



**House
Legislative
Analysis
Section**

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PENALTIES FOR LITTERING

House Bill 5264 (Substitute H-5)
House Bill 5265 (Substitute H-2)

First Analysis (9-24-92)

Sponsor: Rep. David Anthony
Committee: Conservation, Recreation
and Environment

THE APPARENT PROBLEM:

As solid waste landfill space continues to be consumed, solid waste disposal remains one of the state's most pressing concerns. Solid waste disposal has also become a profitable business for private entrepreneurs. However, according to reports, many "entrepreneurs" are disposing of their garbage on private land. Litterers have been sighted disposing of furniture and refuse in state national forests and on the edge of private property in northern counties. Under current laws, however, it is difficult to punish violators. One property owner found proof of the identity of the person who dumped garbage on her property. According to the local enforcement agency, however, the violator couldn't be prosecuted, since the property owner didn't actually see that person commit the offense. Some believe that littering should no longer be treated as a minor infraction, that the penalties for littering should be increased, and that those guilty of dumping large quantities of litter should be made to clean up the litter and forfeit personal property.

THE CONTENT OF THE BILLS:

Currently, a violation of Public Act 106 of 1963 (MCL 752.903), which prescribes penalties for the littering of public and private property and waters, is a misdemeanor, punishable by a fine of up to \$400 and court costs, imprisonment for up to 90 days in the county jail, or both. Under House Bill 5264, a person who violated a provision of the act would, in certain cases, be subject to the forfeiture of property provisions of the Revised Judicature Act.

Penalties. Under the bill, the following fines would be levied against a person who violated the act:

--A violation involving an amount of litter of less than one cubic foot in volume would be subject to a civil fine of up to \$600.

--A violation where the amount of litter was one cubic foot or greater in volume would incur a civil fine of up to \$800, or imprisonment for not more than 90 days, or both. In addition, the violator would be subject to the forfeiture of property provisions of the Revised Judicature Act, and the court would be required to impose community service of 8 to 40 hours of litter-gathering labor.

Exceptions. An enforcement action could not be taken against a landowner on whose land litter had been placed without the landowner's consent, unless the entity enforcing the provisions of the bill had made a diligent and good faith effort to identify, locate, and take enforcement action against the person who appeared likely to have committed the violation. In addition, a landowner could not be held liable for an action taken against the person who committed the violation if he or she provided information, from evidence found in the litter, concerning the identity of that person. The enforcing entity could, however, include the landowner as a party in an enforcement action against a violator so that a court could order the landowner to allow the violator access to the land to remove and dispose of the litter.

In addition to any other legal or equitable remedy available, a landowner could recover both of the following expenses:

-- Reasonable expenses incurred in disposing of the litter.

-- Reasonable attorney's fees.

House Bills 5264 and 5265 (9-24-92)

House Bill 5265 would amend the Revised Judicature Act (MCL 600.4701 et al.) to specify that littering, a misdemeanor under Public Act 106 of 1963, would be considered a crime under the judicature act for purposes of making that violation subject to property forfeiture provisions.

The Michigan Railroads Association supports the bill. (9-23-92)

The bills are tie-barred to each other.

FISCAL IMPLICATIONS:

According to the Department of Natural Resources, the bill would have no impact on state funds. (9-22-92)

ARGUMENTS:

For:

The bill would send a message to litterers by increasing the penalties for littering in proportion to the crime committed. Some violators of the state's littering laws at present find it worth their time and energy to drive for several hours to dispose of garbage. The bill would also relieve from responsibility those persons or corporations, such as railroads, whose property was littered in their absence, and would protect them from liability should they provide the local enforcement agency with the identity of a violator, if found among the contents of the litter.

Against:

Michigan's littering law is obsolete and needs to be completely rewritten rather than amended in a piecemeal manner. Under the act, for example, the operator of a wrecker could be fined for failing " . . . to remove all glass and other injurious substances dropped on the highway . . . as a result of the accident" (MCL 752.901). In the past, the glass and metal might have been the only remnants of an automobile accident. However, nowadays accidents often involve spills from tankers that haul hazardous waste. The act needs to be brought up to date to reflect these changes.

POSITIONS:

The Department of Natural Resources supports the bill, but would prefer a complete revision of Public Act 106. (9-23-92)

The Michigan United Conservation Clubs supports the bill. (9-22-92)