

REVISE PENALTIES FOR UNLAWFUL DUMPING

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House Bill 4454 (H-3) as reported from committee

Sponsor: Rep. Cynthia A. Johnson

Committee: Judiciary

Complete to 3-10-20

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

BRIEF SUMMARY: House Bill 4454 would amend the Natural Resources and Environmental Protection Act (NREPA) to revise the penalties for dumping litter as follows:

- Adopt misdemeanor penalties (penal fine only) for litter of 3 cubic feet or more.
- Allow enhanced penal fines for repeat violations.
- Subject an employer, as well as an employee who dumped litter, to penalties under certain circumstances.
- As part of a sentence, order the offender to remove the litter and remediate any damage.
- Allow a civil fine to be imposed instead of, or in addition to, a civil or misdemeanor fine if the state or a local government brings an action to cover costs of cleanup and remediate property damage.

FISCAL IMPACT: House Bill 4454 would have an indeterminate fiscal impact on local units of government. The number of convictions that would result under provisions of the bill is not known. Under the bill, first, second, or subsequent offenses of littering, over 3 cubic feet, would be misdemeanors, resulting in sanctions of penal fines, and, in addition to that, or in lieu of that, could result in sanctions of civil fines. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Under the bill, civil fine revenue would be directed to the local community group or municipal, county, or state department that performs clean-up and remediation. Civil fine revenue could not exceed actual clean-up and remediation costs under the bill. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs.

THE APPARENT PROBLEM:

Across the state, in urban and rural areas alike, illegal dumping is an issue for many communities. From simple household trash, to couches and appliances, to large piles of brush or tires, and even trucks dumping construction debris in the dark of night, ever-growing piles of trash present health and safety issues for the public and can eat up precious local resources to clean up. Reportedly, the City of Detroit expends upward of \$3 to \$4 million dollars annually employing crews to combat and clean up trash that was dumped illegally. At one time, a dumper could incur a misdemeanor charge and criminal fines. Since the late 1990s, only civil fines have been imposed. Legislation has been offered to reinstate criminal fines for larger amounts of trash and to allow local officials to sue a person caught dumping trash illegally to hold the person responsible for the costs of remediation and cleanup.

THE CONTENT OF THE BILL:

Under section 8905a of NREPA, dumping litter on private or public land is illegal and punishable by a civil fine based on the amount and type of litter that was dumped. The section

distinguishes between dumping litter comprising rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances and litter comprising abandoned vehicles, vessels, ORVs, and snowmobiles. The bill would revise provisions and penalties for general litter but would retain current penalties pertaining to abandoned vehicles, vessels, ORVs, and snowmobiles (an earlier version would have revised these penalties, as well).

Litter comprising rubbish, garbage, glass/cans, etc.

The bill would revise the amounts of litter that would trigger sanctions, as well as the penalties for dumping the litter, as follows:

Less than 1 cubic foot in volume of litter:

State civil infraction/civil fine of up to \$800. The bill would retain current law. (A cubic foot is the size of an object that is 1 foot long, 1 foot wide, and 1 foot high.)

At least 1 cubic foot but less than 3 cubic feet in volume:

State civil infraction/civil fine of up to \$1,500. The bill would retain current law.

At least 3 cubic feet or more in volume:

Currently, the violation is a state civil infraction subject to a civil fine of up to \$2,500, or up to \$5,000 for a subsequent violation. The bill would eliminate this sanction and replace it with those described below.

The bill would add the following sanctions:

At least 3 cubic feet but less than 5 cubic yards in volume:

Misdemeanor punishable by penal fine.

First violation: fine of up to \$2,500.

Second and subsequent violations: fine of up to \$5,000 for a second violation, increased by \$2,500 for each subsequent violation.

(An average kitchen stove is about 5 to 6 cubic feet. A cubic yard is approximately the size of a side-by-side refrigerator/freezer.)

5 cubic yards or more:

Misdemeanor punishable by penal fine.

First violation: fine of up to \$5,000.

Second and subsequent violations: fine of up to \$10,000 for a second violation, increased by \$5,000 for each subsequent violation.

(An average commercial dump truck can hold approximately 10 to 14 cubic yards of dirt.)

For violations pertaining to dumping 3 cubic feet or more of litter:

The prohibitions and criminal penalties would apply to both a person and his or her employer or employing agency if the violation was committed at the direction of, or with the knowledge of, the employer or employing agency. Upon conviction, the court would be required to order a person to remove the litter and remediate any damage caused to the property as a result of the violation.

When seeking an enhanced penalty for a second or subsequent violation of dumping 3 cubic feet or more of litter, a prosecuting attorney would have to include on the complaint and

information a statement listing the prior conviction or convictions. Existence of a prior conviction would be determined by the court, without a jury, at sentencing or at a separate hearing for this purpose before sentencing, and established by any relevant evidence, including one or more of the following:

- A copy of the judgment or conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

Additional sanctions for dumping any amount of litter:

Either in addition to, or in lieu of, a state civil infraction or criminal conviction for a violation of dumping litter, an individual could be liable for a civil fine in an action brought by a city or township attorney, county prosecutor, or the attorney general seeking to cover the costs to clean up litter and remediate property damage. The civil fine ordered under this provision could not exceed the actual cleanup and remediation costs. Further, this civil fine revenue would have to be directed to a local community group or municipal, county, or state department that has or will perform the required cleanup and remediation.

The bill would take effect 90 days after its enactment.

MCL 324.8905a

BACKGROUND INFORMATION:

1995 PA 111 amended NREPA to allow violators to be punished with civil fines either as an alternative to or in addition to criminal penalties for dumping litter. 1995 PA 111 expired at the end of 1997, but 1998 PA 15 reenacted the expired provisions. However, the misdemeanor sanction contained in NREPA for littering was removed by 1998 PA 15. According to a Senate Fiscal Agency analysis of 1998 PA 111, the criminal penalties were deleted to remove any confusion among courts and law enforcement officials.¹

ARGUMENTS:

For:

Communities large and small, rural and urban, fall victim to those looking for easy or cheap ways to dispose of their trash. The litter that results can be more than an occasional kitchen bag of trash. People have witnessed trucks pulling up to abandoned or vacant properties and unloading entire truckloads of tires or debris left over from construction jobs. Besides being an eyesore, such illegal dumping is a health problem, with the piles of trash containing nails and other substances that may cause injuries, trash that becomes home to disease-carrying insects and vermin, and trash that contain toxins with the potential to contaminate soil and groundwater and, when it rains, wash into streams and lakes. The ongoing cleanup efforts to contain such blight take a toll on already overburdened local governmental resources and volunteer efforts.

House Bill 4454 would give municipalities a few extra tools in the fight against problem dumpers. First, for larger amounts of trash, the bill would reinstitute criminal penalties in the

¹ 1998 PA 15 (House Bill 4382): <http://legislature.mi.gov/doc.aspx?1997-HB-4382>

form of criminal fines only—meaning, no jail time. Secondly, the fine amounts would be increased, with higher fines attaching to larger amounts of trash and to repeat offenses. The bill would also enable local officials to go after employers who order employees to illegally dump trash so as to avoid landfill fees or other appropriate disposal costs. If convicted, the employer would have to cover the costs to undo any damage to the property where the trash was dumped. Local officials could also seek a separate fine, either on top of or in place of the civil fine an illegal dumper could receive, to cover—in whole or in part—the cost to clean up the litter and to remediate the property.

Enactment of the bill should go a long way to send a message that illegal dumping will not be tolerated and that violators could get more than a slap on the wrist. Further, the ability to sue an offender for cleanup costs should encourage more diligent enforcement of the law on the part of local and state law enforcement agencies.

Response:

The bill is not a cure-all for the illegal dumping of trash and litter, but it is an important step in better equipping communities to fight the problem. Local and statewide efforts to educate the public on the health and safety risks of improperly disposed of trash need to continue, as does increasing access to recycling.

POSITIONS:

The following entities indicated support for the bill:

- Department of Environment, Great Lakes, and Energy (3-3-20)
- Department of Natural Resources (9-3-19)
- City of Detroit (5-7-19)
- Michigan Association of Recreational Vehicles and Campgrounds (9-3-19)
- Michigan Manufactured Housing Association (9-3-19)
- Michigan Townships Association (2-25-20)
- Michigan Sierra Club (3-3-20)
- Michigan Environmental Council (5-7-19)
- Michigan League of Conservation Voters (5-1-19)
- Michigan Association of Counties (5-7-19)
- Invest Detroit (5-7-19)
- Detroit Regional Chamber (5-7-19)

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Fiscal Analyst: Robin Risko

■ 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.