

Legislative Analysis



PROHIBIT USE OF GAME LOCATION INFORMATION OBTAINED UNDER FOIA TO TAKE GAME

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House Bill 4735 as reported from committee
Sponsor: Rep. Scott VanSingel

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

House Bill 4736 as reported from committee
Sponsor: Rep. John D. Cherry

House Bill 4737 as reported from committee
Sponsor: Rep. Leslie Love

1st Committee: Natural Resources and Outdoor Recreation

2nd Committee: Judiciary

Complete to 2-19-20

BRIEF SUMMARY: Collectively, House Bills 4735, 4736, and 4737 would provide penalties, under certain circumstances, for a person who requests game location records under the Freedom of Information Act (FOIA) and uses that information to take game.

FISCAL IMPACT: House Bill 4735 would have an indeterminate fiscal impact on the state and on local units of government, while HB 4736 is unlikely to affect costs or revenues for the Department of Natural Resources (DNR) and HB 4737 would not have a direct fiscal impact on the state or on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

According to committee testimony, in 2010 and 2011 a person filed a FOIA request with the DNR for grouse population locations that were derived from an ongoing grouse survey. The person then used that information to hunt grouse. The DNR had a clear indication of what the person was doing with the information and had to discontinue the survey in 2015 when the population results became noticeably skewed. The DNR conducts many surveys and studies in Michigan to monitor wildlife to develop management practices designed to ensure that Michigan resources can flourish, or at least be maintained, for years to come. These surveys and studies frequently record wildlife populations to further this goal. Some believe that if wildlife population locations can continue to be requested under FOIA and used for hunting, then the surveys and studies would no longer serve Michigan in monitoring wildlife resources. Legislation has been offered to prohibit the use of FOIA to obtain information from the DNR for that purpose.

THE CONTENT OF THE BILLS:

House Bill 4736 would amend the procedures in FOIA for responding to a request for a public record.

Currently, a public body is required to respond to a request for a public record within five business days after receiving the request by doing one of the following:

- Granting the request.
- Issuing a written notice to the requesting person denying the request.
- Granting the request in part and issuing a written notice to the requesting person denying the request in part.
- Issuing a notice to extend the response time by not more than 10 business days. (An extension may only be issued once per request.)

Under House Bill 4736, if the request were made to the FOIA coordinator for the DNR for records relating to the specific location of game obtained by the DNR during any restoration, management, or research project, or through the expenditure of money, then the DNR would have to do one of the following:

- Respond in one of the four ways described above.
- Grant the request on the condition that the requesting person sign a form indicating that the person will not use the information of game location to take game or to assist others in the taking of game.

MCL 15.235

House Bill 4735 would amend Part 401 (Wildlife Conservation) in the Natural Resources and Environmental Protection Act (NREPA) by imposing current penalties for the taking of certain game on an individual who signs a FOIA agreement described in HB 4736 and uses game location information obtained through FOIA to take game,¹ as follows:

- For the taking of game except deer, bear, wild turkey, wolf, waterfowl,² moose, or elk, the individual would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of \$100 to \$1,000, or both, and the costs of prosecution.
- For the taking of deer, bear, wild turkey, or wolf, the individual would be guilty of a misdemeanor and must be punished by imprisonment for 5 to 90 days, a fine of \$200 to \$1,000, and the costs of prosecution. In addition, the individual would be prohibited from getting or having a hunting license for the rest of the year and the next three calendar years.
- For the taking of elk, the individual would be guilty of a misdemeanor punishable by imprisonment for 30 to 180 days or a fine of \$500 to \$2,000, or both, and the costs of prosecution. In addition, the individual would be prohibited from getting or having a hunting license for the rest of the year and either for the next 15 calendar years (for a first offense) or for life (for a second offense).

¹ Note: Although the agreement proposed in HB 4736 would include a person's use of game location information to assist others in the taking of game, the penalties proposed by HB 4735 appear to only address situations in which an individual signs the form under FOIA and takes the game himself or herself.

² Note: HB 4735 as written does not provide any penalties for using game location information to take **waterfowl**.

- For the taking of moose, the individual would be guilty of a misdemeanor punishable by imprisonment for 90 days to one year, a fine of \$1,000 to \$5,000, and the costs of prosecution. In addition, the individual would be prohibited from getting or having a hunting license for the rest of the year and either for the next 15 calendar years (for a first offense) or for life (for a second offense).

MCL 324.40118

House Bill 4737 would amend the Code of Criminal Procedure to account for citation changes that would be necessitated by HB 4735.

MCL 777.13e

Tie-bars: House Bills 4735 and 4736 are tie-barred to one another, and House Bill 4737 is tie-barred to HB 4735. A bill cannot take effect if a bill to which it is tie-barred is not enacted.

FISCAL INFORMATION:

House Bill 4735 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Costs to local court systems could be offset under provisions of the bill that require convicted individuals to cover costs of prosecution. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4735 may reduce hunting license revenue for the DNR if an individual is convicted of illegal taking of game and forced to forfeit his or her right to purchase a hunting license for the durations specified in the bill. The extent of potential revenue loss is uncertain because the number of individuals who could be subject to these penalties is unclear. The sale of hunting and fishing licenses generated a combined \$60.5 million in revenue in FY 2017-18. This revenue is deposited to the Game and Fish Protection Fund, which primarily supports wildlife and fisheries programs as well as DNR law enforcement. The bill is unlikely to affect departmental costs or local government costs or revenues.

House Bill 4736 is unlikely to affect costs or revenues for the DNR. The bill is also unlikely to affect local government costs or revenues.

House Bill 4737 is a companion bill to HB 4735 and amends sentencing guidelines. The bill would not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

The DNR conducts various wildlife studies, which include population data that can be critical to the studies' purposes and outcomes, such as knowing population health. Supporters of the bills argue that using location information from these ongoing studies to then hunt the wildlife that is being observed and recorded both skews the data and renders the studies useless—taking a toll on Michigan's natural resources while at the same time wasting its fiscal resources on unfinished studies. Supporters also argue that technological advances have provided hunters with other means for finding game, such as trail cameras and fish finders, and that the population data information is not needed in light of that technology.

Against:

Critics of the bills argue that DNR surveys and studies are public information, paid for by the public, and should remain publicly available to anyone for use as that person sees fit. Furthermore, they argue that a precedent could be established: after banning FOIA requests to find wildlife population locations, a prohibition on such other wildlife locators as trail cameras and fish finders could be next.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- Department of Natural Resources (9-3-19)
- Michigan United Conservation Clubs (9-17-19)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.