

Legislative Analysis



PUBLIC EMPLOYEES: PROHIBIT TAMPERING WITH DATA

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4289 as introduced
Sponsor: Rep. Phil Phelps
Committee: Law and Justice

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4076 as introduced
Sponsor: Rep. Klint Kesto
1st Committee: Judiciary
2nd Committee: Law and Justice

Complete to 4-21-17

SUMMARY:

House Bill 4289 would add a new section to the Michigan Penal Code (proposed MCL 750.491a) to prohibit a public employee or officer from directly, or indirectly by instructions to another person, intentionally alter, conceal, destroy, or otherwise tamper with data used in preparing an official report for the purpose of falsifying or misrepresenting the data or misleading a person relying on the report. A violation would be a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$5,000.

House Bill 4076 makes a complementary amendment to sentencing guidelines within the Code of Criminal Procedure (MCL 777.16x) to specify that the intentional alteration of data with intent to mislead would be a Class E felony against the public trust with a maximum term of imprisonment of five years. The bill is tie-barred to House Bill 4289. The bills would take effect 90 days after enactment.

Under House Bill 4289, a public employee or officer could assert an affirmative defense that he or she acted to comply with a directive or other requirement from a superior. The bill's provisions would not impair any right created under the Whistleblowers' Protection Act.

"Official report" would be defined to mean a report prepared in the course of the public employee's or officer's duties for submission or distribution to a governmental body for use in decisions regarding public policy. The term would not include a research report prepared primarily for the purpose of contributing to the scientific community's or the general public's knowledge.

"Public employee or officer" would mean an employee or officer of the state; of a city, village, township, or county of the state; or of a department, board, agency, institution, commission, authority, division, council, or other public entity of the state or of a city,

village, township, or county in the state. The term would include an individual whose position results from election or appointment.

FISCAL IMPACT:

HB 4289 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. Information is not available on the number of persons that might be convicted under the provisions of the bill, but new felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

HB 4076 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

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