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BILL



ANALYSIS

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House Bill 4008 (Substitute H-1)

Sponsor: Representative David Anthony

House Committee: Conservation, Environment, and Great Lakes

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 5-15-95

**SUMMARY OF HOUSE BILL 4008 (Substitute H-1) as passed by the House:**

**The bill would amend Part 89 of the Natural Resources and Environmental Protection Act to specify penalties for littering based on the amount of litter, provide for the impoundment of vehicles used in littering, subject an impounded vehicle to a lien, and allow the enforcement of the lien through a foreclosure sale. The bill would take effect June 1, 1995.**

**Penalties**

Currently, the Act specifies that the driver of a vehicle or vessel is presumed to be responsible for litter that is thrown, dropped, dumped, deposited, placed, or left from the vehicle or vessel on public or private property or water. Littering is a misdemeanor, subject to a minimum fine of \$100 and a maximum fine of \$500. In addition, the court must impose community service in the form of litter-gathering labor. The bill would delete from the list of offenses litter that was "dropped". Further, the bill specifies that the following offenses would be considered State civil infractions, and penalties would be imposed in proportion to the volume of litter, as follows:

- Littering of less than one cubic foot in volume would be punishable by a civil fine of up to \$800.
- Littering of one to three cubic feet in volume would be punishable by a civil fine of up to \$1,500.
- Littering of more than three cubic feet in volume would be punishable by a civil fine of up to \$2,500. A civil fine of up to \$5,000 could be imposed for a violation of this provision in a subsequent proceeding.

A default in the payment or installment payment of the civil fines or costs imposed under these provisions would be subject to remedies provided under the Revised Judicature Act.

These provisions concerning the payment of, and default on, fines would not apply unless House Bill 4426 took effect. (House Bill 4426 would amend the Revised Judicature Act to establish procedures under which violations of State law could be adjudicated as State civil infractions.)

The bill specifies that in addition to any other penalty or sanction provided in Part 89 for a civil or criminal action, the court could require the defendant to pay the cost of removing all litter that was the subject of the violation and the cost of damages to any land, water, wildlife, vegetation, or other natural resource or facility damaged by the violation, or the reasonable expense of impounding a vehicle used in littering, or both. Money collected under this provision would be distributed to the governmental entity that brought an enforcement action or impounded a vehicle.

### Impoundment/Foreclosure Sale

The bill would allow a peace officer to seize and impound a vehicle that was involved in the commission of a violation of Part 89. The impounded vehicle would be subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the defendant could be ordered to pay. The vehicle would have to be released from impoundment, however, if the defendant or a person with an ownership interest in the vehicle posted a \$750 cash or surety bond. The vehicle also would have to be released--and the lien discharged--upon a judicial determination that the defendant was not responsible for the violation, or upon payment of the fine, costs, and damages. If the court determined that the defendant was responsible for a violation of Part 89, and the defendant defaulted in the payment, then any bond posted would be forfeited and applied to the fine, costs, damages, or installment. Any remaining unpaid amount would have to be certified by the court to the attorney for the governmental entity that brought the action.

The attorney for the governmental entity could enforce the lien by a foreclosure sale. The sale would have to be conducted in the same manner, and would be subject to the same rights, as an execution sale implemented to enforce a money judgment. The attorney would be required to send written notice of the time and place of the foreclosure sale to each person with a known ownership interest in or lien of record on the vehicle, at least 21 days before the date of the sale. In addition, at least 10 days before the sale, the attorney would be required twice to publish notice of the sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale would have to be distributed in the following order of priority:

- To discharge any lien on the vehicle that had been recorded prior to the creation of the lien imposed under the bill.
- To the clerk of the court to pay the fine, costs, and damages that the defendant had been ordered to pay.
- To discharge any lien that had been recorded after the creation of the lien under the bill.
- To the owner of the vehicle.

MCL 324.8904 et al.

Legislative Analyst: L. Burghardt

### **FISCAL IMPACT**

The bill would have a potential fiscal impact of between \$125,000 and \$780,000, depending on the number of violations and the types of fines assessed.

The Department of Natural Resources prosecutes an average of 156 littering cases per year. It is unknown how many would be fines in each category described in the bill, or whether the maximum fine in a category would be assessed. If all violators were fined \$800, the revenue would be \$125,000; if fined \$5,000, the revenue would be \$780,000.

Fiscal Analyst: G. Cutler

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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.