

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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House Bill 4382 (Substitute S-1 as reported)
Sponsor: Representative David Anthony
First House Committee: Conservation, Environment and Recreation
Second House Committee: Forestry and Mineral Rights
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 2-5-98

RATIONALE

Public Act 111 of 1995 added several sections to Part 89 of the Natural Resources and Environmental Protection Act (NREPA) to establish civil fines for littering and allow vehicle forfeiture for repeated littering violations. The 1995 Act was designed to address the problems of excess littering and illegal dumping of household appliances. Previously, Part 89 contained criminal penalties only, and it was believed that civil penalties would lead to greater enforcement. The sections added in 1995, however, expired on December 31, 1997. It has been suggested that violators should continue to be subject to civil penalties. The Department of Natural Resources also has suggested that the criminal penalties provision be deleted to remove any confusion among courts and law enforcement officials.

CONTENT

The bill would amend Part 89 (Littering) of the NREPA to reenact several sections concerning penalties for littering violations. The bill also would delete the Act's provision that littering is a misdemeanor, subject to a minimum fine of \$100 and a maximum fine of \$500, and/or imprisonment for up to 90 days. The bill, however, would retain the provision that the court must impose community service in the form of litter-gathering labor for a violation of Part 89. The sections that expired on December 31, 1997, are described below.

Section 8905a specifies that the following offenses are State civil infractions, and penalties are imposed in proportion to the volume of litter, as follows:

- Littering of less than one cubic foot in

volume is punishable by a civil fine of up to \$800.

- Littering of at least one but less than three cubic feet in volume is punishable by a civil fine of up to \$1,500.
- Littering of three cubic feet or more in volume is punishable by a civil fine of up to \$2,500. A civil fine of up to \$5,000 may be imposed in a subsequent proceeding for a violation of this provision.

A default in the payment or installment payment of the civil fines or costs imposed under Part 89 is subject to remedies provided under the Revised Judicature Act. These civil penalties do not apply to violations of Sections 8903 and 8905 (which establish criminal penalties for throwing an object in the path of a vehicle and littering infectious waste).

Section 8905b specifies that in addition to any other penalty or sanction provided in Part 89 for a civil or criminal action, the court may require the defendant to pay the cost of removing all litter that is 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 must be distributed to the governmental entity that brought an enforcement action or impounded a vehicle.

Under Section 8905c, a peace officer is allowed to seize and impound a vehicle that is involved in the commission of a violation of Part 89, if the vehicle operator has been previously convicted of a littering violation. The impounded vehicle is subject to a

lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the defendant may be ordered to pay. The vehicle must be released from impoundment, however, if the defendant or a person with an ownership interest in the vehicle posts a \$750 cash or surety bond. The vehicle also must be released, and the lien discharged, upon a judicial determination that the defendant is not responsible for the violation, or upon payment of the fine, costs, and damages. If the court determines that the defendant is responsible for a violation of Part 89, and the defendant defaults on the payment, then any bond posted must be forfeited and applied to the fine, costs, damages, or installment. Any remaining unpaid amount must be certified by the court to the attorney for the governmental entity that brought the action.

Section 8905c also specifies that the attorney for the governmental entity may enforce the lien by a foreclosure sale. The sale must be conducted in the same manner, and is subject to the same rights, as an execution sale implemented to enforce a money judgment. The attorney is 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 sale. At least 10 days before the sale, the attorney is 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 must be distributed in the following order of priority:

- To discharge any lien on the vehicle that was recorded prior to the creation of the lien.
- To the clerk of the court for the payment of the fine, costs, and damages that the defendant was ordered to pay.
- To discharge any lien that was recorded after the creation of the lien
- To the owner of the vehicle.

The bill would reinstate these provisions without a sunset date.

MCL 324.8904 et. al

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would allow law enforcement agencies and courts to continue to punish violators by imposing stiff civil fines for dumping large quantities of litter, and impounding vehicles for repeat violations. The bill also would delete criminal penalties for general littering violations to remove any confusion among law enforcement agencies and courts as to whether a violator would be charged with a civil or criminal offense.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State or local government, dependent on the number of violations and amount of fine revenues involved. The bill would delete criminal penalties, but maintain civil fines.

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.