

HB 4030 -5 STAFF MEASURE SUMMARY

House Committee On Agriculture and Natural Resources

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/6, 2/15

WHAT THE MEASURE DOES:

Allows courts to impose a misdemeanor fine under ORS 161.635 or a compensatory fine not exceeding the damages under ORS 496.705(2), in addition to incarceration, if a person is convicted of misdemeanor for unlawful taking or killing of wildlife on or after January 1, 2019. Requires compensatory fines be made payable to the Oregon Fish and Wildlife Commission (OFWC). Reduces amount recoverable as damages for offense by amount of compensatory fine imposed for offense. Prohibits person from obtaining a license, tag or permit if a compensatory fine has not been paid.

REVENUE: No revenue impact

FISCAL: Has minimal fiscal impact

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-5 Requires a court to order a defendant to pay all or a portion of a fine to the court clerk for payment to the State Fish and Wildlife Commission (Commission) if the court imposes a fine as penalty for an offense that involves the unlawful taking or killing of wildlife listed under ORS 496.705 (2). Specifies that the court-ordered amount to be paid over to the Commission must be the lesser of: the amount of the imposed fine, or the amount the Commission could recover as damages under ORS 496.705 (2). Sets the maximum fine for the offense as the ORS 496.705 (2) damages amount if that amount is more than the maximum fine established for the offense under felony, misdemeanor, or violation maximum fines. Specifies defendant payment over to the Commission does not prevent the Commission from bringing an action under ORS 496.705 (2) to recover damages for the unlawful taking or killing if the amount paid over to the Commission is less than the amount the Commission could recover under ORS 496.705 (2). Clarifies that the amount recoverable by the Commission as damages under ORS 496.705 (2) must be reduced by the amount already paid over to the Commission from a fine. Clarifies that the amendment provisions apply to all offenses under the wildlife laws, not only misdemeanors.

REVENUE: No revenue impact

FISCAL: Has minimal fiscal impact

BACKGROUND:

In 2016, the Legislature enacted House Bill 4046, which increased damages for unlawful taking or killing of wildlife. Under ORS 496.705 (2), recoverable damages are listed for moose, mountain sheep, mountain goat, elk, deer, gray wolf, black bear, cougar, antelope, silver gray squirrel, other game mammal, wild turkey, sage grouse, other game bird, sturgeon, salmon, steelhead trout or halibut, other game fish, bobcat, fisher, other fur-bearing mammals, bald eagle, golden eagle, goshawk, osprey, peregrine falcon, and any threatened or endangered species. The law allows the Oregon Fish and Wildlife Commission to institute suit for the recovery of civil damages for the unlawful taking or killing of any of the listed wildlife.

Since the passage of House Bill 4046, a judge in Gilliam County found two men guilty of unlawfully possessing bighorn sheep in 2017, but ultimately denied the State's request for a restitution award. The judge found that the civil

damages provided in ORS 496.705 (2) for unlawfully taking wildlife do not constitute "economic damages" necessary for purposes of restitution in criminal cases. This verdict was supported by a subsequent Court of Appeals case (*State v. Shockey*).

PRELIMINARY