

REVISE PENALTIES FOR UNLAWFUL DUMPING

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House Bill 4084 (H-3) as reported from committee

Sponsor: Rep. Cynthia A. Johnson

Committee: Judiciary

Complete to 2-16-22

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

BRIEF SUMMARY: House Bill 4084 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 three 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.
- Require the court to order the offender to remove the litter and remediate any damage under certain circumstances.
- Allow the court to order the violator to reimburse a local community group or municipal, county, or state department for the costs of cleanup and remediation of property damage in addition to or in lieu of a state civil infraction or a criminal conviction.
- Create a civil cause of action for a property owner to sue for damages for the reasonable and necessary costs of cleanup and remediation of the property.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governments. (See *Fiscal Information*, below, for a detailed discussion.)

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 annually expends upward of \$3 million to \$4 million 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 property owners, including local officials if the illegal dumping was on public property, to sue and hold the violator 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 consisting of rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances and litter consisting of 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.

The bill would revise the amounts of litter¹ that trigger sanctions, and the penalties for dumping the litter, as follows:

- Less than one cubic foot in volume: Currently a state civil infraction with a civil fine of up to \$800. The bill would retain current law.
- At least one cubic foot but less than three cubic feet in volume: Currently a state civil infraction with a civil fine of up to \$1,500. The bill would retain current law.
- Three cubic feet or more in volume: Currently a state civil infraction with 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 the following:
 - At least three cubic feet but less than five cubic yards in volume: Misdemeanor punishable by a penal fine of up to \$2,500 for a first violation, increased by \$2,500 for each subsequent violation. (For example, up to \$5,000 for a second violation, up to \$7,500 for a third, etc.)
 - Five cubic yards or more in volume: Misdemeanor punishable by a penal fine of up to \$5,000, increased by \$5,000 for each subsequent violation. (For example, up to \$10,000 for a second violation, up to \$15,000 for a third, etc.)

Provisions concerning three cubic feet or more of litter

For violations pertaining to dumping three cubic feet or more of litter, the prohibitions and criminal penalties would apply both to a person and to 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 have to order a person to remove the litter and remediate any damage caused to the property as a result of the violation. If the violation was committed on railroad property, the court would have to order reimbursement to the railroad for the costs of the removal of the litter and any necessary damage remediation.

When seeking an enhanced penalty for a second or subsequent violation of dumping three 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, such as 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

In addition to or in lieu of a state civil infraction or criminal conviction for a violation of dumping litter, the court could order the individual who committed the violation to reimburse a local community group or municipal, county, or state department that has or will perform the

¹ For purposes of illustration, a cubic foot is a cube whose sides are all 12 inches long. An average kitchen stove is about five to six cubic feet. A cubic yard is about the size of a side-by-side refrigerator/freezer. An average commercial dump truck can hold about 10 to 14 cubic yards of dirt.

required cleanup and remediation for expenses incurred related to the violation. A city or township attorney, county prosecutor, or the attorney general could bring an action seeking the reimbursement for expenses incurred for the expense to clean up litter and remediate property damage. Reimbursement ordered under these provisions could not exceed actual cleanup and remediation costs.

The funds collected as part of an order of reimbursement could be used in partnership by a local community group or municipal, county, or state department with the owner of the property for the cleanup and remediation required as a result of the littering violation.

Civil remedy

In addition to any penal or civil fine ordered for a violation under the bill, a property owner would have a civil cause of action for damages for the reasonable and necessary costs of cleanup and remediation of the property.

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. Those provisions expired at the end of 1997, but 1998 PA 15 reenacted them. However, 1998 PA 15 removed the misdemeanor penalty in NREPA for littering. According to a Senate Fiscal Agency analysis of 1998 PA 15, the criminal penalties were deleted to remove any confusion among courts and law enforcement officials regarding whether a violator would be charged with a civil infraction or criminal offense.²

House Bill 4084 is similar to House Bill 4454 of the 2019-20 legislative session as that bill was passed by the House of Representatives and reported from the Senate Committee on Environmental Quality.

FISCAL INFORMATION:

House Bill 4084 would have an indeterminate fiscal impact on the state and on local units of government. As the number of violations that would occur under provisions of the bill is not known, we cannot estimate the amount of additional revenue that would be collected.

Under the bill, first, second, or subsequent offenses of littering, over three cubic feet, would be misdemeanors, resulting in sanctions of penal fines. In addition to that, or in lieu of that, the offenses could result in sanctions of civil fines. Civil fine revenue could not exceed actual cleanup and remediation costs under the bill.

Any increase in penal or civil fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be deposited into the

² 1998 PA 15: <http://legislature.mi.gov/doc.aspx?1997-HB-4382>

state's Justice System Fund, so revenue to the state would be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch; the Departments of State Police, Corrections, Health and Human Services, and Treasury; and the Legislative Retirement System.

The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and case complexity.

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 or remodeling 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 or hazardous materials with the potential to contaminate soil and groundwater and, when it rains, wash into streams and lakes. Trash dumped on property abutting rail lines can impede the ability of first responders when responding to a vehicle/train collision or pedestrian injury. In addition, illegal dumping affects the ability of property owners to enjoy their own yards and land and prevents others from enjoying the beauty of nature when hiking or hunting, driving on the state's many scenic roadways, or fishing or boating on the state's waterways. The ongoing cleanup efforts to contain such blight take a toll on already overburdened local governmental resources and volunteer efforts.

House Bill 4084 would address the problem by giving 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 form of criminal fines only—meaning, no jail time. Second, the maximum fine amounts would be increased, with higher fines attaching to larger amounts of trash and to repeat offenses. Courts would retain discretion to fit the fine imposed to the size and nature of the trash dumped. The bill also would enable property owners and local officials to go after employers who order employees to illegally dump large amounts of 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. A court could also order, either in addition to or in place of a civil fine an illegal dumper could receive, that the person reimburse local volunteers or governmental entities for the cost to clean up the litter and remediate the property. An amendment incorporated into the bill as reported from committee would require a reimbursement for cleaning up trash dumped on rail property to be made to the affected railroad. Due to the inherent danger presented by fast-moving trains, any cleanup and remediation to rail lines and railroad property should only be done by employees or contractors of the railroad companies.

Enactment of the bill should go a long way in sending the message that illegal dumping will not be tolerated and that violators could get more than a slap on the wrist. Further, the ability

of a private or public property owner 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 would not be a cure-all for the illegal dumping of trash and litter, but it would be 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 trash that is improperly disposed need to continue, as does increasing access to landfills and recycling centers for businesses and individuals to mitigate the belief that illegal dumping is a viable recourse.

POSITIONS:

Representatives of the following entities testified in support of the bill (10-19-21):

- Michigan Railroad Association
- CSX
- CN

Representatives of the following entities indicated support for the bill:

- Department of Environment, Great Lakes and Energy (10-19-21)
- Michigan League of Conservation Voters (11-9-21)
- City of Detroit (11-9-21)
- Michigan Environmental Council (11-9-21)
- Michigan Manufactured Housing, RV, and Campground Association (11-9-21)
- Detroit Regional Chamber (10-19-21)
- Michigan Townships Association (10-19-21)
- Michigan Municipal League (10-19-21)
- Invest Detroit (10-19-21)

Legislative Analyst: Susan Stutzky
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.