

REVISE PENALTIES FOR UNLAWFUL DUMPING

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House Bill 4454 (proposed substitute H-2)

Sponsor: Rep. Cynthia A. Johnson

Committee: Judiciary

Complete to 9-3-19

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 for litter of 3 cubic feet or more (penal fine only).
- Allow enhanced penal fines for repeat violations.
- Subject an employer, as well as an employee who dumped litter, to penalties under certain circumstances.
- Order, as part of a sentence, the offender to remove the litter and remediate any damage.
- Allow a civil fine to be imposed in lieu 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.
- Require notification to be made to the Department of Natural Resources (DNR) regarding sunken vessels, abandoned vehicles or sportscraft, or assembled structures (e.g., ice shanties) that have been involved in an accident or incident and left unattended, and create a criminal penalty (punishable by jail and a criminal fine) for failure to comply with the notification and removal requirements.

DETAILED SUMMARY:

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 both types of litter.

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.

Vessels, abandoned vehicles or sportscraft, and assembled structures

Currently, it is a state civil infraction punishable by a civil fine of at least \$500 but not more than \$2,500 to litter by abandoning a vehicle, vessel, ORV, or snowmobile. A subsequent violation subjects a person to a civil fine of at least \$1,000 but not more than \$5,000. The fine cannot be ordered by a court unless the vehicle or sportscraft has been disposed of by public sale. The bill would eliminate this provision.

Instead, the bill would require the owner or operator of a vessel, litter described under section 8901(a)(ii) to (v), or an assembled structure (e.g., an ice shanty) that has been involved in an incident or accident, or has sunk in a body of water because of negligence or a man-made or natural cause, to immediately remove the object if physically feasible. [Section 8901(a) defines “litter” in the cited provisions as an abandoned vehicle, vessel, ORV, or snowmobile.] If immediate removal were not feasible, the owner or operator would be required to do both of the following:

- Within 24 hours of the incident or accident, notify the DNR that the vessel, abandoned vehicle or sportscraft, or assembled structure was involved in an incident or accident and has been left unattended.
- Make arrangements to remove the object not later than 48 hours after the incident or accident and provide the DNR with a detailed plan that includes an acceptable time frame for the object’s removal. The notification and provision of a detailed plan to the DNR would not affect a person’s civil liability for damages to any party.

A person who violated the above requirements would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and a fine of up to \$500 for each day the litter (abandoned vehicle or sportscraft) or assembled structure is not removed.

[Note: As written, the bill appears to require a court to impose a separate jail sentence, in addition to a separate fine, for each day the object is not removed.]

The bill would take effect 90 days after its enactment.

MCL 324.8905a

BACKGROUND INFORMATION:

1995 PA 111 amended Part 89 (Littering) of 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, 1998 PA 15 removed the misdemeanor sanction contained in 1995 PA 111.

FISCAL IMPACT:

The substitute for HB 4454 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. 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 local libraries, which are the constitutionally designated recipients of those revenues. 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.

Also under the bill, the owner or operator of a vessel, an abandoned vehicle or sportscraft, or an assembled structure that has been involved in an incident or accident, or that has sunk in a body of water, would be guilty of a misdemeanor punishable by imprisonment and a fine for each day the vessel, abandoned vehicle or sportscraft, or assembled structure is not removed. New misdemeanor convictions involving imprisonment 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. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated.

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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.