

Legislative Analysis



REVISE PENALTIES FOR UNLAWFUL DUMPING

Phone: (517) 373-8080
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House Bill 4454 as introduced
Sponsor: Rep. Cynthia A. Johnson
Committee: Judiciary
Complete to 5-6-19

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

BRIEF SUMMARY:

House Bill 4454 would revise the penalties for dumping litter as follows:

- Increase the amount of litter subject only to a civil fine.
- Adopt misdemeanor penalties for larger amounts of litter (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, the misdemeanor fine.
- Allow the state or a local government to bring an action for a civil fine to cover costs of cleanup and remediate property damage.

DETAILED SUMMARY:

Under section 8905a of the Natural Resources and Environmental Protection Act (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 dumping abandoned vehicles, vessels, ORVs, and snowmobiles. The bill would not amend the penalties currently in place for dumping abandoned vehicles or sportscraft.

The bill would revise the amounts of litter (rubbish, garbage, etc.) that would trigger sanctions, as well as revise 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 retains current law.)

At least 1 cubic foot but less than 1/2 cubic yard in volume (upper limit increased from 3 cubic feet):

State civil infraction/civil fine of up to \$1,500 (current penalty). (One-half of a cubic yard equals 13.5 cubic feet. A cubic yard is approximately the size of an oven.)

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; up to \$5,000 for a subsequent violation. The bill would eliminate this sanction.

The bill would add the following sanctions:

More than 1/2 cubic yard but less than 5 cubic yards in volume:

Misdemeanor punishable by penal fine.

First violation: fine of up to \$500.

Second and subsequent violations: fine of up to \$1,000 for a second violation and increased by \$500 for each subsequent violation.

[Note: As written, no prohibition or penalty would apply to dumping exactly 1/2 cubic yard of litter.]

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 and increased by \$5,000 for each subsequent violation.

For violations pertaining to dumping more than 1/2 cubic yard of litter:

The prohibitions and penalties would apply to both a person and his or her employer or employing agency if the violation was done at the direction 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. Either in addition to, or in lieu of, a criminal conviction and penal fine, an individual violating Part 89 (Littering) of NREPA could be liable for a civil fine.

Further, a city or township attorney, county prosecutor, or the attorney general could bring an action seeking a civil fine for 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. 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.

When seeking an enhanced penalty for a second or subsequent violation of dumping more than 1/2 cubic yard 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 evidence relevant for that purpose, 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.

The bill would take effect 90 days after 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 deleted the misdemeanor sanction contained in 1995 PA 111.

FISCAL IMPACT:

House Bill 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, violations for second or subsequent offenses could 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. The state could see an increase in revenue if Justice System assessment revenue is deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. 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.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

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