



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4454 (Substitute H-3 as passed by the House)  
Sponsor: Representative Cynthia A. Johnson  
House Committee: Judiciary  
Senate Committee: Environmental Quality

Date Completed: 9-9-20

### **CONTENT**

**The bill would amend Part 89 (Littering) of the Natural Resources and Environmental Protection Act to do the following:**

- **Prescribe penalties for first and subsequent violations for littering if the amount of litter were three cubic feet or more but less than five cubic yards.**
- **Prescribe penalties for first and subsequent violations for littering if the amount of litter were five cubic yards or more.**
- **Specify that the bill would apply to a person and a person's employer or employing agency if the violation were committed at the direction of or with the knowledge of the employer or employing agency.**
- **Require a court to order a person to remove the litter and remediate any damage caused to a property as a result of littering.**
- **Specify that if a prosecuting attorney intended to seek an enhanced fine, he or she would have to include on the complaint and information a statement listing the defendant's previous conviction or convictions under Part 89.**
- **Allow a city or township attorney, a prosecuting attorney, or the Attorney General to bring an action to seek a civil fine for the cost of cleanup.**
- **Prohibit a civil fine for cleanup ordered as a result of an action brought by one of the individuals listed above from exceeding the actual cleanup and remediation costs.**

The bill would take effect 90 days after its enactment.

Part 89 prescribes penalties for illegal dumping; these penalties generally depend on the amount of the litter dumped. For example, if the amount of litter is less than one cubic foot in volume, a person is responsible for a State civil infraction and is subject to a civil fine up to \$800. If the amount of litter is one cubic foot or more but less than three cubic feet in volume, a person is responsible for a State civil infraction and is subject to a civil fine up to \$1,500.

Under Part 89, if the amount of the litter is three cubic feet or more in volume, a person is responsible for a State civil infraction and is subject to a civil fine of up to \$2,500. A subsequent violation of this type is subject to a civil fine of no more than \$5,000. The bill would replace these penalties with the penalties described below.

A person who committed a first violation of Part 89, if the amount of litter were three cubic feet or more but less than five cubic yards, would be guilty of a misdemeanor punishable by a fine up to \$2,500. A second violation would be a misdemeanor punishable by a fine up to \$5,000. For each subsequent violation of Part 89 that fit these parameters and followed a conviction for a second violation, the fine would have to be increased by \$2,500.

A person who committed a first violation of Part 89, if the amount of litter were five cubic yards or more, would be guilty of a misdemeanor punishable by a fine of up to \$5,000. A person who committed a second violation of this type would be guilty of a misdemeanor punishable by a fine up to \$10,000. For each subsequent violation of Part 89 that fit these parameters and followed a conviction for a second violation, the penal fine would have to be increased by \$5,000.

The violations described above also would apply to a person and a person's employer or employing agency if the violation were committed by a person at the direction of or with the knowledge of the person's employer or employing agency.

As part of its judgment of sentence upon the conviction of a person for the violations described under the bill, the court would have to order a person to remove the litter and remediate any damage caused to the property as a result of the violation.

If a prosecuting attorney intended to seek an enhanced penal fine, he or she would have to include on the complaint and information a statement listing the previous conviction or convictions. The existence of the defendant's previous conviction or convictions would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a previous conviction could be established by any evidence relevant for that purpose, including one or more of the following:

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

In addition to, or instead of, a State civil infraction or a criminal conviction, an individual who violated Part 89 could be liable for a civil fine for the cost of cleanup. A city or township attorney, a prosecuting attorney for the county, or the Attorney General could bring an action seeking a civil fine for a violation for the costs to clean up litter and remediate property damage. A civil fine of this type could not exceed actual cleanup and remediations costs. The civil fine would have to be directed to a local community group or municipal, county, or State department that had or would perform the cleanup and remediation required as a result of the described violations.

MCL 324.8905a

Legislative Analyst: Dana Adams

### **FISCAL IMPACT**

The bill would have a positive fiscal impact on local governments and no fiscal impact on the State. The proposed changes would provide for penal fines, and in addition to, or instead of that, civil fines, for the costs to clean up litter and remediate property damage in an amount up to the actual costs. Any additional increase in revenue from penal fines would go to local libraries. Any civil fines levied would be directed to the local community, municipal, county, or State department that performed the clean-up and remediation. The amount of civil fine revenue could not exceed the actual cost of clean-up and remediation. The revenue for local units of government is indeterminate and would depend on the actual number of violations.

Fiscal Analyst: Ryan Bergan

SAS\S1920\s4454sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.