ranking Member Morano and members of the committee. I am David M. Graham, chief of the Ohio Division of Wildlife. I'd like to offer my special thanks to Representatives Bob Latta and Jimmy Stewart for drafting HB 238, a piece of legislation that is very important to the sportsmen and women of Ohio. I would also like to thank the members of the House for unanimously passing the legislation earlier this year.

The face of the poacher in our state has changed dramatically over the years. Violations of wildlife laws in the past could frequently be attributed to attempts to put food on the table, but today's violations are often the result of a very different motivation. Today we routinely see cases of commercialization of the state's wildlife. The end result of this theft of Ohio's wildlife robs the state's law abiding sportsmen and women of opportunity and robs the state's economy of valuable resources. An example of the type of poaching we see today is the criminal who targets a particular trophy whitetail deer. One ring of poachers in central Ohio made a habit of driving around until they located a true trophy deer, then worked together to sneak on to land where they had no permission to be, kill the buck and stealthily get the animal, or just it's head, off the property. Sometimes poachers shoot the animal and take the antlers, leaving the meat to rot. Sale of really big antlers on the black market can easily net up to twenty-plus thousand dollars. Legal hunters can go a lifetime hoping for the opportunity to take a trophy buck.

Wildlife restitution values have not been updated in about 20 years. House Bill 238 paves the way for total reform which would allow restitution values to become equitable with current conditions. The Division of Wildlife's current authority is in ORC 1531.201 where restitution value for a whitetail deer is \$400. Having researched common prices for taking a trophy buck in a hunting preserve we found that a 190-class buck costs about \$15,000. If a poacher takes an animal in this class currently it is a third degree misdemeanor on the first offense, advancing to a first degree misdemeanor on a second offense. Depending on the degree of misdemeanor, fines between \$0 and \$1,000.00 and up to 6 months jail could be imposed, along with \$400 restitution for the deer, all at the judge's discretion. It is not uncommon in some jurisdictions for fines to be \$100 or less, jail time non-existent and restitution negligible. The bottom line is that current penalties and restitution values are not a deterrent to poaching.

HB 238 provides a system of assigning wildlife values that is biologically, economically and sociologically fair. The system considers value as it relates to the worth of the animal and "worth" is determined by the following 7 scoring criteria:

1. Recreation – the extent to which a species is actively sought by users with wildlife interests where there is no financial gain to the person.
2. Aesthetic – Values that represent the wildlife species' beauty or unique natural history. Aesthetic values for these species exist whether or not a person ever would encounter one in its natural habitat.
3. Educational – The educational value of a species arising from published materials and other audio-visual media about the species, displays and other educational programming or the relative frequency with which the species is used to exemplify important curricula principles.
4. State-List Designation – Endangered, Threatened, Species of Concern as defined in Administrative Code and designated in the Division of Wildlife document "Wildlife That Are Considered to be Endangered, Threatened, Species of Concern, Special Interest, Extirpated, or Extinct."
5. Economics – The direct or indirect economic benefit attributable to the species as a result of recreational or legal transactions. Further evaluation for commercially desirable species will be considered (i.e. pet trade, for human consumption, traditional medicine, religious or cultural trade, etc.).
6. Recruitment – Reproductive and survival potential of a species as it relates to the capability for replacement of its population following decrease or loss.
7. Population Dynamics – Reproductive and survival potential of a species as it relates to its local or sub-population and the impact of the loss to its Ohio population.

The total value score is achieved by multiplying the criteria score which I just described by the weighting factor. The weighting factor relates to the overall demand for a species to its existing supply and to future opportunity for public use. Weighting factors are assigned values of:

- 1 - for Abundant, common across its Ohio range with no consumptive use.
- 1.1 - for Common or Species of Concern, common across its Ohio range with consumptive recreational demand, or designated as a Species of Concern.
- 1.3 - for species designated by the Division of Wildlife as Threatened.
- 1.5 - for species designated by the Division of Wildlife as Endangered.

Along with spelling out increased values for various species of wildlife, HB 238 gives the Division of Wildlife the authority to bring civil action to recover the value of any wild animal held, taken or possessed in violation of chapters 1531 and 1533. The bill will also transfer our current authority in ORC to a combination of the ORC and OAC. It will

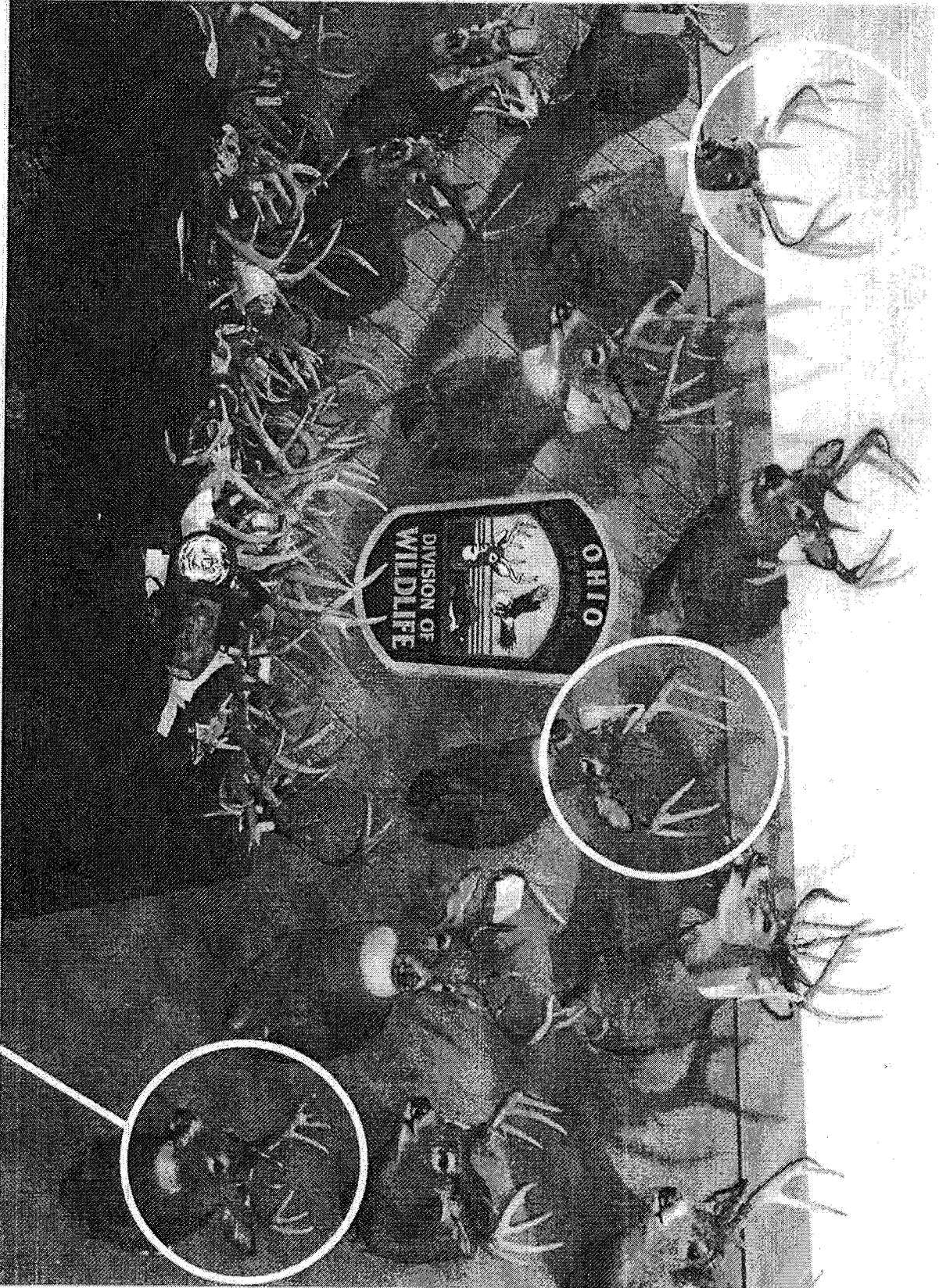
utilize ORC for the restitution value for trophy deer while OAC will contain the values for all other wildlife species in Ohio.

Hunting, fishing and other forms of wildlife recreation are extremely important to our economy. Approximately half a million people hunt and about 1.4 million people fish in Ohio. Each year legal hunting and fishing combined contribute over \$3.3 billion in economic impact to the state. And wildlife watchers spend more than \$600 million a year on wildlife viewing and feeding supplies. We want to keep this industry healthy for both economical and recreational reasons. Please help us by supporting HB 238.

I would be happy to respond to any questions the Committee may have.

(170 - 100)² X \$1.65 = \$8085.00

(150 - 100)² X \$1.65 = \$4125.00



(125 - 100)² X \$1.65 = \$1031.25



ENVIRONMENT AND NATURAL
RESOURCES COMMITTEE

Witness Form

Today's Date 10/10/07

Name: Larry Mitchell

Address: 1048 Geneva Ave

Telephone: 614 274 8370

Organization Representing: League of Ohio Sportsmen

Testifying on Bill Number: HB 238

Testifying AS (Mark One):

Proponent

Opponent

Interested Party

Are you a Registered Lobbyist? YES NO

Are you Submitting Written Testimony? YES NO

Comments _____



League of Ohio Sportsmen

The Ohio affiliate of the National Wildlife Federation

Established 1908

**Senate Environment and Natural Resources Committee
Testimony by Larry Mitchell, President, League of Ohio Sportsmen
HB 238, October 10, 2007**

Good morning Mr. Chairman and members of the committee. I am Larry Mitchell, president of the League of Ohio Sportsmen. The League is an umbrella organization comprised of about 200,000 individual members of conservation organizations throughout the state. My organization dates back to 1908 and has a strong tradition of caring about Ohio's wildlife and Ohio's hunters. The League of Ohio Sportsmen is an affiliate of the National Wildlife Federation, which was founded in 1936 when President Franklin D. Roosevelt convened the first North American Wildlife Conference to stimulate public interest in the management and development of America's natural resources.

League members spend countless hours volunteering with youth teaching safe hunting, fishing and trapping, raising money for improved wildlife habitat for all wildlife, and fostering the conservation ethic among youth and adult hunters. We want people to enjoy hunting and we want them to do it legally.

Poachers steal from all Ohioans. When a deer or a turkey is taken illegally, it is no longer available for hunters to hunt or for wildlife watchers to see. And if it is a trophy quality animal we have an additional loss of genetic material for the breeding stock to pass along. Ohio has a high quality deer population that is eagerly sought after by both residents and non-residents, who all spend a lot of money to pursue this great resource.

Poachers don't take just one animal. There have been numerous cases in recent years involving multiple deer, turkeys, small game and sometimes endangered species for which there is no legal hunting season. Ohio's laws regarding fines and restitution for wildlife violations have not been updated in years and in many cases are so low that poachers consider them a "cost of doing business." HB 238 would change that and make poachers take our wildlife laws seriously.

We respectfully urge your support to pass HB 238. Your time and consideration is greatly appreciated, and I would be happy to answer any questions you may have.



ENVIRONMENT AND NATURAL
RESOURCES COMMITTEE

Witness Form

Today's Date 10/10/07

Name: MICHAEL MILLER

Address: 3857 MINK ST.
MT. VERNON OH 43050

Telephone: 740-397-0237

Organization Representing: OHIO WILDLIFE OFFICERS LODGE FOP 149

Testifying on Bill Number: HB 238

Testifying AS (Mark One):

Proponent

Opponent

Interested Party

Are you a Registered Lobbyist? YES NO

Are you Submitting Written Testimony? YES NO

Comments _____

Senate Environment and Natural Resources Committee

Testimony on HB 238

**Mike Miller, Knox County Wildlife Officer and President of Wildlife Officers
Lodge 149 of the Fraternal Order of Police**

Good morning Chairman Niehaus, Ranking Member Morano and members of the committee. I am State Wildlife Officer Mike Miller, president of the Wildlife Officers Lodge 149 of the Fraternal Order of Police.

Restitution amounts for poaching violations have not been increased or updated in about 20 years but during that time an incredible market for illegally taken animals, especially surrounding white-tailed deer antlers has developed. This market has created a whole new variety of "poacher."

Under current law, a poacher might take a trophy deer for its antlers and if he were caught, pay a fine that could run between \$25 and \$1,000. Meanwhile those antlers might be sold for up to \$20,000 depending upon the size. If you compare the potential earnings versus potential punishment, you can see why many poachers consider the prospect of a fine simply a cost of doing business.

House Bill 238 increases fines for poaching any wildlife in Ohio. It attaches value to deer antlers that is comparable to what a poacher might sell them for on the black market. It gives wildlife officers the tools we need to halt the illegal taking of our wildlife – wildlife that is held in trust for all Ohioans.

In my career as a wildlife officer I have too often seen the results of poaching. It steals from legal hunters and gives a black eye to those who follow the rules. I urge you to support HB 238. Thank you. I would be happy to answer any questions from the committee.



Tom Niehaus

Senate Building
Columbus, Ohio 43215
614/466-8082
Fax: 614/466-7662
Toll-Free: 800/282-0253
E-mail: tniehaus@mailr.sen.state.oh.us

Committees:

Natural Resources and Environment, Chair
Finance and Financial Institutions
Energy and Public Utilities
State and Local Government and Veterans Affairs
Ways and Means and Economic Development

Ohio Senate
14th District

COMMITTEE NOTICE

To: Members of Senate Environment and Natural Resources Committee
From: Senator Tom Niehaus, Chair
Date: October 11, 2007

The Senate Environment and Natural Resources Committee will meet in the South Hearing Room

Wednesday, October 17, 2007 at **11:00 a.m.**

AGENDA

Governor's Appointments

John F. Jaeger, as a Member of the Ohio Parks and Recreation Council for a term beginning June 28, 2007, and ending at the close of business January 31, 2009, replacing Keith D. Shy, whose term expired.

James A. Schneider, as a Member of the State Emergency Response Commission for a term beginning April 4, 2007, and ending at the close of business January 13, 2009, replacing J. Randal Van Dyne, whose term expired.

SB 214 Niehaus	Dishwater detergents-limit percentage of phosphorus	2nd hearing prop./opp./ip Testimony
HB 169 Wagner	Used lead-acid batteries-collection/disposal requirements	3rd hearing* prop./opp./ip Testimony
HB 238 Latta	Wild animals-made property unlawfully-restitution value	3rd hearing* prop./opp./ip Testimony

*** Possible Vote**

If you plan to testify, please provide 20 copies of written testimony to the Committee Secretary before testifying.

All amendments to be submitted 24 hours in advance of the scheduled meeting.
cc: Senate Clerk, Sgt. at Arms, LSC, ENR Distribution Lists

Serving: Clermont, Brown, Adams, Scioto and Lawrence (part) Counties

Ohio Senate
Committee on Environment and Natural Resource
Minutes
October 17, 2007 Committee
127th General Assembly

The Senate Committee on Environment and Natural Resources was called to order pursuant to the meeting notice at approximately 11:00 a.m. in the South Hearing Room of the Statehouse.

Attendance was taken with a quorum present.

Minutes of October 10, 2007 were approved without objections

Chair called for Governors' Appointments to be considered:

John F. Jaeger, from Perrysburg, Wood County, Ohio, as a Member of the Ohio Parks and Recreation Council for a term beginning June 28, 2007, and ending at the close of business January 31, 2009, replacing Keith D. Shy, whose term expired.

James A. Schneider, from Beavercreek, Green County, Ohio, as a Member of the State Emergency Response Commission for a term beginning April 4, 2007, and ending at the close of business January 13, 2009, replacing J. Randal Van Dyne, whose term expired.

Senator Mumper moved to accept and second by Senator Miller. Chair called for roll call vote – 6 yays - 0 nays.

Chair called for proponent, opponent, interested testimony on the following bills:

Amended House Bill 169 – Wagner 3rd hearing

Used lead –acid batteries-collection/disposal requirement

No witnesses – No vote

Amended House bill 238 – Latta 3rd hearing

Wild animals-made property unlawfully-restitution value

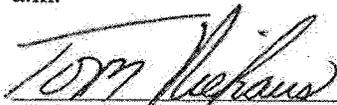
No witnesses – Senator Grendell moved to report back and recommend it passage, second by Senator Miller vote 8-0

Senate Bill 214 – Niehaus 2nd hearing

Dishwater detergents-limit percentage of phosphorus

- 1) Beth Percynski, Procter & Gamble – proponent (written testimony)
- 2) Jeff Peterson, Ecolab Inc. – proponent (written testimony)
- 3) Jack Shaner, OEC – proponent (written testimony)

With no further business before committee, Chair adjourned committee at approximately 11:20 a.m.



Tom Niehaus, Chairman



Jim Aslanides

State Representative, 9th House District

REVISED!!!

ANNOUNCEMENT OF COMMITTEE MEETING

Committee: Agriculture and Natural Resources

Chairman: Aslanides

Date: Wednesday June 13, 2007

Time: 8:30 a.m.

Room: 116

BILLS SCHEDULED TO BE HEARD

<u>Bill</u>	<u>Sponsor</u>	<u>Subject</u>	<u>Status</u>
HB 238	Latta J. Stewart	Wild animals-made property- Unlawfully restitution value	1 st Hearing Sponsor/Pro Testimony
SB 77	Grendell	Commercial fishing-fees- Penalties, etc.	3 rd Hearing Pro/Opp/IP Testimony

****All amendments are due in the Chairman's office by noon on Tuesday, June 12, 2007.**

****All witnesses must provide 30 copies of written testimony.**

****All requests for audio/video taping are due in the Chairman's office 24 hours prior to the start of committee.**

Cc:
Committee Members
Clerks Office
Speaker's Office
Legislative Information
Bill Sponsors

Committees:

Agriculture and Natural Resources, Chairman;
Infrastructure, Homeland Security and Veterans Affairs;
Economic Development and Environment

www.house.state.oh.us
District94@ohr.state.oh.us

District:

Coshocton and Muskingum Counties
46275 U.S. Rte. 36
Coshocton, Ohio 43812
(740) 623-7355

Capitol:
77 South High Street
Columbus, Ohio 43215-6111
(614) 644-6014, (614) 644-9494 (fax)
(800) 282-0253 (toll free)

AGRICULTURE AND NATURAL RESOURCES COMMITTEE ROLL CALL

DATE: JUNE 13, 2007

ASLANIDES

CHAIRMAN

DISTEL

SECRETARY

MEMBERS	PRESENT										
		YES	NO								
Aslanides - C	X										
Wagner - VC	X										
Core	X										
Distel	ABSENT										
Dodd	X										
Domenick	X										
Evans	X										
Gibbs	X										
Goodwin	X										
Harwood	X										
Heard	X										
Hite	X										
Huffman	X										
Luckie	X										
McGregor	X										
Okey	X										
Reinhard	X										
Sayre	X										
Schlichter	X										
Strahorn	ABSENT										
Ujvagi	X										
Yates	X										
Zehringer	X										
TOTAL	21										

J. D. L.

CHAIRMAN

SECRETARY



Jim Aslanides

State Representative, 94th House District

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

Chairman: Aslanides

June 13, 2007

Chairman Aslanides called the House Agriculture and Natural Resources Committee to order at 8:33 a.m. on Wednesday, June 13, 2007. The roll was taken and a quorum was present. Minutes were approved from the previous committee meeting.

The Chairman called House Bill 438 for its first hearing for Sponsor and Proponent testimony. Representative Latta and Stewart presented Sponsor testimony on the bill. Following their testimony, Representative Latta and Stewart fielded questions from Representative Domenick, Chairman Aslanides, Representative Heard and Evans. David M. Graham, Chief of the Division of Wildlife, presented Proponent testimony on the bill. Following his testimony, Chief Graham fielded questions from Representatives Okey and Luckie. This concluded testimony on House Bill 238.

The Chairman called Senate Bill 77 for its third hearing for Proponent, Opponent and Interested Party testimony. Holly Szuch, a commercial fisherman, presented Opponent testimony on the bill. Following her testimony Ms. Szuch fielded questions from Representative Ujvagi. Joe Smith, from the Ohio Fish Producer's Association, presented Opponent testimony on the bill. Following his testimony, Mr. Smith fielded questions from Representatives Luckie, Okey, Chairman Aslanides, Huffinan, McGregor, Evans, Ujvagi, Sayre and Domenick. Elisabeth Smith, from the Ohio Fish Producers Association, presented Opponent Testimony on behalf of her father, David Seggaard. Jeff Herr, from the Ohio Fish Producers Association, presented Opponent testimony on the bill. Following his testimony, Mr. Herr fielded questions from Representatives Yates, Luckie and Chairman Aslanides. Dean Koch, from the Ohio Fish Producers Association, presented Opponent testimony on the bill. Following his testimony, Mr. Koch fielded questions from Representatives Ujvagi, Hite, Chairman Aslanides, Evans, Dodd and Okey. James R. Swartz, from the Ohio Fish Producers Association, presented Opponent testimony on the bill. Following his testimony, Mr. Swartz fielded questions from Chairman Aslanides and Representative Okey. Frank L. Reynolds, Chairman of the Ohio-Fish Producers Association, presented Opponent testimony on the bill. William H. Smith Jr., Attorney with the Ohio Fish Producers Association, presented Opponent testimony on the bill. Following his testimony, Mr. Smith fielded questions from Chairman Aslanides and Representative Luckie. Lee Stinson, from Port Clinton Fisheries Inc., presented Opponent testimony on the bill. Chairman Aslanides stated that he appreciated those who traveled to testify and the concerns they brought to the table. Chairman Aslanides also mentioned that issues with the bill will be worked out.

With no further business, Chairman Aslanides adjourned the committee at 11:37 a.m.

Jim Aslanides, Chairman

George Distel, Secretary

Committees:

Capitol:
77 South High Street
Columbus, Ohio 43215-6111
(614) 644-6014, (614) 644-9494 (fax)
(800) 282-0253 (toll free)

Agriculture and Natural Resources, Chairman;
Infrastructure, Homeland Security and Veterans Affairs;
Economic Development and Environment
www.house.state.oh.us
District94@ohr.state.oh.us

District:
Coshocton and Muskingum Counties
46275 U.S. Rte. 36
Coshocton, Ohio 43812
(740) 623-7355



Robert E. Latta

State Representative, 6th House District

**House Agriculture and Natural Resources Committee
Representatives Bob Latta and Jimmy Stewart
Sponsor Testimony
House Bill 238
June 13, 2006**

Chairman Aslanides and members of the Agriculture and Natural Resources Committee, I come before you today and bring House Bill 238, legislation that will increase the penalties for poaching white-tailed deer and other wildlife in Ohio.

House Bill 238 will increase the restitution value of wildlife that is poached in Ohio and specifically increase the penalty for poaching antlered white-tailed deer through the use of a gross scoring system based on the national Boone and Crockett antler measurement. In addition, any person convicted of taking, buying, selling or possessing any wild animal unlawfully will also be subject to the restitution as well as having their Ohio hunting license revoked until the restitution is paid.

Under current law, individuals who are caught poaching face misdemeanor criminal charges and also may be ordered to pay a restitution based on the type of animal killed. They can range from \$25 to \$1,000. By enacting this law, both Representative Stewart and I hope to maintain the quality and quantity of wildlife for the hunters, trappers, fishermen and wildlife watchers who contribute billions of dollars to the state's economy each year.

This legislation is in response to poaching rings in Franklin, Hamilton, Marion and Meigs Counties. These cases have resulted in the suspects being charged with more than 200 wildlife violations. Considering what the trophy-sized bucks sell for on the black market, it's appropriate that the restitution be commensurate with their market value. Current statute does not deter criminals from breaking the law, and this bill provides the necessary tools we need to stop this criminal activity.

Thank you for allowing me to give testimony on this bill and I will be happy to entertain any questions.

Capitol:

77 South High Street
Columbus, Ohio 43215-6111
(614) 466-8104
(614) 719-0006 (fax)
(800) 282-0253 (toll free)

www.house.state.oh.us
District06@ohr.state.oh.us

Appx. 22

District:
Wood County
1528 Muirfield Drive
Bowling Green, Ohio 43402

Date: 6/13/07

**OHIO HOUSE OF REPRESENTATIVES
WITNESS INFORMATION FORM**

Name: Dave Graham Chief

LEGISLATION to which you are submitting testimony:

Bill Number: HB 238

Proponent Opponent _____ Interested Party _____

Organization: ODNR

Address: 2045 Morse Rd., Columbus, OH 43229

Telephone: 614-265-6891

Comments:



Ohio Department of Natural Resources

TED STRICKLAND, GOVERNOR

SEAN D. LOGAN, DIRECTOR

OHIO DEPARTMENT OF NATURAL RESOURCES
HOUSE BILL 238 TESTIMONY
HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE
DAVE GRAHAM, CHIEF, DIVISION OF WILDLIFE
JUNE 13, 2007

Good morning Mr. Chairman, Ranking Member Domenick and members of the committee. I am David M. Graham, chief of the Ohio Division of Wildlife. I'd like to offer my special thanks to Representatives Latta and Stewart for drafting HB 238, a piece of legislation that is very important to the sportsmen and women of Ohio.

The face of the poacher in our state has changed dramatically over the years. Violations of wildlife laws in the past could frequently be attributed to attempts to put food on the table, but today's violations are often the result of a very different motivation. Today we routinely see cases of commercialization of the state's wildlife. The end result of this theft of Ohio's wildlife robs the state's law abiding sportsmen and women of opportunity and robs the state's economy of valuable resources. An example of the type of poaching we see today is the criminal who targets a particular trophy whitetail deer. One ring of poachers in central Ohio made a habit of driving around until they located a true trophy deer, then worked together to sneak on to land where they had no permission to be, kill the buck and stealthily get the animal, or just it's head, off the property. Sometimes poachers shoot the animal and take the antlers, leaving the meat to rot. Sale of really big antlers on the black market can easily net up to \$20-plus thousand dollars. Legal hunters can go a lifetime hoping for the opportunity to take a trophy buck.

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HB 238 provides a system of assigning wildlife values that is biologically, economically and sociologically fair. The system considers value as it relates to the worth of the animal and "worth" is determined by the following 7 scoring criteria:

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5. Economics – The direct or indirect economic benefit attributable to the species as a result of recreational or legal transactions. Further evaluation for commercially desirable species will be considered (i.e. pet trade, for human consumption, traditional medicine, religious or cultural trade, etc.).
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The total value score is achieved by multiplying the criteria score which I just described by the weighting factor. The weighting factor relates to the overall demand for a species to its existing supply and to future opportunity for public use. Weighting factors are assigned values of:

- 1 - for Abundant, common across its Ohio range with no consumptive use.
- 1.1 - for Common or Species of Concern, common across its Ohio range with consumptive recreational demand, or designated as a Species of Concern.
- 1.2 - for species designated by the Division of Wildlife as Threatened.
- 1.5 - for species designated by the Division of Wildlife as Endangered.

Along with spelling out increased values for various species of wildlife, HB 238 gives the Division of Wildlife the authority to bring civil action to recover the value of any wild animal held, taken or possessed in violation of chapters 1531 and 1533. The bill will also transfer our current authority in ORC to a combination of the ORC and OAC. It will utilize ORC for the restitution value for trophy deer while OAC will contain the values for all other wildlife species in Ohio.

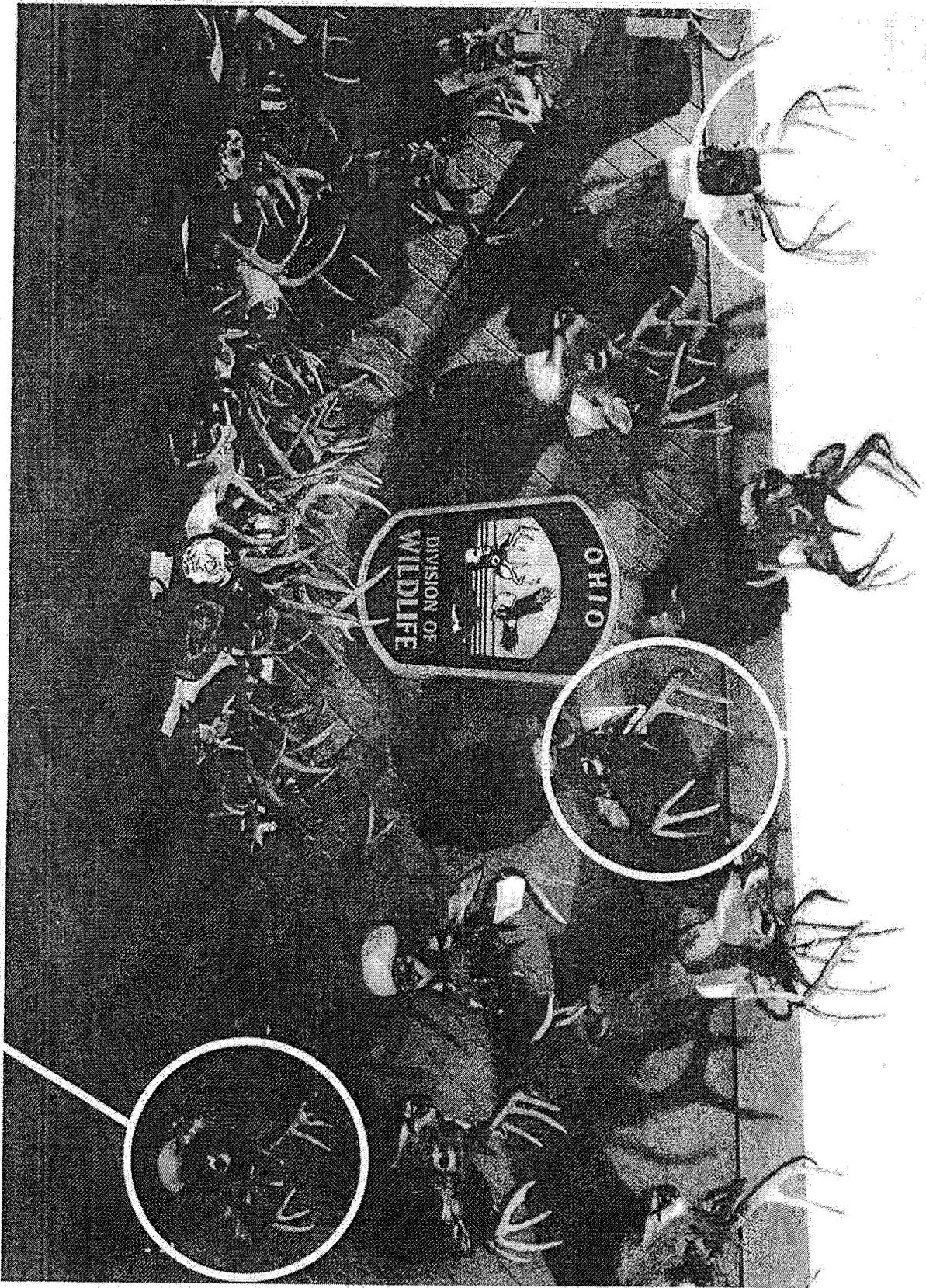
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Ohio. Each year legal hunting and fishing combined contribute over \$3.3 billion in economic impact to the state. And wildlife watchers spend more than \$600 million a year on wildlife viewing and feeding supplies. We want to keep this industry healthy for both economical and recreational reasons. Please help us by supporting HB 238.

I would be happy to respond to any questions the Committee may have.

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(150 - 100)? X \$1.65 = \$4125.00



(125 - 100)? X \$1.65 = \$1031.25



Jim Aslanides
 State Representative, 94th House District

ANNOUNCEMENT OF COMMITTEE MEETING

Committee: Agriculture and Natural Resources
Chairman: Aslanides
Date: Wednesday June 20, 2007
Time: 8:30 a.m.
Room: 116

BILLS SCHEDULED TO BE HEARD

<u>Bill</u>	<u>Sponsor</u>	<u>Subject</u>	<u>Status</u>
Sub HB 71	White	Confiscated dog fighting- Dog impoundment	4 th Hearing Pro/Opp/IP **Acceptance of Sub Bill **Possible Vote
HB 238	Latta J. Stewart	Wild animals-made property unlawfully - restitution value	2 nd Hearing Pro/Opp/IP Testimony
SB 77	Grendell	Commercial fishing-fees, penalties, etc.	4 th Hearing Pro/Opp/IP Testimony

**All amendments are due in the Chairman's office by noon on Tuesday, June 19, 2007.
 **All witnesses must provide 30 copies of written testimony.
 **All requests for audio/video taping are due in the Chairman's office 24 hours prior to the start of committee.

Cc:
 Committee Members
 Clerks Office
 Speaker's Office
 Legislative Information
 Bill Sponsors

Committees:

Agriculture and Natural Resources, Chairman;
 Infrastructure, Homeland Security and Veterans Affairs;
 Economic Development and Environment

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AGRICULTURE AND NATURAL RESOURCES COMMITTEE ROLL CALL

DATE: 06/20/07

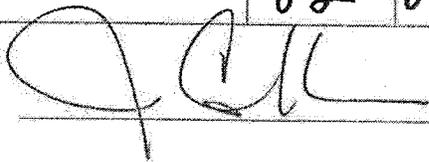
Aslanides

CHAIRMAN

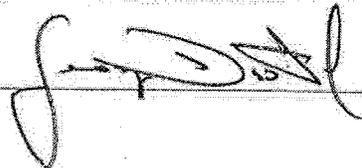
Distel

SECRETARY

MEMBERS	PRESENT	HB 71		238							
		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
Aslanides - C	✓	✓		✓							
Wagner - VC	✓	✓		✓							
Core	✓	✓		✓							
Distel	✓	✓		✓							
Dodd	✓	✓		✓							
Domenick	✓	✓		✓							
Evans	✓	✓		✓							
Gibbs	✓	✓		✓							
Goodwin	✓	✓		✓							
Harwood	✓	✓		✓							
Heard	✓	✓		✓							
Hite	✓	✓		✓							
Huffman	✓	✓		✓							
Luckie	✓	✓		✓							
McGregor	✓	✓		✓							
Okey	✓	✓		✓							
Reinhard	✓	✓		✓							
Sayre	✓	✓		✓							
Schlichter	✓	✓		✓							
Strahorn											
Ujvagi	✓	✓		✓							
Yates	✓	✓		✓							
Zehringer	✓	✓		✓							
TOTAL	22	22	0	22	0						



CHAIRMAN



SECRETARY



Jim Aslanides

State Representative, 94th House District

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

Chairman: Aslanides

June 20, 2007

Chairman Aslanides called the House Agriculture and Natural Resources Committee to order at 8:35 a.m. on Wednesday, June 20, 2007. The roll was taken. With a quorum not present, the committee acted as a Sub. Committee.

The Chairman called for House Bill 223 to be referred back to the House Rules and Reference Committee. Following a question by Representative Luckie, the re-referral was moved by Representative McGregor and seconded by Representative Luckie. With no objections to the motion, the bill was re-referred.

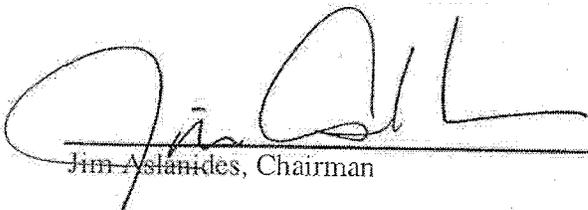
With a quorum present, the committee now operated a full committee.

The Chairman called Substitute House Bill 71 for its fourth hearing. Stephanie Krider, aide to Representative White, explained various changes to the Substitute Bill. Following her testimony, the Substitute Bill was moved by Vice-Chairman Wagner and seconded by Representative Zehringer. With no objections to the motion, the Substitute Bill was accepted. Ms. Krider fielded questions and comments from Representatives Yates, Luckie, Domenick, and Chairman Aslanides. Following questions and comments, Chairman Aslanides then asked for the wishes of the committee for Substitute HB 71. Chairman Aslanides moved passage of the bill. Representative McGregor seconded the motion. The secretary called the roll and the bill passed 22-0.

The Chairman called House Bill 238 for its second hearing. Larry Mitchell, from the League of Ohio Sportsmen, presented Proponent Testimony. Following his testimony, Aaron Dynes of Duck Unlimited presented Proponent Testimony. Following his testimony, Troy Conley of the National Wild Turkey Federation presented Proponent Testimony. Following his testimony, Dean Koch, testifying as a private citizen, presented Opponent Testimony. Following his testimony, Chairman Aslanides asked for the wishes of the committee. Representative McGregor moved passage of the bill and Representative Zehringer seconded the motion. The secretary called the roll and the bill passed 22-0.

The Chairman called Senate Bill 77 for its fourth hearing. Sean Logan, Director of the Ohio Department of Natural Resources, presented Proponent Testimony. Following his testimony, Director Logan fielded questions and comments from Representatives Luckie, Hite, Ujvagi, Zehringer, McGregor, Huffman, Domenick, Yates, Reinhard, Evans, and Chairman Aslanides.

With no further business, Chairman Aslanides adjourned the committee at 9:55 a.m.


Jim Aslanides, Chairman


George Distel, Secretary

Committee:

Agriculture and Natural Resources, Chairman;
Infrastructure, Homeland Security and Veterans Affairs;
Economic Development and Environment

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(800) 282-0253 (toll free)

Representative Distel submitted the following report:

The standing committee on Agriculture and Natural Resources
to which was referred HB No. 238

Representative (s)/Senator (s) Latta and J. Stewart

having had the same under consideration,

- reports it back and recommends its (passage/adoption).
- reports it back with the following amendment(s) and recommends it (passage/adoption) when so amended.
- reports it back as a substitute bill and recommends its (passage/adoption).

RE:

Representative Aslanides moved to amend the title as follows:

Add the names: Aslanides, Distel, Goodwin, Hoffman, Sayre, Hite, Luckie

YES

NO

[Handwritten signatures and names, many with asterisks, indicating a vote record. An arrow points from the 'NO' column to the 'YES' column.]

YES: *[Signatures: John [unclear], Jim [unclear], Jeff [unclear], Jim [unclear], Steve Bernhard, Anthony [unclear], Ben [unclear], Matt [unclear], [unclear]]*

NO: *[Signatures: * [unclear], Tyronne K. Yates, [unclear], Clyde Evans, [unclear], [unclear], [unclear], [unclear], [unclear], [unclear], [unclear], [unclear], [unclear]]*

Date: 6-20-07

**OHIO HOUSE OF REPRESENTATIVES
WITNESS INFORMATION FORM**

Name: Troy Conley

LEGISLATION to which you are submitting testimony:

Bill Number: 238

Proponent

Opponent

Interested Party

Organization: National Wild Turkey Federation

Address: 13464 Wadlow Rd Sardinia Ohio 45171

Telephone: 937-446-1882

Comments:

House Agriculture and Natural Resources Committee
Testimony by Troy Conley, Regional Director, National Wild Turkey Federation
HB 238, June 20, 2007

Good morning Mr. Chairman and members of the committee. I am Troy Conley, an avid deer and turkey hunter, and Regional Director for the National Wild Turkey Federation, known as NWTF. The NWTF is a national 501(c)(3) nonprofit conservation and education organization dedicated to conserving wild turkeys and preserving hunting traditions. Growth and progress define the NWTF as it has expanded from 1,300 members in 1973 to 545,500 today. Together, the NWTF's conservation partners and grassroots members have raised and spent more than \$230 million upholding hunting traditions and conserving more than 11.3 million acres of wildlife habitat across the country. In Ohio we have Chapters in all 88 Counties and over 16900 members state wide and I know many of you have attended our banquets.

I am here to support the passage of House Bill 238, the increase of wildlife restitution fees. This issue has not been addressed in many years and it is way past time. Your help in this area is greatly appreciated. Since this bill was introduced I have asked many people's opinions about the issue, and I have had a 100% favorable response rate. Everyone feels that this is the right thing to do to assist the courts and wildlife officers in prosecuting poachers.

Many of us have read the stories in the newspaper about some of the outrageous poaching cases in Ohio. The punishment never fits the crime. Too often the poachers are given a slap on the wrist. Ohio's wildlife and the public deserve better. Our rich wildlife, and primarily deer and turkeys, are highly sought after by good law abiding hunters and greedily pursued by poachers. We need to make the poachers think twice before illegally taking deer and turkeys from the citizens of Ohio.

The National Wild Turkey Federation thanks you for your time and thoughtful consideration of this issue. We respectfully request your support of House Bill 238. I will gladly answer any questions you may have.

Date: 6-20-07

**OHIO HOUSE OF REPRESENTATIVES
WITNESS INFORMATION FORM**

Name: Dean Koch

LEGISLATION to which you are submitting testimony:

Bill Number: 238

Proponent

Opponent

Interested Party

Organization: DEAN KOCH

Address: 204 NORWOOD SANDUSKY

Telephone: 419-684-5991

DE/CO 40870

Comments:

No written testimony

Date: 6/20/07

**OHIO HOUSE OF REPRESENTATIVES
WITNESS INFORMATION FORM**

Name: Larry Mitchell

LEGISLATION to which you are submitting testimony:

Bill Number: 203 (238)

Proponent Opponent _____ Interested Party _____

Organization: League of Ohio Sportswomen

Address: 642 W Broad St Col 43215

Telephone: 2248970

Comments:



League of Ohio Sportsmen

The Ohio affiliate of the National Wildlife Federation

Established 1908

House Agriculture and Natural Resources Committee
Testimony by Larry Mitchell, President, League of Ohio Sportsmen
HB 238, June 20, 2007

Good morning Mr. Chairman and members of the committee. I am Larry Mitchell, president of the League of Ohio Sportsmen. On behalf of over 200,000 Ohioans who are League members and members of our affiliated conservation organizations throughout the state, I am here today in strong support of HB 238. The League will celebrate our 100th anniversary next year and has a strong tradition of caring about Ohio's wildlife and Ohio's hunters. The League of Ohio Sportsmen is one of the founding affiliates of the National Wildlife Federation, which was founded in 1936 when President Franklin D. Roosevelt convened the first North American Wildlife Conference to stimulate public interest in the management and development of America's natural resources.

League members spend countless hours volunteering with youth teaching safe hunting, fishing and trapping, raising money for improved wildlife habitat for all wildlife, and fostering the conservation ethic among youth and adult hunters. We want people to enjoy hunting and we want them to do it legally.

Poachers steal from all Ohioans. When a deer or a turkey is taken illegally, it is no longer available for hunters to hunt or for wildlife watchers to see. And if it is a trophy quality animal we have an additional loss of genetic material for the breeding stock to pass along. Ohio has a high quality deer population that is eagerly sought after by both residents and non-residents, who all spend a lot of money to pursue this great resource.

Poachers don't take just one animal. There have been numerous cases in recent years involving multiple deer, turkeys, small game and sometimes endangered species for which there is no legal hunting season. Ohio's laws regarding fines and restitution for wildlife violations have not been updated in years and in many cases are so low that poachers consider them a "cost of doing business." HB 238 would change that and make poachers take our wildlife laws seriously.

We respectfully urge your support to pass HB 238. Your time and consideration is greatly appreciated, and I would be happy to answer any questions you may have.

Date: 6/20/07

**OHIO HOUSE OF REPRESENTATIVES
WITNESS INFORMATION FORM**

Name: Aaron Dykes

LEGISLATION to which you are submitting testimony:

Bill Number: H.B. 238

Proponent Opponent Interested Party

Organization: Dukes Unlimited

Address: 1014 Mills Rd

Telephone: 937 382 8518

Comments:

No written testimony

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
County Courts of Common Pleas, Municipal Courts, County Courts			
1 1 1 1 Revenues	Minimal gain in court fees	Minimal gain in court fees	Minimal gain in court fees
1 1 1 1 Expenditures	Minimal increase in court costs	Minimal increase in court costs	Minimal increase in court costs
County Jails			
1 1 1 1 Revenues	- 0 -	- 0 -	- 0 -
1 1 1 1 Expenditures	Minimal increase in incarceration costs	Minimal increase in incarceration costs	Minimal increase in incarceration costs

Note:1 For most local governments, the fiscal year is the calendar year.1 The school district fiscal year is July 1 through June 30.

- ? **Courts' costs.**1 If more arrests are made as a result of the bill, local courts may experience a minimal gain in revenue from court fees and fines if the offender is convicted.1 These revenues will likely offset any administrative expenses associated with hearing cases.1
- ? **County incarceration costs.**1 In the case where the offender is convicted and required to serve jail time, county jails may experience an increase in incarceration costs to house the offender.

Detailed Fiscal Analysis

The bill revises provisions governing the restitution value of a wild animal that is unlawfully held, taken, bought, sold, or possessed.

Background

Under current law, no person shall buy, sell, or offer any part of wild animals for sale, or transport any part of wild animals, except as permitted by the Revised Code or Division rules (R.C. 1531.02).¹

In general, violators are guilty of a misdemeanor of the fourth degree (maximum fine of \$250 and 30 days' jail time); however, if the violation concerns the taking or possession of a deer, a person is guilty of a misdemeanor of the third degree (maximum fine of \$500 and 60-day jail term) on the first offense, and on each subsequent offense a person is guilty of a misdemeanor of the first degree (maximum fine of \$1,000 and six-month jail term) (R.C. 1531.99).¹ Furthermore, a violator who is convicted of or pleads guilty to the offense is required to make restitution for the minimum value of the wild animal held, taken, or possessed.¹ The minimum value to be paid for a variety of wild animals is provided in R.C. 1531.201, ranging from \$25 for each nongame bird up to \$1,000 for each eagle.

Also, whoever is convicted of buying, selling, or offering for sale any wild animal or parts of wild animals, and the minimum value of which animals or parts, in aggregate is \$1,000 or more, is guilty of a felony of the fifth degree (R.C. 1531.99).¹ The maximum fine for a fifth degree felony is \$2,500 and a state prison term of 6 to 12 months.

To illustrate a likely outcome under current law, if a first-time violator is found guilty of illegally taking two white-tailed deer, a third degree misdemeanor would result in a maximum fine of \$500 and a maximum sentence of 60 days in jail.¹ In addition to the fine amount and potential jail time, the violator may be required to pay the restitution value of each deer, currently \$400 for each.¹ In all, the violator would be required to pay a total fine amount of \$1,300.

All fine money collected for misdemeanor or felony convictions is credited to either the county treasury or municipal treasury depending on which court hears the case.¹ All money collected for payment of restitution is credited to the Wildlife Fund (Fund 015).¹ If restitution payment is not made the violator's license may be revoked and hunting privileges suspended.¹

The bill

The bill retains the current criminal penalties (misdemeanor and jail time) but modifies the minimum restitution values.

(A) Restitution values

The bill eliminates amounts established in current law for the restitution value of certain wild animal species, and instead requires the minimum restitution values for wild animals to be established by Division rule.¹ The bill also creates an additional restitution value in statute specific to white-tailed deer based on a gross scoring system.

Note that the statutory dollar values for white-tailed deer are based on a gross score greater than 125.¹ The value for white-tailed deer with a score less than 125 is defined by Division rule.

(1) All other species (by rule).¹ The Division of Wildlife provided LSC with a list of some of the new restitution values the Department is proposing to establish by rule.¹ The restitution value listed for white-tailed deer is based on a Boone-Crockett gross score of less than 125.¹ The Boone-Crockett method is a measurement system accepted by the hunting industry that hunters can use to "score" the size of their big game trophies.¹ In the case of deer, the antlers are measured, whereas in the case of bear or cougar, head and jaw size is measured.¹

However, there does not appear to be a common multiplier used to determine the new values, further, in some cases the value does not change for certain species.¹ Thus, ODNR's proposed values are based more so on perceived or suggested market value rather than formula-based.¹ It is possible these values may change by the time the Division officially promulgates the rules.

Table 1.a Old and Proposed New Restitution Values

Type or Wild Animal	Old Restitution Value	New Restitution Value
Timber Rattlesnake	Not specified*	\$2,500
Massasauga Rattlesnake	Not specified*	\$2,500
Peregrine Falcons	Not specified*	\$2,500
Eagle	\$1,000	\$2,500
Bear	Not specified*	\$1,000
Wild Turkey	\$300	\$500
River Otter	Not specified*	\$500
White-Tailed Deer	\$400	Antlered - \$500; Antlerless - \$250
Nongame Bird	\$25	\$100
Game Bird	\$50	\$50
Various Fish Species	\$10	\$50
Game Quadruped	\$50	\$50
Endangered or Threatened Species	\$1,000	Endangered - \$1,000
		Threatened - \$750

* May have been classified as "Other wild animal" with a value of \$200, or if endangered classified as "Endangered" with a value of \$1,000.

(2) White-tailed deer (Statutory).¹ For white-tailed deer with a gross score of 125 or greater, the bill creates a separate gross scoring system that considers several measurements of the deer antlers including length of the main antler beam, total length of abnormal points, total length of normal points, and various circumference measurements.¹ The overall restitution value is based on the Boone-Crockett model and is calculated from the following formula:

$$\text{Additional restitution value} = (\text{gross score} \square 100)^2 \times \$1.65$$

The table below provides examples of the gross score and the new restitution value that will be required to be paid for white-tailed deer with a gross score greater than 125.

Table 2.a Gross Score and Additional Restitution Values

Gross Score Based on Measurements per R.C. 1531.201	Formula Restitution Value per Formula
125	\$1,031
150	\$4,125
175	\$9,281
200	\$16,500
225	\$25,781

Looking back at the earlier example, a first-time violator was found guilty of illegally taking two white-tailed deer (gross score of 150 each) and received a third degree misdemeanor. Under the bill, instead of paying \$500 for the misdemeanor and making two payments of \$400 each for the restitution value, the violator would still pay the \$500 for the misdemeanor since that portion of current law is unchanged, but would now pay \$4,125 for each deer. Overall, the total fine would increase from \$1,300 under current law to \$8,750 under the bill.

Fiscal impact to the Division of Wildlife

The largest impact to the Department is likely to be from the change in restitution values based on the new gross scoring system for white-tailed deer.

Limited data. Currently the Division of Wildlife cannot accurately track restitution amounts collected. The Division reports that the courts do not distinguish between fines or restitution when they forward the revenue to the Division. As reference, the Wildlife Fund (Fund 015) receives approximately \$500,000 annually from all wildlife fines and penalties, not just fines and restitution for poaching violations. At this point, it is not apparent how much of this annual revenue comes from fines and restitution payments for poaching violations.

Though the amount of restitution payments is unclear, the Division of Wildlife speculated that on average in a year there may be one illegal taking with a gross score over 200, two to three illegal takings around 170, and approximately eight to ten illegal takings at 150. Further, the Division notes that the average score for deer is around 150. The Department notes that these estimates are by no means definitive, as the Division of Wildlife does not routinely score or record confiscated antlers. Thus, until evidence from the data becomes clearer, estimating the additional restitution value for white-tailed deer under the bill may be problematic.

Revenue estimate. However, going on the assumption that the averages mentioned above are reliable, and focusing specifically on the restitution payments for white-tailed deer, with the new restitution values, the Wildlife Fund (Fund 015) is likely to experience a gain of around \$100,000, more or less, per fiscal year. On the one hand, with ten violations at \$4,125, three violations at \$9,281, and one violation at \$16,500, Fund 015 may experience a gain of \$85,000 per fiscal year. On the other hand, it is possible that, due to increase in restitution values, the number of violations may actually decrease, resulting in a corresponding decrease in revenue. Also, note that the bill would allow, not require, judges to order restitution. This may further affect revenues received from this source.

Fund 015 is also likely to experience increased revenue from poaching cases involving other species such as various birds and fish. Though difficult to determine, it is possible the Division may realize a few thousand dollars in additional revenue from the increased restitution values from other species as well.

Administrative costs. As far as added administrative costs, the Division of Wildlife indicates that no additional staff or resources will likely be needed. It is possible that additional staff time and office resources may be dedicated toward sending notice to violators regarding the revocation of their license, assisting in civil action cases, adopting new rules, and providing assistance regarding the new measurement requirements and gross scoring system.

Fiscal impact to local courts

Local courts appear to be the only local government entity that would be directly affected by the provisions of the bill. □ Depending on the criminal charge, county courts of common pleas, municipal courts, and county courts may be impacted. □ Whether or not these courts will see an increase in cases is unknown. □ Currently, there is no statewide caseload data available to indicate the number of poaching cases brought forth and the amount of fines and restitution currently paid, making it difficult to estimate the number of these cases that may result under the bill. □ It is possible that there may be fewer cases as the increase in restitution payments may result in a reduction in criminal activity. □ However, as with current poaching cases brought forth, courts may continue to experience a minimal gain in revenue from court fees and fines. □ These revenues will likely offset any administrative expenses associated with hearing poaching cases.

In misdemeanor cases, any fines ordered to be paid are credited to either the county treasurer or the municipal treasury depending on which court hears the case. □ Furthermore, for each conviction \$24 in state court costs is assessed. □ Of this amount, \$15 is credited to the state General Revenue Fund and \$9 is credited to the Reparations Fund (Fund 402) within the Attorney General's Office. □ In cases where a judge orders both a fine to be paid and jail time to be served, jail systems, be it county jail or state prison, may experience an increase in incarceration costs. □ However, such costs are likely to be minimal. □ A sentence to state prison would only occur in the case of a fifth degree felony where the violator bought or sold an animal and/or its parts with a combined aggregate value of \$1,000 or more.

Overall, the amount of ordered fine payments and restitution payments will likely vary by court jurisdiction as well as the offender's ability to pay. □ As mentioned earlier, all statutory restitution payments would be credited to the Wildlife Fund (Fund 015). □ Whether or not a judge will order the full restitution payment is unknown. □ Note that while current law requires judges to order violators to pay restitution, the bill changes this to allow judges to do so. □ This could potentially cause the number of cases where restitution is paid to drop, and consequently mitigate any gains in revenue resulting from the change in restitution value amounts.

Wildlife restitution in other states

To provide some insight into the restitution payments of other states, LSC surveyed a few other states around the nation. LSC learned that several states have increased their restitution payments in the last ten years and have similar statutes, comparable restitution amounts, criminal penalties, and license revocation requirements.

Texas. In 2004, the Texas Parks and Wildlife Department adopted new rules regarding the restitution values for wildlife species. Like Ohio, Texas created new values for trophy species (white-tailed deer, mule deer, pronghorn antelope, and desert sheep) and new values for all other species. The method used to determine the new values for all other species was based on the Consumer Price Index (CPI) increase of 1.677 points from 1986 to 2003. For example, a species with a value of \$63.00 was multiplied by 1.677 for a new value of \$105.50. The new rules for calculating the value of trophy species is the same as the "Additional Restitution Formula" proposed under the bill.

The fiscal note accompanying the rules stated that the new rules are likely to generate an additional \$15,835 per year for all trophy wildlife species (largely white-tailed deer), i.e., calculated under "Additional Restitution Formula," and \$70,393 per year for all other wildlife species. Prior to the new rules, the Department's five-year average yearly recovery for white-tailed deer was \$8,324. Overall, the Department reports that the level of poaching cases has remained the same even with the increased restitution payments and has not acted as a deterrent as originally anticipated. Furthermore, the Department indicates that the gross score of the average deer in Texas is around 125.

Kansas. Kansas' Wildlife Code lists restitution values for several wildlife species, some of those values are as follows: eagles - \$1,000; deer or antelope - \$400; elk or buffalo - \$600; and hawks and falcons - \$200.

Washington. Examples of criminal wildlife penalties assessed for illegally taken or possessed wildlife in Washington are as follows: moose, mountain sheep, or mountain goat - \$4,000; elk, deer, black bear, and cougar - \$2,000; trophy animal elk and deer - \$6,000; mountain caribou, grizzly bear, trophy mountain sheep - \$12,000. Washington statutes also include doubling of the penalties for the intent to barter or sell the animal, when (1) spotlighting was involved, or (2) when the violator had a similar conviction within five years. Furthermore, a violator will have his license revoked and hunting privileges suspended until all penalty payments have been made.

LSC fiscal staff: Jonathan Lee, Senior Budget Analyst

Brian Hoffmeister, Budget Analyst

HB0238EN/cm