

Legislative Analysis



PROHIBIT USE OF FOIA INFORMATION REGARDING GAME LOCATION TO TAKE GAME

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House Bill 4735 as referred to second committee
Sponsor: Rep. Scott VanSingel

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

House Bill 4736 as referred to second committee
Sponsor: Rep. John D. Cherry

House Bill 4737 as referred to second committee
Sponsor: Rep. Leslie Love

1st Committee: Natural Resources and Outdoor Recreation
2nd Committee: Judiciary
Complete to 10-28-19

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 an individual filed a FOIA request with the DNR for grouse population locations that were derived from an ongoing grouse survey. The individual then used that information to hunt grouse. The DNR had a clear indication of what the individual 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 ensure that Michigan resources continue for years to come. These surveys and studies frequently record wildlife populations to further this goal. Some people 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 proposed to prohibit the use of FOIA information from 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 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 Bills 4735 and 4736 are tie-barred to one another, which means that neither could take effect unless both were enacted.

House Bill 4737 would amend the Code of Criminal Procedure to account for citation changes that would be necessitated by HB 4735. House Bill 4737 is tie-barred to HB 4735, which means that it could not take effect unless HB 4735 were enacted.

MCL 777.13e

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 Department of Natural Resources. 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 studies on various wildlife, which includes population numbers that can be critical to the outcomes of those studies, such as knowing population health. Supporters of the bills argue that using location information from the ongoing studies to then hunt the wildlife skews the data and renders the studies useless, thus putting Michigan's precious resources in danger of extermination.

For:

Supporters of the bills also argue that the population information is not needed in our current high-tech world. Current technology advances enable hunters to use other means for finding game, such as trail cameras and fish finders. Relying on DNR studies and surveys for population locations would not only deteriorate the scientific integrity of those studies, but also ruin the fair chase of hunting and fishing and encourage unsportsmanlike conduct.

Against:

Critics of the bills argue that the DNR surveys and studies are public, and so should remain public. These critics also argue that publicly available data should be available to anyone and for any purpose that individual sees fit.

Opponents of the bills further argue that a precedent could be established: after banning FOIA requests to find wildlife population locations, trail cameras and fish finders could be next, as those also locate wildlife.

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.