

## SEIZE LITTERERS' PROPERTY

House Bills 4789 and 4790  
(Substitutes H-1)  
First Analysis (5-10-94)

Sponsor: Rep. David Anthony  
Committee: Conservation,  
Environment, and Great Lakes

### THE APPARENT PROBLEM:

In recent years, as communities across the state have become more committed to reducing environmental contamination, local governments have worked to introduce recycling programs and to educate citizens on ways to reduce waste. Most local governments, however, have also increased trash pickup fees to recoup the costs of these programs. In addition, cities that once hauled away old appliances and furniture, at little or no cost to property owners, now charge additional fees for that service. As a result, the age-old problem of littering has taken on new dimensions, as people resort to the practice of illegally abandoning old household appliances and other garbage in rural areas. Old stoves, refrigerators, and ironing boards have been seen in state national forests and on the edge of private property in northern counties.

Reportedly, some of those who litter are persons who own cottages -- or even campers -- in the northern parts of the state, and who discard old appliances in this manner rather than hauling them home or having them transported to a landfill. Solid waste disposal has also become a profitable business for private entrepreneurs, many of whom -- according to reports -- are disposing of garbage on private lands, in spite of recent laws that have been passed to punish those who are caught. For example, Public Act 106 of 1963, the litter law, was amended in 1993 to increase the penalties for littering and to impose mandatory community service on offenders. It is generally agreed that stricter laws are needed to punish those who indulge in littering on a large scale. Some argue that it would be easier for such violators to be prosecuted if certain types of littering were defined as a civil, rather than a criminal, offense. It is further argued that those guilty of dumping large quantities of litter should be made to forfeit personal property.

### THE CONTENT OF THE BILLS:

House Bills 4789 and 4790 would amend Public Act 106 of 1963, which prohibits littering, and the Revised Judicature Act (RJA), respectively, to permit property that has been used in the commission of littering offenses to be subject to the forfeiture provisions of the RJA. The bills are tied to each other.

Currently, under Public Act 106 of 1963, littering is a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$500, or both; the court must also order community service in the form of litter-gathering labor. If the litter is produced at a health facility, the penalty is imprisonment for up to six months, a fine of up to \$1,000, or both. Additional penalties are provided for subsequent violations and for violations involving litter that is considered infectious, or pathological waste, or sharps. House Bill 4789 would add civil penalties for littering, as follows:

--A civil fine of up to \$600 would be imposed if the amount of the litter was less than one cubic foot in volume.

--A civil fine of up to \$800 would be imposed if the amount of the litter was more than one cubic foot in volume; and, in addition, the person would be subject to the forfeiture of property provisions of the RJA.

--An intentional violation of the criminal provisions of the act would subject the violator to the forfeiture provisions of the RJA.

--A default on the payment of a civil fine or costs, or on an installment of the fine or costs, could be remedied by any means authorized under RJA.

The Revised Judicature Act (RJA) (MCL 600.4701 et al.) provides for forfeiture to the government of property used for, or obtained through, the commission of any of several crimes named in the act. House Bill 4790 would amend RJA to add the civil offense of littering to the list of offenses for which property could be forfeited. Under the bill, the forfeited property would be returned if the action against the owner was dismissed, or if he or she were found to be not responsible for commission of the civil offense.

### **FISCAL IMPLICATIONS:**

If, as anticipated, the provisions of the bills reduce the amount of litter currently found in state parks, then, according to the Department of Natural Resources (DNR), personnel costs for cleaning up this litter would be reduced. (5-4-94)

### **ARGUMENTS:**

#### ***For:***

Littering causes degradation of the environment and pollution of the water resources, presents safety hazards, and mars the beauty of Michigan's countryside. It is a problem that affects both urban and rural areas in the state. These problems were acknowledged by the House Republican Task Force on Recycling and Waste Reduction, when it said in its 1993 report that "Michigan must come down harder on individuals who illegally dump garbage along our roads." However, in the past, penalties for littering have been perceived as being woefully inadequate; and fines, capped at \$500, as too low. The pecuniary rewards of this crime apparently outweighed the threat of criminal penalties, since some violators of the state's littering law apparently have found it worth their time and energy to drive for several miles to dispose of garbage. The provisions of the bills would minimize the incentive for would-be violators by ensuring that property used in committing the violation was forfeited. Most important, the bills would focus on those planning to dump large items: people found dumping items whose volume was greater than one cubic foot could have a lien placed on their cars, or, for that matter, on their Winnebagos!

#### ***Against:***

The bills represent a fundamental inequity. In the first place, under the bills, personal property used in the commission of littering could be forfeited, irrespective of the amount of gain realized from that

crime. The punishment would not necessarily fit the crime, but rather could vary from case to case. In the second place, mandatory penalties such as the bills' can operate against the interests of justice by undermining judicial discretion to tailor sentences to fit the circumstances of a case.

#### ***Response:***

Forfeiture laws can deter would be violators. In fact, the bills are modeled after the state's successful drug forfeiture law, which ensures that property used for, or obtained through, criminal activity is forfeited to the government. In addition, by allowing prosecutors to charge violators as civil, rather than criminal, offenders, the bills would make it easier for offenders to be convicted (the standard of proof for a civil offense lies in a "preponderance of the evidence," which is less than the standard of proof in criminal offense, in which guilt must be proven "beyond a reasonable doubt").

#### ***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.

#### ***Against:***

The provisions of the bill are vague. For example, it is unfair to expect a local police officer to make an on-the-spot estimate on whether an item is more or less than one cubic foot in volume, and to make an arrest based on that decision. The bill should be amended to provide a different method for police officers to gauge whether an item falls under the provisions of the bill or not.

### **POSITIONS:**

The Michigan United Conservation Clubs (MUCC) supports the bills. (5-9-94)

The Michigan Environmental Council supports the bills. (5-9-94)

The Department of State Police has no position on the bills. (5-9-94)

**The Department of Natural Resources has no position on the bills. (5-3-94)**

**The Prosecuting Attorneys Association of Michigan has no position on the bills. (5-6-94)**