

Legislative Analysis



ALLOW THE EXPORTATION OF MICHIGAN MINNOWS, WIGGLERS, AND CRAYFISH

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House Bill 4242 as reported from committee
Sponsor: Rep. Julie Alexander
Committee: Natural Resources and Outdoor Recreation
Complete to 5-25-21

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

BRIEF SUMMARY: House Bill 4242 would amend the Natural Resources and Environmental Protection Act (NREPA) to allow minnows, wigglers, or crayfish¹ taken from Michigan waters to be exported from the state under certain circumstances.

FISCAL IMPACT: House Bill 4242 is unlikely to affect costs or revenues for the Department of Natural Resources or local governments.

THE APPARENT PROBLEM:

Although Michigan law currently prohibits a person from exporting minnows, wigglers, or crayfish harvested from Michigan waters, a 1979 United States Supreme Court case ruled that this exact kind of ban unlawfully restricts interstate commerce in violation of the Commerce Clause.² (See **Background Information**, below.) According to its sponsor, the bill would allow the exportation of minnows, wigglers, and crayfish taken from Michigan waters to align Michigan law with this Supreme Court ruling.

THE CONTENT OF THE BILL:

The bill would amend Part 487 (Sport Fishing) of NREPA to allow minnows, wigglers, or crayfish taken in Michigan to be exported from the state under certain circumstances.

Currently under the act, a person cannot export minnows, wigglers, or crayfish unless the person has a permit from the Department of Natural Resources to do so. However, the permit allows a person to export from Michigan only minnows, wigglers, or crayfish that were harvested from waters outside Michigan's jurisdictional border and imported wholesale into the state. Minnows, wigglers, and crayfish taken from Michigan waters cannot be exported from Michigan.³

The bill would amend these provisions to allow a permit holder to export from Michigan minnows, wigglers, and crayfish taken from Michigan waters.

MCL 324.48729

¹ For purposes of these provisions, *minnows* means chubs, shiners, suckers, when of a size ordinarily used for bait in hook and line fishing, dace, stonerollers, muddlers, and mudminnows; *wigglers* means mayfly nymphs or any other aquatic insect nymphs or larvae; and *crayfish* means any arthropod of the decapoda family.

² *Hughes v. Oklahoma*, 441 US 322 (1979).

³ See https://www.michigan.gov/dnr/0,4570,7-350-79136_79236_80538_80539---,00.html

BACKGROUND:

In *Hughes v. Oklahoma*, the U.S. Supreme Court ruled that an Oklahoma statute that prohibited the exportation of minnows collected from its waters was a restriction of interstate commerce in violation of the Commerce Clause. Despite the state's interest in protecting the wildlife within its borders and thus having the latitude to determine how to do so, the court nonetheless found that prohibiting the exportation of minnows from the state's waters was a regulation of interstate commerce. In the words of the decision, "[w]hen any animal... is lawfully killed for the purposes of food or other uses of man, it becomes an article of commerce, and its use cannot be limited to the citizens of one State to the exclusion of citizens of another State." Those findings led to the ruling that the Oklahoma statute discriminated against interstate commerce on its face, that the statute did not serve a legitimate local purpose, and that there were alternative means of promoting the local purpose without discriminating against interstate commerce.

However, two justices dissented in the case, arguing that while commerce was involved, the state's interest in protecting its resources for all persons within its state is a strong and legitimate purpose that minimally affects interstate commerce. The court opinion also noted this, but remained firm in ruling that the ban on the exportation of minnows collected from Oklahoma waters was not the "least discriminatory alternative," stating that there were "no limits placed on the numbers of minnows that [could] be taken by licensed minnow dealers; nor [did] it limit in any way how [the] minnows [could] be disposed of within the State."

ARGUMENTS:

For:

Supporters of the bill argue that it is imperative not only that Michigan align its laws with the rulings of highest court in the nation, but also that Michigan open up more economic opportunities for Michiganders. Restricting the export of minnows, wigglers, or crayfish harvested from Michigan waters inhibits economic prospects, and aligning with case law would open that extra avenue for exporting minnows, wigglers, or crayfish.

Against:

Critics of the bill argue that Michigan has restricted the sale of minnows, wigglers, or crayfish from Michigan waters since the 1920s in recognition of the harm that unrestricted harvesting for export could cause. These small, seemingly insignificant creatures are vital to Michigan's aquatic ecosystems. Allowing the exportation of minnows, wigglers, or crayfish harvested from Michigan waters could deplete them, which could then cause devastating ripple effects for fish populations, plant growth in Michigan waterways, and the overall makeup of the Great Lakes and Michigan rivers. This devastating change would have a large negative effect on Michigan's economy, as the fishing industry (both commercial and sporting) as well as certain recreational attractions would likely crumble.

POSITIONS:

Representatives of the following entities testified in support of the bill (4-29-21):

- Knutson's Recreational Sales
- Mackie's Live Bait
- Gallon Wholesale Live Bait

A representative of the Department of Natural Resources testified with a neutral position on the bill. (4-29-21)

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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.