

## ALLOW CERTAIN DATA RELATING TO LOCATION OF GAME TO BE EXEMPTED FROM FOIA DISCLOSURE

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**House Bill 4050 as reported from committee**

**Sponsor: Rep. John D. Cherry**

**Committee: Natural Resources and Outdoor Recreation**

**Complete to 3-23-21**

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

**BRIEF SUMMARY:** House Bill 4050 would amend the Freedom of Information Act (FOIA) to allow the exemption from disclosure of certain data relating to the location of game.

**FISCAL IMPACT:** House Bill 4050 may allow the Department of Natural Resources (DNR) to realize costs savings on FOIA requests that meet the conditions specified in the bill, although such savings are unlikely to be significant. The bill is unlikely to affect DNR revenues or local government costs or revenues.

### **THE APPARENT PROBLEM:**

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. This information is currently subject to disclosure under FOIA. According to committee testimony regarding similar bills introduced in the 2019-20 legislative session,<sup>1</sup> 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. Some believe that if wildlife population locations can continue to be requested under FOIA and used for hunting, then the surveys and studies will 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 BILL:**

Under FOIA, public records are generally required to be made publicly available. However, FOIA also includes a list of exempted information that a public body is not required to disclose. The bill would add to this list, and allow a public body to exempt from disclosure, records or information that would reveal the specific location or GPS coordinates of *game*, including records or information of the specific location or GPS coordinates obtained by the DNR during any wildlife restoration, management, or research project conducted under section 40501 of the Natural Resources and Environmental Protection Act (NREPA)<sup>2</sup> or in connection with the expenditure of money under section 43553 of NREPA.<sup>3</sup>

<sup>1</sup> House Bills 4735, 4736, and 4737 of 2019-20: <http://legislature.mi.gov/doc.aspx?2019-HB-4735>

<sup>2</sup> <http://legislature.mi.gov/doc.aspx?mcl-324-40501>

<sup>3</sup> Section 43553 addresses the disposition of money received from the sale of passbooks and licenses and other payments, grants, and funds under Part 435 (Hunting and Fishing Licensing): <http://legislature.mi.gov/doc.aspx?mcl-324-43553>

**Game** would mean any of the animals listed in section 40103 of NREPA as well as any species of wildlife designated by the legislature or the Natural Resources Commission as game under section 40110. Game would not include privately owned cervidae (deer) species located on a cervidae livestock facility registered under the Privately Owned Cervidae Producers Marketing Act.<sup>4</sup>

MCL 15.243

**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 bill 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. Moreover, these technological advances in finding game have been an enhancement to the fair chase principles that hunters and anglers observe, while using FOIA to gain information from DNR studies subverts the process altogether and counteracts fair chase principles.

**Against:**

Although no arguments were presented during committee testimony on this bill, in past hearings critics of the proposed FOIA exemption have argued 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, a precedent could be established: after banning FOIA requests to find wildlife population locations, a prohibition on other wildlife locators such as trail cameras and fish finders could be next.

**POSITIONS:**

Representatives of the following entities testified in support of the bill (3-4-21):

- Department of Natural Resources
- Michigan United Conservation Clubs

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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.

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<sup>4</sup> The list of animals specified as game under section 40103: <http://legislature.mi.gov/doc.aspx?mcl-324-40103>.