Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. H.B. 238** DATE: **October 3, 2007**

STATUS: **As Passed by the House** SPONSOR: **Reps. Latta and J. Stewart**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **To revise provisions governing the restitution value of a wild animal that is unlawfully held, taken, bought, sold, or possessed**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
Wildlife Fund (Fund 015)			
Revenues	Potential gain in wildlife restitution revenue	Potential gain in wildlife restitution revenue	Potential gain in wildlife restitution revenue
Expenditures	Minimal increase in administrative costs	Minimal increase in administrative costs	Minimal increase in administrative costs
General Revenue Fund (GRF)			
Revenues	Minimal increase in state court cost revenues	Minimal increase in state court cost revenues	Minimal increase in state court cost revenues
Expenditures	Minimal increase in incarceration costs	Minimal increase in incarceration costs	Minimal increase in incarceration costs
Reparations Fund (Fund 402)			
Revenues	Minimal increase in state court cost revenues	Minimal increase in state court cost revenues	Minimal increase in state court cost revenues
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.

- ***Wildlife restitution revenue*.** The Wildlife Fund (Fund 015) may experience a gain in wildlife restitution revenue due to an increase in possible restitution payments, in the range of $100,000 per fiscal year. Revenues will ultimately depend on the number of cases where restitution is required to be paid and the offender's ability to pay.

- ***Administrative expenses*.** The Division of Wildlife may experience a minimal increase in administrative expenses to send notice to violators regarding the revocation of their license, assist in civil action cases, adopt new rules, and provide assistance regarding the new measurement requirements and gross scoring system.

- ***Incarceration costs*.** If more violators are convicted of a fifth degree felony, it is possible that additional offenders could be sentenced to state prison. This may result in a minimal increase in annual incarceration costs to the Department of Rehabilitation and Correction (DRC). Any costs would impact the DRC's GRF budget.

- ***State court cost charges*.** Also, if more violators are convicted of a misdemeanor or felony, they will be required to pay state court costs. State court costs are $24 per case with $15 credited to the state GRF and $9 credited to the Reparations Fund (Fund 402) within the Attorney General's Office.

Local Fiscal Highlights

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

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

- ***Courts' costs*.** 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. These revenues will likely offset any administrative expenses associated with hearing cases.

- ***County incarceration costs*.** 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).

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). 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. 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). 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. 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. 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. All money collected for payment of restitution is credited to the Wildlife Fund (Fund 015). If restitution payment is not made the violator's license may be revoked and hunting privileges suspended.

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. 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. The value for white-tailed deer with a score less than 125 is defined by Division rule.

***(1) All other species (by rule)*.** The Division of Wildlife provided LSC with a list of some of the new restitution values the Department is proposing to establish by rule. The restitution value listed for white-tailed deer is based on a Boone-Crockett gross score of less than 125. 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. In the case of deer, the antlers are measured, whereas in the case of bear or cougar, head and jaw size is measured.

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. Thus, ODNR's proposed values are based more so on perceived or suggested market value rather than formula-based. It is possible these values may change by the time the Division officially promulgates the rules.

Table 1. 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)*.** 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. The overall restitution value is based on the Boone-Crockett model and is calculated from the following formula:

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

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. 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.

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